

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2020-000986

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S.C. SUPREME COURT

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); The Episcopal Church in South Carolina, Appellants.

RECORD ON APPEAL – Volume I

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STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

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; 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; St.)
 Bartholomews Episcopal Church;)
 St. Davids Church; St. James' Church,)
 James Island, S.C.; St. Paul's Episcopal)
 Church of Bennettsville, Inc.; 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 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 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)

Case No. 2013-CP-18-00013

ORDER

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	)
	)
DEFENDANTS.	)
	)

BEFORE THE COURT is a Motion for Clarification of Jurisdiction and For Other Relief filed by Plaintiffs, Defendant's Petition for an Accounting and Execution and Further Relief on Declaratory Judgments of the South Carolina Supreme Court, and Defendant's Motion to Appoint a Special Master. This Court finds that no parish acceded to the 1979 Dennis Canon; the deed of Camp St. Christopher titled to the Trustee Corporation is controlling; the Federal Court has exclusive authority to decide all issues relating to the trademarks, service marks, and intellectual property; and the Defendants' Petition for the Appointment of a Special Master and Petition for an Accounting are denied.

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") purported membership, withdrawal, and disaffiliation from The Episcopal Church ("TEC"). The Diocese, along with The Trustees of The Protestant Episcopal Church in South Carolina ("The Trustees"), and thirty-six Plaintiff parishes (collectively "the Plaintiffs") claim that TEC and The Episcopal Church in South Carolina ("TECSC") (collectively "the

Defendants”) have no “legal, beneficial, or equitable interest in the disputed property.” All parties contend they are the lawful and rightful owners and possessors of the real and personal property at issue.

II. PROCEDURAL HISTORY

On January 3, 2013, the Diocese, the Trustees, and the individual church parishes organized as South Carolina non-profit corporations filed this action against TEC and TECSC to determine the ownership of church property due to disagreements on the theological direction of the Episcopal Church.¹

A bench trial before the Honorable Judge Diane S. Goodstein began on July 8, 2014, and ended on July 25, 2014. After three weeks of testimony and presentation of evidence, by order dated February 3, 2015, the trial judge ruled that the Plaintiffs are the owners of their real, personal, and intellectual property, and further held that the Defendants have no legal, beneficial, or equitable interest in the Plaintiff’s real, personal, and intellectual property. The trial judge further ordered that pursuant to §§ 39-15-1105, §§ 16-17-310, and §§ 16-17-320, TEC and TECSC were permanently enjoined from using, assuming, or adopting in any way the names, styles, emblems, or marks of the Plaintiffs.

Subsequently, the Defendants TEC and TECSC appealed the order arguing against the standard used to determine who has the right to control the Diocese. Further, TEC and TECSC appealed the state registered trademarks claiming they created confusion with TEC’s Federal trademarks.

On August 2, 2017, the Supreme Court of South Carolina issued five separate opinions regarding this matter. *Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church*,

¹ This Court’s decision is not an endorsement of the underlying theological position that gave rise to this division.

421 S.C. 211, 806 S.E.2d 82 (2017) (“the Collective Opinions”). The Plaintiff then filed a petition for rehearing, in which two justices voted to grant the petition, two voted to deny the petition, and one recused herself. The petition for rehearing was denied by order on November 17, 2017, and the remittitur was issued on the same date. The case was then assigned to this Court on January 10, 2018, by the Chief Administrative Judge for the First Judicial Circuit.

On February 9, 2018, the Plaintiffs petitioned the United States Supreme Court for a writ of certiorari, which was subsequently denied on June 11, 2018.

On March 23, 2018, the Plaintiffs filed their Motion for Clarification of Jurisdiction and Other Relief. The Defendants filed their Petition for Execution and Further Relief on Declaratory Judgments and for the Appointment of a Special Master on May 8, 2018. The parties each filed responses to these motions, and this Court conducted hearings on November 19, 2018, and November 26, 2019.²

On April 11, 2019, Defendants filed a petition with the S.C. Supreme Court seeking a writ of mandamus directing this Court to enforce the mandate in the *Episcopal Church* case, “by effectuating the transfer of possession and control of the diocesan property and property of 29 of the parishes at issue and providing any further relief consistent with that mandate.” The Plaintiffs argued that the writ of mandamus was not appropriate as the circuit court was scheduling hearings to review the Defendant’s petition to enforce the judgement. The Supreme Court agreed with the Plaintiff and denied the writ of mandamus on June 28, 2019.

² On November 19, 2017, the Plaintiffs filed an action pursuant to the Betterments Act. S.C. Code Ann. § 27-27-10. On December 15, 2017, TEC and TECSC filed a motion to dismiss. A hearing was held on July 23, 2019, to determine TEC’s Motion to Dismiss, which this Court denied by order dated August 27, 2019. Defendants then moved this Court to reconsider, arguing the Collective Opinions are dispositive, the Betterments Act does not apply, and the complaint was filed too late. This motion remains outstanding pending a final decision in this case.

On February 12, 2020, the Defendants filed a writ of prohibition with the Supreme Court of South Carolina. Nevertheless, a final hearing was conducted on February 27, 2020, to address any outstanding motions of the Defendant. On March 31, 2020, the Supreme Court (Hearn, J., not participating) denied Defendants writ of prohibition to prevent the circuit court from clarifying the Supreme Court's opinion in this case.

III. JURISDICTION AND DUTY ON REMITTITUR

This Court has the jurisdiction and duty to enforce the Supreme Court's Collective Opinion. The jurisdiction of this Court to hear and determine matters after a case is remitted is well established. "Once the remittitur is sent down from this [Supreme] Court, [the] Circuit Court acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling." *Muller v. Myrtle Beach Golf and Yacht Club*, 313 S.C. 412, 414-15, 438 S.E.2d 248, 250 (1993) (finding the Circuit Court's holding that it was without jurisdiction to adjudicate the issue of attorney's fees was erroneous). "The trial court has a duty to follow the appellate court's directions." *Prince v. Beaufort Memorial Hospital*, 392 S.C. 599, 609-10, 709 S.E.2d 122, 127-28 (2011) (Court of Appeals found upon remand, the trial court exceeded its jurisdiction when remand stated to "set forth the specific portions of the [QAC] file that are subject to discovery as well as the reasons these portions are not confidential under section 40–71–20." As a result, the trial court's jurisdiction extended only to a review of each document contained in the QAC file in light of the statute.). "Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form." *Ackerman v. McMillan*, 324 S.C. 440, 443 S.E.2d 267, 268 (Ct. App. 1996).

"In construing a judgment, it should be examined and considered in its entirety." *City of North Myrtle Beach v. East Cherry Grove Realty Co., Inc.*, 397 S.C. 497, 503, 725 S.E.2d 676,

679 (2012). The judgment of a court is construed like any other written instrument to determine the intent of the court. *Id.* That intent is determined from all its parts, not from an isolated part. *Id.* Further, if the judgment is ambiguous, the intent of the court is still the determinative factor, and the trial court should construe the judgment to determine intent while disregarding superfluous language. *Jenson v. Conrad*, 292 S.C. 169, 171, 355 S.E.2d 291, 293 (Ct. App. 1987) (dicta); *Eddins v. Eddins*, 304 S.C. 133, 135, 403 S.E.2d 164 (Ct.App. 1991).

In an action at law tried without a jury, the judge's finding of fact will not be disturbed unless there is no evidence to support the court's finding. *South Carolina Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012). Additionally, the trial court's findings of fact will be upheld on appeal when they are reasonably supported by the evidence unless: (1) the findings of fact are wholly unsupported by the evidence; or (2) unless it clearly appears the findings were influenced or controlled by an error of law. *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 127–28, 631 S.E.2d 252, 255–56 (2006); *Wilder v. Blue Ribbon Taxicab Corp.*, 396 S.C. 139, 144, 719 S.E.2d 703, 706 (2011). “The trial court's findings in such a case are equivalent to a jury's findings in a law action.” *Butler Contracting, Inc.*, 369 S.C. at 127, 631 S.E.2d at 256.

There must be an actual decision of the legal issue for it to become the law of the case. *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 571, 776 S.E.2d 397, 403 (2015); *See also Howe v. City of Akron*, 801 F.3d 718, 739-40 (6th Cir. 2015). When assessing appeals, at a minimum, issue preservation requires that an issue be “raised to and ruled upon by the trial judge.” *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). “It is axiomatic that an issue cannot be raised for the first time on appeal.” *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011). “In order for an issue to be preserved for appellate review, it must have

been raised to and ruled upon by the trial judge...A party may not argue one ground at trial and an alternate ground of appeal.” *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (internal citation omitted). The decision of an appellate court on a legal issue is the law of the case to be followed in subsequent proceedings. *Arizona v. California*, 460 U.S. 605, 618-19 (1983); *Flexon*, 413 S.C. at 571-75, 776 S.E.2d at 403-05. Implicitly decided issues fall within the law of the case doctrine, but ambiguous ones do not. *Entek GRB, LLC v. Stull Ranches, LLC*, 840 F.3d 1239, 1241 (10th Cir. 2016); *First Union Nat. Bank v. Pictet Overseas Trust Corp., Ltd.*, 477 F.3d 616, 619-21 (8th Cir. 2007). The law of the case is an “amorphous concept” that “directs a court’s discretion” but does not limit its power to alter the result. *Pepper v. United States*, 562 U.S. 476, 506-07 (2011); *Flexon*, 413 S.C. at 572, n.6, 776 S.E.2d at 403, n.6.

The legal issues decided by an appellate court

must be followed in all subsequent proceedings in the same case in the trial court or on a later appeal in the appellate court unless the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision of the law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice.

Flexon, 413 S.C. at 572, 573, 776 S.E.2d at 404.

The law of the case does not apply to dicta, and appellate court statements about an unpreserved issue are dicta. *White’s Mill Colony, Inc., v. Williams*, 363 S.C. 117, n.1, 609 S.E.2d 811 (Ct. App. 2005). Thus, any statements in the Collective Opinion that rule on unpreserved issues are simply dicta.

In this case, the remittitur from the Supreme Court simply stated: “[t]he above referenced matter is hereby remitted to the lower court and tribunal.” Order, November 17, 2017. The Defendants argue that the Court’s jurisdiction on remittitur is limited to enforcing the mandate of the South Carolina Supreme Court, which they claim is clear and unambiguous. Plaintiffs argue,

and this Court concurs, that the “enforcement of a judgment” or taking “any action consistent with an appellate court’s ruling,” requires this Court to confront and determine the intent of the Supreme Court in the Collective Opinions. Any ambiguity must be resolved by this Court.³

Justice Kittredge and Acting Justice Toal stated in the order denying rehearing that the five individual opinions create “great uncertainty” and provide “little to no guidance.” Order, November 17, 2017. Regardless, this Court must articulate an order that is “consistent” with the Collective Opinions.⁴

IV. THE LAW OF THE CASE

The United States Supreme Court decided a church property dispute between the Presbyterian Church of the United States (“PCUS”) and two local Georgia churches that had withdrawn from the PCUS. *Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969) (*Presbyterian Church I*); rev’g *Presbyterian Church v. Eastern Heights Church*, 224 Ga. 61, 159 S.E.2d 690 (1968). The Georgia Supreme Court initially resolved the controversy by applying a theory of implied trust, whereby the property of a local church affiliated with a hierarchical church organization was deemed to be held in trust for the general church, provided the general church had not “substantially abandoned” the tenets of faith and practice as they

³ In *Hamm I*, the Supreme Court reversed a Southern Bell rate increase and remitted the case to the circuit court without instructing the circuit court that it should send the matter back to the Public Service Commission to determine refunds with interest. *Hamm v. S. Bell Tel. & Tel. Co.*, 302 S.C. 132, 394 S.E.2d 311 (1990) (*Hamm I*). The circuit court held it was without jurisdiction to do so because the Supreme Court had not remanded the case with such instructions. *Hamm v. S. Bell Tel. & Tel. Co.*, 305 S.C. 1, 406 S.E.2d 157 (1991) (“*Hamm II*”). Rather, the circuit court held that only the Supreme Court could “clarify its own opinion.” *Id.* at 159. The *Hamm II* court held it was error for the circuit court not to take action that was “implicit as well as our intention.” *Id.* at 160. No remand was necessary because the circuit court was to interpret the Court’s decision “according to law” and the only reasonable interpretation, considering prior case law and what was implicit in the reversed and remitted decision, was that refunds needed to be computed with interest and ordered refunded. *Id.*

⁴ The United States Supreme Court has stated in regards to interpreting multiple opinions in a decision, “When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, ‘the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds...’” See *Marks v. United States*, 430 U.S. 188, 193 (1977).

existed at the time of affiliation. *See Presbyterian Church I*, 393 U.S. at 443-44 and n.2. However, the Supreme Court of the United States reversed, holding that Georgia courts would have to find some other way of resolving church property disputes that did not draw the state courts into religious controversies. *Id.* at 451. The United States Supreme Court did not specify what that method should be, although it noted in passing that “there are neutral principles of law, developed for use in all property disputes, which can be applied without ‘establishing’ churches to which property is awarded.” *Id.* at 449.

On remand, the Georgia Supreme Court concluded that, without the departure-from-doctrine element, the implied trust theory would have to be abandoned in its entirety. *Presbyterian Church v. Eastern Heights Church*, 225 Ga. 259, 167 S.E.2d 658 (1969) (*Presbyterian Church II*). In its place, the Georgia Supreme Court adopted what is now known as the “neutral principles of law” method for resolving church property disputes. *Id.* The Georgia Supreme Court examined the deeds to the properties, the state statutes dealing with implied trusts, Ga. Code §§ 108-106, 108-107 (1978), and the Book of Church Order to determine whether there was any basis for a trust in favor of the general church. *Id.* Finding nothing that would give rise to a trust in any of these documents, the court awarded the property on the basis of legal title, which was in the local church, or in the names of trustees for the local church. *Id.* at 261, 167 S.E.2d at 660. Review was again sought in the U.S. Supreme Court, but was denied. 396 U.S. 1041 (1970).

The United States Supreme Court was asked again to determine a church property dispute between members of a local congregation, which was divided between a majority who sought to withdraw from the PCUS, and a minority who wished to maintain the affiliation. *Jones v. Wolf*,

443 U.S. 595, 607 (1979). In *Jones*, the title on the deeds named the church, and the funds used to acquire the property were contributed entirely by the local church members. *Id.* at 600-01.

The Supreme Court noted that “the State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively.” *Id.* at 602 (*quoting Presbyterian Church I*, 393 U.S. at 445). “[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.” *Id.* “[A] civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust.” *Id.* at 604. The U.S. Supreme Court determined that the issue in *Jones* contained an ecclesiastical question that could not be answered by a civil court. *Id.* at 607. Furthermore, the U.S. Supreme Court held “that a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute.”⁵ *Id.* at 604.

Following *Jones*, the Supreme Court of South Carolina articulated the rule that South Carolina civil courts must follow when adjudicating church dispute cases. *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996).

⁵ The U.S. Supreme Court stated:

“The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general-flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.”

Jones, 443 U.S. at 603-04.

The Court stated in *Pearson*:

- (1) Courts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration; (2) courts cannot avoid adjudicating rights growing out of civil law; (3) in resolving such civil law disputes, courts must accept as final and binding the decision of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.

Id. at 52-53.

The S.C. Supreme Court established that where a civil court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so.

Nonetheless, where a civil court is presented an issue that is a question of religious law or doctrine masquerading as a dispute over church property or corporate control, it must defer to the decisions of the proper church judicatories in so far as it concerns religious or doctrinal issues.⁶ See *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709-10 (1976) (finding that the controversy before the Court “essentially involve[d] not a church property dispute, but a religious dispute the resolution of which...is for ecclesiastical and not civil tribunals.”).⁷ The South Carolina Supreme Court addressed neutral principles of law doctrine by stating: “We hereby expressly reaffirm that, when resolving church dispute cases, South Carolina courts are to apply the neutral principles of law approach as approved by the Supreme Court of the United States in *Jones*...and expressed by this Court in *Pearson*...” *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 385, 444, 685 S.E.2d 163, 172 (2009). The *All Saints* Court concluded that it should apply trust, property, and corporate law in resolving church property disputes in South Carolina. *Id.*

⁶ Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709-10 (1976).

⁷ “In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property.” *Jones*, 443 U.S. at 604.

This Court must determine the law of the case based on the Collective Opinions. Chief Justice Beatty in his opinion stated, “[g]iven the divergent opinions, I am compelled to write separately because I believe my position is that of a centrist between the members of the Court.” 421 S.C. at 248, 806 S.E.2d at 102. This Court finds that Chief Justice Beatty’s controlling decision determines whether a majority exists as to any issue in these Collective Opinions. As Chief Justice Beatty stated:

In resolving this issue, I am guided by the neutral principles of law approach enunciated in *All Saints* and *Jones* and aptly discussed by former Chief Justice Toal. *See All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 385, 444, 685 S.E.2d 163, 172 (2009) (applying neutral principles of law in disputes arising between a congregation and its denomination over title to church property and between the congregation’s members over corporate control; stating, “the neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes”).

421 S.C. at 249, 806 S.E.2d at 102. Justice Kittredge supported the application of “neutral principles of law” as enunciated in *Jones*. *Id.* at 251, 806 S.E.2d at 103. However, he believed *Jones* required “that the burden imposed on a religious organization be “minimal.” *Id.* at 254, 806 S.E.2d at 104.

Acting Justice Toal stated, “[b]ecause this is a dispute over title to property, we should apply neutral principles of South Carolina property and trust law.” *Id.* at 276-77, 806 S.E.2d at 117. Likewise, Chief Justice Beatty stated, “distilled to its simplest form, this case involves a property dispute.” *Id.* at 249, 806 S.E.2d at 102. Justice Kittredge also expressly referred to this matter as a “property dispute.” *Id.* at 252, 806 S.E.2d at 104. Thus, the majority consisting of Chief Justice Beatty, Acting Justice Toal, and Justice Kittredge agreed that *All Saints* remained good law in directing the application of neutral principles of law in secular church disputes.

On remand, this Court will apply the “neutral principles of law” as directed by the

majority. This is the law in South Carolina and the law of this case.

A. Deeds in South Carolina

“An estate in fee simple is the entire and absolute property of the subject...” *Keels v. Crosswell*, 180 S.C. 63, 65, 185 S.E. 39, 40 (1936). A landowner holding title in fee by a valid deed owns the subject property in fee simple absolute.

B. Creation of Expressed Trusts in South Carolina

At issue in this case is whether the 1979 Dennis Canon created a valid trust over the Plaintiff parish properties pursuant to South Carolina law. In South Carolina, an expressed trust may be created by a “(i) transfer of property to another person as trustee;” or by a (ii) “written declaration signed by the owner of property that the owner holds identifiable property as trustee.” S.C. Code Ann. § 62-7-401(a)(1)(i) and (ii)(2014). The cornerstone of a trust is to discern the settlor’s or declarant’s intent. *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995). Further, a trust is created only if the settlor properly manifests an intention to create a trust relationship. *See* § 62-7-401(a)(2); Restatement of the Law of Trusts (3rd) § 13, 22. “[A] trust is not created until it receives property.” *See* § 62-7-401 Reporter’s Comment.

When the expressed trust is of real estate, a declaration that “manifests the trust intention must be proved by some writing signed by the party creating the trust. § 62-7-401(a)(2). The writing must contain “the object and purpose of such a trust, as well as the beneficiaries thereof, ...expressed with such reasonable clearness and definiteness as to render [it] enforceable, if necessary, by the Court.” *Harter v. Johnson*, 122 S.C. 96, 115 S.E. 217, 222 (1922). The writing is sufficient if it shows with reasonable definiteness the beneficiary, the trust property, and the purposes of the trust.⁸ *Whetstone v. Whetstone*, 309 S.C. 227, 231, 420 S.E.2d 877, 979 (Ct. App.

⁸ In *Gifford v. Linnell*, the North Carolina Court of Appeals found a deed was void for lack of a grantee. 157 N.C.App. 530, 579 S.E.2d 440, 443 (N.C.Ct.App.2003). The deed in *Gifford* specified the property was conveyed to

1992) (finding evidence did not establish existence of trust where there was no executed trust agreement, court-appointed trustee never controlled trust, and husband retained total control).⁹

However, a trust in land may be proved by more than one writing, so long as each writing is signed by the settlor and the writings indicate they relate to the same transaction. *Ramage v. Ramage*, 283 S.C. 239, 244, 322 S.E.2d 22, 26 (Ct.App.1984) (finding since the will codicil made reference to trust deeds, which were executed simultaneously and the codicil and deeds were each signed by testatrix-settlor, and when read together, they plainly related to each other and showed testatrix's intention to create a trust, both documents could be considered together in determining whether a trust had been created). Thus, if there are two documents, they must logically relate to each other so that the Court can identify intent to create a trust in land.¹⁰

With respect to parish property, Chief Justice Beatty, Justice Kittredge, and Acting Justice Toal followed the precedent of *All Saints*. *All Saints*, 385 S.C. 428, 685 S.E.2d 163. In *All Saints*, a trust can be created in favor of TEC only if, when strictly applying neutral principles of “longstanding trust law,” each parish church, in a signed writing, expressly agreed to the Dennis

“Beth Linnell, Trustee of Droffig Family Trust.” *Id.* at 442. The court found that because the deed referred to Linnell as a trustee, she was a grantee only in her representative capacity and not in her individual capacity. *Id.* at 443. Furthermore, the court found that because the trust was not in existence on the date of conveyance, the deed failed to identify a valid grantee. *Id.* at 442. Thus, the court ruled that Linnell was not the intended grantee at the time of the deed's execution, but rather was the representative of a non-existing legal entity. *Id.* at 443. Therefore, the court voided the deed for lack of a grantee. *Id.* The South Carolina Court of Appeals adopted this logic in *Foster v. Foster*. 384 S.C. 380, 384, 682 S.E.2d 312, 314 (Ct. App. 2009).

⁹ “A transfer in trust of personal property does not require written evidence, but must be proven by clear and convincing evidence,” pursuant to S.C. Code Section 62-7-407. Thus, if the trust of personal property is not written, there must be clear and convincing evidence that a valid trust was created. *Id.*

¹⁰ The South Carolina Supreme Court held in *Foster*, that the deed in question required that a trust which includes real property be proved by a writing. *Foster v. Foster*, 384 S.C. 380, 682 S.E.2d 312 (Ct. App. 2009); *See* S.C. Code Ann. § 62-7-401 (1986). In *Foster*, the parties argued over the fact that the elderly father denied the existence of a trust in land. Foster argued his will did not reference a trust and no written trust agreement ever existed. *Id.* at 384, 682 S.E.2d at 314. Moreover, there was no written evidence of the purported trust's terms or its beneficiaries in document(s) signed by the grantor. *Id.* The Court imposed a constructive trust to set aside the deed by which the elderly father conveyed his home to the non-existent trust established by one of his children, and ordered the return of monies which his children had transferred from a joint account. The Supreme Court of South Carolina agreed with the S.C. Court of Appeals that the circuit court correctly found no evidence of a proper trust in land as there are no documents signed by grantor referring to a trust other than the deed. *Id.*

Canon.¹¹ In the Collective Opinion, Chief Justice Beatty found that the Dennis Canon, standing alone, does not “unequivocally convey an intention to transfer ownership of property to the national church or create an express or constructive trust.” 421 S.C. at 250, 806 S.E.2d at 103. Rather, he relies on the statutory provision on an express trust’s creation: “[t]o be valid, a trust of real property, created by transfer in trust or by declaration of trust, must be proved by some writing signed by the party creating the trust.” *Id.* at 250, 806 S.E.2d at 102-103; *See* S.C. Code Ann. § 62-7-402(a)(2)(2015). According to *All Saints* and the three justice majority, a trust of real property in South Carolina must meet these requirements in order to be “legally cognizable.”

C. Constructive Trusts in South Carolina

An exception to the requirement of a writing to establish a trust in land are trusts arising by operation of law, such as resulting and constructive trusts. *See* § 62-7-401 Reporter’s Comment. Constructive trusts arise in South Carolina not because the parties intended to create a trust, but because the court is enforcing an equitable remedy by imposing a trust on the property. South Carolina law states regarding constructive trusts:

The law may impose a constructive trust when a party obtains a benefit that does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it. A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. Fraud is an essential element, although it need not be actual fraud.

McDaniel v. Kendrick, 386 S.C. 437, 444, 688 S.E.2d 852, 856 (Ct. App. 2009). A constructive trust must be established by clear and convincing evidence. *Id.* (citing *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 793–94 (1990)).

The South Carolina Court of Appeals stated in *Briggs*:

¹¹ *All Saints* continues to be the controlling law on these issues. *Jenkins v. Refuge Temple of God in Christ, Inc.*, 424 S.C. 320, 328, 818 S.E.2d 13, 17 (Ct. App. 2018).

A constructive trust...is a trust by operation of law which arises against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means and against good conscience, either has obtained *or holds* the right to property which he ought not in equity and good conscience to hold and enjoy.

Briggs v. Richardson, 288 S.C. 537, 539, 343 S.E.2d 653, 654 (Ct. App. 1986) (emphasis added).

South Carolina cases indicate that the relevant circumstances for the imposition of a constructive trust are those circumstances in which property was acquired. In *Bank of Williston* the South Carolina Supreme Court stated:

By the well-settled doctrines of equity, a constructive trust arises whenever one party has obtained money, which does not equitably belong to him, and which he cannot in good conscience retain or withhold from another, who is beneficially entitled to it; as, for example, when money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust, or violation of fiduciary duty, and the like...Whenever one person had wrongfully taken the property of another, and converted it into a new form, or transferred it, the trust arises and follows the property or its proceeds. Constructive trusts do not arise by agreement or from intention, but by operation of law; and fraud, actual or constructive, is their essential element. Actual fraud is not necessary, but such trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by him who holds the legal title.

Bank of Williston v. Alderman, 106 S.C. 386, 91 S.E. 296, 297-98 (1917) (emphasis added).

V. DISCUSSION

This Court must distill the five separate opinions, identify the Court's intent, and produce a logical directive. It must harmonize these opinions and find common ground among them. The issue is whether the 1979 Dennis Canon or any parish's alleged accession to that Canon created a legally cognizable trust under South Carolina law.

Before this Court are competing requests. The Plaintiffs ask this Court to clarify the five separate opinions of the South Carolina Supreme Court. The Defendants ask this Court to enforce the ruling they contend is expressed in the Collective Opinions. Defendants argue no interpretation is allowed or needed of the Collective Opinions. Plaintiffs argue enforcement is

impossible without interpretation and remittal implicitly requires interpretation if this Court is to act “consistent with” the Collective Opinions. This Court notes that:

- “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.” Final Order at 20. This was uncontested at trial, on appeal, and on remittitur.
- The undisputed evidence is that all the real and personal property at issue was purchased, constructed, maintained and possessed exclusively by the Parishes. Final Order at 37.
- The Diocese and Parish churches successfully disassociated from TEC by following the procedures required for disassociation under South Carolina neutral principles of corporate law.
- Title to Camp St. Christopher is stated on the deed for the Trustees of the Protestant Episcopal Diocese of South Carolina. The Trustees Corporation has never been a member of the Diocese or TEC, and TEC does not have a voice in the Trustees governance or any right of approval for the Trustees’ governance. Final Order at 16.

The trial court held that the Dennis Canon did not create an express trust relying on *All Saints*. Final Order at 36. Defendants argued in their brief on appeal that “29 of the 36 parishes made express promises in their governing documents to comply with the TEC’s rules” which created express trusts. Brief of Appellants at 38. Defendants argue that the Supreme Court decided that the property of the parishes that acceded to the Dennis Canon is held in trust for Defendants, and the property of the Trustees is held in trust for the benefit of TECSC. They also argue that the real, personal, and intellectual property of the Diocese belongs to the TECSC and the Trustees’ property, Camp St. Christopher, is held in trust for the benefit of TECSC.

At issue is ownership of real property, purchased and managed exclusively by the Plaintiff Parishes including land and buildings, considerable funds, and other personal property such as books, silver, and historical archives. The crux of the disagreement rests upon the Dennis Canon and its legal effect on whether this property was ever held in trust for TEC or TECSC.

The 1979 Dennis Canon states:

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 remain a part of, and subject to this Church and its Constitution and Canons.

The trial court initially considered who had the *right to control* the Diocese and the parishes and whether the parish property is subject to a trust. The issue of ownership was not litigated because all the deeds are titled in each of the individual Parishes.

Furthermore, it is unclear which portions of the Final Order were appealed. The Defendants contend that the trial court's order was appealed in its entirety because the Supreme Court of South Carolina determined certain issues in the Collective Opinion. Defendants argue the trial court's forty-six page order included findings of fact and conclusions of law that were immaterial to the result, and therefore not specifically addressed in the Brief of Appellants or by the Supreme Court.¹² Additionally, the Defendants argue that the trustee statute¹³ references TEC as the beneficiary of the Camp St. Christopher deed.¹⁴

However, the Plaintiffs argue that the five opinions issued by the Supreme Court did not reverse the original ruling that the beneficiary of the Trustees is the Plaintiff Diocese as ordered

¹² Under the Appellate Court Rules, an issue is considered "appealed" for appellate review if it is reasonably clear from the appellant's contentions when considering the statement of issues on appeal as required by Rule 208(b)(1)(B), SCACR, along with the arguments in the appellant's brief. *Gibson v. Ameris Bank*, 420 S.C. 536, 542 n.2, 804 S.E.2d 276 (Ct. App. 2017); *see also* Jean Hoefer Toal, et al., *Appellate Practice in South Carolina* 208 (3d ed. 2016).

¹³ The 1880 Act of the General Assembly of South Carolina, as amended by the 1902 Act, states that the "Trustees of the Protestant Episcopal Church in South Carolina" hold all diocesan property in trust for "The Protestant Episcopal Church for the Diocese of South Carolina," which it further describes as the "Episcopal Church in the Diocese of South Carolina," "said church in said Diocese," "Diocese of the said Church," and "said Diocese of the said church."

¹⁴ In the 1951 deed, the grantor, Marjorie Nott Morawetz of the City of New York granted to the Trustees of the Protestant Episcopal Church in South Carolina, their successors and assigns, forever, the real estate now called Camp St. Christopher. Their property was given to the Trustees because the grantor desired "to further the welfare of the Protestant Episcopal Diocese of South Carolina, and in consideration of the goods works of the Trustees."

by the trial judge. The Plaintiffs argue that the Collective Opinions do not resolve the issue of which parishes expressly acceded to the Dennis Canon. Finally, Plaintiffs argue that the South Carolina Supreme Court was unable to resolve critical issues relating to the Collective Opinions on rehearing because it did not consider them on the merits, the votes to rehear being evenly divided, two to two.

Finally, Defendants argue that the Plaintiffs have received due process because they have had an opportunity to raise and argue every deficiency complained of with the Collective Opinions in their Petition for Rehearing, and the Plaintiff's arguments were rejected.¹⁵

If this dispute arose between two secular organizations, or between a religious and a secular organization, the party standing in the Plaintiffs' shoes would have prevailed because their name is on the deed and a valid trust under South Carolina law was never created or acknowledged by the Parishes.

The outcome of a property dispute simply cannot change because this case involves religious rather than secular institutions. This was expressly rejected in *All Saints*. That is the heart of the neutral principles of law approach.¹⁶

¹⁵In opposing the Plaintiffs' Petition for Certiorari with the United States Supreme Court, the Defendants contended that the Collective Opinions were a "poor vehicle for review" because the Collective Opinions: are based on "an incomplete record"; are based on a record which "contains significant ambiguities"; and are "fractured not only in rationale but even on facts." Br. for Resp. in Opp., *The Protestant Episcopal Church in the Diocese of South Carolina, et. al. v. The Episcopal Church, et. al.*, 17-1136, p. 2, 23 (U.S. May 7, 2018). TEC and TECSC stated to the United States Supreme Court that the South Carolina Supreme Court did not resolve the uncertainties or ambiguities in the Collective Opinions because they did not pass upon them. *Id.* at 20. ("[T]he state Supreme Court divided evenly (2-2) on the rehearing petition and as a result held it was denied. The court clearly did not 'pass upon' petitioners' [arguments].")

¹⁶ Nearly 40 years after the Supreme Court of the United States addressed the neutral-principles approach in *Jones*, courts are deeply divided about what "neutral" means. *Jones* states: The neutral-principles approach demands application of ordinary state law and courts may give effect to property deeds or to trusts recited in the constitution of a general church only if the parties' intent "is embodied in some legally cognizable form." *Jones*, 443 U.S. at 606. Courts adopting the hybrid approach ignore *Jones*' unambiguous guidance because they believe that requiring national churches to comply with state trust law would violate the Free Exercise Clause of the First Amendment. E.g., App.42a (Hearn, J.). But *Jones* squarely rejected that argument, holding that "[t]he neutral principles approach

The South Carolina Supreme Court has held that statements of allegiance to the Constitution and Canons of TEC or the Diocese of South Carolina generally are insufficient to support a finding of express accession to the 1979 Dennis Canon. 421 S.C. at 251, 806 S.E.2d at 103; *see also All Saints*, 385 S.C. at 439, 685 S.E.2d 163, n.5.

Chief Justice Beatty unequivocally stated that the Dennis Canon, by itself, does not create a “legally cognizable” trust under South Carolina law. 421 S.C. at 250, 806 S.E.2d at 103. Further, Chief Justice Beatty, Justice Kittredge, and Acting Justice Toal agreed that the Dennis Canon alone was not sufficient to transfer title of property or create an express or constructive trust without evidence of accession. *Id.* at 250-51, 261, 806 S.E.2d at 103-04, 108.

Chief Justice Beatty stated that *if* a parish “expressly acceded to the Dennis Canon,” then a trust over the parish’s property was created. *Id.* at 251, 806 S.E.2d at 103. He also found that “the parishes that did not expressly accede to the Dennis Canon cannot be divested of their property” and those parishes “merely promised allegiance” to TEC. *Id.* Chief Justice Beatty further stated that, “TEC argues that the parish’s accession to the Dennis Canon created the trust. Assuming that each parish acceded in writing, I would agree.” *Id.* at 250-51, 806 S.E.2d at 103. Chief Justice Beatty did not identify the parishes that expressly acceded to the Dennis Canon nor did he state a number of parishes that did or did not expressly accede.¹⁷ *Id.* Thus, this Court

cannot be said to ‘inhibit’ the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods.” *Jones*, 443 U.S. at 606.

¹⁷ Parish accession must be directly and expressly to the Dennis Canon and not simply to rules, constitutions, or canons of TEC. Chief Justice Beatty relies upon *All Saints* and was a member of the Court in that unanimous decision. *All Saints* did not find that the withdrawing parish there created a trust when its Articles of Incorporation stated: “The purpose of the said proposed Corporation is to conduct religious services, and prosecute religious works under the forms and according to the canons and rules of the Protestant Episcopal Church, and as a component part of the Diocese of said church in South Carolina.” *All Saints*, 385 S.C at 439, n.5, 685 S.E.2d at 169, n.5. Similarly, in this case, the Defendants’ claims of accession were denied with respect to St. John’s and St. Matthias because “neither of those churches ever directly acceded to the local or national version of the Dennis Canon.” 421 S.C. at 265, n.49, 806 S.E.2d at 111, n.49.

must determine whether each individual Parish expressly acceded in writing to the 1979 Dennis Canon as distinguished from “mere promises of allegiance.” *Id.*

Chief Justice Beatty stated that since TEC was not the settlor of the trust and had no interest in the property of the trust, “TEC was nothing more than a demanding scrivener.” *Id.* at 250, 806 S.E.2d at 103.

“In order to establish a constructive trust, the evidence must be clear, definite, and unequivocal.” *Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987). This Court agrees with Chief Justice Beatty’s opinion that even though the Dennis Canon uses the term “trust,” the word alone does not unequivocally convey an intention to transfer ownership of property to TEC or create an express or constructive trust. 421 S.C. at 250, 806 S.E.2d at 103.

The Dennis Canon can have no effect until acceded to in writing by the individual parishes under South Carolina law. The Parishes that did not accede to the Dennis Canon cannot be divested of their property. These Parishes merely pledged allegiance and without more, these pledges cannot be used to “deprive them of their ownership rights to property.” *Id.* at 251, 806 S.E.2d at 103. Without clear, definite, and unequivocal evidence, a constructive trust cannot be established in TEC or TECSC’s favor.

This Court finds that the Plaintiffs would be deprived of due process if their property rights to the parish property are revoked without a finding, pursuant to a proper opportunity for argument and based on a proper record that they indeed acceded to the Dennis Canon.¹⁸ *See generally Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930) (stating that one

¹⁸ “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *South Carolina Department of Social Services v. Witsor*, 352 S.C.445, 452, 574 S.E.2d 730, 734 (2002). “Substantive rights - life, liberty and property – cannot be deprived except pursuant to constitutionally adequate procedures.” *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985). This is a “constitutional guarantee.” *Id.* The Due Process Clause’s “root requirement” is that there be “an opportunity for a hearing *before* [an owner] is deprived of any significant property interest.” *Id.* at 542 (emphasis in original).

cannot be deprived of property, “whether acting through its judiciary or through its legislature...unless there is, or was, afforded to him some real opportunity to protect it.”).

The deeds to the real estate are titled in the names of the Plaintiff parishes and have all been entered into evidence. Since the title to the parish property is not in question, the sole issue is whether a trust exists on each parish property.

This Court has reviewed the Record on Appeal to determine whether the South Carolina Supreme Court intended to identify and make a ruling of fact and law regarding which Parishes expressly acceded to the Dennis Canon. Rule 210(h), SCACR (“Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.”).

The only material in the Record on Appeal related to express accession appears in Defendants’ Motion to Reconsider the trial judge’s Final Order.¹⁹ This material is simply argument of counsel. Argument is not evidence. *Bowers v. Bowers*, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991); *see also McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (“This [Supreme] court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.”). In their briefing before the South Carolina Supreme Court, Defendants argued that Plaintiffs expressly acceded to the Dennis Canon. *See* Br. of Appellant at p. 38 (“The Plaintiff parishes’ voluntary accession to the National Church’s rules, *including the Dennis Canon*, supplies the requisite intent to hold their property in trust for the National Church.”). However, the Plaintiffs only did so in the context of being part of a

¹⁹ The only record in support of expressed accession were five pages from a post-trial submission to the trial court in which Defendant’s counsel summarized documents. The documents summarized by the Defendants’ counsel were not in the record on appeal, and therefore would not have been considered by the Supreme Court. Rule 210(h), SCACR.

larger set of church rules. The Defendants' arguments on appeal were not that each parish agreed to the Dennis Canon itself, but rather that they agreed to a larger set of information in which the Dennis Canon was included.²⁰ There is no evidence of written accession to the Dennis Canon in the Record. Defendants' representation to the South Carolina Supreme Court that there was an express accession to the Dennis Canon by the parishes is thus unsupported by any evidence in the Record on Appeal. This Court cannot carry out the required determination mandated by looking only to the Record on Appeal.²¹ As stated in *Jones*, this Court can review the deeds, the corporate charter, or the provisions of the constitution of the general church as they relate to the ownership of property. *Jones*, 443 U.S. at 604.

VI. FINDINGS AS TO PARISH PROPERTY

This Court finds that there was no evidence that the Plaintiffs acceded to the Dennis Canon in the Record on Appeal. Therefore, this Court must now determine upon review of the trial record whether Plaintiffs expressly acceded to the 1979 Dennis Canon in writing.²²

²⁰ Defendants stated that the parishes agreed to "the National Church's authority and rules," "to obey National church governance," "written promises to obey National Church rules," the "National Church's rules," "abide by the National Church's rules," "rules of the national governing body," "promises of allegiance" to church rules, "accession to the National Church's rules," the parishes "made express promises in their governing documents to comply with the National Church's rules." Br. of Appellants at 8, 12, 30, 34, and 38, (August 6, 2015).

²¹ Generally, this Court notes that an Appellant [the Defendants] have the duty to furnish an adequate Record on Appeal sufficient to achieve reversal. *Harkins v. Greenville Cty.*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000).

²² Plaintiffs further noted in their Petition for Rehearing the Supreme Court's power to order portions of the lower court record to supplement the Record on Appeal, and Plaintiffs urged that were the Supreme Court to do so, the Supreme Court would find there was no express accession by any parish to the Dennis Canon. The Supreme Court did not and could not act on these requests due to its 2-2 deadlock on the Petition for Rehearing. *See Laird v. Tatum*, 409 U.S. 824, 837-38 (1972) (stating that an affirmation by an equally divided court leaves unsettled the principle of law presented by the case); *Ohio ex rel. Eaton v. Price*, 364 U.S. 263, 264 (1960) (Brennan, J., concurring) (stating that "nothing is settled" by an equally divided court). This Court notes that Justice Kittredge stated in his opinion regarding the Petition for Rehearing joined in by Acting Justice Toal, that, "[u]nder these circumstances, to disallow a full Court from considering the rehearing petitions is deeply troubling and, in my judgment, raises constitutional implications as the Court has blocked a fair and meaningful merits review of the rehearing petitions." (Order Den. Mot. Recuse at p. 3 (Kittredge, J., concurring in separate order).)

The Defendants concede that the eight Parishes that do not hold their property in trust for TEC or TECSC are:

1. Christ the King, Waccamaw
2. St. Matthews Church, Darlington
3. Parish of St. Andrews, Mount Pleasant (and its Land Trust, a separate corporation)
4. The Vestries and Churchwardens of the Parish of St. Paul's Episcopal Church of Conway
5. The Episcopal Church of the Parish of Prince George Winyah, Georgetown
6. St. John's Episcopal Church of Florence
7. St. Matthias Episcopal Church, Summerton
8. The Vestries and Churchwardens of the Parish of St. Andrews (aka Old St. Andrew's)²³

The trial judge made no finding of express accession in regards to each individual parish—as it was not a basis of her ruling. This material has already been identified by Plaintiffs and presented to this Court. It is located in the trial court record as Court's Exhibit 1, and consists of the Exhibits and Trial Transcript pages noted therein.

²³ The inadequacy of the record to consider the issue of accession seems obvious given the Defendants' representations to the United States Supreme Court, (an "incomplete record" containing "significant ambiguities"). The five-page argument from defense counsel omitted seven parishes from its list of those that "expressly accepted TEC's governance." The S.C. Supreme Court's finding for the 7 or 8 parish churches was because of this admission. The Supreme Court could not have made a finding based on the records relating to the other parishes because there was no record before the Supreme Court. Those parishes are not part of this proceeding as a result of this concession. The eighth non-acceding parish would be "The Vestries and Churchwardens of the Parish of St. Andrews ("Old St. Andrews").

The issue presented with respect to Old St. Andrews is whether it was the Supreme Court's intention to include it among those found, based on Defendants' admissions, not to have acceded to the Dennis Canon.

The Supreme Court notes a discrepancy between whether there are seven or eight parishes whom the Defendants admitted did not accede to the Dennis Canon. The Supreme Court vigorously took issue with the Court's ability to consider the issue of whether 7 or 8 parishes agreed ("acceded") to the Dennis Canon because of the "dearth of evidence on [the accession] issue in this voluminous record." 421 S.C. at 243, 806 S.E.2d at 99. Nonetheless Chief Justice Beatty, Justice Kittredge and Acting Justice Toal, found a lack of accession by the 7 or 8 churches based on the Defendants' admission. It is not disputed that Old St. Andrews was omitted by Defendants from their list of acceding parishes. It is equally undisputed that there is no parish called "the Parish of St. Andrew, Mt. Pleasant." There is a parish called "St. Andrews Church – Mt. Pleasant Land Trust." That parish is properly named in footnote 49 of the Collective Opinions. The only other parish appearing in this case with a similar name is "The Vestries and Churchwardens of The Parish of St. Andrews" (located in West Ashley section of Charleston and founded in 1706). Given this fact and the omission of this parish on Defendants list from those that acceded, it is apparent that this is a clerical error that is "not the result of exercise of a judicial function" and "this may be corrected by the Court at any time." Rule 60(b), SCRPC. Additionally, this Court finds that "Old St. Andrews" was not among those Defendants listed in the Record on Appeal as having acceded to the Dennis Canon and accordingly fits the category of parishes listed in footnote 49 of the Collective Opinions. There is no trust as to Old St. Andrews because Defendants admitted in the Record on Appeal that it did not accede to the Dennis Canon.

This Court finds that the Plaintiffs merely promised allegiance to TEC and without more, this promise cannot deprive them of their ownership rights in their property. This Court finds no Parish expressly acceded to the 1979 Dennis Canon. The Dennis Canon was not mentioned by name in any of the evidence, and Defendants admitted that the Dennis Canon is not referenced in any of the deeds of parish property. Tr. of Hearing, July 23, 2019 at 38. As a result, there is no trust created in favor of the Defendants, TEC and TECSC.

Additionally, there is no evidence in the record of any parish discussing the Dennis Canon, voting on it or otherwise considering it.²⁴ The record before this Court reflects that there are parishes for which there is no signed writing,²⁵ parishes for which there is no accession to TEC's canons,²⁶ parishes who do not use the word "accession" or "accede" at all,²⁷ parishes that

²⁴ Parish churches have never been members of TEC and none of the parish churches have ever participated in General Conventions of TEC. Final Or. at 17, ¶ 53; *Id.* at 33; Tr. at 1106; *TEC Response to First Request for Admission No 2 by Church of Our Saviour of the Diocese of SC; Church of the Cross, Inc. and Church of the Cross Declaration of Trust; The Church of the Epiphany; St. Davids Church, The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Helena and the Parish Church of St. Helena Trust; Vestry and Church Wardens of The Episcopal Church of St. John's, Charleston County; The Vestry and Church Wardens of St. Jude's Church of Walterboro; 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; and Trinity Episcopal Church, Edisto Island, October 8, 2013.*

While the parishes were members of the Diocese and as such voted to add the Dennis Canon in 1987 to the Diocesan Canons, they also voted to remove it by greater than 90% in 2010 two years before the Diocese (and the Parishes) withdrew from TEC. Final Order, Finding 27 at 11. This finding was not contested on appeal.

²⁵ Church of the Holy Comforter; St. Bartholomews Episcopal Church; St. James' Church, James Island, S.C.; Saint Luke's Church, Hilton Head; All Saints Protestant Episcopal Church, Inc.; The Church of the Holy Cross; St. Davids Church; The Vestry and Church Wardens of St. Jude's Church of Walterboro; Trinity Church of Myrtle Beach; Church of the Redeemer; The Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Episcopal Church; Church Of the Cross, Inc. and Church Of the Cross Declaration of Trust; The Church Of the Epiphany (Episcopal); The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust; 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; Trinity Episcopal Church, Pinopolis; Christ St. Paul's Episcopal Church; St. Paul's Episcopal Church of Bennettsville, Inc.

²⁶ Church Of the Cross, Inc. and Church Of The Cross Declaration of Trust; The Church Of The Epiphany (Episcopal); 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 Protestant Episcopal Church, Of The Parish Of Saint Philip In Charleston, In The State of South Carolina; The Church Of The Good Shepherd, Charleston, SC; St. Paul's Episcopal Church of Bennettsville, Inc.

²⁷ All Saints Protestant Episcopal Church, Inc.; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County; The Church Of Our Saviour Of The Diocese Of South Carolina; Church of the Redeemer; The Church Of The Resurrection, Surfside; The Church Of St. Luke and St. Paul, Radcliffesboro; The Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Episcopal Church; Church Of the Cross, Inc. and

are not subject to the Non-Profit Act and parishes whose property was the result of a legislative grant not subject to divestment without evidence of unmistakable intent to do so. Final Order at 17-18, 19, 36, n.16. Defendants failed to prove the creation of a trust.²⁸

This Court finds that even if an agreement to TEC's constitutions and canons is sufficient to satisfy a signed writing pursuant to South Carolina trust law, it is insufficient to establish that each parish intended to create a legally enforceable trust in favor of TEC over all its property. As noted by the Missouri Court of Appeals, in considering a similar property-trust clause in the Presbyterian Church's Book of Order,

[O]ur laws are based on the reasonable assumption that a party would not intend to convey its property (in this case with millions of dollars) in trust without signing the writing purporting to create the trust, identifying the property to be conveyed, and expressing a definite intention to create a trust.

Colonial Presbyterian Church v. Heartland Presbytery, 375 S.W.3d 190, 197 (Mo. Ct. App. 2012).

TEC's argument that their unilaterally drafted Dennis Canon created a trust under South Carolina law is rejected. Additionally, TEC's arguments that the parish pledges of allegiance to

Church Of the Cross Declaration of Trust; The Church Of The Epiphany (Episcopal); The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust; St. Paul's Episcopal Church of Bennettsville, Inc.; 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 Protestant Episcopal Church, Of The Parish Of Saint Philip In Charleston, In The State of South Carolina; Trinity Episcopal Church, Pinopolis; Christ St. Paul's Episcopal Church; The Church Of The Good Shepherd, Charleston, SC.

²⁸ The Court notes that the issues of "minimal burden" and trust revocability advanced by Defendants were not argued to, nor ruled upon, by the trial court. They appear in the Collective Opinions because they were argued in the Appellants' Brief. Raised for the first time in their appellate brief, these would not have been properly before the Supreme Court. *State v. Dunbar*, 356 S.C. 138, 142-43, 587 S.E.2d 691, 693 (2003) (issue not considered by the trial court cannot be considered *sue sponte* by an appellate court as the basis of its decision). However, the Court finds it unnecessary to reach these issues because it finds a failure of proof by Defendants in establishing that each parish church expressly agreed to the Dennis Canon in a signed writing that unequivocally establishes the intent to create a trust. The Court also notes that the issue of "accession" was not included in the statement of issues on appeal as required by Rule 208 (b)(1)(B), SCACR; *State v. Crocker*, 366 S.C. 394, n.1, 621 S.E.2d 890, n.1 (Ct. App. 2005). Justice Hearn joined by Acting Justice Pleicones also noted that the issue of accession (as to those parishes found by Defendants' admission not to have acceded to the Dennis Canon) should not have been determined due to the "dearth of evidence on this issue in this voluminous record." 421 S.C. at 243, 806 S.E.2d at 99.

the constitution and canons of TEC created intent to form a trust is rejected. This Court will go through each parish and identify the evidence of accession presented in the trial record for each parish church.

1. St. Philip's Church

The only evidence with respect to St. Philip's that Defendants argue constitutes accession to the Dennis Canon is in its 1987 Articles of Restatement. The Articles describe the purpose of the parish corporation as "preaching and teaching the Gospel of our Lord and Savior, Jesus Christ, in accord with the Articles of Religion of [TEC]..." Ex. SPH 30. The Articles of Religion, found on pages 867 to 876 of Exhibits D-6 and D-512, were established in 1801. (page 867). They predate the Dennis Canon by 178 years and relate exclusively to religious doctrine. The Articles do not make an express accession to any rules or Canons of TEC, do not use the word "accession" or "accede," do not create an express agreement to the terms of the Dennis Canon, and do not express allegiance to TEC and TECSC. There is nothing in either the five-page argument of Defendants' counsel nor in the record that establishes an express agreement in a signed writing to the Dennis Canon by St. Philips Church.

The referenced Articles of Religion were not part of the record on appeal. There was no evidence that could be considered under the S.C. Appellate Court Rules or by the trial court because it did not conduct a parish-by-parish review. Rule 210(h), SCACR. The Articles of Religion contain no mention of the Dennis Canon or any other Canon of TEC—they represent nothing more than a summary of theological and doctrinal beliefs. There is a complete lack of evidence of an express agreement to the 1979 Dennis Canon by St. Philips Church in a signed writing. Thus, this Court finds that the Parish of Saint Phillip's property title is held in fee simple absolute by the Parish, and its property is not held in trust for the Defendant TEC or TECSC.

2. St. Michael's Church

The 1989 bylaws state St. Michael's Church "acknowledges the authority of...The Diocese of South Carolina...and of [TEC]." According to Defendants, this statement constitutes an expressed accession to the 1979 Dennis Canon. However, these bylaws were not in the record on appeal, and therefore no evidence was presented to the Supreme Court on this issue.

Defendant's five-page argument does not contend there is an express agreement to the Dennis Canon in a signed writing by St. Michael's Church. St. Michael's has never been a member of TEC nor has it ever participated in the General Conventions of TEC. Further, St. Michael's church merely acknowledges the "authority" of TEC in its bylaws and does not use the word "accession" or "accede." Stated promises of allegiance do not create a trust. Accordingly, based on a simple reading of the deed, St. Michael's Church holds title to its property in fee simple absolute and St. Michael's Church is not held in trust for TEC or TECSC.

3. The Church of the Good Shepherd, Charleston, SC

The Church of the Good Shepherd amended its corporate articles in 2001 to "describing the parish corporation as 'organized pursuant to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina.'" These corporate articles were not in the record on appeal, and therefore no evidence was presented before the Supreme Court. Defendants' argument in its five-page summary is that The Church of the Good Shepherd is organized pursuant to the Canons of the Diocese, not TEC. Acting Justice Toal rejected the argument that organization pursuant to the Canons of the Diocese "now in force or as hereafter may be amended" was evidence of an express trust in favor of TEC when she found that St. Matthias did not "directly" accede "to the local or national version of the Dennis Canon." 421 S.C. at 265 n.49, 806 S.E.2d at 111, n.49. The corporate articles do not accede to TEC's Canons, they do not use the word accede or

accession, and the Dennis Canon is not mentioned in its bylaws or on the deed. Accordingly, this Court finds that title to the property is owned in fee simple absolute by the Church of the Good Shepherd, and its property is not held in trust for the Defendant TEC or TECSC.

4. All Saints Protestant Episcopal Church, Inc.

In regards to the All Saints Parish, this Court finds that the only evidence regarding accession is found in the 1985 bylaws stating: “we are bound by the Constitution and Canons of [TEC].” D-AS-24. This exhibit and statement does not amount to an expressed, written accession to the 1979 Dennis Canon. The Dennis Canon is not mentioned by name nor does it appear in any part of Parish’s bylaws or on the deed. The bylaws only reference the “Constitution and Canons of [TEC]” and do not use the word accession or accede. Thus, the All Saints Parish did not expressly accede to the Dennis Canon and cannot be divested of its property. The Court finds that All Saints is not held in trust and is the owner of its property in fee simple absolute.

5. Vestry and Church Wardens of the Episcopal Church of The Parish of Christ Church

Defendants argue that the 1980 bylaws are evidence of a trust in favor of TEC when it states that the Parish of Christ Church “does acknowledge and accede to...the Constitution and Canons of [TEC],” CC-25, and vestry statement “reaffirming our willingness to conform to the Constitutions and Canons of [TEC].” D-CC-6. After careful analysis, this Court finds that a willingness to conform to generalized constitutions and canons of TEC does not amount to expressed accession to the 1979 Dennis Canon. Accordingly, the Parish of Christ Church cannot be divested of its property. The Court finds that the Parish of Christ Church is not held in trust for TEC or TECSC, and the parish owns title to their property in fee simple absolute.

6. Christ St. Paul's Episcopal Church

Christ St. Paul's 1980 bylaws provide that the parish was "organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of [TEC]." Tr. 337 (Attachment 1). This Court finds that this evidence does not constitute an expressed accession to the Dennis Canon. The testimony from trial concerns a general accession to the Constitution and Canons of TEC. This Court finds no mention of the 1979 Dennis Canon in its bylaws or on the deed, nor any accession language, and thus no expressed accession was ever made. This Court finds that the parish merely stated a promise of allegiance to the Defendant TEC. Thus, Christ St. Paul's Episcopal Church is not held in trust for TEC or TECSC and owns its property in fee simple absolute.

7. Church of the Cross, Inc. and Church of the Cross Declaration of Trust

The Defendants maintain that the 2003 bylaws describing the purpose of the parish corporation as "the support and maintenance of a Church...in accordance with the doctrine and practices of [TEC] and of the Diocese of South Carolina" is enough to constitute an agreement to the Dennis Canon. TC-12 (art. II). However, this Court finds it is not sufficient under the precedent of *All Saints* and Chief Justice Beatty's, Acting Justice Toal's, and Justice Kittredge's opinions to divest the parish of its property. Further, this Court notes that the bylaws contain no accession to TEC's canons, they do not use any language of accession, and the parish has never been a member of TEC and has not participated in the General Conventions of TEC. The Dennis Canon is not mentioned in the bylaws or on the deed of the Church of the Cross. Thus, the Church of the Cross owns its property in fee simple absolute, and the property is not held in trust for TEC or TECSC.

8. The Church of the Epiphany

This Court finds that the 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 [TEC] and the Diocese of South Carolina” is a mere pledge of allegiance to TEC. E-4B (art. II). The bylaws contain no accession to TEC’s canons, they do not use any language of accession, the Church of the Epiphany has never been a member of TEC and has not participated in the General Conventions of TEC. Further, the Dennis Canon is not mentioned in the bylaws or on the deed. Thus, this Court finds that the Church of the Epiphany owns its property in fee simple absolute, and their property is not held in trust for TEC or TECSC.

9. The Church of the Holy Comforter

The 1985 Constitution and bylaws state that the Church of the Holy Comforter “acknowledge[s], accede[s] to and adopt[s]...the Constitution and Canons of [TEC].” This Court finds that acknowledgement of the generalized constitutions and canons of TEC is a mere pledge of allegiance rather than an expressed accession to hold property in trust. There is no mention of the Dennis Canon in the bylaws or on the deed. Accordingly, the Church of the Holy Comforter owns its property in fee simple absolute, and the property is not held in trust for TEC or TECSC.

10. The Church of the Holy Cross (Statesburg)

The 1980 and 1981 bylaws stated that The Church of the Holy Cross “having resolved to accept the rules and regulations of [TEC], in effect, accedes to...the Constitution and Canons of [TEC].” No mention is made of the 1979 Dennis Canon in the bylaws or in the deed. The bylaws contain a general accession to the Constitution and Canons of TEC. Accordingly, The Church of the Holy Cross owns its property in fee simple absolute, and the property is not held in trust for TEC or TECSC.

11. Holy Trinity Episcopal Church

The 1985, 1988, 1993, and 2001 bylaws state that Holy Trinity “does acknowledge and accede to...the Constitution and Canons of [TEC] and the Constitution and Canons of...the Diocese of South Carolina.” This Court finds that these statements do not amount to an expressed, written accession to the 1979 Dennis Canon. There is no evidence that Holy Trinity acknowledged or knew of the 1979 Dennis Canon. Accordingly, this Court finds that the Holy Trinity Episcopal Church owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

12. The Church of Our Saviour of the Diocese of South Carolina

The Church of Our Saviour stated in the 1980 bylaws a “promise to conform to the Constitution [and] Canons...of [TEC]”; in the 1981 bylaws that the parish was “organized for the purpose of operating an Episcopal Church (mission) pursuant to the Constitution and Canons of...[TEC]”; in a 1984 letter that: “[w]e agree to conform to the Constitution and Canons of [TEC]”; and lastly, in 1992 and 2003 bylaws that the parish “acknowledges the authority of [TEC] 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.” The Court notes that the Church of our Saviour has never been a member of TEC nor has it participated in TEC’s General Convention. Furthermore, the Court finds no language of accession in this parish’s bylaws or in the 1984 letter. The Dennis Canon is not mentioned in the bylaws or on the deed. This Court finds no expressed accession to the 1979 Dennis Canon, and thus the Church of Our Saviour owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

13. The Church of the Redeemer

Defendants argue that the bylaws from 2000 stating that the Church of the Redeemer “shall conform to the Constitution and Canons of [TEC], and the Constitution and Canons of...the Diocese of South Carolina” are enough to constitute an expressed accession to the 1979 Dennis Canon. This Court notes that there is no language of accession, TECSC and TEC are not listed on the deed, and no reference is made to the Dennis Canon in the bylaws. This Court finds that these bylaws merely amount to a pledge of allegiance to TECSC and TEC’s rules and that an expressed accession was never made to the Dennis Canon. The Church of the Redeemer is not held in trust for TEC or TECSC. Further, this Court finds the Church of the Redeemer owns its property in fee simple absolute.

14. The Church of the Resurrection, Surfside

The 1983 bylaws of the Church of the Resurrection state that the “parish is organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of...[TEC].” This Court finds that this does not amount to an expressed accession to the 1979 Dennis Canon. There is no trust listed on the deed, there is no written agreement to the Dennis Canon, and there is no language of accession. Accordingly, this Court finds that the Church of the Resurrection owns its property in fee simple absolute, and the property is not held in trust for the Defendant TEC or TECSC.

15. St. Bartholomew’s Episcopal Church

The 2005 bylaws of St. Bartholomew’s state that the parish “accedes to and adopts the Constitution and Canons of [TEC] and of the Diocese of South Carolina.” Further, the 1982 and 1992 Constitution and bylaws state that the parish “accedes to and adopts the Constitution and Canons of [TEC], and also the Constitution and Canons of the Diocese of South Carolina.” The

Court finds that no mention is made of the 1979 Dennis Canon only a general pledge to comply with the Constitution and Canons of TEC. This boiler plate language is not evidence of an intent to convey property through a trust. Thus, no expressed trust was created. Accordingly, St. Bartholomew's owns its property in fee simple absolute, and the property is not held in trust for the Defendant TEC or TECSC.

16. The Vestry and Church Wardens Of the Episcopal Church Of the Parish of St. Helena And the Parish Church Of St. Helena Trust

The 1987 bylaws state that the Parish of St. Helena "pledges to adhere to the doctrine, discipline, and worship of [TEC]," and that any bylaws provision "which may be in conflict with the canons of the...[TEC] shall be considered null and void." The Court finds that the Parish of St. Helena has merely pledged allegiance to the doctrine, discipline, and worship of TEC and did not use any express language of accession. The Dennis Canon is not mentioned in their bylaws nor is it mentioned on the deed. The Parish of St. Helena is not a member of TEC, nor has it participated in the General Convention of TEC. Thus, the Parish of St. Helena owns its property in fee simple absolute, and the property is not held in trust for the Defendant TEC or TECSC.

17. St. James' Church, James Island, S.C.

The 1993, 1995, and 2001 Constitution of St. James' Church state that the parish "accedes to and adopts the Constitution and Canons of [TEC] and to the Constitution and Canons of the Diocese of South Carolina," 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."

This Court finds no express accession to the 1979 Dennis Canon. The Dennis Canon is not mentioned nor did the parish expressly agree to hold their property in trust for the benefit of TEC or TECSC. Rather, these statements generally accede to and promise allegiance to the

Constitution and Canons of TEC and TECSC. This Court finds that the St. James' Church did not expressly accede in writing to the 1979 Dennis Canon. Thus, the St. James' Church owns its property in fee simple absolute, and the property is not held in trust for TEC or TECSC.

18. The Vestry and Church Wardens Of the Episcopal Church Of the Parish Of St. John's, John's Island (Charleston)

The 1996 amended corporate articles of The Parish of St. John's state that the parish corporation "is subject to the Constitution and Canons of [TEC] and...the Diocese of South Carolina"; and the 2001 Parish Constitution and bylaws state that the parish "accedes to and adopts the Constitution and Canons of the Diocese of South Carolina and of [TEC]." This Court finds that merely pledging allegiance to TEC's constitutions and canons does not create an expressed or constructive trust. The Court finds there was no intent to accede nor was there expressed accession to the Dennis Canon to create a trust in favor of TEC or TECSC. Thus, the Church of St. John's owns its property in fee simple absolute, and the property is not held in trust for TEC or TECSC.

19. The Vestry and Church Wardens Of St. Jude's Church of Walterboro

The 1975 Constitution of St. Jude's Church states that the parish "accedes to and adopts the Constitution and Canons of [TEC] and also the Constitution and Canons of...the Diocese of South Carolina." St. Jude's Church did not expressly accede to the 1979 Dennis Canon in its Constitution. The parish only generally acceded to the Constitution and Canons of TEC and the Diocese in 1975. The 1990 bylaws, and subsequent revisions remained the same, only generally acceded to the Constitution and Canons of TEC. Furthermore, St. Jude's Church has never been a member of TEC and has never participated in the General Convention of TEC. Thus, St. Jude's Church owns its property in fee simple absolute, and its property not held in trust for TEC or TECSC.

20. Saint Luke's Church, Hilton Head

The bylaws from 2000 of Saint Luke's Church state that the parish "accedes to and adopts the Constitution [and] canons...of the [Diocese of South Carolina], and [TEC]." SL-6 (2000 art. II). This Court finds that Saint Luke's Church did not expressly accede to the 1979 Dennis Canon. Rather, Saint Luke's generally acceded to the Constitution and Canons of TEC. Further, there is no mention of the Dennis Canon, and title is in Saint Luke's. Thus, Saint Luke's owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

21. The Church of St. Luke and St. Paul, Radcliffeboro

The 1995 bylaws of St. Luke and St. Paul state 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 [TEC]." D-SLP-13 (art. I, sec. 1). The Court finds that the Church of St. Luke and St. Paul generally pledged allegiance to the Constitution and Canons of TEC. The Dennis Canon is not mentioned in its bylaws nor is it referenced in the deed. No specific language of accession is used in the 1995 bylaws. Thus, St. Luke and St. Paul own their property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

22. St. Paul's Episcopal Church of Bennettsville

The 2002 corporate articles of St. Paul's Episcopal Church describe 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. The 2004 bylaws authorize 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 [TEC]." This Court finds that St. Paul's Church, Bennettsville never expressly acceded to the 1979 Dennis Canon. There is only a generalized statement to comply with TEC's Constitution and Canons and no accession language is used.

The Dennis Canon is not mentioned on the deed nor is a valid trust created under South Carolina law. Thus, St. Paul's owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

23. The Vestry and Church Wardens Of St. Paul's Church, Summerville

The 1992 bylaws of St. Paul's Church stated that the parish "is organized pursuant to the Constitution and Canons of [TEC] and of...the Diocese of South Carolina." St. Paul's Church, Summerville did not expressly accede to the 1979 Dennis Canon. In fact, the words accession or accede are not used at all. The bylaws merely state that the parish was organized pursuant to the Constitution and Canons of TEC. This Court finds that the Parish of St. Paul's Church owns its property in fee simple absolute, and the property is not held in trust for TEC or TECSC.

24. Trinity Episcopal Church, Edisto Island

Trinity Episcopal Church stated in its 1980, 1988, 1991, 1992, and 1998 bylaws 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 [TEC]." D-TED-13 (art. I, sec. I). Trinity Episcopal Church never expressly acceded to the 1979 Dennis Canon. It pledged only to be organized pursuant to the Constitution and Canons of TEC. Trinity Episcopal Church has never been a member of TEC nor has it participated in the General Conventions of TEC. This Court finds that Trinity Episcopal Church owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

25. Trinity Church of Myrtle Beach

The 1993 bylaws of Trinity Church of Myrtle Beach state that the congregants seeking parish status "do hereby acknowledge, accede to and adopt...the Constitution and Canons of [TEC] and the Constitution and Canons of the...Diocese of South Carolina." D-TMB-26

(preamble). However, the parish did not expressly accede to the 1979 Dennis Canon, but only generally pledged allegiance to the Constitution and Canons of TEC. This Court finds that Trinity Church of Myrtle Beach owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

26. Trinity Episcopal Church, Pinopolis

The Defendants' evidence of accession is from the 1985 admission as a parish of the Diocese which required the parish to state its "willingness to conform to the Constitution and Canons of [TEC]." D-TP-31; D-401A at 32-33; Exhibit D-TP-31. This exhibit is an unsigned letter from the Diocese to the rector of Trinity Pinopolis stating the requirements of admission into union with the Diocese. This was a written application stating the parish's "willingness to conform" to the Constitution and Canons of TEC. This application does not use the word accession or accede. This Court finds that this is a mere pledge of allegiance to TEC and not an expressed accession to the Dennis Canon. Trinity Episcopal Church, Pinopolis owns its property in fee simple absolute, did not expressly accede to the 1979 Dennis Canon, and there is no trust in favor of TEC or TECSC.

27. St. David's Church

The April 4, 1982, bylaws of St. David's Church state that it "accedes to and adopts the constitution and canons of [TEC], and also the Constitution and Canons of the Diocese of South Carolina." Additionally, the Constitution and Bylaws dated May 24, 1992 state: "St. David's accedes to and adopts the Constitution and Canons of [TEC], and also the Constitution and Canons of the Diocese of South Carolina." In 2013, the bylaws state that St. David's "accedes to and adopts the Constitution and Canons of the Episcopal Diocese of South Carolina." D-SD-3 and D-SD-4 (Court Ex. 1, Tab 15).

In these bylaws, St. David's Church did not expressly accede to the 1979 Dennis Canon. These bylaws only state a general accession to the Constitution and Canons of TEC and the Diocese of South Carolina. St. David's Church has never been a member of TEC and has not participated in the General Conventions of TEC. The Dennis Canon is not mentioned. This Court finds that St. David's owns its property in fee simple absolute, and its property is not held in trust for TEC or TECSC.

28. The Vestry and Church Wardens of The Parish of St. Matthew (St. Matthews, Fort Motte)

The bylaws of the Parish of St. Matthews state that it "accedes to the Constitution and Canons of [TEC], and in the Episcopal Diocese of South Carolina; wherever a conflict exists between the Constitution and Canons of the Church and Diocese the Canons take precedence." The bylaws of the Parish of St. Matthew did not expressly accede to the 1979 Dennis Canon. This Court finds that the Parish only generally acceded to the Constitution and Canons of TEC. No mention is made of the Dennis Canon and an expressed trust was never formed. Accordingly, this church is not held in trust in favor of TEC or TECSC, and the Parish of St. Matthew owns its property in fee simple absolute according to its deed.

VII. FINDINGS AS TO CAMP ST. CHRISTOPHER

The issue of determining who the proper statutory beneficiary of the Trustees was both tried and appealed. The trial court found the statutory beneficiary was the Plaintiff Diocese and not TEC or TECSC.

The lead opinion and concurrence of the Collective Opinions found the beneficiary to be TECSC by deferring to TEC's choice of its "true" Diocese under a legal standard of deference. This Court finds that determining the "true diocese" is an ecclesiastical question, which was expressly rejected by *Jones* when the United States Supreme Court refused to determine the "true

faction” of the Vineville Presbyterian Church. This reasoning was subsequently followed by the South Carolina Supreme Court in *Pearson*, *All Saints*, and the majority in the Collective Opinion. Civil courts are prohibited from determining the issue of who is the true diocese.

Chief Justice Beatty reaffirmed the authority of *All Saints* when he applied neutral principles of law to determine corporate control in church disputes. 421 S.C. at 249, 806 S.E.2d at 102. Chief Justice Beatty in footnote 29 “find[s] ‘The Trustees...should retain title...as my decision in no way alters the clear language of the 1951 deed.’” *Id.* at 251, n.29, 806 S.E.2d at 103. However, he then states, “the disassociated diocese can make no claim to being the successor.” *Id.*

Acting Justice Toal affirmed the trial court’s decision that the Plaintiff Diocese was the beneficiary as stated on the deed. 421 S.C. at 287, 806 S.E.2d at 122-23. Acting Justice Toal stated, “[i]t is undisputed that the trustee corporation holds title in fee simple to Camp St. Christopher” and adds that the Camp was “held for the benefit of the disassociated diocese,” just as the original deed conveyed the property. *Id.* “Because the trustees did not accede to the Dennis Canon, there is no basis in South Carolina trust law for TEC to claim an ownership interest in Camp St. Christopher.” *Id.* at 287, 806 S.E.2d at 123.

Under *All Saints*, a religious non-profit corporation who follows the correct steps to sever its association with another entity does so with all its property interests intact. All Saints Parish Waccamaw withdrew from the Diocese and did not lose its rights to its property simply by disassociation.

There is no dispute that before disassociation that the Plaintiff Diocese was the beneficiary of those Trustees’ assets. This Court finds that the act of disassociation alone cannot cause the loss of beneficiary status because that would be inconsistent with *All Saints* upon

which the majority relied and did not overturn. This is especially true since the Dennis Canon does not apply to the property of the Diocese. There is nothing in the trial courts' order, or in the trial record, or in the record on appeal that suggests the beneficiary of Camp St. Christopher was an issue based on the language of its deed.²⁹ Before the Plaintiff Diocese could be deprived of its beneficial rights to Camp St. Christopher based on such a finding, due process requires that it have an opportunity to be heard. However, the rehearing petition was never ruled on the merits due to the 2-2 deadlock. Thus, the opportunity to be heard was never meaningfully addressed by the Supreme Court.

This Court finds that since the argument and issue regarding the language of the deed was never presented by TEC to the trial court for a decision nor was it ruled on by the trial court, the language of the deed cannot now be used as a basis for reversal of the trial court's order. The Collective Opinions are ambiguous on whether the Diocese or the Defendant TECSC is the proper beneficiary of the Trustee's assets.

Chief Justice Beatty's footnote must be construed in light of his legal ruling that the *All Saints* decision furnished the guiding principles ("aptly discussed by former Chief Justice Toal"). 421 S.C. at 249, 806 S.E.2d at 102. Justice Hearn's and Acting Justice Pleicones' views that the "true diocese" is determined by TEC was not accepted by Chief Justice Beatty because he reaffirmed *All Saints*. *All Saints* rejected the idea that TEC could determine the "true parish" and looked to neutral principles of corporate law to determine corporate control. Justice Kittredge and Acting Justice Toal confirmed the use of neutral principles of law in determining church property disputes.

²⁹ Camp St. Christopher is mentioned in the trial record only when its deed was introduced, and it was noted that the deed makes no reference to TEC being its beneficiary. Tr. Trans. at 59, 60, 62, 273.

Applying neutral principles of law, this Court finds the Diocese and Parishes properly disassociated and control their real and personal property with any improvements thereon. Following the narrowest grounds of the majority in the Collective Opinions, this Court finds that Camp St. Christopher should remain as titled in the Trustees of the Protestant Episcopal Church in South Carolina as stated in the 1951 deed.

VIII. FINDINGS AS TO TRADEMARKS, SERVICE MARKS, AND INTELLECTUAL PROPERTY

Plaintiffs argue that the trial judge found that the state registered marks prevailed over TEC's federally-protected trademarks based on a reading of state law. The trial court ruled that the Diocese's intellectual property is protected by a permanent injunction. Plaintiffs assert that since the Defendants failed to appeal the alternative statutory basis for an injunction, this is now the law of the case.³⁰ *See Dreher v. S. Carolina Dep't. of Health & Envtl. Control*, 412 S.C. 244, 249-50, 772 S.E.2d. 505, 508 (2015); *See generally Anderson v. Short*, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996).³¹

Regardless, in the Federal lawsuit involving the same parties, United States District Judge Richard Gergel issued his Order on September 19, 2019, granting summary judgment to the Defendants on their Federal Lanham Act claims finding that TEC owns the five federally

³⁰ Judge Goodstein issued an injunction under two separate statutes, one involving infringement of service marks, S.C. Code Ann. §§39-15-1105 et. seq., the other involving Improper Use of Names, Styles and Emblems," S.C. Code Ann. §§ 16-17-310 and 320. "Under both statutes, the Plaintiffs have established their entitlement to permanent injunctive relief." Final Order at 43. Defendants appealed the injunction under the first statute, Service Mark Infringement, but not the second statute, Improper use of Names, Styles and Emblems. This was noted in the Brief of Respondents on appeal, when they stated "Appellants fail to address Respondents' cause of action based on S.C. Code Ann. § 16-7-310 "Improper Use of Names." ...The circuit court found that this statute provided additional grounds for injunctive relief. Appellant have simply ignored it." Br. of Resp. at 56. Defendants then argued against its applicability for the first time in its reply brief. Reply Brief at 6. All issues must be argued in the initial briefs. Rule 208 (b)(2), SCACR. A reply brief may not be used by Appellant to raise an issue for the first time. *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d, 475, 477 (Ct. App. 1989).

³¹ Defendants' brief to the South Carolina Supreme Court did not take issue with the trial court's finding that the Diocese owned its intellectual property. The Brief referenced "the Diocese's state-registered trademarks", "Plaintiffs' marks", Plaintiffs' state-registered trademarks" and "Plaintiffs' state registrations". Br. of Appellants at 9, 11, 39 and 40, (August 6, 2015).

registered marks, and TECSC owns the marks designated in the state registrations. That Order is currently on appeal.

As to the law of this case, Chief Justice Beatty in footnote 28 believes the “rights to the service marks...determination should remain with the federal court,” while Justice Kittredge did not address the state-registered trademarks. 421 S.C. at 249, n.28, 806 S.E.2d at 103.

Acting Justice Toal defers to the “[F]ederal court to answer any issues...over applicable [F]ederal copyright and trademark law.” 421 S.C. at 261, 806 S.E.2d at 108-09. However, Acting Justice Toal, “narrowly affirm[ed] on the question of whether the Defendants infringed on the Plaintiffs’ service marks.” 421 S.C. at 288, 806 S.E.2d at 123. Acting Justice Pleicones found the trial court erred in holding that the Parishes’ state-registered trademarks prevailed over TEC’s federally-protected trademarks and reversed that portion of the order. 421 S.C. at 216, 806 S.E.2d at 85. Justice Hearn found that TEC is “entitled to all property, including...the emblems, seals, and trademarks associated with the TEC.” 421 S.C. at 248, 806 S.E.2d at 101-02.

Almost uniformly, the Supreme Court determined that TEC and TECSC owned all service marks, trademarks, and intellectual property or deferred to the Federal courts on these issues. As a result, this Court likewise follows and conforms to that decision and the subsequent order of the Honorable Richard Gergel, United States District Court Judge, dated September 19, 2019. This Court finds that the Federal Court has jurisdiction over matters related to the trademarks, intellectual property, and service marks.

IX. FINDINGS AS TO PETITION FOR ACCOUNTING AND SPECIAL MASTER

As noted in the above findings, the Parish property remains in the names of each parish and Camp St. Christopher remains titled in the Trustees of the Corporation. Thus, there is no need for a Special Master to oversee or manage the transfer of title to the above properties. Also,

since no title to property is transferred, there is no necessity for an accounting. As a result, this Court finds these requests unnecessary and consequently moot. Thus, the Petitions for the Appointment of a Special Master and an Accounting are denied.

X. CONCLUSION

A dispassionate reading of the Collective Opinions reinforces the majorities' affirmation of the neutral principles of law approach. The Court is also cognizant that a failure to apply those principles would negatively affect property and trust law in South Carolina. The neutral principles of property, corporate, and trust law have been consistent for years. Lawyers and judges understand those principles and are competent to decide issues based upon them. Additionally, neutral principles of law avoids all religious discussion, including which party is "true" to their denomination.

This is a property case. A decision on property ownership is usually governed by the title to real estate—the deed. In this case, all the Plaintiff Parishes hold title to their property in fee simple absolute.

Ownership may be effected by trust: a clear, convincing legal statement of a trust—not a promise, not a pledge, not polity. This Court concludes that there is no signed writing by the Plaintiffs expressly acceding to the Dennis Canon. This Court concludes there is no evidence establishing an intent by the Plaintiff Parishes to create a trust in favor of Defendants nor did the Plaintiffs ever vote on or consider acceding specifically to the Dennis Canon. Statements of allegiance are insufficient to establish an expressed trust. TEC unilaterally drafted the Dennis Canon. Since TEC and TECSC are not the owners of the Parish properties, they cannot establish a trust for themselves simply by declaring that they are also the beneficiary of the trust. The

Dennis Canon by itself does not create a “legally cognizable” trust nor does transfer title to property.

Further, this Court concludes there is no evidence to establish a constructive trust as an equitable remedy in favor of the Defendants. The Plaintiffs have not received money or property from the Defendants which did not belong to the Plaintiffs. The Plaintiff did not obtain the property through a breach of trust or violation of a fiduciary duty. Further, there was no evidence of fraud or bad faith in obtaining the property because it was stipulated that the Plaintiffs owned their respective parish properties. Thus, no constructive trust is established by operation of law.

This Court concludes that the burden of preparing a deed or of creating a trust in compliance with state law is extremely minimal.³² This Court concludes that the neutral principles of law applies in church cases and specifically to this case. This is a property matter, and the title holders are the owners of their property as set forth in their deeds. There is no clear, convincing evidence of an expressed or constructive trust applicable to any parish. For the reasons set forth above,

³² This Court is aware that deeds are relatively simple and inexpensive. When entities or individuals sign deeds or trusts, they are fully cognizant of their actions. Preparing deeds and trusts and then having them properly executed has additional benefits of directly apprising the grantor or settlor of what they are actually doing and intend to do in the future. On the issue of minimal burden, this Court notes that had any parish wished to place their parish in a trust to TEC, they could have done so easily and with only a “minimal burden” to the parish and TEC. In comparing the costs of litigation to the costs of deed preparation, the “burden,” is not just minimal, it is microscopic. Likewise, a simple declaration of trust, though the cost is higher than deed preparation, pales in comparison to the costs of litigation. The U.S. Supreme Court in *Jones* stated it best:

This [burden] argument assumes that the neutral-principles method would somehow frustrate the free-exercise rights of the members of a religious association. Nothing could be further from the truth. The neutral-principles approach cannot be said to “inhibit” the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion 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. The burden involved in taking such steps will be minimal. 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, 443 U.S. at 606.

IT IS THEREFORE ORDERED that the thirty-six Plaintiff Parishes be, and hereby are, declared and affirmed as the title owners in fee simple absolute of their respective parish real properties, with improvements thereon and their accompanying personal property.

IT IS FURTHER ORDERED that certified true copies of this order shall be filed in the Clerk of Court's Office in the county where each parish is located.

IT IS FURTHER ORDERED that the Defendants herein have no interest in the Plaintiff Parishes' properties.

IT IS FURTHER ORDERED that ownership to Camp St. Christopher remain as titled to the Trustees of the Corporation as stated in the 1951 deed.

IT IS FURTHER ORDERED that the Federal Court has jurisdiction over all matters related to trademarks, service marks, and intellectual property.

IT IS FURTHER ORDERED that the request for the Appointment of a Special Master, the Petition for an Accounting are denied.

AND IT IS SO ORDERED.

Edgar W. Dickson
Circuit Court Judge
The First Judicial Circuit

_____, South Carolina
_____, 2020



Dorchester Common Pleas

Case Caption: Protestant Episcopal Church In The Diocese Of South Carolina ,
plaintiff, et al VS Episcopal Church , defendant, et al
Case Number: 2013CP1800013
Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2020-06-18 17:34:06 page 47 of 47

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; 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; St.)
Bartholomews Episcopal Church;)
St. Davids Church; St. James' Church,)
James Island, S.C.; St. Paul's Episcopal)
Church of Bennettsville, Inc.; 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 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 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)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-18-00013

ORDER

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	)
	)
DEFENDANTS.	)
_____	)

The Court has reviewed the Defendants' Rule 59(e) Motion to Reconsider. In most of their motion, Defendants reargue matters previously presented to the Court which have been determined adverse to them. With respect to the contention that this Court did not rule on Diocesan property, that contention is incorrect. The Order rules on the issue of Diocesan property on pages 18, 40, 41 and 42.

Accordingly, the Motion for Reconsideration is denied.

IT IS SO ORDERED.

Orangeburg, South Carolina

July____, 2020

Edgar W. Dickson
Circuit Court Judge
The First Judicial Circuit



Dorchester Common Pleas

Case Caption: Protestant Episcopal Church In The Diocese Of South Carolina ,
plaintiff, et al VS Episcopal Church , defendant, et al

Case Number: 2013CP1800013

Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2020-07-13 15:48:09 page 3 of 3

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 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

FILED - RECORDED
2013 JAN 10 AM 11:45
CHERYL B. BARNES
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: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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: **It is hereby ordered that this case be assigned to the Honorable Edgar Dickson to hear any further motions, trials and other matters pertaining to this case.** *for administrative purposes.*

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.

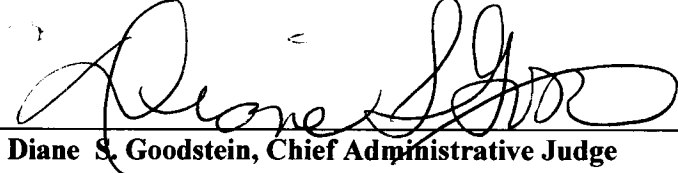
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Diane S. Goodstein, Chief Administrative Judge

2112
Judge Code

12/29/2017
Date

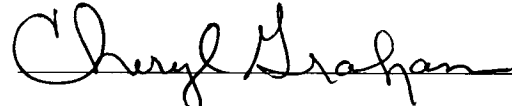
For Clerk of Court Office Use Only

This judgment was entered on 1/10/18 ~~12/29/2017~~, and a copy mailed first class or placed in the appropriate attorney's box on 1/10/18 ~~12/29/2017~~, 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)


Cheryl Graham - Clerk of Court

Court Reporter

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

**Protestant Episcopal Church in the Diocese of South Carolina, et al. vs.
The Episcopal Church (a/k/a Protestant Episcopal Church in the
United States of America
2013-CP-18-00013**

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FILED - RECORDED
2018 JAN 10 AM 11:45
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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
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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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: _____

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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
For Clerk of Court Office Use Only

2/3/2015
Date

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.

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**Protestant Episcopal Church in the Diocese of South Carolina, et al. vs.
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2013-CP-18-00013**

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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

Case No. 2013-CP-18-00013

FINAL ORDER

2015 FEB -3 PM 5:18

DORCHESTER COUNTY

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.

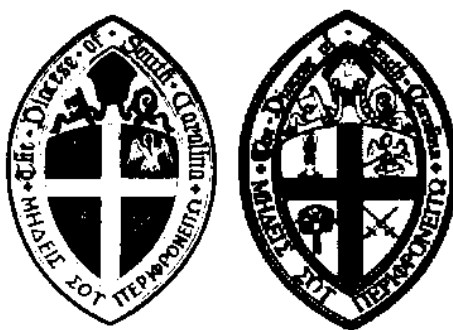
version. The Diocese contended that this new version was unconstitutional because the provisions in these new Canons conflicted with TEC's own Constitution.

- 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 hishop.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Plaintiff Trustees

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

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

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

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

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

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

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

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

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

C. Plaintiff Churches

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Defendants TEC and TECSC

67. TEC is a New York unincorporated association.

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

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

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

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

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

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

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

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

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

76. TEC does not have an ultimate judicatory.

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

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

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

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

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

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

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

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

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

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

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

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

IV. Conclusions of Law

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

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

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

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

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

A. Corporate Control and Rightful Leadership

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

I. Diocese

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q: I am.

A: What is your question?

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

A: I don’t believe so.

Mr. Runyan: Thank you, sir.

The Witness: But I may be wrong.

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

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

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

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

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

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

2. Trustees

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

3. Parish Churches

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

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

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

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

B. Real and Personal Property Rights

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

1. Express and Constructive Trusts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Marks

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

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

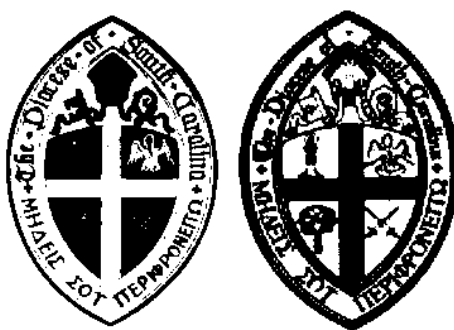
¹⁸ A person “includes a juristic person, as well as a natural person. The term “juristic person” includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.” S.C. Code Ann. § 39-15-1105(4).

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

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

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

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



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

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

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

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

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

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

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

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

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

- Mr. Lewis attended the January 26, 2013 convention of TECSC. "My impression upon attendance is that the intention was to be a convention of the Diocese of South Carolina." However, had the convention been of the Diocese of South Carolina, it would have lacked the necessary quorum.

- Among other things at this convention, Mr. Lewis observed Mr. Tisdale's appointment as the Chancellor of TECSC, passage of resolutions intended to alter existing provisions of the Constitution and Canons of the Diocese and which used a registered name of the Diocese.

- Mr. Lewis made a comparison between the Diocese of South Carolina's Constitution and Canons and those, which were part of the resolutions and found "it was clear that the changes that were being proposed were in direct correspondence with what were our governing documents as the Diocese of South Carolina."

- He discovered after the January convention of TECSC, that when searching for a registered name of the Diocese of South Carolina by using a web search engine, the search would be redirected to TECSC's website.

- In addition to Mr. Lewis' testimony, TECSC admitted that at its two conventions in 2013, it attempted to revise the Constitution and Canons of the Diocese; used a website known as "www.episcopalchurchofsc.org" until the summer of 2013, redirected web visitors seeking the Diocese of South Carolina's website to TECSC's website, used the names of the Plaintiff parishes on TECSC's website for a number of months without their permission and operated a

bank account in the registered name of the Diocese.

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

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

The word "episcopal" refers to an organization with bishops or overseers. Not only does the use of this word predate TEC, but it also is used today in many other church organizations unrelated to any party in this lawsuit. "Episcopal" and "Episcopal Church" were also part of the corporate names of some of the Plaintiffs before TEC was created. "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

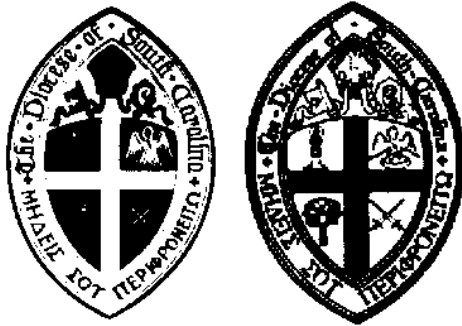
TEC's presiding bishop called a special convention using both the name and the seal of the Diocese. Even after the entry of the January 2013 orders, TECSC continued to use the name of the Diocese on its checking account, acted to make modifications to the Diocese's Constitution and Canons also using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

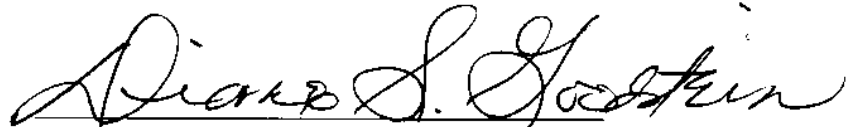
The Parish Church of St. Helena:

- "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!

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

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

February 3, 2015
Orangeburg, South Carolina

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800013

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

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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

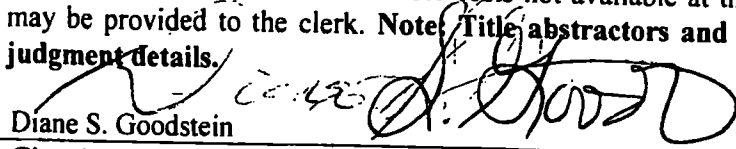
JAN 14 2014

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.

-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, SCRCP.

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

Rule 15(a), SCRCP², 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), SCRCP, 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)
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 3:29
CHERYL GRAHAM
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.

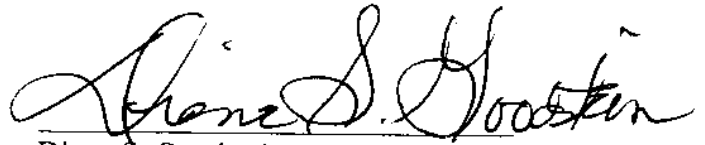
The following persons employed by, or serving as the officers or directors of the Diocese of South Carolina or of the Trustees are not subject to this order:

- **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; Craige 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 black ink, appearing to read "Diane S. Goodstein". The signature is fluid and cursive, with a horizontal line drawn underneath it.

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), SCRCP, 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,

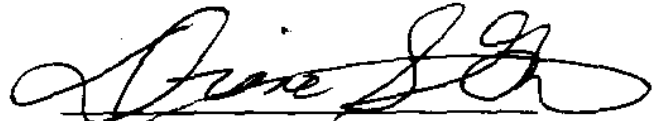
President and Director; John M. Barr, III, Director; J. Reid Boylston, III, Director; Ann Hester Willis, Director and Secretary; Julian Jeffords, III, Director; William G. Lyles, III, Director; Ed Mitman, Director; Andrew O'Dell, Director; Elizabeth Pennewill, Director; Suzanne Schwank, Director; Gregory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

- **Trustees:** Mark J. Lawrence, President; Craige 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

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By: Henrietta U. (Henri) Golding

Henrietta U. Golding, Esq.

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By: Charles H. Williams

Charles H. Williams, Esq.

WILLIAMS & WILLIAMS

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Orangeburg, SC 29116-1084

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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

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 St. Luke's Church, Hilton Head St. Matthias Episcopal Church, Inc	Episcopal Church	Protestant Episcopal Church in the United States of America FILED - RECORDED JAN 31 PM 5:29 CHERYL GRANHAM 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.
- ☐ **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

1/31/2013
Date

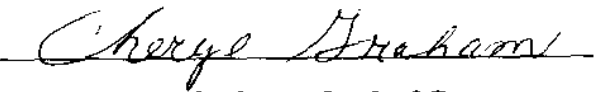
For Clerk of Court Office Use Only

This judgment was entered on 1/31/2012, and a copy mailed first class or placed in the appropriate attorney's box on 1/31/2012, to attorneys of record or to parties (when appearing pro se) as follows:

See Attached Mailing List

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


Cheryl Graham - Clerk of Court

Court Reporter

The Supreme Court of South Carolina

The Episcopal Church in South Carolina and The
Episcopal Church, Petitioners,

v.

Edgar W. Dickson, in his official capacity as Judge of the
First Judicial Circuit, In re: Civil Action No. 2013-CP-
18-00013, on remittitur, following the final decision of
this Court in *Protestant Episcopal Church in the Diocese
of S.C. v. Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82
(2017), *reh'g denied* (2017), *cert. denied*, 138 S.Ct. 2623
(2018), Respondent,

and

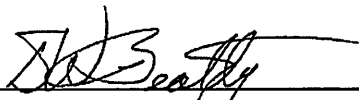
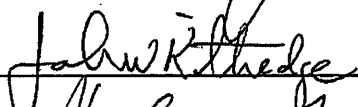
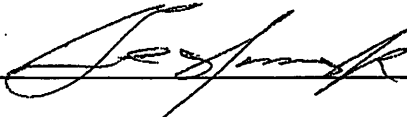
In re: The Protestant Episcopal Church in the Diocese of
South Carolina; The Trustees of The Protestant Episcopal
Church in South Carolina, a South Carolina Corporate
Body; All Saints Protestant Episcopal Church, Inc.;
Christ St. Paul's Episcopal Church; Church of The Cross,
Inc. and Church of the Cross Declaration of Trust;
Church of The Holy Comforter; Church of the Redeemer;
Holy Trinity Episcopal Church; Saint Luke's Church,
Hilton Head; St. Bartholomew's Episcopal Church; St.
David's Church; St. James' Church, James Island, S.C.;
St. Paul's Episcopal Church of Bennettsville, Inc.; 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 Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens 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; and The Vestries and Churchwardens of The Parish of St. Andrews, Respondents.

Appellate Case No. 2020-000324

ORDER

Petitioners seek a writ of prohibition to prevent the circuit court from clarifying this Court's decision in *Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (2017). The petition is denied.

	C.J.
	J.
	J.
	J.

Hearn, J., not participating

Columbia, South Carolina
March 31, 2020

cc:

C. Pierce Campbell, Esquire
Thomas Christian Davis, Esquire
Harry Arthur Oxner, Esquire
Andrew Spencer Platte, Esquire
C. Alan Runyan, Esquire
Thornwell F. Sowell, III, Esquire
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Robert R. Horger, Esquire
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James Kent Lehman, Esquire
John B. Williams, Esquire
Allan Poe Sloan, III, Esquire

Joseph C. Wilson, IV, Esquire
Bert Glenn Utsey, III, Esquire
Jason S. Smith, Esquire
The Honorable Edgar W. Dickson

The Supreme Court of South Carolina

Ex parte: The Episcopal Church (a/k/a The Protestant Episcopal Church in the United States of America) and The Episcopal Church in South Carolina, Petitioners,

v.

Edgar W. Dickson, in his official capacity as Dorchester County Circuit Court Judge, Respondent.

In re: 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; St. Matthews Church; St. Andrews Church-Mt. Pleasant Land Trust; St. Bartholomews Episcopal Church; St. David's 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 Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens 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; and The Vestries and Churchwardens of The Parish of St. Andrews, Plaintiffs - Intervenor,

v.

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

Appellate Case No. 2019-000463

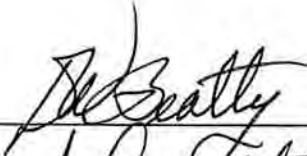
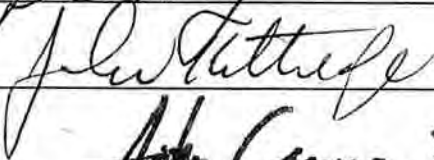
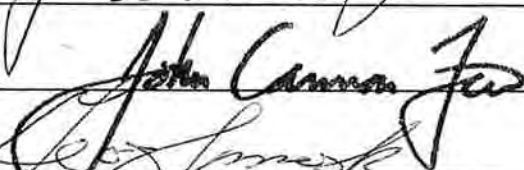
ORDER

Petitioners have filed a petition with this Court seeking a writ of mandamus directing Respondent, Dorchester County Circuit Court Judge Edgar W. Dickson, "to enforce this Court's mandate" in *Protestant Episcopal Church in the Diocese of South Carolina v. Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (2017), *cert. denied*, 138 S. Ct. 2623 (2018), "by effectuating the transfer of possession and control of the diocesan property and the property of 29 of the parishes at issue and providing any further relief consistent with that mandate." Petitioners state they filed a petition to enforce the judgment that has been pending in the circuit court since May 2018.

A motion to intervene and a return to the petition for a writ of mandamus have been submitted by the remaining parties in the underlying appeal (Intervenors). Intervenors argue a writ of mandamus is not appropriate as Respondent is currently scheduling hearings to review the petition to enforce the judgment, as well as a separate action filed in the circuit court under the Betterments Act. *See* S.C. Code

Ann. § 27-27-10 (Supp. 2018). Petitioners have advised the Court that they do not oppose the motion to intervene.

We grant the motion to intervene. Because Respondent is in the process of scheduling hearings on the matters filed in the circuit court, we are confident that Respondent will resolve the petition to enforce the judgment, as well as any related matters that are pending, in an expeditious manner. As a result, we deny the petition for a writ of mandamus.

	C.J.
	J.
	J.
	J.

Hearn, J., not participating.

Columbia, South Carolina

June 28, 2019

cc:

Christopher Ernest Mills, Esquire
Steffen N. Johnson, Esquire
C. Pierce Campbell, Esquire
Thomas Christian Davis, Esquire
Harry Arthur Oxner, Esquire
Andrew Spencer Platte, Esquire
C. Alan Runyan, Esquire
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The Honorable Edgar W. Dickson

The Supreme Court of South Carolina

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; St. Matthews Church; St. Andrews Church-Mt. Pleasant Land Trust; St. Bartholomews Episcopal Church; St. David's 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 Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens 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. Andrews,
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.

Appellate Case No. 2015-000622

ORDER

Respondents, with the exception of those parishes who prevailed with respect to
their property rights, have filed petitions for rehearing. We would deny the
petitions.



C.J.

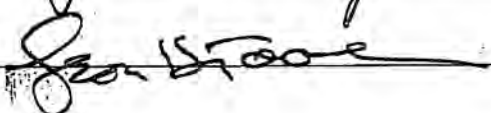


A.J.

We would grant the petitions for rehearing.

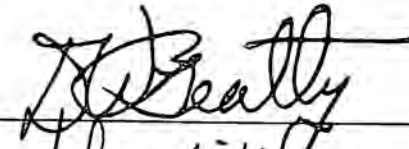
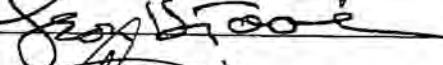
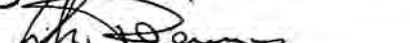


J.



A.J.

In light of the above, the petitions for rehearing have failed to receive a majority vote. Therefore, the petitions for rehearing have been denied, and the opinions previously filed in this case reflect the final decision of this Court. The Clerk of this Court shall send the remittitur.

	C.J.
	J.
	A.J.
	A.J.

Hearn, J., not participating

Columbia, South Carolina
November 17, 2017

cc:

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David Booth Beers, Esquire
Mary E. Kostel, Esquire
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Cheryl L. Graham
The Honorable Diane Schafer Goodstein

The Supreme Court of South Carolina

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; St. Matthews Church; St. Andrews Church-Mt. Pleasant Land Trust; St. Bartholomews Episcopal Church; St. David's 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 Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens 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. Andrews,
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.

Appellate Case No. 2015-000622

ORDER

Respondents have filed a motion to recuse Justice Hearn from participating in the decision on the petitions for rehearing in this case and to vacate Justice Hearn's opinion or, in the alternative, to vacate all opinions in this case. Respondents request consideration of this motion by the full Court. With the exception of the request for the full Court to consider the motion, the motion is denied. *See Davis v. Parkview Apts.*, 409 S.C. 266, 762 S.E.2d 535 (2014) (citing *Duplan Corp. v. Milliken, Inc.*, 400 F.Supp. 497, 510 (D.S.C. 1975) ("Timeliness is essential to any recusal motion. To be timely, a recusal motion must be made at counsel's first opportunity after discovery of the disqualifying facts.")).

	C.J.
	J.
	A.J.

Kittredge, J., concurring in separate order in
which Toal, A.J., joins in part

Toal, A.J., concurring in separate order

I write separately to state my position on the rehearing matters before the Court. Because I remain firmly convinced that this Court's majority decision as to the so-called twenty-eight "acceding churches" reaches the wrong result and is fundamentally flawed, I vote to grant rehearing. I have signed the Court's order reflecting my vote.

In connection with the requested recusal of Justice Hearn, because the motions are untimely as they relate to the Court's opinion(s), I join the Court in denying the vacatur and recusal motions. The Court need not address the recusal motion on a prospective basis, for Justice Hearn has elected, to her great credit, to recuse herself prospectively and not to participate in the resolution of the rehearing petitions.

For the purpose of resolving the rehearing petitions, I requested that a fifth justice be appointed to fill the absence created by Justice Hearn's recusal so that a *full* Court could decide this matter of great importance. My request was rejected, which I find shocking. Under these circumstances, to disallow a full Court from considering the rehearing petitions is deeply troubling and, in my judgment, raises constitutional implications as the Court has blocked a fair and meaningful merits review of the rehearing petitions.

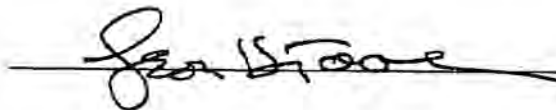
 J.

I have voted to grant rehearing. I join Justice Kittredge's separate writing and submit this additional separate writing concerning this matter.

With regard to the motion for recusal and the associated motion for vacatur, I agree wholeheartedly with the other members of the Court that these motions are untimely. The respondents did not challenge Justice Hearn's participation in the five months between this Court's certification of the case from the court of appeals and the oral arguments before us. While the respondents may have surmised she would recuse herself during that five-month span, any possible reason for their not filing a formal motion for her recusal vanished after she participated in the oral arguments. Nonetheless, in the two years between the arguments and the issuance of the Court's opinion, the respondents again took no action. Only after receiving an adverse decision on the merits from a majority of the Court did the respondents challenge Justice Hearn's participation in the matter. However, an adverse decision

is no reason to excuse a nearly two-and-a-half year delay in making a request for recusal. Moreover, Justice Hearn is not participating in this matter on a prospective basis, remedying any possible future question about her participation in the matter. While I make no criticism of the respondents' lawyers for filing the motions to recuse and for vacatur, I am disappointed in the tone of these filings. They are unreasonably harsh criticisms of a highly accomplished judge and a person of great decency and integrity. The respondents' legal points could have been made without such unnecessary language. I concur in the Court's decision to deny the motions for recusal and vacatur.

With regard to the request to appoint a fifth justice to fill the vacancy left by Justice Hearn's prospective non participation, I believe that this could have been accomplished without significant delay or undue burden on the Court or an appointed acting justice. In any event, the Court's collective opinions in this matter give rise to great uncertainty, in that we have given little to no coherent guidance in this case or in church property disputes like this going forward. Given our lack of agreement, I have no doubt the Court will see more litigation involving these issues and similarly situated parties. I am comforted in the knowledge that there will be ample opportunity for the Court to resolve these issues in a more definitive manner in the future.

 A.J.

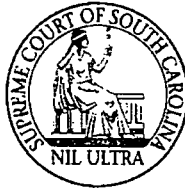
Columbia, South Carolina
November 17, 2017

cc:

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John S. Nichols, Esquire
Thomas S. Tisdale, Jr., Esquire
Jason S. Smith, Esquire
Allan R. Holmes, Sr., Esquire
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Wallace K. Lightsey, Esquire
D. Reece Williams, III, Esquire
John Carroll Moylan, III, Esquire
Christopher Ernest Mills, Esquire
Steffen N. Johnson, Esquire
The Honorable Diane Schafer Goodstein



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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29211

1231 GERVAIS STREET
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www.sccourts.org

November 17, 2017

The Honorable Cheryl L. Graham
Clerk of Court, Dorchester County
5200 E Jim Bilton Blvd
St George SC 29477-8020

REMITTITUR

Re: Protestant Episcopal v. Episcopal Church
Lower Court Case No. 2013-CP-18-00013
Appellate Case No. 2015-000622

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CHIEF DEPUTY CLERK

cc:

Blake A. Hewitt, Esquire
Thomas S. Tisdale, Jr., Esquire
Jason S. Smith, Esquire
Allan R. Holmes, Sr., Esquire
David Booth Beers, Esquire
Mary E. Kostel, Esquire
Andrew Spencer Platte, Esquire
Henrietta U. Golding, Esquire
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The Honorable Diane Schafer Goodstein

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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; St. Matthews Church; St. Andrews Church-Mt. Pleasant Land Trust; St. Bartholomews Episcopal Church; St. David's 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 Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens 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. Andrews,
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.

Appellate Case No. 2015-000622

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 27731
Heard September 23, 2015 – Filed August 2, 2017

REVERSED IN PART AND AFFIRMED IN PART

Allan R. Holmes, Sr. and Timothy O. Lewis, both of Gibbs & Holmes,
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ACTING JUSTICE PLEICONES: This is an appeal from a circuit court order holding that the Appellants have no legal or equitable interests in certain real and personal property located in South Carolina, and enjoining the Appellants from utilizing certain disputed service marks and names. In this lead opinion I explain why I would reverse the entire order.

The Respondents are the Protestant Episcopal Church in the Diocese of South Carolina (Disassociated Diocese); the Trustees of the Protestant Episcopal Church in South Carolina (Trustees); and thirty-six individual parishes that have aligned themselves with the Disassociated Diocese (Parishes). The Appellants are The Episcopal Church a/k/a The Protestant Episcopal Church in the United States of America (TEC) and The Episcopal Church in South Carolina, the diocese that remains affiliated with the TEC (Associated Diocese).

After a lengthy bench trial, and based upon the application of "neutral principles of law," the circuit court found in favor of the Respondents on both the property and the service mark causes of action. Since the main purposes of this suit were requests for declaratory judgments and injunctive relief, I find that it sounds in equity.¹ *Doe v. S.C. Med. Mal. Liab. Joint Underwriting Ass'n*, 347 S.C. 642, 557 S.E.2d 670 (2001). The Court is therefore free to take its own view of the facts. *Id.*

As noted above, much of the trial judge's decision making in this case was controlled by her interpretation of the "neutral principles of law" approach to deciding ecclesiastical disputes. See *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996) (adopting this approach). Specifically, she was guided by her reading of this Court's decision in *All Saints Parish-Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 685 S.E.2d 163

¹ Acting Justice Toal maintains that because the declarations made in this case will determine the rightful ownership of property, the main purpose of this suit is legal. I, however, look not to the first paragraph of the complaint, but rather to the prayer for relief, which seeks a declaration (1) which of the competing entities is the true diocese, (2) that respondents' legal title to property trumps appellants' equitable claims, and (3) for other injunctive relief related to trade names. The main purpose is to enjoin appellants from "interfering" with the respondents in "church matters" and thus this suit sounds in equity. Compare, e.g., *Williams v. Wilson*, 349 S.C. 336, 563 S.E.2d 320 (2002). To the extent the issues turn on property rights, the results turn on the validity and existence of certain trusts, matters which also sound in equity. E.g., *Settlemyer v. McCluney*, 359 S.C. 317, 596 S.E.2d 514 (Ct. App. 2004). Were Acting Justice Toal correct, and were the Court to find the main purpose of this suit were legal, then the Court would be compelled to reverse and remand for a new trial given the number of erroneous and prejudicial evidentiary rulings made by the trial judge and raised to us on appeal. I note none of the opinions that would uphold the trial court's order in whole or in part address these issues.

(2009) (*All Saints*). In the trial judge's view, the admissibility of evidence and the resolution of the property disputes at issue here were properly adjudicated solely on the basis of state corporate, property, and trust law, and she was required to ignore the ecclesiastical setting in which these disputes arose. This error of law led, in turn, to a distorted view of the issues in this case.

Before discussing the merits of the appeal, I briefly review a simplified history of TEC, and the church's history in South Carolina. I next address, and would reverse, the circuit court's finding that TEC is a congregational rather than a hierarchical church. I then address misperceptions of the "neutral principles of law" approach resulting in large part from the trial court's reading of *All Saints*, which I would now overrule in part.² I conclude that the present property and church governance disputes are not appropriate for resolution in the civil courts and would reverse the order to the extent it purports to resolve these questions. Finally, I find the trial court erred in holding that the Respondents' state-registered trademarks prevail over TEC's federally-protected trademarks, and therefore would also reverse that portion of the order.

HISTORY

The Episcopal Church has a long history in South Carolina. *See All Saints, supra*. In 1789, four years after its formation, the Protestant Episcopal Church in South Carolina (South Carolina Diocese) and six other dioceses came together to form the national church (TEC). The South Carolina Diocese was voluntarily associated with TEC since that date, save for a five-year hiatus surrounding the Civil War. In 1841, Article 1 was added to the South Carolina Diocese's Constitution. This article, titled, "Of acceding to the constitutions and canons of the general convention," provided "The [South Carolina Diocese] accedes to, recognizes and adopts the general constitution and canons of [TEC] and acknowledges their authority accordingly." Similar language in which the Diocese acceded to TEC remained in the Diocese's governing documents until 2010. Further, for more than 200 years, a parish had to agree to conform to TEC's Constitution and Canons as well as those of the Diocese in order to become and remain a member of the South Carolina Diocese. Finally, the Trustee Corporation, which purports to be

² Acting Justice Toal misreads my opinion as retitling property owned by All Saints Waccamaw, ousting its vestry, and rewriting its charter. It is unclear to me how Acting Justice Toal derives that conclusion as that congregation is not a party to this suit.

represented in this suit by the respondent Trustees, was chartered as a non-profit corporation in 1880 and again in 1902.

In 1923, after requesting permission from TEC to divide the state into two Dioceses, TEC's General Convention agreed to the division and the state was divided into the Upper and Lower Dioceses of South Carolina. The Lower Diocese was incorporated in 1973, with this corporate purpose: "[T]o continue an Episcopal Diocese under the Constitution and Canons of [TEC]." Both the Disassociated Diocese and the Associated Diocese claim to be the successor to the Lower Diocese.

Overly simplified, the issue in this case is whether respondent Disassociated Diocese, the Trustees, and the Parishes or appellant Associated Diocese and its parishes "own" the real, personal, and intellectual property that the Appellants allege was held in trust for the benefit of TEC in 2009.

I. TEC Organization

In *All Saints*, the Court reiterated its previous definitions of a congregational and a hierarchical church structure: "A congregational church is an independent organization; governed solely within itself....; while a hierarchical [or ecclesiastical] church may be defined as one organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head." *All Saints*, 385 S.C. at 443, 685 S.E.2d at 171 fn. 9 (quoting *Seldon v. Singletary*, 284 S.C. 148, 149, 326 S.E.2d 147, 148 (1985)).

TEC is an unincorporated association comprised of subunits known as dioceses. Each diocese is, in turn, comprised of congregations known as parishes or missions. Every three years, TEC sponsors a General Convention to which each diocese's standing committee sends a specified number of clerical and lay representatives to conduct TEC's business, including electing and confirming³ new bishops.

The evidence in the record demonstrates TEC's organization is three-tiered, with the General Convention at the top, approximately one hundred dioceses created along geographical lines in the middle, and the individual parishes and missions

³ Although a diocese (s)elects its own bishop, the bishop is not the ecclesiastical authority for the diocese until, *inter alia*, a majority of the standing committees for the remaining dioceses confirm his (s)election.

affiliated with a particular diocese forming in the bottom tier. TEC is led by a Presiding Bishop, and each diocese is traditionally led by a bishop. The record establishes that the ultimate authority in TEC rests with the General Convention, and that the written sources of authority include TEC's Constitution and Canons, the Book of Common Prayer, and the Holy Bible. As noted above, until 2010, the Lower Diocese explicitly acceded to TEC's authority, and accession to both the Diocese and TEC was required of all parishes and missions. Further, until 2010, the Trustees' corporate bylaws stated it would carry out its duties under the authority of TEC's Constitution and Canons.

I find, based upon the evidence in this record, that TEC is a hierarchical church, and would therefore overrule the trial court's finding that it is, instead, a congregational church. *Doe, supra*. In reaching this decision, I join numerous other jurisdictions that have concluded that TEC is a hierarchical church. *See, e.g., Dixon v. Edwards*, 290 F.3d 699 (4th Cir. 2002); *In re Episcopal Church Cases*, 45 Cal.4th 467, 198 P.3d 66 (2009); *Parish of the Advent v. Protestant Episcopal Diocese of Massachusetts*, 426 Mass. 268, 688 N.E.2d 923 (1997); *Masterson v. Diocese of Northwest Texas*, 422 S.W.3d 594 (TX 2014); *Falls Church v. Protestant Episcopal Church in the United States*, 285 Va. 651, 740 S.E.2d 530 (2013). I turn next to a discussion of *All Saints*.

II. *All Saints*

As noted above, the trial judge's conduct of the trial and her rulings were governed, in large part, by her understanding of *All Saints*. As explained below, I would now overrule *All Saints* to the extent it holds that TEC's Dennis Canon and the Lower Diocese's own version of that Canon were ineffective in creating a trust over the property at issue here, and to the extent the opinion distorts the correct understanding of the neutral principles of law approach to resolving issues arising from a church schism. In so doing, I focus especially on the effects of corporate actions taken by ecclesiastical institutions.

In *All Saints*, the dispute was between the Lower Diocese and a congregation which sought to disaffiliate from the Diocese. The legal questions were which faction of the splintered Episcopal congregation owned the parish property, and which faction controlled the parish's vestry. *All Saints* decided the property issue by holding that TEC's 1979 "Dennis Canon" was ineffective in creating a trust over real and personal property titled in the name of the All Saints Parish. Further, in deciding the "legitimate vestry" issue, the Court indicated that the "neutral principles of law" approach required that in order for a civil court to determine

whether a church-related dispute could be adjudicated in that forum, the court must look **only** at state corporate and property law, ignoring the ecclesiastical context entirely. If the civil court could determine the dispute applying state law, then the case could be resolved by it. Thus, *All Saints* undertook to analyze the disagreement in that case by treating the "All Saints Corporation" as independent of the "All Saints Parish." I find this analysis to be a distortion of the neutral principles approach. See *Jones v. Wolf*, 443 U.S. 595 (1979).

In *All Saints*, the Court correctly explained "neutral principles of law" this way:

A clear recitation of the neutral principles of law approach as adopted by this Court was enunciated in *Pearson v. Church of God*. In *Pearson*, we articulated the rule that South Carolina civil courts must follow when adjudicating church dispute cases. We reaffirm and more fully explain this rule here. The *Pearson* rule provides:

(1) Courts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration; (2) courts cannot avoid adjudicating rights growing out of civil law; (3) in resolving such civil law disputes, courts must accept as final and binding the decision of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration.

325 S.C. at 52-53, 478 S.E.2d at 853.

The *Pearson* rule establishes that where a civil court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so. Nonetheless, where a civil court is presented an issue which is a question of religious law or doctrine masquerading as a dispute over church property or corporate control, it must defer to the decisions of the proper church judicatories in so far as it concerns religious or doctrinal issues. See *Serbian Eastern Orthodox Diocese*, 426 U.S. at 709, 96 S.Ct. 2372 (finding that the controversy before the Court "essentially involve[d] not a church property dispute, but a religious dispute the resolution of which . . . is for ecclesiastical and not civil tribunals.").

All Saints at 444-45, 685 S.E.2d at 172.

Properly applied, the "neutral principles" approach requires that the civil court's initial inquiry be a "holistic" one. The court must first determine whether the property/corporate dispute will require the court to decide issues of religious law, principle, doctrine, discipline, custom, or administration - in other words, is the property/corporate dispute actually ecclesiastical in nature. If the dispute is "a question of religious law or doctrine masquerading as a dispute over church property or corporate control," then the Constitution of the United States requires the civil court defer to the decision of the appropriate ecclesiastical authority. *All Saints, supra*. As explained below, this is the approach I expressly adopt and apply to decide the merits of the present dispute in § III, *infra*.⁴ Before proceeding to that analysis, however, I reexamine the legal analysis applied in *All Saints* and the conclusions drawn there.

In 1979, the Supreme Court decided *Jones v. Wolf, supra*. Like the present case, *Jones* was a property dispute arising from a schism in a hierarchical church. The *Jones* Court acknowledged the ability of civil courts to resolve most church-based property disputes using deeds, state statutes, the local church charters, and the national church's constitution. The Court explicitly stated, however, that:

Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.

...

The neutral-principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the

⁴ Acting Justice Toal contends I 'skip' this step entirely: I respectfully refer the reader to the penultimate sentence in the first paragraph under this section.

neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion 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. The burden involved in taking such steps will be minimal. 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 at 603-4; 606.

In 1979, TEC, acting through the General Convention, responded to *Jones* by enacting the so-called Dennis Canon. This Canon provides:

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 part of, and subject to this Church and its Constitution and Canons.

The Dennis Canon (Canon 1.7.4) is followed by Canon 1.7.5, which provides:

The several Dioceses may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, but no such action shall be necessary for the existence and validity of the trust.

In 1987, the Lower Diocese of South Carolina adopted a version of the Dennis Canon as part of its own constitution, as did many of the Parishes.⁵ Recall that

⁵ The diocesan version of the Dennis Canon states: "All real and personal property held by or for the benefit of any Parish, Mission, or Congregation is held in trust

accession to TEC's Canons, which included the Dennis Canon, and to the Lower Diocese's Constitution, which from 1987 forward included a diocesan version, were conditions of a parish or mission's membership in the Lower Diocese. Recall also that until the 2010 Diocesan Convention, Article 1 of the Diocesan Constitution provided: "The Church in the Diocese of South Carolina accedes to and adopts the Constitution and Canons of [TEC] and acknowledges this authority accordingly."

In *All Saints*, this Court first addressed the validity of the Trusts created by the Dennis Canon and Diocesan Constitution as applied to property belonging to the All Saints Parish at the time the Parish sought to disaffiliate from the Episcopal Church. In resolving the issue of the effect of TEC's adoption of the Dennis Canon in 1979, and the Lower Diocese's incorporation of the Canon into its own constitution in 1987, the Court reviewed the history of the All Saints Parish, extensively reporting and resolving title issues from 1745 until 1903. On the merits, the *All Saints* opinion simply holds:

Furthermore, we hold that neither the 2000 Notice [recorded by the Diocese in the county courthouse reflecting the trust created by the Diocese and that created by the Dennis Canon] nor the Dennis Canon has any legal effect on title to the All Saints congregation's property. A trust "may be created by either declaration of trust or by transfer of property" *Dreher v. Dreher*, 370 S.C. 75, 80, 634 S.E.2d 646, 648 (2006). 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 or transfer legal title to one person for the benefit of another. The Diocese did not, at the time it recorded the 2000 Notice, have any interest in the congregation's property. Therefore, the recordation of the 2000 Notice could not have created a trust over the property.

For the aforementioned reasons, we hold that title to the property at issue is held by All Saints Parish, Waccamaw, Inc., the Dennis Canons [sic] had no legal effect on the title to the

for [TEC] and the [Lower Diocese]. 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 a part of, and subject to, [TEC] and the [Lower Diocese]."

congregation's property, and the 2000 Notice should be removed from the Georgetown County records.

All Saints at 449, 685 S.E.2d at 174.

I would now overrule *All Saints* to the extent it held the Dennis Canon and the 1987 amendment to the Lower Diocese's Constitution were ineffective in creating trusts over property held by or for the benefit of any parish, mission, or congregation in the Lower Diocese. The result in *All Saints* was obtained without considering the religious documents and texts, including the Diocesan Constitution, which formed the foundation of the relationships between All Saints Parish, the Lower Diocese, and TEC, and by ignoring the premise of *Jones* that a hierarchical church could direct the disposition of property in case of a schism with a minimal burden. Specifically, *All Saints* failed to acknowledge that, as a matter of church governance and administration, All Saints Parish had agreed to be bound by the "trust terms" found in the Dennis Canon and the Diocesan Constitution through its voluntary promises of allegiance, upon which the hierarchical church is founded, and by its conduct in remaining affiliated with TEC after 1979, and with the Lower Diocese after 1987. *All Saints'* failure to consider the entirety of these ecclesiastical relationships, the governing documents, and the parties' conduct, as well as the assurances given by the *Jones'* majority that a hierarchical church could direct the ownership of property in the case of a schism, led to a violation of the command of *Pearson* that a court look at the entirety of the dispute, including the hierarchal church's constitution, canons, and rules, before determining whether the dispute can be resolved purely by the application of state law.

Further, I find that *All Saints* fell into error when it created an artificial division between All Saints' authority as a parish to withdraw from TEC and the Lower Diocese, and All Saints parish's corporate authority to withdraw by amending its bylaws and articles of incorporation in compliance with South Carolina law. The *All Saints* decision focused only on the parish corporation's compliance with the provisions of the South Carolina Non-Profit Act, S.C. Code Ann. §§ 33-31-100, *et seq.* (2006 and Supp. 2016). The opinion concluded that the corporate formalities had been properly executed and thus the parish had effectively withdrawn from TEC. The flaw in this section of the *All Saints* decision is that it relies on a false dichotomy between parish as ecclesiastical unit and parish as a corporate entity,⁶ and fails to acknowledge the dispositive statute in the Non-Profit Act.

⁶ I find persuasive this passage from Justice Lehrmann's dissent in *Masterson v. Diocese of Northwest Texas*, 422 S.W.3d 594, 617-18 (TX 2014):

When deciding whether a matter invokes constitutional protection, I believe that we should err on the side of caution, upholding constitutional mandates when in doubt.

The Court divides the questions of Good Shepherd *parish's* authority to withdraw from TEC and Good Shepherd *corporation's* authority to withdraw by amending its bylaws and articles of incorporation In my view, however, the two inquiries are inextricably linked. The Court goes on to conclude that, because the parish at issue was incorporated and because there was no specific TEC or diocesan restriction on the corporation's authority to amend its bylaws and articles of incorporation, the validity of Good Shepherd's withdrawal by amendment of those documents was *not* an ecclesiastical question I am unconvinced that the incorporated status of the parish removes the issue from the realm of church polity. If [the Bishop's] determination that the parish could not withdraw from TEC is a binding ecclesiastical decision, it does not cease to be so because of the corporate form taken by the parish. Such a determination permits civil courts to conduct an end-run around the First Amendment's prohibition against inquiry into and resolution of religious issues by effectively allowing the lower church entity's unilateral decision to trump the higher entity's authority over matters of church polity.

Notably, the Court recognizes that "what happens to the relationship between a local congregation that is part of a hierarchical religious organization and the higher organization when members of the local congregation vote to disassociate is an ecclesiastical matter over which civil courts generally do not have a jurisdiction." *Id.* at 607 (citing *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713-14, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976)). "But what happens to the property is not," the Court continues, "unless the congregation's affairs have been ordered so that ecclesiastical decisions effectively determine the property issue." *Id.* It follows that [the Bishop's] determination regarding the parish's authority (or, more accurately, lack of authority) to withdraw from TEC is a

The omitted statute, § 33-31-180 (2006)⁷ provides:

§ 33-31-180. Religious corporations; Constitutional protections.

If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this chapter on the same subject, the religious doctrine controls to the extent required by the Constitution of the United States or the Constitution of South Carolina, or both.

Once effect is given to § 33-31-180, and the disaffiliated parish's actions in *All Saints* are viewed through the proper constitutional lens, it is patent that the civil courts of South Carolina were obligated to accept the ecclesiastical decision that

binding ecclesiastical decision, irrespective of the corporate form taken by the parish. In turn, since Good Shepherd did not validly withdraw from TEC, Good Shepherd remained a constituent thereof and consequently remained subject to TEC's and the Diocese's Constitutions and Canons.

There appears to be no dispute that, as a TEC parish, Good Shepherd could not pick and choose those portions of the governing documents by which it wished to be bound. And the Dennis Cannon [sic] and its diocesan counterpart expressly state that the church property is held in trust for TEC and the Diocese. Thus, if Good Shepherd had no authority to withdraw, it had no authority to revoke its adherence to the Canons or to revoke the trust placed on the property by virtue thereof. Moreover, the Canons condition Good Shepherd's authority over the church property on its "remain[ing] a part of, and subject to, this Church and its Constitutions and Canons." By purporting to withdraw from TEC, then, Good Shepherd took the very action that would strip it of its rights in the property. Good Shepherd may not avoid the consequences of its actions - - consequences to which it had freely agreed -- simply by voting to no longer be subject to those consequences.

⁷ This statute was the foundation of the trial court's order in *All Saints*.

the so-called "minority vestry" were the *All Saints* parish's true officers. Had the *All Saints* Court analyzed the issue under all the relevant authorities, it would have been clear that the Court could not adjudicate the corporate legitimacy claim, as the question which group was the "true vestry" was a matter of religious law and doctrine, and both the Constitution and § 33-31-180 required that the Court accede to TEC's and the Lower Diocese's determination of the "true vestry." See *Pearson*, *supra*.

Here, the trial court sought to faithfully apply the flawed analytical framework created by *All Saints*. In so doing, she unwittingly violated the constitutional precepts that underlie the "neutral principles of law" approach to the resolution of church disputes.

I now turn to the facts of this case in order to determine whether the trial court properly determined that the present property/corporate dispute was cognizable in the civil court.

III. Application

While *All Saints* deemed the reason(s) for the disaffiliated parish's corporate actions irrelevant to the dispute, I find that the underlying reasons for the schism here are relevant to the determination whether this dispute is, at its core, one grounded in "religious law, principle, doctrine, discipline, custom, or administration" and thus not cognizable in civil court. See *Pearson*, 325 S.C. at 53, 478 S.E.2d at 851-2. Although the trial judge understandably sustained respondents' objections to much of the evidence offered to explain the Disassociated Diocese's decision to leave TEC in light of *All Saints*, I find there is sufficient evidence in the record to support my finding that doctrinal issues were the trigger. *Doe*, *supra*. A brief overview of that evidence follows.

In 2006, the Lower Diocese of South Carolina convened to select a new bishop and the Diocesan Convention elected Mark Lawrence. There was evidence that Bishop Lawrence was understood to be disenchanted with TEC's direction.⁸ His 2006

⁸ Prior to 2006, TEC's General Convention confirmed the selection of the first openly homosexual bishop in TEC. Bishop Lawrence testified the Disaffiliated Diocese had become "uncomfortable with the trajectory of the general convention of the Episcopal Church." In referring to the Presiding Bishop of TEC, Katharine Jefferts Schori, Bishop Lawrence testified she had gone "contrary to the historic

election did not garner the support of a majority of TEC's other dioceses, however, a requirement for a bishop's election to be valid. In 2009, Bishop Lawrence was ordained as Bishop of the Lower Diocese following his reassurances to the other dioceses he would make the requisite vows of conformity to TEC's Canons and Constitution. The record reflects that Bishop Lawrence did make these vows.

The record demonstrates that Bishop Lawrence and others in the Lower Diocese determined to leave TEC and to take with them the property of those parishes in the Lower Diocese that were intending to disaffiliate. For example, a former president of the Lower Diocese's Standing Committee testified that the Diocese's bank accounts were moved to "friendly bankers" out of fear that the accounts might be frozen if Bishop Lawrence were to be disciplined by TEC. This witness testified he received a call in 2009 from another priest in the Lower Diocese who expressed concern that Bishop Lawrence was "not moving quickly enough to take the [Lower Diocese] out of [TEC]," and reminded the witness that they had elected Lawrence "to take us out of [TEC]."

Following this Court's opinion in *All Saints*, which held that the All Saints Parish was not bound by TEC's Dennis Canon or by the Diocesan Constitution's version of the Canon, and that a parish could disaffiliate from the Diocese simply by amending its corporate documents, Bishop Lawrence and his supporters undertook certain actions.⁹ Among other things, the Diocesan Convention began the process of amending the Lower Diocese's governing documents, and began providing Parishes with quitclaim deeds purporting to disclaim any interest of the Diocese in each Parish's property. Parishes, however, were asked to delay recording these

teachings of the church and the Holy Scriptures" and admitted this involved "the sexuality issue."

⁹ Acting Justice Toal ignores the evidence in the record, and concludes that in creating and disseminating these deeds and in purporting to alter the Lower Diocese's governance documents, "Bishop Lawrence [was] clearly acting on the [TEC's] behalf" This astounding conclusion is supported by the equally stunning assertion that "[TEC] was fully aware of what Bishop Lawrence's intentions were when he was made a bishop" The evidence reflects, in fact, that TEC was (rightfully) concerned about the Bishop's intentions and that his 2006 election not receive the consent necessary from the diocesan standing committee for years, and then only after his written assurances (1) that he would make the requisite vows of conformity to TEC's Canons and Constitution and (2) that "[his] intention is to remain in the Episcopal Church, period."

deeds until 2011 because, as a witness for respondents testified, there was fear TEC would discipline Bishop Lawrence if the quitclaim deeds were recorded and his actions became public.

Following the *All Saints* decision, certain leaders in the Lower Diocese, among the Trustees, and within the leadership of various parishes in the Diocese undertook to sever the relationship between themselves and TEC through corporate amendments. On October 19, 2010, Bishop Lawrence executed Nonprofit Corporation Articles of Amendment which purported to amend the language concerning the purpose of the Lower Diocese set forth in its 1973 incorporation. The amendment purportedly altered the purpose from "to continue the operation of an Episcopal Diocese under the constitutions and canons of the Protestant Episcopal Church in the United States of America" to "to continue operation under the Constitution and Canons of The Protestant Episcopal Church in the Diocese of South Carolina." Other corporate actions were taken during this period which purported to alter the governance structure of the Diocese, and many of the Parishes undertook similar corporate alterations. During 2010, the Trustees met to amend their corporate bylaws, which stated the corporation would carry out its duties under the authority of TEC's Constitution and Canons, to remove these references.

On December 5, 2012, Bishop Lawrence was informed that TEC's Presiding Bishop accepted his renunciation of orders, and shortly thereafter, a letter confirmed the action.¹⁰ On January 4, 2013, the Respondents filed this suit for a declaratory judgment seeking a declaration that respondent Disassociated Diocese was the true Diocese in the lower part of South Carolina, that all property at issue belonged to that faction, and for injunctive relief against the Appellants. On January 26, 2013, Charles vonRosenberg was elected and ordained as the Bishop of appellant Associated Diocese.

¹⁰ The letter stated in pertinent part: "In accordance with Title III, Canon 12, Section 7 of the Constitution and Canons of [TEC] and with the advice and consent of the Advisory Committee to the Presiding Bishops, I have accepted the renunciation of ordained ministry of this church made in writing on November 17th, 2012, by the Right Reverend Mark Joseph Lawrence, Bishop of South Carolina." Bishop Lawrence contends he never made such a renunciation. November 17, 2012, is the date the Disassociated Diocese held a Special Convention affirming the Diocese's disaffiliation from TEC.

The finding that TEC is hierarchal requires that I defer to its highest ecclesiastical body. *Pearson, supra*. TEC's acceptance of Bishop Lawrence's renunciation of orders and the subsequent ordination of Bishop vonRosenberg are decisions that the civil court "must accept as final and binding" *Pearson*, 325 S.C. at 52-53, 478 S.E.2d at 853. Because TEC has recognized the Associated Diocese to be the true Lower Diocese of South Carolina with Bishop vonRosenburg as its head, a civil court cannot inject itself into this church governance dispute and reevaluate that decision applying state law principles because this is a question of church polity, administration, and governance, matters into which civil courts may not intrude. The circuit court erred in allowing itself to become entangled in the questions of which competing claimant was the true successor of the Lower Diocese.

Further, the civil courts in South Carolina cannot decide disputes which are governed by church polity and governance concerning property ownership. For the reasons given above, I have determined that the real and personal property disputes sought to be adjudicated in this civil lawsuit are "question[s] of religious law or doctrine masquerading as a dispute over church property [and] corporate control" *See All Saints* at 445, 685 S.E.2d at 172. I find, therefore, the Court "must defer to the decision of the proper church judicatories" *Id.* "What happens to the relationship between a local congregation that is part of a hierarchical religious organization when members of the local congregation vote to disassociate is an ecclesiastical matter over which civil courts generally do not have a jurisdiction." *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Here, the church governing documents establish that as of 2010, the Lower Diocese had agreed since at least 1822 to be part of TEC and to be bound by its Constitution and Canons. These documents make clear that since at least 1979, and explicitly since 1987, the Lower Diocese, the Trustees, and the Parishes accepted that the property in dispute in this case was held in trust for TEC, and was controlled by the Diocese, the Trustees, and the Parishes only so long as they remained part of TEC. Here, both TEC and Lower Diocese had in place provisions governing the disposition of property in the event of a disaffiliation as contemplated by *Jones*. I believe the Court is "[constitutionally] bound to give effect to the result indicated" by TEC and the Lower Diocese, especially since both entities enacted these provisions "before the dispute erupt[ed]." *Jones, supra* at 606. I would therefore reverse the circuit court's decision to the extent it declined to give effect to the Dennis Canon and its diocesan counterpart, and to the extent it

held that the Disassociated Diocese, the Trustees, and parishes controlled or owned the disputed real and personal property.¹¹

IV. Service Marks

The trial court upheld the Respondents' claim that state trademarks it began filing in 2010 were being infringed upon by the Appellants in violation of S.C. Code Ann. § 39-15-1160 (Supp. 2016) and §§ 16-17-310 and 320 (2016), leading to confusion. It therefore enjoined the Appellants from "using, assuming, or adopting" certain "names, styles, emblems, or marks" claimed by the Respondents. I agree with the Appellants that in light of the evidence of the confusion created by the Respondents' use of the term 'episcopal,' with TEC's federally-registered trademarks, which include "The Episcopal Church" and "The Protestant Episcopal Church in the United States of America," state law dictates that the Appellants' right to these marks is superior, and that therefore the Respondents' state marks must be cancelled. *See* S.C. Code Ann. § 39-15-1145(3)(f) (Supp. 2016). I would therefore reverse the injunctive relief granted by trial court.

CONCLUSION

I would overrule *All Saints* to the extent it held the Dennis Canon and the diocesan equivalent did not create effective trusts in South Carolina, and to the extent that it holds that corporate actions taken by Episcopal dioceses, parishes, missions, and related corporations can be reviewed without reference to TEC's Constitution,

¹¹ As Acting Justice Toal acknowledges, the determination that this dispute is ecclesiastical is tantamount to recognizing the validity of the trusts. By denying the ecclesiastical nature of this dispute, Chief Justice Beatty, Justice Kittredge, and Acting Justice Toal free themselves from First Amendment constraints and, among other things, impose a requirement that each local church must specifically accede to the Dennis Canon before it can be bound. Such a requirement entangles the civil court in church matters, for TEC's Canons specifically provide that "no such action shall be necessary for the existence and validity of the trust." Canon 1.7.5, and the Diocesan Constitution expressly provided for accession to, adoption of, and acknowledgment of the authority of TEC's Constitution and Canons. *Jones* requires only that "a religious organization . . . ensur[ing] that a [church property] dispute . . . will be resolved in accord with the desires of the members" indicate those desires in "some legally cognizable form" *Jones* does not require that these "cognizable forms" be created in a way that satisfies the specific legal requirements in each jurisdiction where the church property is located.

Canons, and other authorities, and without reference to § 33-31-180. Further, the question of which diocese is "legitimate" is a question of church governance and not a matter to be resolved in the civil courts of South Carolina. I would therefore reverse the circuit court's order to the extent it rejected the efficacy of the Dennis Canon and the Diocesan Constitution, and to the extent it declined to accept TEC's recognition of the Associated Diocese as the true Lower Diocese of South Carolina. In addition, I would reverse the injunction granted to respondents on their service mark claim.

Finally, while all **individuals** are guaranteed the freedom to disassociate from a religious body, here the question of the disposition of ecclesiastical property following the disaffiliation from the TEC by the Disassociated Diocese, the Trustees, and the Parishes, is a question of church governance, which is protected from civil court interference by the First Amendment.

For the reasons given above, I would reverse the circuit court's order and also join Justice Hearn's opinion.

HEARN, J., concurring in a separate opinion. BEATTY, C.J., concurring in part and dissenting in part in a separate opinion. KITTREDGE, J.,

~~concurring in part and dissenting in part in a separate opinion.~~ Acting Justice Jean H. Toal dissenting in a separate opinion.

JUSTICE HEARN: I concur fully with Acting Justice Pleicones's thorough and well-reasoned lead opinion, but write separately because of the magnitude of this case and its far-reaching effects not only on the Episcopal Church ("the National Church") but also all other hierarchical religious organizations.¹²

The primary issue before the Court is which of two competing dioceses is the true Episcopal diocese in the lower half of South Carolina and thus has the right to control the property at issue which consists of thirty-six parish churches and Camp Saint Christopher on Seabrook Island. Because the National Church has ordained Charles vonRosenberg and recognizes him as the Bishop in the Lower Diocese, this Court, under long-settled principles, must defer to that decision. Consequently, I would find the actions of the breakaway bishop, Mark Lawrence, and his followers in leaving the National Church and attempting to take its property with them, are ineffective. Additionally, consistent with the majority of state court decisions which have considered this issue, under neutral principles of law, the Dennis Canon¹³ controls and imposes an express trust on the property in favor of the National Church. Therefore, I concur with the lead opinion and would confirm title to the property at issue in the National Church and reverse.¹⁴

¹² I emphasize that our holding does not, as the dissent claims, affect *all* trusts in South Carolina; rather, our holding is limited to ecclesiastical decisions protected by the First Amendment, as will be explained herein.

¹³ A canon is "[a] law, rule, or ordinance in general, and of the church in particular. An ecclesiastical law or statute." *Black's Law Dictionary* 206 (6th ed. 1990).

¹⁴ At the outset, I find the trial was permeated by errors which necessarily dictated the outcome. The threshold issue in resolving this dispute was an analysis of the structure of the National Church—whether it is hierarchical or congregational—and the nature of the relationship between the thirty-six parishes and the National Church. After repeatedly stating on the record that the church's structure was "irrelevant," and refusing to admit evidence on this issue, insisting that South Carolina was not a "hierarchical state," the trial court found in its order that the National Church "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." Additionally, although there can be no question that the individual parishes have been affiliated with the National Church for decades, the trial court found in its order that "[n]one of the Plaintiff parish churches have ever been members of [the National Church]."

As the lead opinion thoroughly explains, there can be but one conclusion based on the record before us and the overwhelming consensus of our sister jurisdictions, and that is the National Church is hierarchical in nature.¹⁵ With that in mind, I turn to the claims raised by the respective parties.

ANALYSIS

I. ECCLESIASTICAL DEFERENCE

I believe it is clear this dispute arises out of doctrinal differences between the National Church and the Breakaway Diocese. I therefore find that we are required in this instance to exercise restraint and defer to the highest ecclesiastical body of this hierarchical church. Though the Breakaway Diocese has attempted to frame this as a matter of simple corporate law fit for resolution in civil court, we are bound by the Constitution and our own precedent from interjecting ourselves into religious matters masquerading as disputes over property or corporate control. *See Serbian E. Orthodox Diocese for U.S. and Canada v. Milivojevich*, 426 U.S. 696, 709–10 (1976); *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 445, 685 S.E.2d 163, 172 (2009).

The use of the word "masquerade" by the United States Supreme Court in *Milivojevich* is particularly germane here. Whether used as a noun ("a disguise or

The significance of this error in refusing to recognize the National Church's hierarchical design and the historical relationship of the individual parishes to the National Church cannot be overstated. By mischaracterizing the structure of the National Church and the nature of the relationship between it and the individual parishes, the trial court employed an erroneous framework in resolving this dispute.

¹⁵ *See, e.g., Dixon v. Edwards*, 290 F.3d 699, 716 (4th Cir. 2002) ("Our examination of this record, and our study of the organization and operation of the Episcopal Church, compels the determination that the court was correct in both its analysis and in its conclusion: The Episcopal Church is hierarchical."); *Episcopal Diocese of Massachusetts v. Devine*, 797 N.E.2d 916, 921 (Mass. App. Ct. 2003) ("Based on our review of the record we conclude . . . that the Episcopal Church is hierarchical."); *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 921 (N.Y. 2008) ("The National Church has a hierarchical form of governance. Its governing body, the General Convention, adopted—and periodically amends—a constitution and canons that manifest its doctrinal law.").

false outward show")¹⁶ or as a verb (to "have or put on a deceptive appearance"),¹⁷ the word aptly describes the actions of Bishop Lawrence and the Breakaway Diocese. Despite the vows and written assurances made by Bishop Lawrence concerning his loyalty to the National Church, within a few short years of his ordination, the masquerade began.¹⁸ Bishop Lawrence and his followers provided parishes with quitclaim deeds designed to disclaim any interest of the Diocese in each parish's property. In furtherance of a pretense of loyalty, these quitclaim deeds were not made public; rather, parishes were asked to delay their recording. Bishop Lawrence's group also quietly changed the Diocese's bank accounts, seeking out "friendly bankers" who would provide assurances that the accounts would not be frozen when litigation commenced. Importantly, the fuse which ignited this powder keg was without question the divergent views on the doctrines and teachings of the National Church.

Although the trial court barred the National Church from introducing evidence as to the reason for the Breakaway Diocese's actions, it is clear from the record that doctrinal issues concerning marriage and the role of women were the trigger. A witness for the dissociated parishes testified that it was "a doctrinal issue" which prompted St. Andrew's in Mt. Pleasant to leave the National Church. Another parish witness stated that the National Church "seemed to be moving away from the Christ teaching [sic] that marriage is between a man and a woman." Other parish witnesses testified they were leaving the National Church because of the way it was treating Bishop Lawrence, obviously referring to the National Church's discipline of Bishop Lawrence as a result of his actions in leading the Breakaway Diocese out of the National Church. Bishop Lawrence testified the Breakaway Diocese had become "uncomfortable with the trajectory of the general convention of the Episcopal Church." In referring to the then-Presiding Bishop of the National Church, Katharine Jefforts Schori, Bishop Lawrence testified she had gone "contrary to the

¹⁶ THE AMERICAN HERITAGE DICTIONARY 770 (2d College ed. 1982).

¹⁷ *Id.*

¹⁸ Although the dissent takes issue with my recitation of Bishop Lawrence's role in this rift, the facts contained herein are undisputed in the record and many are based upon direct admissions from Lawrence himself. Moreover, I find these facts highly relevant—if not essential—in addressing Bishop Lawrence's alleged breach of fiduciary duties owed to the National Church, as discussed *infra*.

historic teachings of the church and the Holy Scriptures" and admitted this involved "the sexuality issue."

Given this background, I find this case is factually distinguishable from our holding in *All Saints* and more analogous to the dispute in *Milivojeovich* where the Supreme Court found the issues were inextricably tied to "a matter of internal church government, an issue at the core of ecclesiastical affairs." 426 U.S. at 721. Furthermore, our holding is not wholly contradictory to *All Saints*; rather it is grounded in one of the very principles that case reaffirmed. 385 S.C. at 445, 685 S.E.2d at 172 (finding that if a question of religious law or doctrine is masquerading as a dispute over property or corporate control, the court must defer to the ecclesiastical body).

In essence, resolving this dispute would require us to decide which faction is the "true" Episcopal Church. Because the National Church has recognized the remaining diocese to be the true Lower Diocese of South Carolina with Bishop vonRosenburg at its head, we cannot inject ourselves into this dispute in such a manner as to overrule that determination. See *Milivojeovich*, 426 U.S. at 721. This Court has repeatedly acknowledged its constitutional mandate to refrain from wading into matters of internal organization, or ecclesiastical rule, custom or law. *All Saints*, 385 S.C. at 445, 685 S.E.2d at 172; *Pearson v. Church of God*, 325 S.C. 45, 49–50, 478 S.E.2d 849, 851–52 (1996). This decision is unquestionably a matter of church polity and governance, matters into which civil courts should not intrude. On this basis alone, I would reverse the decision of the trial court.

With the guarantees of the First Amendment in mind, the National Church purposely and consciously decided to structure its organization in the manner espoused in its constitution and canons. Dating back to the early 19th century, churches were built, congregations grew, and members attended services, all with voluntary acceptance of the National Church's governing framework. In fact, Title II, Canon 6.1 of the National Church's constitution and canons states, "No Church or Chapel shall be consecrated until the Bishop shall have been sufficiently satisfied that the building and the ground on which it is erected are secured for ownership and use by a Parish, Mission, Congregation, or Institution **affiliated with this Church and subject to its Constitution and Canons.**" (Emphasis added.) Thus, by these very terms, houses of worship cannot be members of the "Episcopal Church" unless they are subject to the National Church's governing authority.

The National Church's constitution and canons are as much a part of its identity as a religious organization as the scriptures themselves. As a Court, we can no more decide what it means to be part of the "Episcopal Church" than we can

dictate how the National Church chooses to worship. The inextricable link between the National Church's religious structure and the dispute before the Court is supported by abundant evidence. Accordingly, I find the current litigation before the Court is, at its heart, controlled by matters of religious doctrine, and therefore I would defer resolution to the ecclesiastical authorities of the National Church.

Nevertheless, in light of the Breakaway Diocese's insistence that the case is ripe for resolution in this Court, I continue to address equally compelling grounds to support the lead opinion's holding.

II. NEUTRAL PRINCIPLES

Even were we to wade into this dispute and resolve it solely on neutral principles as the dissent insists, I would still find the trial court erred in holding the Dennis Canon ineffective and in giving effect to Bishop Lawrence's attempts to change the corporate charter and form. More importantly, I believe the writings, conduct, and relationship between the parties all evince the necessary intent to create a legally cognizable express trust, enforceable in favor of the National Church.

In considering the application of neutral principles, I turn to *Jones v. Wolf*, 443 U.S. 595 (1979), and the response of the National Church and the Lower Diocese to its holding. In *Jones*, the four dissenting Justices would have gone even further than the majority to hold that a rule of compulsory deference was necessary in order to protect the free exercise rights of those who had formed a religious association. The majority's response to that criticism resulted in this passage which is critical to our resolution today:

At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion 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. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is in some legally cognizable form.**

Id. at 606 (emphasis added).

Two months after the decision in *Jones*, and in obvious response to the invitation contained therein, the National Church adopted the Dennis Canon, which recites an express trust in favor of the denominational church. That same year, the National Church also adopted a companion canon which stated, "The several Dioceses may, at their election, **further confirm** the trust declared under the [Dennis Canon] by appropriate action **but no such action shall be necessary for the existence and validity of the trust.**" (Emphasis added.) Significantly, in 1987 the Lower Diocese did exactly that—confirming its acknowledgement of the trust by adopting its own mirror image of the Dennis Canon.¹⁹ The dissent fails to mention the Diocesan canon or analyze its importance in its opinion, perhaps for the same reason it does not discuss the hierarchical nature of the National Church and why that is critical to the resolution of the case before us.

There is no question that South Carolina adheres to neutral principles in resolving church property disputes. *See Pearson, supra; All Saints, supra.* However, that does not mean we are "not a hierarchical state," as the trial court repeatedly stated. Adherence to neutral principles does not require us to ignore the clear language of the United States Supreme Court in *Jones* as to how hierarchical churches like the National Church may protect their property, nor the actions of the Plaintiffs before us. In fact, the proper application of neutral principles entails a holistic analysis of deeds, corporate charters, and the constitution and governing documents of the general church. In 1841, the delegates to the Diocesan Convention of South Carolina voted unanimously to accede to the National Church's constitution and canons. When the Diocese of South Carolina wished to divide into two dioceses, permission was sought from the National Church to do so and was granted. When the Lower Diocese was incorporated in 1973, its stated corporate purpose was "to continue an Episcopal Diocese under the Constitution and Canons of the Protestant Episcopal Church in the United States of America." Representatives from the Diocese were present at the General Convention in 1979 when the Dennis Canon was adopted. In 1987, the Diocese adopted its own language reaffirming the trust imposed by the Dennis Canon. Accordingly, Respondents acted consistently both

¹⁹ That canon stated, "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 a part of, and subject to, the Episcopal Church and the Protestant Episcopal Church in the Diocese of South Carolina.**" (Emphasis added.)

before and after the enactment of the Dennis Canon by the General Convention as though the National Church held a trust interest in the property at issue, going so far as to expressly acknowledge the existence of the trust in their own Diocesan canon.

The highest courts in many other jurisdictions have concluded that the Dennis Canon applies to defeat claims of ownership and control over church property by disassociated parishes, "even in cases in which record title to the property has been held in the name of the parish since before enactment of the provision." *Episcopal Church in the Diocese of Connecticut v. Gauss*, 28 A.3d 302, 321 (Conn. 2011); *In re Episcopal Church Cases*, 198 P.3d 66, 84 (Cal. 2009); *Bishop & Diocese of Colorado v. Mote*, 716 P.2d 85, 108–09 (Colo. 1986); *Rector, Wardens, Vestrymen of Christ Church in Savannah v. Bishop of Episcopal Diocese of Georgia, Inc.*, 718 S.E.2d 237, 254 (Ga. 2011); *Daniel v. Wray*, 580 S.E.2d 711, 719 (N.C. Ct. App. 2003); *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 925 (N.Y. 2008) ("We conclude that the Dennis Canons clearly establish an express trust in favor of the Rochester Diocese and the National Church."); *In re Church of St. James the Less*, 888 A.2d 795, 810 (Pa. 2005); *Falls Church v. Protestant Episcopal Church in U.S.*, 740 S.E.2d 530, 540 (Va. 2013) ("In the present case, we need look no further than the Dennis Canon to find sufficient evidence of the necessary fiduciary relationship. As a number of courts in other states have noted, the Dennis Canon 'merely codified in explicit terms a trust relationship that has been implicit in the relationship between local parishes and dioceses since the founding of [the National Church] in 1789.'"). Unlike the dissent, none of these jurisdictions based the validity of the Dennis Canon on the formal execution of trust documents following its enactment.

In my view, the language in *Jones* that "[a]t any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property" by reciting an express trust in favor of the denominational faction has clearly been met here. As noted by the Connecticut Supreme Court in *Episcopal Church in the Diocese of Connecticut, Jones v. Wolf* "not only gave general churches explicit permission to create an express trust in favor of the local church but stated that civil courts would be *bound* by such a provision." 28 A.3d at 325 (emphasis in original). The dissent ignores the United States Supreme Court's admonition that the "burden" on national churches in taking steps to impose an express trust over church property "**will be minimal.**" *Jones*, 443 U.S. at 606 (emphasis added). There is no question but that the National Church more than met this minimal burden in enacting the Dennis Canon, and under *Jones*, this Court is bound to recognize the trust it created. The Dennis Canon, the Diocesan Canon, and the mandate found in the National Church's canons declaring that

affiliated parishes are bound by its governing laws satisfy the legally cognizable form and the intent to create a trust which Acting Justice Toal claims are absent. See *Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A.)*, 291 P.3d 711, 720 (2012) (explaining "the neutral principles approach does not free the courts from examining and potentially giving legal effect to church documents").

To suggest that to comply with the blueprint laid out by the United States Supreme Court, the National Church would be required to obtain a separate trust instrument from each of the thirty-six parishes would impose a constitutionally impermissible burden on the National Church and violate the First Amendment. As it stands now, the trial court's order shows no regard for the self-governance of the National Church and instead attempts to wrongfully supplant enforceable religious canons. Thus, I join the lead opinion in departing from *All Saints* to the extent it held that the Dennis Canon and subsequent acquiescence by individual parishes were insufficient to establish a trust in favor of the National Church.²⁰

I agree with Justice Kittredge's dissent in recognizing the unique nature of trusts as applied to religious organizations, but I cannot embrace his conclusion that the trust imposed by the Dennis Canon is revocable at any time—a finding unsupported by any authority. To give credence to the terms of the Dennis Canon only to conclude that it is revocable at the whims of the parishes surely renders this a trust in name only. I find compelling the language used by the majority in *Jones v. Wolf* that "the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property." 443 U.S. at 606 (emphasis added). If we conclude the trust is merely revocable, then certainly the parties cannot

²⁰ I fear the approach urged by the dissent would ultimately lead to confusion, voluminous litigation, and uncertainty for religious organizations. Of what importance is it that a religious body be hierarchical in nature, if any individual church can choose to disassociate from the higher body and take all property with it? For decades, religious organizations have structured their affairs to comply with the roadmap drawn out in *Jones* where the Supreme Court expressly annunciated a minimal burden for them to ensure a continuing body. If we were to ignore this, it logically follows that any hierarchical church would struggle to maintain itself. At any doctrinal difference, an individual parish could decide it disagrees with the teachings of the national body, break away and proclaim itself the "true" church. In a hierarchical church, the individual parishes look to the head of the church to provide guidance and steer the course of worship, not the other way around. Were we to adopt the dissent's approach, the tail would be wagging the dog.

ensure the National Church retains the property, and *Jones v. Wolf's* clear effort to prevent property disputes in the wake of church schisms is rendered meaningless.

Justice Kittredge also posits that the provisions of the South Carolina trust code which unquestionably render the trust irrevocable are not enforceable here because, he argues, the National Church's entire case is based on the derogation of our trust code.²¹ At the outset, I find this to be a mischaracterization of the National Church's position because it did not contend strictly that the trust imposed by the Dennis Canon was wholly independent from South Carolina law; to the contrary, the National Church repeatedly argued for the existence of an express trust, created pursuant to our established trust law. Furthermore, I find this reasoning inconsistent with Justice Kittredge's subsequent claim that Respondents withdrew their accession to the Dennis Canon "in accordance with state law." What we cannot do is pick and choose which state laws to apply in order to justify a desired result. Thus, I would not be so selective in adhering to one law addressing the manner in which Respondents may revoke the trust, while at the same time disregarding the very statute that controls whether the trust, once created, is revocable.

Respectfully, I disagree with my colleague and would apply the appropriate statute which resolves the issue: South Carolina Code Section 62-7-602(a) (Supp. 2016) (common law default rule of irrevocability applies to trusts created before the effective date of the statute [January 1, 2006]). When faced with a similar schism in the Presbyterian Church, the Supreme Court of Oregon—also applying the Uniform Trust Code and adhering to neutral principles—found the express trust in favor of the denominational church was irrevocable because it was created before Oregon's adoption of the UTC. See *Hope Presbyterian Church*, 291 P.3d at 726–27. I would follow the approach taken by Oregon and look to our statutory code, which provides this simple answer to any question of revocability: the trust is irrevocable because it was created prior to the implementation of the SCTC. S.C. Code Ann. § 62-7-602(a).

With regard to the dissent's proposition that eight²¹ of the dissociated parishes formerly affiliated with the National Church were nevertheless free to ignore the provisions of the Dennis Canon, I believe this issue is not properly before the Court because, from my review of the record, the argument was not raised by Respondents at the trial court level, nor was it argued on appeal before this Court. To base its opinion on such reasoning now signifies the dissent's departure from this Court's

²¹ There is a discrepancy as to the precise number of parishes alleged to fall within the scope of this argument.

longstanding adherence to issue preservation rules. See *I'on, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

Justice Kittredge suggests that I am ignoring Rule 220(c) by insisting that the Court should not reach this issue of the seven or eight churches. I am aware of the language in subsection (c) which provides that the "appellate court *may* affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." (Emphasis added.) However, case law from this Court which interprets the Rule provides guidance on when this provision should be utilized. In *I'on* this Court streamlined the procedure for the use of additional sustaining grounds, and held only that the basis for a respondent's additional sustaining grounds "must appear in the record on appeal." 338 S.C. at 420, 526 S.E.2d at 723. Here, Acting Justice Toal purports to satisfy that principle by plucking this argument concerning the seven or eight churches, not from anything mentioned by Respondents in the pleadings, the record, or the brief, but rather from the post-trial motion filed by the National Church. In doing so, she ignores this language from *I'On* which I view as critical to an appellate court's decision as to whether or not to exercise the discretion afforded by the Rule to affirm on this basis: "Of course, a respondent may abandon an additional sustaining ground under the present rules—just as a respondent could under the former rules—by failing to raise it in the appellate brief." *Id.* This is precisely what I believe occurred here, and while I agree that this Court *may* affirm on any ground contained in the record on appeal, as provided by Rule 220(c), I believe this is surely one of those instances where it "would be unfair or unwise to resolve a case on a ground never mentioned by the respondent," given the dearth of evidence on this issue in this voluminous record. See Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 62 (2d ed. 2002). Quite simply, too many discrepancies exist to resolve the issue on this record, the most glaring being the actual number of entities to be affected—by the National Church's count the number is seven while Acting Justice Toal asserts it is eight. Accordingly, it is not the case, as Justice Kittredge posits, that I am ignoring the language in Rule 220(c), but rather that I would honor the language in *I'On* and elect not to reach this issue where it was never raised by Respondents and doing so injects an alarming degree of uncertainty into this case.

Moreover, I fear the dissent mischaracterizes the National Church's argument regarding the twenty-nine parishes with documentation reaffirming their allegiance to the National Church. In my view, the National Church is correct in its assertion that even without these individual reaffirmations made post-Dennis Canon, the relationships between the National Church and the parishes reveal that an express trust exists, created as the majority envisioned in *Jones v. Wolf*. That the National

Church could locate twenty-nine reaffirmations made after the enactment of the Dennis Canon simply serves to point out the magnitude of the trial court's inexplicable error in finding no express trust was *ever* created by any of the parishes. However, the creation of a trust was never contingent upon the presence of these documents. Likewise, the dissent fails to give any effect to the trust imposed by the Diocesan canon. If the Dennis Canon has no effect on these seven parishes because it was unilateral, the same cannot be said about the Diocesan canon, which unequivocally bound its affiliated parishes. Even without the Dennis Canon, the hierarchical structure of the National Church results in the Diocesan canon binding all affiliated parishes, including the seven in question.

Lastly, even accepting *arguendo* the dissent's assertion there was no writing to create an express trust binding the remaining seven parishes, I would find South Carolina's doctrine of constructive trusts would operate to impose a trust in favor of the National Church. A constructive trust arises "whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding the legal title." *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987). The impetus to impose a constructive trust "results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." *Id.* Importantly, in construing whether a constructive trust exists, this Court acts as the finder of fact in accordance with its own view of the evidence. *Id.* at 530, 354 S.E.2d at 561. For decades, if not longer, these parishes very clearly held themselves out as being affiliated with the National Church, agreed to be bound by its constitution and canons, attracted new members based on their affiliation with the Episcopal faith, participated in church governance, and in all other ways acted consistently with the National Church's structure. As mentioned earlier, parishes must agree to be bound by the National Church's constitution and canons before their buildings can be consecrated as churches of the Episcopal faith. In light of the evidence presented by both parties, I believe equity requires that a constructive trust be imposed, lest this Court condone the seven parishes camouflaging themselves as loyal adherents to the National Church without objection for nearly 30 years after the Dennis Canon was adopted, only to pivot and proclaim that relationship never existed when it no longer suited them. This is precisely the type of bad faith which constructive trusts were designed to reconcile.²²

²² Justice Kittredge conscientiously questions the propriety of declaring the National Church the rightful holder of the parish property and depriving the disassociated parishioners of the churches where they once worshipped. I answer his question with another equally compelling question: May we deprive the remaining

In sum, regardless of the effects, if any, of the absence of reaffirmations given by the seven parishes in response to the Dennis Canon, the record is rife with evidence that the National Church and Respondents structured their relationship in such a manner that Respondents were to act as trustees on behalf of the National Church. This Court must give effect to this trust under the neutral principles approach. The dissent's suggestion that there were no written documents evincing a trust executed by Respondents is not supported by the record. Even beyond its clear accession to the Dennis Canon by its actions in remaining affiliated with the National Church upon its enactment, the Lower Diocese indisputably manifested its acknowledgement that all parish property was held in trust for the National Church through its adoption of its Diocesan version of the Dennis Canon in 1987. Through the hierarchical structure of the organization, the adoption of the Diocesan canon was binding upon all of its parish affiliates. Only by ignoring the hierarchical framework of the National Church could one believe the parishes were not bound by this Diocesan canon.

Lastly I note, even if this Court resolved the matter solely under state corporate law, Bishop Lawrence disregarded corporate form and governance and therefore his actions were ineffectual.²³ In 1973 the nonprofit corporation was

constituents of the National Church of this same property when, for decades, they attended services, donated funds, and invested time and labor into their respective parishes, all the while acting with the knowledge that the property was held in trust for the National Church in accordance with the organization's widely-known religious canons? The dissenting justices attempt to answer these questions looking narrowly at state property law, but it comes at the expense of the First Amendment freedoms guaranteed by the Constitution. Justice Kittredge perceives an inequity in requiring the breakaway constituents to leave their property behind, but as a Court we must be equally mindful of the past and present parishioners who devoted their time and talents to the individual parishes and relied on the fact that they were indivisible parts of the National Church.

²³ Interestingly, a recent decision from a California appellate court affirmed title to disputed property in the National Church following a similar series of events in the Diocese of San Joaquin, where, as a parish rector, Lawrence joined an attempt to lead the diocese out of the National Church prior to his election as bishop in South Carolina. *See Diocese of San Joaquin v. Gunner*, 202 Cal. Rptr. 3d 51 (Cal. Ct. App. 2016). In that case, the court resolved the dispute based on state corporate principles, finding the attempts to amend the diocese's articles of incorporation and transfer property were ineffective. *Id.* at 65–67.

re-chartered, establishing the governance of the diocese. This is significant for two reasons.

First, the articles of incorporation expressly proclaimed the purpose of incorporation was "to continue the operation of an Episcopal Diocese under the Constitution and Canons of The Protestant Episcopal Church in the United States of America." Under a plain reading of the articles, the stated purpose incorporates by reference its alignment with the National Church, thereby subordinating the Diocese to the constitution and canons of the National Church. This stated intent to align and subordinate to the National Church is further supported by the Legislature's expressed intention to allow religious doctrine to control over corporate form. See S.C. Code Ann. § 33-31-180 (2006) ("If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this chapter on the same subject, the religious doctrine controls to the extent required by the Constitution of the United States or the Constitution of South Carolina, or both."). As such, the nonprofit corporation and those acting on its behalf are subject to all oaths and canons of the National Church. The exception for religious governance is critical here; while the trial judge found, and Justice Kittredge agrees, that Bishop Lawrence and the Breakaway Diocese made legally effective changes to the nonprofit corporation, that result can be reached only by disregarding section 33-31-180 and relying on the default provisions of the nonprofit code. However, because the National Church has promulgated its own set of rules concerning corporate governance, including changes to the bylaws, section 33-31-180 requires that those rules trump the default provisions of the nonprofit corporate code. Thus, the actions of Bishop Lawrence and the Breakaway Diocese—which indisputably did not comply with the National Church's governing rules—must be deemed ineffective.²⁴

²⁴ I must part company with Acting Justice Toal in her dogged effort to impose South Carolina civil law at any cost, which in my view runs roughshod over the National Church's religious autonomy and indeed, elevates the concept of neutral principles to heights heretofore unknown. My own view of the appropriate application of neutral principles would honor the constitutional mandate to not disturb matters of religious governance in order to maintain religious institutions' independence from state intrusions, a principle repeatedly described by the United States Supreme Court as radiating "a spirit of freedom for religious organizations, an independence from secular control or manipulation—in short, [the] power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*,

Second, as the director of a nonprofit organization, the bishop owes a fiduciary duty of care, loyalty, and good faith to the Protestant Episcopal Church in the Diocese of South Carolina. *See* S.C. Code Ann. § 33-8-300 (2006); *see also* *Menezes v. WL Ross & Co., LLC*, 403 S.C. 522, 531, 744 S.E.2d 178, 183 (2013) ("The duty of loyalty requires corporate officers and directors act in the best interest of the corporation and prioritize the corporation's interest above their own."). It is troubling that the dissent would base its holding on the application of corporate law, yet at the same time inexplicably fail to consider Bishop Lawrence's derogation of his fiduciary duties. Bishop Lawrence's actions in this matter undermined the very organization he was charged (and swore an oath) to serve, thereby ignoring his prescribed fiduciary duties.²⁵ This is evidenced by his issuance and delivery of quitclaim deeds²⁶ to disassociated parishes and instruction to those parishes not to immediately record the deeds; seeking out "friendly bankers" to discreetly handle church assets; and executing a formal residential lease of the diocesan property to himself in his individual capacity. Bishop Lawrence's subterfuge took place over the course of several years, all the while keeping his actions secret from the National Church to which he had vowed his loyalty. Further, the act of amending the corporate form was not in the interest of the corporation because it was contrary to the constitution and canons of the National Church. Based upon both the articles of incorporation and the fiduciary duty owed to the nonprofit corporation, Bishop Lawrence acted outside his scope and authority in direct violation of his oath, the canons, and corporate governance. Therefore, any attempts by Bishop Lawrence to

565 U.S. 171, 185–86 (2012) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952)).

²⁵ In fact, when questions arose surrounding Bishop Lawrence's loyalty to the National Church and jeopardizing his potential ordination, he expressly represented to the National Church his intention to abide by its doctrines and teachings. In a letter dated March 7, 2007, Bishop Lawrence wrote, "I will heartily make the vows conforming to the doctrine, discipline and worship of the Episcopal Church, as well as the trustworthiness of the holy scriptures. So to put it as clearly as I can, my intention is to remain in the Episcopal Church, period."

²⁶ Indeed, if Bishop Lawrence himself believed the National Church held no interest in the property of the various parishes, there would have been no reason for him to issue quitclaim deeds.

unilaterally alter the Lower Diocese's relationship with the National Church cannot be given any effect.

CONCLUSION

Based on our doctrine of deference to ecclesiastical authority, the Appellants represent the true Lower Diocese of the Protestant Episcopal Church in South Carolina and are therefore entitled to all property, including Camp Saint Christopher and the emblems, seals, and trademarks associated with the National Church. This holding is based on the National Church's recognition of Charles vonRosenberg as its Bishop and the express trust imposed on Respondents' property by the Dennis Canon, as well as on state corporate law principles.²⁷

²⁷ To clarify the dissent's summary of this case's resolution, I join Acting Justice Pleicones and Chief Justice Beatty in reversing the trial court as to the twenty-nine parishes that documented their reaffirmation to the National Church, but Chief Justice Beatty joins Acting Justice Toal and Justice Kittredge with respect to the remaining seven parishes. Four justices agree that the Dennis Canon created an enforceable trust as envisioned in *Jones*, but Justice Kittredge departs from the majority and would find that the trust was revoked at the time of the schism. Moreover, though Acting Justice Pleicones and I believe ecclesiastical deference is required in this case, both of our opinions find that all thirty-six parishes acceded to the Dennis Canon such that a legally cognizable trust was created in favor of the National Church.

CHIEF JUSTICE BEATTY: Given the divergent opinions, I am compelled to write separately because I believe my position is that of a centrist between the members of the Court. While I agree The Episcopal Church ("TEC") is hierarchical, I disagree with the analysis and much of the result reached by the majority. Instead, applying neutral principles of law, I would find those parishes that did not expressly accede to the Dennis Canon should retain ownership of the disputed real and personal property.²⁸ Consequently, I concur in part and dissent in part.

As evident by all of the well-written opinions, this case evokes strong views from each member of this Court. I cannot deny that each opinion is impassioned and persuasive. Although I appreciate the merits of each view, I do not believe that emotion or religious doctrine should control purely legal analysis. Rather, distilled to its simplest form, this case involves a property dispute. Thus, irrespective of the doctrinal context in which the case arose, this legal issue is our sole concern.

In resolving this issue, I am guided by the neutral principles of law approach enunciated in *All Saints* and *Jones* and aptly discussed by former Chief Justice Toal. See *All Saints Parrish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 444, 685 S.E.2d 163, 172 (2009) (applying neutral principles of law in disputes arising between a congregation and its denomination over title to church property and between the congregation's members over corporate control; stating, "the neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes"); *Jones v. Wolf*, 443 U.S. 595, 603-04 (1979) (holding that a state is constitutionally entitled to adopt neutral principles of law approach as a means of adjudicating church disputes; recognizing that "[t]he primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organizations and polity").

Based on the neutral principles of law approach, I believe our analysis requires a discussion of the following sequential questions: (1) what is the legal efficacy of the Dennis Canon?; (2) does accession to the Dennis Canon equate to a creation of a legally cognizable trust?; and (3) what is the import of a decision not to accede to the Dennis Canon?

²⁸ I express no opinion concerning the rights to the service marks as I believe this determination should remain with the federal court.

The answer to each of these questions is not dependent on the doctrinal validity of the Dennis Canon or a determination that TEC is hierarchical. In fact, I look no further than our state's property and trust laws to determine whether the purported trust created by the Dennis Canon comports with the requirements of either an express or constructive trust.

Although this writing arguably complies with the statute of frauds, like Justice Toal, I would find that, standing alone, it is not sufficient to transfer title of property or create an express or constructive trust under South Carolina law. *See* S.C. Code Ann. § 62-7-402(a)(2) (2015) ("To be valid, a trust of real property, created by transfer in trust or by declaration of trust, must be proved by some writing signed by the party creating the trust. A transfer in trust of personal property does not require written evidence, but must be proven by clear and convincing evidence, pursuant to Section 62-7-407."). Significantly, in the instant case, the party attempting to create the trust was not the settlor. Instead, TEC was merely the drafter of the Dennis Canon as it had no interest in the property intended to comprise the corpus of the trust. Admittedly, there is no requirement that the drafter of a trust agreement be the settlor; however, in the absence of this status, TEC was nothing more than a demanding scrivener.

Further, in my view, the Dennis Canon, by itself, does not have the force and effect to transfer ownership of property as it is not the "legally cognizable form" required by *Jones*. *See Jones*, 443 U.S. at 606 (recognizing that courts must give effect to churches' intent when deeds and trust documents executed by the general church "provided [the documents] are embodied in some legally cognizable form"). While the Dennis Canon may use the term "trust," this word alone does not unequivocally convey an intention to transfer ownership of property to the national church or create an express or constructive trust. *See Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987) ("In order to establish a constructive trust, the evidence must be clear, definite, and unequivocal.").

Yet, TEC argues that the parishes' accession to the Dennis Canon created the trust. Assuming that each parish acceded in writing, I would agree. In my view, the Dennis Canon had no effect until acceded to in writing by the individual parishes.

Thus, in contrast to the majority, I would find the parishes that did not expressly accede to the Dennis Canon cannot be divested of their property. Because there was no writing purporting to create a trust and they took no other legal action to transfer ownership of their property, I believe these parishes merely promised allegiance to the hierarchical national church. Without more, this promise cannot deprive them of their ownership rights in their property. However, I agree with the

majority as to the disposition of the remaining parishes because their express accession to the Dennis Canon was sufficient to create an irrevocable trust.²⁹

In conclusion, I readily acknowledge the controversy surrounding this case and the ramifications of the Court's decision. Even so, my decision cannot be driven by personal beliefs or a desired result. Strictly applying neutral principles of law, which I believe this property dispute mandates, I would affirm in part and reverse in part the order of the circuit court.

²⁹ Additionally, I would find "The Trustees of the Protestant Episcopal Church" in the Diocese of South Carolina should retain title to Camp St. Christopher as my decision in no way alters the clear language of the 1951 deed conveying ownership of this property. The conveyance of Camp St. Christopher was for the explicit purpose of furthering "the welfare of the Protestant Episcopal Diocese of South Carolina." In my view, the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.

JUSTICE KITTREDGE: Because I believe the proper application of "neutral principles of law," as enunciated in *Jones v. Wolf*,³⁰ demands that all thirty-six local parishes retain ownership and control of their property, I would affirm the trial court in result.³¹

This Court may—indeed, must—resolve this property dispute on the basis of civil law, without regard to religious doctrine or practice.³² I first address the twenty-eight local churches that acceded in writing to the 1979 Dennis Canon. Justice Toal presents a scholarly analysis of South Carolina trust law. I take no exception to her presentation of general trust-law principles, and I join Justice Toal in result. However, for reasons I explain below, it seems to me that *Jones v. Wolf* creates some uncertainty as to what "neutral principles of law" means in the context of a church property dispute. As a result, I am not persuaded that a court may, within constitutional boundaries, simply apply general state trust law to decide this case. As best as I can interpret and apply *Jones v. Wolf*, it is my view that a trust was created as to the property of the local churches that acceded to the 1979 Dennis Canon. In what appears to be a pure application of neutral principles of law, Justice Toal would hold that accession to the 1979 Dennis Canon "was not a legally binding action to impose a trust under South Carolina law." While I agree the national church could not unilaterally declare a trust over the property of the local churches, I would join Chief Justice Beatty and hold that the local churches' accession to the 1979 Dennis Canon was sufficient to create a trust in favor of the national church. See *Jones v. Wolf*, 443 U.S. 595, 606 (1979) (noting that courts must give effect to churches' intent when churches structure property arrangements

³⁰ 443 U.S. 595 (1979).

³¹ I join Justice Toal's opinion, save for Part II.C.1's conclusion that no trusts were created as to the twenty-eight churches that acceded to the 1979 Dennis Canon.

³² By framing the issue before the Court as being which diocese is the "true" diocese of the national church, the lead opinion and concurrence preordain the result, for that is a question this Court clearly lacks authority to answer. See *id.* at 602 ("[T]he First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice."). Moreover, quoting from a case cited by Justice Hearn, "recognizing the Episcopal Church as hierarchical does not resolve a property dispute such as the one here." *Diocese of San Joaquin v. Gunner*, 202 Cal. Rptr. 3d 51, 63 (Ct. App. 2016).

"in some legally cognizable form").

I focus my comments on express trusts in light of First and Fourteenth Amendment considerations, for that is the basis on which the national church seeks to acquire control over the property of the local churches. I do not depart from Justice Toal's position lightly, for she faithfully interprets South Carolina's trust law as it applies to typical property disputes. Were the Court in the instant case permitted to apply the law of express trusts as we ordinarily would, the suggestion that *any* of the thirty-six local churches created a trust in favor of the national church would be laughable. Yet I find *Jones v. Wolf* teaches that a court must treat religious organizations differently in accordance with constitutional limitations and considerations. The burden the law imposes on a religious organization in creating a trust is reduced.

In resolving church property disputes, we learn from *Jones v. Wolf* that "neutral principles of law" is a bit of a misnomer, for it is not really "neutral" after all. If it were, why would the Supreme Court have taken pains to mandate that the burden imposed on a religious organization be "minimal"? *See id.* at 606. And why would the Supreme Court have specified ways churches could establish an express trust, without indicating concern for whether those methods were valid under any state's existing trust law? *See id.* at 603. I believe where there is a dispute involving a local church's property rights *vis a vis* a national religious society and an affiliated local religious body, constitutional considerations require courts to analyze and resolve the property dispute through the framework of a "minimal burden" on the national religious organization. *See id.* at 606.

Two passages from *Jones v. Wolf* lead me to this conclusion. First, the Court in *Jones v. Wolf* spoke forcefully about the many advantages of the neutral principles of law approach:

The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, *well-established* concepts of trust and property law *familiar to lawyers and judges*. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations to reflect the intentions of the parties. *Through*

appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy.

Id. at 603 (emphasis added).

If this were the sum total of what *Jones v. Wolf* said about neutral principles, I would without hesitation join Justice Toal in full. But the *Jones v. Wolf* Court went further. Specifically, the majority in *Jones v. Wolf* addressed the dissent, which preferred a rule of compulsory deference.³³ In declining to mandate a rule of compulsory deference, the Court rejected the dissent's argument that the neutral-principles method would frustrate the free-exercise rights of the members of a religious organization. The Court explained:

The neutral-principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion 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. The burden involved in taking such steps will be minimal.* 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*.

Id. at 606 (emphasis added). It is this passage in particular that causes me to part company with Justice Toal's adherence to the normal rules of the road concerning

³³ In my view, Justices Pleicones and Hearn cast their votes based on the rule of compulsory deference that was rejected in *Jones v. Wolf*. See *id.* at 604–05 (noting the dissent in that case "would insist as a matter of constitutional law that whenever a dispute arises over the ownership of church property, civil courts must defer to the authoritative resolution of the dispute within the church itself" (internal quotation marks omitted)).

the creation of express trusts.

As I interpret the above passages, *Jones v. Wolf* imposes a minimal burden on a national religious institution in the creation of what courts must recognize as an express trust over the property of an affiliated local church. Thus, while general principles of law mark the starting point in resolving a church property dispute, the harder question is determining where to draw the finish line—just how much of the general law must a religious organization follow?

Here, as Justice Toal forcefully points out, the national church turns the law of express trusts on its head, as no local church (as "settlor") took steps to create a trust, but merely responded to ("acceded" to) changes to church governance documents proposed by the national church. Nonetheless, given the Supreme Court's imprimatur concerning the minimal burden that may be imposed on a religious organization, I conclude that a trust was created in favor of the national church over the property of the twenty-eight local churches that acceded in writing to the 1979 Dennis Canon.

The next question is whether these twenty-eight churches were irrevocably bound by the 1979 Dennis Canon. The national church accepted the invitation of *Jones v. Wolf* and created the equivalent of an express trust with a minimal burden. If the national church had followed state law as described by Justice Toal and actually created an express trust in the normal course, the national church would have a strong argument on the issue of revocability. But the national church cannot escape the method and manner in which it chose to create a trust, that is, by placing the trust provision in a church governance document that is inherently amendable.

Justice Hearn invokes what she calls the "common law default rule of irrevocability" to argue that the local churches were eternally bound by the 1979 Dennis Canon. However, this "default rule" is a presumption that is susceptible of evidence of a contrary intent. In my judgment, as explained below, the circumstances here overcome the presumption of irrevocability.

"If the meaning of the trust instrument is uncertain or ambiguous as to whether the settlor intended to reserve a power of revocation, evidence of the circumstances under which the trust was created is admissible to determine its interpretation." Restatement (Second) of Trusts § 330 cmt. b (1959). Among the factors that could indicate a settlor intended to reserve a right of revocation are the character of the trust property, the relationship between the settlor and the beneficiary, and the reasons that induced the settlor to create the trust. *E.g., id.* §§ 330 cmt. c, 332 cmt.

a (1959). I believe these factors militate in favor of the trust's revocability.³⁴ The disputed property includes land and buildings to which the local churches have long held title, in some cases for centuries. And the impetus to create the trust came not from the settlors (the local churches), but the beneficiary (the national church). Furthermore, I would not myopically invoke the common law presumption of irrevocability where, as here, the national organization seeking to impose the trust placed the trust language in a document that is by its very nature subject to amendment. As the legislature observed in a comment to the South Carolina Trust Code, "An unrestricted power to amend may also include the power to revoke a trust." S.C. Code Ann. § 62-7-602 reporter's cmt. (Supp. 2016).

In my view the circumstances described above—a trust provision drafted by a beneficiary and placed in an amendable church governance document—combine to overcome the common law presumption of irrevocability. As a result, I would hold as a matter of South Carolina law that under these facts the local churches were not forever bound by the trust provision, and they retained the authority to withdraw their accession to it.³⁵ That is precisely what they did—through proper

³⁴ I note that there is significantly less justification for adhering to the common law presumption of irrevocability where, as in this case, it is not consistent with the rationale behind the presumption—"[t]he theory . . . that most trusts are created by way of gift and a completed gift may not be rescinded by the donor merely by reason of a change of mind." Mary F. Radford, George Gleason Bogert & George Taylor Bogert, *The Law of Trusts and Trustees* § 998, at 235 (3d ed. 2006). Here, the trust was clearly not intended to effectuate a gift to the beneficiary (the national church); rather, the trust was drafted by the national church (the beneficiary) to benefit the national church. In addition, the settlors (the local churches) retained ownership of and continued to exercise exclusive control over the property.

³⁵ I reject any argument that the national church would be required to consent to any amendment of the trust provision, for the national church would never consent and the result would be a de facto irrevocable trust. Chief Justice Beatty accurately describes the national church as "nothing more than a demanding scrivener." Allowing the national church to invoke the "minimal burden" approach of *Jones v. Wolf* in the creation of a trust is not a license to completely turn our back to neutral principles of law. If it is determined that a settlor retains the right to revoke a trust and the manner of revocation is not specified, the trust may be revoked "'in any manner which shows a clear and definite purpose on the part of the settlor of the trust to revoke the same.'" *Peoples Nat'l Bank of Greenville v. Peden*, 229 S.C. 167, 171, 92 S.E.2d 163, 165 (1956) (emphasis added) (quoting *Broga v. Rome Tr.*

action, by those with proper authority, the Diocese and local churches withdrew their accession to the 1979 Dennis Canon in accordance with state law prior to the filing of this litigation.³⁶ Therefore, I would affirm the trial court in result and hold that those churches that had previously agreed to the 1979 Dennis Canon are no longer bound by it.³⁷

I turn now to the eight churches that *never* acceded to the 1979 Dennis Canon. Today, this Court allows (by a three-to-two vote with Chief Justice Beatty casting the deciding vote) the eight churches that were never subject to the 1979 Dennis Canon to keep their property. That is remarkable, for by a single vote the rule of law is preserved and property ownership is protected.

Co., 272 N.Y.S. 101, 106 (Sup. Ct. 1934)); *see also* S.C. Code Ann. § 62-7-602 reporter's cmt. ("Where the right to revoke [is] reserved and no particular mode [is] specified, any mode sufficiently showing an intention to revoke [is] effective.").

³⁶ There is no question that Bishop Lawrence and the local churches had the *legal* authority at the time to take the actions they did. Justice Hearn's reliance on *Diocese of San Joaquin v. Gunner* is misplaced. In that case the attempted transfers of diocesan property by Bishop Schofield were ineffective because they "occurred after Schofield had been removed as bishop of the Diocese." *Diocese of San Joaquin*, 202 Cal. Rptr. 3d at 59. Not only that, but the entity to which Bishop Schofield attempted to transfer the property did not exist because he lacked authority under California law to change the diocese's corporate name. *Id.* at 65–67. Conversely, notwithstanding the unrelenting vilification of Bishop Lawrence, it is manifest that Bishop Lawrence was duly ordained, appointed, and authorized to act at the time the property transfers and corporate amendments occurred, and they were conducted in accordance with South Carolina law.

³⁷ Despite Justice Hearn's claim to the contrary, reaching this conclusion does not require me to ignore the Nonprofit Corporation Act's exception for religious organizations. *See* S.C. Code Ann. § 33-31-180 (2006). Section 33-31-180 grants supremacy to a religious corporation's governing documents only "to the extent required by the Constitution of the United States or the Constitution of South Carolina." *Id.* Therein lies the nub of this dispute, as "[t]he exact scope of constitutional [l]imitations is less than clear and is subject to debate." *Id.* § 33-31-180 official cmt. (2006). Justice Hearn and I simply disagree as to what the Constitution requires.

Prior to today's opinion, the national church's focus in this property dispute has been whether the 1979 Dennis Canon imposed an express trust on the property of the local churches. The national church throughout this litigation has relied on the 1979 Dennis Canon and the law of *express* trusts to support its claim of ownership over the church property of the thirty-six local parishes in question. But it is undisputed that eight of the local parishes were never subject to the 1979 Dennis Canon. Yet two members of this Court would go further and transfer to the national church ownership of the property of the eight churches that never agreed to the Dennis Canon. That is stunning. The effort by two members of this Court to strip the property from these eight churches confirms Justice Toal's observation concerning their motivation to "reach[] a desired result in *this* case."

I first address the concurrence's view that the Court may not even consider the status of the eight non-acceding churches on issue preservation grounds. The answer to this assertion is simple: "The appellate court may affirm any ruling, order, decision or judgment upon *any* ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR (emphasis added). The local churches, as winners at trial and respondents on appeal, were not required to play "what if we lose" in their briefs or during oral argument.

Moreover, as Justice Toal points out, the national church itself brought up the non-acceding churches. The national church acknowledged to this Court that only some of the thirty-six local churches involved in this litigation "made express promises in their governing documents to comply with the [n]ational [c]hurch's rules" after the national church adopted the 1979 Dennis Canon.³⁸ That obviously makes an issue out of the churches that did *not* make such promises. Although the concurrence may feign surprise at a majority of this Court addressing the status of the eight non-acceding churches, the national church surely cannot.

As to the merits of the national church's claim to the property of the eight non-acceding churches, in my judgment the dissent on this issue (Justices Pleicones and Hearn) misreads the Supreme Court's *observation* in *Jones v. Wolf* that complying with state property and trust laws would not impose an undue free-exercise burden

³⁸ The national church acknowledged in its brief that "29 of the 36 parishes made express promises in their governing documents to comply with the [n]ational [c]hurch's rules *after* those rules had been amended to include the Dennis Canon in 1979." Brief of Appellants at 38. The same point was repeated by the national church's counsel during oral argument.

on religious organizations as a *command* that states completely ignore their existing laws to placate hierarchical national churches. Properly applied to the non-acceding churches, there is no neutral principle of law that supports the conclusion Justices Pleicones and Hearn desire. As Chief Justice Beatty and Justice Toal note in their respective opinions, the framework set forth in *Jones v. Wolf* makes clear that, because of well-established South Carolina law, an express trust³⁹ cannot be imposed on the property of those eight churches that never adopted the Dennis Canon. See S.C. Code Ann. § 62-7-401(a)(2) (Supp. 2016) (stating that express trusts in real property "must be proved by some writing signed by the party creating the trust"); see also *Beckham v. Short*, 298 S.C. 348, 349, 380 S.E.2d 826, 827 (1989) (noting that under the then-applicable statute, "trusts in lands not manifested and proved by some writing signed by the party declaring the trust are utterly void and of no effect" (citation and internal quotation marks omitted)).

Nonetheless, the national church, with two members of this Court in support, desires the property of these eight churches by virtue of a "trust" the churches never acceded to. In short, these eight churches have never agreed to anything in a

³⁹ I do not address constructive trusts, because *that* issue is not preserved for our review. The national church has relied exclusively on the law of express trusts throughout this litigation. The national church mentioned the term constructive trust just once in its fifty-one-page brief and not at all in its twenty-five-page reply brief. The sole reference to a constructive trust was a conclusory statement that "South Carolina's Trust Code and common law of constructive trusts" require the Court to enforce the Dennis Canon against all thirty-six parishes. Accordingly, the law of constructive trusts cannot serve as a basis to reverse the trial court. See, e.g., *Brouwer v. Sisters of Charity Providence Hosps.*, 409 S.C. 514, 520 n.4, 763 S.E.2d 200, 203 n.4 (2014) (refusing to consider an argument in the appellant's brief that was "conclusory" and "not supported by any authority"); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting a claim is deemed abandoned when the appellant fails to support it with arguments or citations to authority); cf. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000) (stating that although an appellate court may *affirm* a decision on any ground appearing in the record, "[a]n appellate court may not, of course, *reverse* for any reason appearing in the record"). I add that the phrase "constructive trust" was never mentioned in the approximately hour-long oral argument before this Court. In any event, Justice Toal correctly explains why the law of constructive trusts provides no lifeline to the national church.

"legally cognizable form" indicating the slightest intention of transferring ownership of their property. Yet if Justices Pleicones and Hearn had their way, these eight local churches would lose their property today. Under this approach, the 1979 Dennis Canon was unnecessary, for the national church would control the property of all local churches simply because the national church "said so." Perhaps this explains the wisdom of the *Jones v. Wolf* majority in rejecting the rule of compulsory deference that Justices Pleicones and Hearn invoke today.

By a single vote, these eight local churches retain ownership of their property. The message is clear for churches in South Carolina that are affiliated in any manner with a national organization and have never lifted a finger to transfer control or ownership of their property—if you think your property ownership is secure, think again.

I dissent in part (concerning the twenty-eight churches) and concur in part (concerning the eight non-acceding churches).

ACTING JUSTICE TOAL: This is a very difficult dispute in which the trial court was asked by the plaintiffs to declare the status of title to church property. Just as the litigants in this matter are in disagreement about the legal issues raised in this case, so too our Court is sharply divided in our opinions about this matter. These divisions are the result of sincerely held views about the law, but we are united in our deep respect for each other's views and the sincerity which informs our opinions. The various writings are powerfully written and deeply researched. I am regretful that I cannot join my colleagues in the majority⁴⁰ whose legal ability I respect so highly. Therefore, I respectfully dissent.⁴¹ With regard to the question of who owns the disputed real and personal property, I would hold that the plaintiffs are the title owners in fee simple absolute to this property under South Carolina law and would affirm the decision of the trial court. With regard to the question of whether the defendants infringed on the plaintiffs' service marks, I would narrowly affirm the trial court under state law and defer to the federal court to answer any issues in this matter in which federal copyright and trademark law may be applicable.

INTRODUCTION

The main points upon which I depart from my brothers and sister in the majority are as follows:

- (1) I would rely on over three hundred years of settled trust and property law in South Carolina to declare title to these disputed properties in the plaintiffs' favor, as I believe the effect of the majority's decision is to strip a title owner of its property and give it to an organization with which the property owner

⁴⁰ As there are five writings covering different aspects of this case, I refer to "the majority" when discussing the collective decisions of Chief Justice Beatty, Justice Hearn, and Acting Justice Pleicones.

⁴¹ I likewise concur in the result reached by Justice Kittredge in his dissent. Justice Kittredge believes that in *Jones v. Wolf*, 443 U.S. 595 (1979), the United States Supreme Court dictated a national church need not strictly adhere to a state's neutral trust law to establish a cognizable property interest in its constituents' holdings. I cannot agree that complying with ordinary trust law requirements is overly burdensome, or that enforcing such requirements would violate the holding in *Jones*. However, Justice Kittredge nonetheless takes a reasoned approach to the applicability of our state's trust law in this instance. I therefore concur in the result he reaches.

has no affiliation, relying on documents and practices that do not create a trust under South Carolina law.

(2) The lead opinion and concurrence⁴² (unsuccessfully) attempt to strip eight parishes of their titled property, despite the fact that these parishes have never agreed to or signed any document purporting to affect their ownership interests.

(3) I believe the lead opinion is not consistent with the provisions of South Carolina statutory law regarding the organization and management of non-profit and charitable corporations.

(4) I believe the lead opinion uses an equitable standard of review in this action which is not consistent with the pleadings in this matter, and thus, misstates the question before this Court.

(5) In my view, the lead opinion is contrary to settled First Amendment precedents from the United States Supreme Court.

(6) Although the lead opinion specifically relies on and upholds our prior precedents—most importantly *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 685 S.E.2d 163 (2009)—essentially the effect of its holding is to reverse the result in *All Saints*.

In my view, the result stemming from the majority's various decisions is a distinct departure from well-established South Carolina law and legal precedents, a departure which appears to be driven by a sole purpose: reaching a desired result in *this* case. However, the Court's decision here affects law governing *all* trusts and titles as well as the operation of *all* non-profit and charitable corporations in this State. Thus, the effects of the majority's decision are sure to be pervasive, and for this reason, I feel compelled to write separately.

I. PARTIES AND POSTURE OF THE DISPUTE

The plaintiffs in this case are: (1) thirty-six individual church parishes,

⁴² For sake of clarity, I refer to Acting Justice Pleicones's opinion as the lead opinion and Justice Hearn's opinion as the concurrence. I refer to Chief Justice Beatty's opinion as the Chief Justice's partial concurrence. I refer to Justice Kittredge's dissent as the Kittredge dissent.

incorporated under South Carolina law and located in southeast South Carolina (the plaintiff parishes); (2) the Protestant Episcopal Church in the Diocese of South Carolina, a South Carolina corporation (the disassociated diocese); and (3) the Trustees of the Protestant Episcopal Church in South Carolina, a South Carolina corporation (the trustee corporation). It is undisputed that the individual plaintiff-parish corporations hold title in fee simple absolute to their parish's real and personal property. It is also undisputed that the disassociated diocese is the title holder of its service marks, seals, and emblems; and that the trustee corporation holds title in fee simple absolute to Camp St. Christopher.

The defendants in this case are: (1) the National Episcopal Church, a voluntary unincorporated association (the national church); and (2) the Episcopal Church of South Carolina, a South Carolina corporation affiliated with the national church (the associated diocese). As to the relationship between the plaintiffs and defendants, the disassociated diocese was once a member of the national church, and the plaintiff parishes were and are affiliated with the now-disassociated diocese. The associated diocese is comprised of the parishioners and churches who chose to continue their association with the national church when the disassociated diocese disaffiliated from that organization.

Prior to the Revolutionary War, the South Carolina Commons House of Assembly created colonial parishes as part of the Church Act, granting the parishes both civil and ecclesiastical powers over the land and people. These colonial parishes were part of the Church of England, under the authority of the Bishop of London. However, the Church of England did not pay for the services provided to parishioners, nor did it pay for the properties used by the churches located within the parishes. Rather, the various colonial churches were locally funded, and the properties associated with them were titled in the local churches' names.

In 1778, the first state constitution disestablished the Church of England as the state church and empowered existing parishes to petition the legislature for incorporation. The local churches previously under the aegis of the Church of England disassociated from that Church, and many sought to be legislatively incorporated.

Later, in 1785, the disassociated diocese formed as an unincorporated association of former Anglican churches. In 1786, the twelve churches that then comprised the disassociated diocese adopted the first diocesan constitution.⁴³ In

⁴³ These churches included St. Philip's Church, Charleston; St. Michael's Church, Charleston; Prince Frederick, Plantersville; St. James' Church, Goose Creek; St.

this constitution, the churches—some of which predated the formation of the diocese by more than 100 years—reaffirmed that they wished to remain independent from the Church of England in ecclesiastical and civil matters.⁴⁴ Three years later, in 1789, the disassociated diocese and six other states' dioceses founded and voluntarily associated with the national church under terms dictated by the dioceses.⁴⁵

Except for a five year hiatus during the Civil War,⁴⁶ the disassociated diocese continued its voluntary association with the national church until October 2012. Throughout the history of the disassociated diocese's voluntary association with the national church, the plaintiff parishes likewise voluntarily associated with the disassociated diocese, and therefore, were only affiliated with the national church through their membership in the diocese. Both before and after the association, the plaintiff parishes and their parishioners worshipped on property titled in the individual parishes' names, which the parishes owned in fee simple. Moreover, for as long as the disassociated diocese was affiliated with the national church, the national church and its dioceses, including the disassociated diocese, implemented various changes in their respective constitutions and canons, which are the governing documents for the organizations.

In 1973, the disassociated diocese incorporated, becoming a non-profit corporation. Initially, the diocese's corporate purpose was "to continue the operation of an Episcopal Diocese under the Constitution and Canons of [the national church]." Similarly, the trustee corporation's initial bylaws stated that it

Thomas' Church, Berkeley County; St. Bartholomew's Church, Jacksonboro; Prince William's Church, Beaufort County; St. Andrew's Church, Mt. Pleasant; the Church of the Parish of St. Helena, Beaufort; the Episcopal Church of the Parish of Prince George Winyah, Georgetown; St. John's Parish, Colleton County; and the Episcopal Church of Christ Church Parish, Mt. Pleasant. Some of these churches are parties to this action.

⁴⁴ Thus, these plaintiff parishes did not transfer title to their properties to the disassociated diocese.

⁴⁵ These states included New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and South Carolina.

⁴⁶ Title to the properties owned by the disassociated diocese and its churches did not change hands either before or after the Civil War.

would carry out its duties under the authority of the national church's constitution and canons. Likewise, many of the individual plaintiff parishes had similar provisions in their governing documents.

In 1979, the national church enacted the so-called "Dennis Canon," which reads:

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.

In 1987, the disassociated diocese adopted its own version of the Dennis Canon.⁴⁷ The defendants contend that twenty-eight of the plaintiff parishes "acceded," in some form or another, either to the local or national version of the Dennis Canon.⁴⁸ Eight of the plaintiff parishes never acceded to either Dennis Canon.⁴⁹ In all cases, however, the defendants concede that no formal trust

⁴⁷ That version of the Dennis Canon states: "All real and personal property held by or for the benefit of any Parish, Mission, or Congregation is held in trust for [the national church] *and the [disassociated diocese]*. 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 a part of, and subject to, [the national church] *and the [disassociated diocese]*." (Emphasis added).

⁴⁸ Some of these "accessions" occurred before the 1979 proclamation of the Dennis Canon by the national church. Some occurred before 1987 when the now-disassociated diocese adopted its own version of the Dennis Canon. Some occurred after both actions.

⁴⁹ The defendants do not reference any documentation of accession (and I have found none in the record) for the following plaintiff parishes: Christ the King, Waccamaw; St. Matthews Church, Darlington; St. Andrews Church-Mt. Pleasant Land Trust; St. Paul's Episcopal Church of Conway; The Episcopal Church of the Parish of Prince George Winyah, Georgetown; the Parish of St. Andrew, Mt. Pleasant; St. John's Episcopal Church of Florence; and St. Matthias Episcopal

documents were ever executed by the plaintiff parishes, the disassociated diocese, or the trustee corporation in favor of the national church specifying the title holder as the settlor or creator of the trust and the national church as the *cestui que* trust or holder of the beneficial title of the trust. Instead, the defendants maintain that the Dennis Canon and other specific actions of the plaintiffs in amending their governing documents throughout their history (including before the existence of the Dennis Canon) "imposed" a trust in favor of the defendants.

In 2009, with the General Convention's approval, Bishop Lawrence became the ecclesiastical head of the now-disassociated diocese. Shortly thereafter, a doctrinal dispute concerning marriage and the priesthood developed between the national church and the disassociated diocese, resulting in what was described as a "cold war" between the entities.

As a result, the disassociated diocese, the trustee corporation, and the plaintiff parishes began to make significant changes to their corporate organizational structures and governing documents, in accordance with the civil laws by which the disassociated diocese and the national church structured its affairs in South Carolina. For example, in March 2010, the trustee corporation amended its bylaws to remove all references and accessions to the national church's constitution and canons. Similarly, in October 2010 and February 2011, the disassociated diocese amended its constitution and canons to remove its accession to the Dennis Canon and other canons of the national church, and to adopt a new corporate purpose: "to continue operation under the Constitution and Canons of [the disassociated diocese]." While these changes were being made, Bishop Lawrence was the duly-elected (by the national church) corporate officer empowered with the authority to undertake these actions in South Carolina under state law.⁵⁰

Church, Summerton. The defendants contend that St. Matthias and St. John's in effect "acceded" to the Dennis Canon because each was deeded some real property by the now-disassociated diocese that contained language tantamount to accession. However, neither of these churches ever directly acceded to the local or national version of the Dennis Canon, and the disassociated diocese disclaimed any interest in these churches' real property by quitclaim.

⁵⁰ To the extent Justice Hearn's concurrence focuses on the alleged nefarious motives and actions of Bishop Lawrence and other parish officers and members of the disassociated diocese, as will be explained, *infra*, it is my opinion that such examination and recitation is inappropriate. Because I believe this dispute should

During the same time period, the disassociated diocese issued a series of quitclaim deeds to the plaintiff parishes, disclaiming any interest it might have in the plaintiff parishes' properties. Further, the disassociated diocese applied to South Carolina's Secretary of State to register five "service marks"⁵¹: three similar names for the disassociated diocese, and two pictures of the diocesan seal.⁵² All of the amendments and registrations were accomplished through publicly-recorded legal documents. Additionally, at some point during this time, the national church had actual knowledge of these changes, but chose not to revoke Bishop Lawrence's authority within the church.

In September 2012, the national church's disciplinary board found that Bishop Lawrence had abandoned the national church, and recommended disciplinary action against him. On October 17, 2012, upon discovering the disciplinary board's recommendation to sanction Bishop Lawrence, the disassociated diocese ended its association with the national church. The disassociated diocese's standing committee then amended its corporate bylaws to add provisions prohibiting anyone from challenging the authority of the board of directors or removing any member of the board, including Bishop Lawrence, except by the process provided in the diocesan bylaws.

Thereafter, loyalists within the disassociated diocese who remained committed to the teachings of the national church called a meeting.⁵³ At this meeting, the defendants discussed replacing the disassociated diocese with a

be resolved on neutral principles of law, reliance on this ecclesiastical and doctrinal background is improper to resolving this dispute.

⁵¹ Service marks are similar to trademarks, but whereas trademarks identify and distinguish a person's or business's *goods*, service marks identify and distinguish a person's or business's *services*. Compare S.C. Code Ann. § 39-5-1105(7) (1976) (defining "service mark"), with S.C. Code Ann. § 39-5-1105(9) (1976) (defining "trademark").

⁵² In 2011, several of the plaintiff parishes also registered service marks.

⁵³ The defendants called the meeting by emailing clergy from the disassociated diocese and inviting them to a clergy day purportedly sponsored by the disassociated diocese. This is just one of several instances in which the plaintiffs claim the defendants improperly used the disassociated diocese's registered name and seal without permission.

newly-created diocese—the associated diocese—and placing Bishop Charles vonRosenberg at its helm.

On November 17, 2012, the disassociated diocese held a Special Convention, at which the plaintiff parishes and their clergy overwhelmingly voted to affirm the diocese's disaffiliation from the national church, as well as voting to remove the diocese's accession to the national church's constitution. On January 26, 2013, following the national church's acceptance of Bishop Lawrence's renunciation of orders,⁵⁴ the associated diocese was created and subsequently voted to reverse most of the changes made to the disassociated diocese's constitution and canons. That same date, Bishop vonRosenberg was officially installed as the national church's bishop to the associated diocese.

After the plaintiffs withdrew from the national church, the defendants claimed ownership over all of the property held by the plaintiffs, arguing the plaintiffs only held such property in trust for the benefit of the national church and its associated diocese, and that the associated diocese was entitled to control and govern the assets belonging to the plaintiffs because the plaintiffs acceded to the Dennis Canon.

II. REAL AND PERSONAL PROPERTY

The question here is ultimately simple: what entities—the plaintiffs or the defendants—own the real and personal property at issue? I fundamentally disagree with how the lead opinion and concurrence answer that question, as we are not asked to determine the "legitimacy" of either diocese, nor are we permitted to do so by the United States Constitution or South Carolina law.

A. Standard of Review

First, I strongly disagree with the lead opinion's statement of the standard of review. The lead opinion contends that because the plaintiffs are seeking injunctive relief, this is an equitable matter. As a result, the lead opinion finds the Court is free to take its own view of the facts.

However, by the terms of their complaint, the plaintiffs seek a declaratory judgment as to the rightful ownership, under South Carolina law, of the real, personal, and intellectual property of the disassociated diocese, the plaintiff

⁵⁴ Bishop Lawrence contends that he never renounced his orders.

parishes, and the trustee corporation.⁵⁵ The plaintiffs' request for injunctive relief is clearly confined to the defendants' use of the plaintiffs' names, seals, and emblems—which, as I explain further, *infra*, is ultimately a question of federal law.

"A suit for declaratory judgment is neither legal nor equitable; rather, it is determined by the nature of the underlying issue." *Sloan v. Greenville Hosp. Sys.*, 388 S.C. 152, 157, 694 S.E.2d 532, 534 (2010). Rather than looking to the relief sought, appellate courts must look to the "main purpose" of the underlying issue to determine whether the action is at law or in equity. *Verenes v. Alvanos*, 387 S.C. 11, 16, 690 S.E.2d 771, 773 (2010); *Sloan v. Greenville Cnty.*, 356 S.C. 531, 544, 590 S.E.2d 338, 345 (Ct. App. 2003).

Here, the central issue of this dispute (as succinctly put by the lead opinion) is the determination of title to real property. Therefore, the action is one at law. *See Query v. Burgess*, 371 S.C. 407, 410, 639 S.E.2d 455, 456 (Ct. App. 2006) ("Where, as here, the main purpose of the [declaratory judgment action] concerns the determination of title to real property, it is an action at law."); *see also Wigfall v. Fobbs*, 295 S.C. 59, 60, 367 S.E.2d 156, 157 (1988) ("The determination of title to real property is a legal issue."). In an action at law tried without a jury, this Court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them. *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 593, 748

⁵⁵ Specifically, the opening paragraph of the plaintiffs' second amended complaint states:

Plaintiffs, by and through their respective undersigned counsel, bring this action against the Defendants seeking a declaratory judgment pursuant to §§ 15-53-10 et seq. of the South Carolina Code of Laws (1976) that they are the sole owners of their respective real and personal property in which the Defendants, The Episcopal Church ("TEC") has no legal, beneficial or equitable interest. The Plaintiffs (except for St. Andrew's Church, Mt. Pleasant) also seek a declaratory judgment that the Defendants and those under their control have improperly used and may not continue to use any of the names, styles, seals and emblems of any of the Plaintiffs or any imitations or substantially similar names, styles, seals and emblems and that the Court enter injunctions prohibiting the Defendants and those under their control from such uses pursuant to §§ 39-15-1105 et seq. and §§ 16-17-310 and 320 of the South Carolina Code of Laws (1976).

S.E.2d 781, 785 (2013). "However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard." *Id.*

It is abundantly clear from the pleadings that the main purpose of this declaratory judgment action is the determination of title to real property. Thus, under South Carolina's jurisprudence, this is an action at law, and we must defer to the trial court's factual findings unless wholly unsupported by the evidence.

B. First Amendment Jurisprudence

The Establishment Clause of the First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I; *see also Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (stating the Establishment Clause applies to the States through the Fourteenth Amendment). Undeniably, "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). More specifically, "the First Amendment 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); *Serbian E. Orthodox Diocese for the U.S. & Canada v. Milivojeovich*, 426 U.S. 696, 709–10 (1976); *Presbyterian Church*, 393 U.S. at 447 (discussing *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728–29 (1871)); *accord Banks v. St. Matthews Baptist Church*, 406 S.C. 156, 160, 750 S.E.2d 605, 607 (2013) (quoting *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952)). In other words, civil courts may not inquire into matters touching on "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of a church to the standard of morals required of them." *Serbian E. Orthodox*, 426 U.S. at 713–14 (quoting *Watson*, 80 U.S. (13 Wall.) at 733).

However, "not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment." *Presbyterian Church*, 393 U.S. at 449; *see also Jones*, 443 U.S. at 605 (rejecting the suggestion that the First Amendment requires states to adopt a compulsory rule of deference to religious authorities in resolving church property disputes when the dispute does not involve a doctrinal controversy). Instead, "a [s]tate may adopt any one of various approaches for 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." *Jones*, 443 U.S. at 602 (emphasis in original)

(citing *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (per curiam) (Brennan, J., concurring)).

Thus far, the Supreme Court has expressly sanctioned two constitutionally permissible approaches for resolving church disputes: the deference approach and the neutral principles of law approach. See *All Saints*, 385 S.C. at 442, 685 S.E.2d at 171. Under the deference approach, "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them." *Watson*, 80 U.S. (13 Wall.) at 727; see also *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Emp't Opportunity Comm'n*, 565 U.S. 171, 185–86 (2012). The deference approach used to be the only approach taken by courts to resolve church disputes. *All Saints*, 385 S.C. at 443, 685 S.E.2d at 171. However, as First Amendment jurisprudence developed, criticism of a pure deference approach arose because the approach "is rigid in its application and does not give efficacy to the neutral, civil legal documents and principles with which religious congregations and denominations often organize their affairs." See, e.g., *id.* at 444, 685 S.E.2d at 171.

As an alternative, in *Jones v. Wolf*, the United States Supreme Court explicitly sanctioned the neutral principles of law approach to resolving church disputes. 443 U.S. at 603 (holding a state is constitutionally entitled to adopt the neutral principles of law approach as a means of adjudicating church disputes); accord *Presbyterian Church*, 393 U.S. at 449 ("[T]here are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded.").

Under the neutral principles methodology, ownership of disputed property is determined by applying generally applicable law and legal principles. That application will usually include considering evidence such as deeds to the properties, terms of the local church charter (including articles of incorporation and [bylaws], if any), and relevant provisions of governing documents of the general church.

Masterson v. Diocese of Nw. Tex., 422 S.W.3d 594, 603 (Tex. 2014). In *Jones*, the Supreme Court explained:

The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of

trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.

443 U.S. at 603–04. At the most basic level, the neutral principles approach embodies notions of fairness, as churches—like other private and public entities—can avail themselves of the protections of our state and local laws,⁵⁶ and therefore, should be on an equal playing field when disputes arise under those laws. As far back as 1871 in *Watson*—which was the architect of the deference approach as we know it—the United States Supreme Court acknowledged this basic principle of fairness:

Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints. Conscious as we may be of the excited feeling engendered by this controversy, . . . we enter upon its consideration with the satisfaction of knowing that the principles on which we are to decide so much of it as is proper for our decision, are those applicable alike to all of its class, and that our duty is the simple one of applying those principles to the facts before us.

80 U.S. (13 Wall.) at 714.

In *Pearson v. Church of God*, this Court first adopted the neutral principles approach. 325 S.C. 45, 478 S.E.2d 849 (1996). There, the Court articulated three

⁵⁶ Here, the plaintiffs utilized local deed recordation systems and organized as corporations under state law.

general principles to assist the courts when resolving civil disputes involving a church. *Id.* at 52–53, 478 S.E.2d at 853. First, "courts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom, or administration." *Id.* at 52, 478 S.E.2d at 853. Second, "courts cannot avoid adjudicating rights growing out of civil law," such as disputes determined by contract or property law. *Id.* at 52 & n.3, 478 S.E.2d at 853 & n.3. Third, "in resolving such civil law disputes, courts must accept as final and binding the decisions of the highest religious judicatories as to religious law, principle, doctrine, discipline, custom, and administration." *Id.* at 52–53, 478 S.E.2d at 853; *see also Jones*, 443 U.S. at 602; *Serbian E. Orthodox*, 426 U.S. at 724–25.

Prior to *Pearson*, this Court issued decisions resolving property matters using a purely deferential approach.⁵⁷ However, following *Pearson's* pronouncements, South Carolina evolved into a State that exclusively applies a neutral principles approach to matters involving *secular* church disputes—and not just property disputes. *See, e.g., All Saints*, 385 S.C. at 442, 685 S.E.2d at 170 (applying neutral principles of law in disputes arising between a congregation and its denomination over title to church property and between the congregation's members over corporate control); *Pearson*, 325 S.C. at 45, 478 S.E.2d at 849 (applying neutral principles of law in a contractual pension dispute); *see also Banks*, 406 S.C. at 156, 750 S.E.2d at 605 (effectively applying neutral principles of tort law to a dispute between church trustees and the church pastor when deciding that the trustees' claims of negligence, defamation, and intentional infliction of emotional distress could be litigated in a civil court).

Under the current analysis, a court must first determine if the dispute is ecclesiastical or secular.⁵⁸ If the dispute is secular in nature, we have—until now—applied the neutral principles approach. *See id.* If the dispute is ecclesiastical in nature, we have applied the deference approach. *See Knotts v. Williams*, 319 S.C. 473, 478, 462 S.E.2d 288, 291 (1995) (finding in a dispute about the ecclesiastical leadership of a church that "the courts' function is solely limited to interpreting the final action of the church"); *accord Pearson*, 325 S.C. at 52, 478 S.E.2d at 853 (stating "courts may not engage in resolving disputes as to

⁵⁷ *See, e.g., Seldon v. Singletary*, 284 S.C. 148, 326 S.E.2d 147 (1985) (deferring to hierarchical authority of the church in case involving ownership and control of church property); *Adickes v. Adkins*, 264 S.C. 394, 215 S.E.2d 442 (1975) (same); *Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956) (same).

⁵⁸ The lead opinion agrees this is the correct starting-point in the analysis.

religious law, principle, doctrine, discipline, custom, or administration").

Only after deciding that the dispute is ecclesiastical should a court consider whether the church is hierarchical or congregational,⁵⁹ and then defer to the decision of the highest authority in that body to resolve the dispute. *See Pearson*, 345 S.C. at 53 n.4, 478 S.E.2d at 853 n.4 ("In religious organizations of a hierarchical nature, courts would interpret the final actions of the highest ecclesiastical tribunal or body. In religious organizations of a congregational nature, courts would interpret the final actions of the majority of congregations.").⁶⁰ Thus, ordinarily, if a dispute is deemed to be a secular civil dispute, the question of whether a church is hierarchical or congregational does not even factor into the analysis. *See All Saints*, 385 S.C. at 444, 685 S.E.2d at 172 ("Church disputes that are resolved under the neutral principles of law approach do not turn on the single question of whether a church is congregational or hierarchical. Rather, the neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes.").

Although the lead opinion states that it relies on this well-established framework, the lead opinion does not actually apply it. In fact, in both of their analyses, the lead opinion and the concurrence do not first consider the nature of the cause of action, instead skipping straight to making a factual pronouncement that the national church is hierarchical.⁶¹ In so doing, both opinions persist in

⁵⁹ *See generally Md. & Va. Eldership*, 396 U.S. at 369 n.1 (Brennan, J., concurring) (defining hierarchical and congregational organizations).

⁶⁰ The lead opinion criticizes *All Saints*, claiming it stands for the proposition that "the 'neutral principles of law' approach require[s] that in order for a civil court to determine whether a church-related dispute could be adjudicated in that forum, the court must look **only** at state corporate and property law, ignoring the ecclesiastical context entirely." This is a gross misstatement of the legal framework created by *Pearson* and perpetuated by the *All Saints* decision, in that both opinions clearly state that South Carolina still uses deference when appropriate—just not with respect to secular civil matters.

⁶¹ As stated previously, I believe the lead opinion's exercise in fact-finding is wholly inappropriate under the proper "any evidence" standard of review, conveniently cast aside by the lead opinion to benefit its analysis. Under the correct standard of review, we are required to uphold the trial court's finding that the structure of the national church is ambiguous due to displaying aspects of both a hierarchical and congregational organization. In cases "where the identity of the

committing a fundamental analytical error: failing to first assess the nature of the dispute itself. By applying the framework in reverse order and declaring the church hierarchical as an initial matter, it is the lead opinion and concurrence themselves that imbue this dispute with ecclesiastical qualities, because the finding carries with it the implication that all decisions with respect to this dispute over property ownership flow from this leadership structure. Thus, the lead opinion and concurrence essentially gut the neutral principles approach so carefully developed since *Pearson*. Under their formulations, there will **never** be a civil law suit involving a church that can be resolved without reference to ecclesiastical doctrine, law, custom, or administration. In my view, the two opinions overrule *Pearson* and its progeny in all but name.⁶²

governing body or bodies that exercise general authority within a church is a matter of substantial controversy," the United States Supreme Court has declared that "civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy." *Md. & Va. Eldership*, 396 U.S. at 369–70 & n.4 (1970) (Brennan, J., concurring) (explaining that even when courts employ the deference approach and attempt to enforce the decision made by the highest ecclesiastical authority in a church, those courts "would have to find another ground for decision, *perhaps the application of general property law*, when identification of the relevant church governing body is impossible without immersion in doctrinal issues or extensive inquiry into church polity" (emphasis added)); *see also Jones*, 443 U.S. at 605 (stating that the deference approach is inappropriate when the locus of control is ambiguous (quoting *Serbian E. Orthodox*, 426 U.S. at 723)). Here, the record supports the trial court's finding that the national church's leadership structure is ambiguous. I contend this ambiguity provides an additional basis on which this Court should look to neutral principles of property law to resolve this dispute. *See Jones*, 443 U.S. at 605; *cf. Serbian E. Orthodox*, 426 U.S. at 714 ("[I]t is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in civil court.").

⁶² I note that until today, our precedents have conformed with the overwhelming majority of state courts (not to mention the United States Supreme Court) that would apply a neutral principles approach to this title dispute. *See, e.g., Jones*, 443 U.S. at 602 (upholding the neutral principles approach in a property dispute); *Md.*

In my opinion, the framework—properly applied—yields but one logical result. Because this is a dispute over title to property, we should apply neutral principles of South Carolina property and trust law.

C. Application

As noted previously, the lead opinion and concurrence declare this property dispute is ecclesiastical in nature based on their factual finding that the national church is a hierarchical institution. In doing so, they rely on directives from the national church unilaterally creating trusts in the plaintiffs' properties, claiming these purported trust documents satisfy the requirements of *Jones*. This result is the exact opposite that I would reach in applying *Jones*'s neutral-principles approach.

Jones was a property dispute arising from a schism in a hierarchical church, in which the Supreme Court acknowledged the ability of civil courts to resolve most church-based property disputes using deeds, state statutes, the local church charters, and the national church's constitution. There, the Supreme Court explained:

Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.

Jones, 443 U.S. at 603–04. I agree with the lead opinion that *Jones* offers religious institutions the ability to order their affairs and structure their property ownership through "appropriate" (i.e., secular) channels. However, the lead opinion and I diverge at the point in its analysis where it fails to recognize *Jones*'s mandate that

& Va. Eldership, 396 U.S. at 367; *Diocese of Quincy v. Episcopal Church*, 14 N.E.3d 1245, 1258 (Ill. 2014); *Masterson*, 422 S.W.3d at 602 n.6 (collecting state cases). Notably, the lead opinion does not cite any cases to support its novel analysis, and instead primarily supports its departure from well-settled law using the non-prevailing analysis contained in the dissent to a Texas state court case which resolved a church property dispute using the neutral principles approach. See *Masterson*, 422 S.W.3d at 614 (Lehrmann, J., dissenting).

any such undertaking must occur in a legally binding manner:

The neutral-principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion 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. The burden involved in taking such steps will be minimal. 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, 443 U.S. at 606 (emphasis added). The lead opinion and concurrence not only misinterpret this passage from *Jones*, but ultimately dispense with it.

First, the lead opinion and concurrence extrapolate a requirement that any state law affecting a church's property rights may only be accomplished with minimal burdens on the national religious body. More accurately, the *Jones* Court was merely stating that only minimal efforts would be required on the part of national church organizations to bring their ownership interests within the ambit of state law and ultimately, to avoid litigation over property ownership in the event of a doctrinal dispute or schism. *Jones* did not, as the lead opinion suggests, create a requirement that states amend their property laws so as to only minimally burden national religious organizations as they are attempting to structure their affairs with respect to property ownership in their member dioceses. Further, contrary to the lead opinion's implication, South Carolina law does not place undue burdens on religious bodies seeking to create trusts in this State. Our general trust law is similar to that of every other jurisdiction in this country, and therefore, it requires only minimal effort to comply with South Carolina trust law.

Next, the lead opinion and concurrence dismiss completely the requirements that trust documents—which "ensure . . . that the faction loyal to the hierarchical church will retain the church property"—must be adopted before the dispute begins and be "*embodied in some legally cognizable form*" in order to be enforceable under state law. To me, however, this language is the defining language of the *Jones* opinion with respect to this suit, and why the plaintiffs necessarily must

prevail.

The lead opinion finds that not only is accession to the Dennis Canon not required, but that the defendants were not required to take any further action under South Carolina law to ensure the validity of these "trusts." Remember that eight parishes neither acceded to the Dennis Canon nor took any other legal action with respect to their property outside of membership in the national church. Thus, the lead opinion finds trusts existed with respect to all of the plaintiff parishes merely because these parishes were members in a voluntary organization where that organization has unilaterally claimed ownership in their property.

By giving credence to this standard built only on "the national church said so," the lead opinion effectively ignores *Jones* altogether. *Jones* explicitly suggests state courts use "well-established concepts of trust and property law familiar to lawyers and judges" to resolve these disputes, "thereby promis[ing] to free civil courts completely from entanglement in questions of religious doctrine, policy, and practice." 443 U.S. at 603–04. In fact, in *Jones*, the United States Supreme Court remanded the case to Georgia to determine the property's ownership by applying Georgia's long-established property law. *Id.* at 609–10. Yet, in direct contravention of *Jones*'s directive to use state principles of property and trust law ingrained in the collective knowledge of our bench and bar to resolve church property disputes, the lead opinion instead does exactly what *Jones* warns against and dives headfirst into religious matters.

Under South Carolina law, there are only two ways to create a trust: either expressly or constructively. As will be explained, *infra*, it is my opinion that the defendants accomplished neither in this case.

1. Express Trusts

The South Carolina Trust Code⁶³ provides that an express trust may be created by either the "transfer of property to another person as trustee," or by a "written declaration signed by the owner of property that the owner holds identifiable property as trustee." S.C. Code Ann. § 62-7-401(a)(1); *see also All Saints*, 385 S.C. at 449, 685 S.E.2d at 174. However, it is axiomatic that the trust is created only if, *inter alia*, the settlor indicates an intention to create the trust. S.C. Code Ann. § 62-7-402(a)(2); *State v. Parris*, 363 S.C. 477, 482, 611 S.E.2d 501, 503 (2005). Moreover, to satisfy the statute of frauds, "a trust of real property

⁶³ S.C. Code Ann. §§ 62-7-101 to -1106 (2009 & Supp. 2016).

... must be proved by some writing signed by the party creating the trust." S.C. Code Ann. § 62-7-401(a)(2); *Whetstone v. Whetstone*, 309 S.C. 227, 231–32, 420 S.E.2d 877, 879 (Ct. App. 1992) (citing *Beckham v. Short*, 298 S.C. 348, 349, 380 S.E.2d 826, 827 (1989)). Proof of express trusts must be made by clear and convincing evidence. *Price v. Brown*, 4 S.C. 144 (1873); cf. S.C. Code Ann. § 62-7-407 (stating that the burden of persuasion for oral trusts is clear and convincing evidence).

In examining the efficacy of the Dennis Canon, I would find that it does not satisfy the requirements for creating an express trust under South Carolina law. First, there was no transfer of title. In fact, the defendants stipulated at trial that the property in dispute is (and has always been) titled in the plaintiff parishes' names. Thus, in order to create an express trust, the plaintiff parishes—as the title-holders—must have made a written, signed statement of intent to transfer their property into a trust for the benefit of the national church. Cf. *Turbeville v. Morris*, 203 S.C. 287, 26 S.E.2d 821 (1943) (examining the document creating a purported trust in order to ascertain which church faction was the beneficiary of the trust). However, the Dennis Canon is merely the *national church's* statement of interest in the plaintiff parishes' properties. "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 or transfer legal title to one person for the benefit of another." *All Saints*, 385 S.C. at 449, 685 S.E.2d at 174. Thus, I believe the only conclusion this Court could reach under South Carolina law is that the Dennis Canon is not a basis for asserting legal title to the plaintiffs' properties, nor does it create an express trust over the those properties. *Id.* (holding that the Dennis Canon does not create an express trust pursuant to South Carolina property law); cf. *Jones*, 443 U.S. at 606 (stating that civil courts must give effect to deeds and trust documents executed by the general church "provided [the documents are] embodied in some *legally cognizable* form" (emphasis added)).⁶⁴

With respect to the writing requirement, the defendants argue that twenty-eight of the thirty-six plaintiff parishes "made express promises in their governing

⁶⁴ For this reason, I believe the lead opinion errs in reexamining our holding in *All Saints*. I am just as firmly convinced now—as the Court was in 2009—that the Dennis Canon did not create an express trust under South Carolina law and that *All Saints* was correctly decided. To the extent the lead opinion contends that it is not seeking to overrule the result of *All Saints*, its analysis of the issue does not comport with this assertion.

documents to comply with the [n]ational [c]hurch's rules *after* those rules had been amended to include the Dennis Canon in 1979," and that "[t]hese writings fulfilled the writing and signature requirements of South Carolina's Trust Code."⁶⁵ I would reject this argument for two reasons.

First, the twenty-eight parishes that made this alleged express promise at most merely acceded to the national church's constitution and canons. However, their accession did not include a transfer of title in a form recognized under South Carolina law. Moreover, like the two prior disassociations—from the Church of England during the Revolutionary War, and from the national church during the Civil War—the plaintiffs associated and disassociated with the national church on their own terms, and at no point made a title transfer recognizable under South Carolina law. Thus, it is my opinion that the parishes' accession to the national church's rules does not constitute clear and convincing evidence that they intended to place their property in trust (either revocable or irrevocable) for the national church. *See Price*, 4 S.C. at 144 (requiring clear and convincing evidence of intent to place property in beneficial use for another).⁶⁶

⁶⁵ A majority of the Court agrees with my analysis up to this point, finding we must apply neutral principles of South Carolina property law to resolve this dispute. However, on this argument, Chief Justice Beatty and I part ways. He agrees with the defendants' argument, finding "the Dennis Canon had no effect until acceded to in writing by the [twenty-eight] individual parishes." I explain, *infra*, why I respectfully disagree with him. Essentially, I do not believe mere accession meets the requirements of South Carolina law for the creation of a trust.

⁶⁶ I note that the defendants ask that we resolve this title issue by deciding whether the parties complied with the rules set forth in their respective constitutions and canons—such as the Dennis Canon. While we *can* decide that the Dennis Canon (and other governing documents) are not legally binding trust documents because they do not comport with the secular formalities required by South Carolina law to impose a trust on the settlor's property, it would be completely improper under settled First Amendment jurisprudence for this Court to resolve this real property title issue by delving into the ecclesiastical doctrine of the national church. *See, e.g., Presbyterian Church*, 393 U.S. at 449 ("States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.").

The concurrence suggests the Court does not have enough information to determine, applying long-standing state property principles, the statuses of the

2. Constructive Trusts

Likewise, I would find that constructive trusts did not arise with respect to the property at issue.

"A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding the legal title." *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987); *see also Carolina Park Assocs., L.L.C. v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 879 (2012). "A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." *Lollis*, 291 S.C. at 529, 354 S.E.2d at 561; *Gordon v. Busbee*, 397 S.C. 119, 141, 723 S.E.2d 822, 834 (Ct. App. 2011). "In order to establish a constructive trust, the evidence must be clear, definite, and unequivocal." *Lollis*, 291 S.C. at 530, 354 S.E.2d at 561.

According to the testimony adduced at trial, the plaintiffs obtained their properties through (1) grants from current or prior parishioners; or (2) purchase with their own funds, and not funds from the national church. The defendants made no effort to demonstrate that the parishioner grants were intended to be grants to the national church or the local diocese affiliated with the national church. In fact, the deed granting Camp St. Christopher to the trustee corporation expressly names the trustee corporation as beneficiary due to its "good works." Therefore, I would find no "clear, definite, and unequivocal" evidence of fraud on the part of the plaintiffs in acquiring title to the properties.

titles of the various properties, and that at best, a remand would be required to allow the parties to litigate the issue. However, this flies in the face of basic appellate principles. *Cf. Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (holding successive PCR applications are disfavored because they allow the applicant more than one bite at the apple). Here, each plaintiff painstakingly entered into evidence information about their individual titles. In response, the defendants did not attempt to refute or distinguish any of the individual plaintiff's title information, but instead proceeded entirely on ecclesiastical theory, i.e., that they owned *all* of the disputed properties, without exception, because "the national church said so." In my view, the plaintiffs clearly established each of their titles under our state's property, trust, and corporate law, and the defendants failed to grapple with the implications of those neutral principles of state law, to their detriment.

The defendants argue Bishop Lawrence and the disassociated diocese acted deceptively and contrary to the national church's interests in issuing the quitclaim deeds, and that their amendment of the disassociated diocese's corporate charter was *ultra vires*. In the defendant's view, this provides evidence of fraud sufficient to make constructive trust appropriate in this situation. I disagree.

Essentially, the defendants ask that we determine the plaintiffs lacked the canonical authority to issue the quitclaim deeds and amend their corporate charters. However, the Supreme Court has expressly forbidden courts from making such determinations. *See Md. & Va. Eldership*, 396 U.S. at 370 (Brennan, J., concurring) (stating that even in applying the deference approach, "civil courts do not inquire whether the relevant church governing body has power under religious law to control the property in question. Such a determination, unlike the identification of the governing body, frequently necessitates the interpretation of ambiguous religious law and usage. To 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.").

Rather, we may only determine whether the plaintiffs had legal authority and followed the appropriate steps under South Carolina's corporate law to issue the quitclaim deeds and amend their corporate charters. I would find the plaintiffs had the legal authority and complied with the legal requirements to effectuate those changes, and the defendants do not argue otherwise to this Court. Remember, the national church never revoked Bishop Lawrence's authority over the disassociated diocese while the diocese was issuing the quitclaim deeds or amending its diocesan constitution, canons, and corporate purpose.⁶⁷ Indeed, the purported acceptance of Bishop Lawrence's renunciation of orders occurred after the amendments to the various constitutions and deeds were executed and publicly recorded. To me, this constitutes overwhelming evidence of the national church's acquiescence to the changes in the plaintiffs' corporate forms, constitutions, and bylaws.

Further, all actions by Bishop Lawrence were undertaken using the correct legal channels and proper corporate formalities under South Carolina law. Not only was Bishop Lawrence clearly acting on the national church's behalf at the time, but the record shows that the national church was fully aware of what Bishop Lawrence's intentions were when he was made a bishop and that he was executing

⁶⁷ Likewise, the national church did not assert the plaintiff parishes lacked the authority to de-accede.

these deeds by the authority vested in him by the national church.⁶⁸ Thus, whether or not trusts were created—which I contend they were not—the current status of the property is that it has been deeded back to the plaintiff parishes. That these various corporate amendments and deeds are embodied in a "legally cognizable form" is irrefutable.

The lead opinion utterly fails to account for the national church's subsequent action of quitclaiming the deeds back to the plaintiff parishes. Even though the lead opinion and concurrence declare this dispute "ecclesiastical," the fact remains that Bishop Lawrence—acting with the full authority of the national church—legally transferred the deeds to the plaintiffs, and the deeds continue to be held by the plaintiffs. No level of deference to the national church at this point can change this. Thus, it remains unclear what legal basis the lead opinion is using to declare the national church the rightful owner of the plaintiffs' property.

While I would decline to impose a constructive trust on the plaintiffs' properties, I would additionally find that the property at issue is now titled in the plaintiffs' names by its bishop's actions.

D. Conclusion as to Title of Plaintiff Parishes' Property

By applying neutral principles of South Carolina's longstanding property law, I would find that the national church has no "legally cognizable" interest in

⁶⁸ This is in stark contrast to the facts underlying the recent California case cited favorably by the concurrence. In *Diocese of San Joaquin v. Gunner*, 202 Cal. Rptr. 3d 51 (Ct. App. 2016), the California Court of Appeals applied neutral principles of state corporate law and held the attempts to amend the breakaway diocese's articles of incorporation and transfer the property away from the national church were ineffective. However, importantly, in that case, the bishop of the breakaway diocese had already been deposed by the national church one month before attempting to amend the diocesan articles of incorporation under state law, and two months before attempting to transfer the disputed property titles to the new corporation formed by the breakaway diocese. This, of course, was not the case here, as Bishop Lawrence retained his full secular and religious authority over the disassociated diocese until well after all of the amendments were adopted and quitclaim deeds were issued. Thus, in my view, the analysis in *Gunner* supports my position, not the concurrence's. See, e.g., *id.* at 63, 64 (including section titles to the court's opinion stating "Deference to the [national c]hurch does not resolve the dispute" and "The property was not held in trust for the [national c]hurch").

the plaintiff parishes' properties. *See Jones*, 443 U.S. at 606; *Md. & Va. Eldership*, 396 U.S. at 367–68 (dismissing the appeal for want of a federal question after the state court resolved a church property dispute by examining the deeds to the properties, the state statutes dealing with implied trusts, and the relevant provisions in the church's constitution pertinent to the ownership and control of church property, and found that nothing in those documents gave rise to a trust in favor of the general church). Despite the lead opinion's and concurrence's statements to the contrary, this is not an instance where a "property right follows as an incident from decisions of the church custom or law on ecclesiastical issues." *See Kedroff*, 344 U.S. at 120–21. Rather, the properties at issue here are titled in the plaintiff parishes' names (and some have been for over two hundred years), and the majority is permitting the defendants to circumvent South Carolina law in authorizing this title-takeover, albeit not agreeing on the rationale for doing so.

Let us not forget the defendants stipulated that the real property at issue is titled in the plaintiff parishes' names, and that the *plaintiff parishes "are not members of the [national c]hurch."* (emphasis added). Aside from the fact that a majority of the parishes acceded to the Dennis Canon in some form or another—which I would find was not a legally binding action to impose a trust under South Carolina law—eight parishes **never acceded** in any form to either the national church's Dennis Canon or the diocesan version of the Dennis Canon created by the now-disassociated diocese.⁶⁹ Under the lead opinion's formulation, these parishes,

⁶⁹ The concurrence takes Chief Justice Beatty, Justice Kittredge, and me to task for giving any credence to the fact that eight of the thirty-six plaintiff parishes did not accede to the Dennis Canon whatsoever. I first point out the national church contended in both its motion to reconsider and its brief to this Court that twenty-eight of the thirty-six plaintiff parishes "made express promises in their governing documents to comply with the [n]ational [c]hurch's rules after those rules had been amended to include the Dennis Canon in 1979," and that "[t]hese writings fulfilled the writing and signature requirements of South Carolina's Trust Code." (emphasis in original). While the argument only addresses the twenty-eight churches that allegedly acceded, it raises a direct question about the other eight churches, implying that they are somehow different from the twenty-eight who "made express promises." Second, and perhaps more importantly, the concurrence incorrectly construes our holding in *On L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), with regards to issue preservation as it relates to additional sustaining grounds. A prevailing party need never raise an additional sustaining ground below, nor secure a ruling on it, in order for the issue to be preserved for appellate review. *See* Rule 220(c), SCACR (providing appellate

like all of the other plaintiff parishes, must surrender their lawful titles to the national church for the mere fact that the national church is a religious organization. This is extremely troubling. The lead opinion offers no explanation or legal basis (and I know of none) that allows for an organization—religious or otherwise—to strip an individual, business, or charitable organization of title ownership because that organization unilaterally declares ownership in such property. However, the ramifications do not end there. The rationale underlying the lead opinion would place many heretofore validly-titled properties in legal limbo. If I were a member of a governing body of a religiously-affiliated hospital, for example, I would be gravely concerned, as the lead opinion declares today that different rules apply to religious organizations with respect to corporate organization and property ownership in this State.

In my opinion, because it would dispense with the ancient formalities of property and trust law and the prior esteem with which courts in this state afforded such formalities, the lead opinion's rationale would dramatically alter our property law as we know it. Accordingly, I would affirm the trial court's decision that the defendants do not have an interest in the plaintiff parishes' real properties.

E. Camp St. Christopher

In some respects, the title to Camp St. Christopher presents the Court with a more straightforward analysis, in that the Dennis Canon, by its own terms, does not apply. Specifically, the Dennis Canon states, *inter alia*, " 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." (emphasis added). It is undisputed the trustee corporation holds title in fee simple to Camp St. Christopher, and that it does so for the benefit of the disassociated diocese, rather than any individual parish, mission, or congregation. Because the trustees did not accede to the Dennis Canon, there is no basis in South Carolina trust law for the national church to claim an ownership interest in Camp St. Christopher. Moreover, although the trustee corporation's initial bylaws stated that it would carry out its duties under the authority of the

courts may affirm the judgment of a lower court based on any ground appearing in the record). Undoubtedly, it is more prudent to raise an additional sustaining ground in the appellate brief, as it draws the appellate court's attention to the matter and encourages it to exercise its discretion to address the issue. However, explicitly raising the issue is not a prerequisite for the court to affirm the decision of the lower court on an alternative ground. *See* Rule 220(c), SCACR.

national church's constitution and canons, the trustees later took steps, using appropriate corporate formalities, to amend the bylaws and remove all references to the national church *before the national church revoked Bishop Lawrence's authority*. Accordingly, similar to the other plaintiff parishes', I would declare title to Camp St. Christopher in the trustee corporation, held for the benefit of the disassociated diocese, just as the original deed conveyed the property.

III. INTELLECTUAL PROPERTY

Next, the plaintiffs assert their service marks are validly registered under state law and that they own the right to use the seals and symbols registered with the state. As a result, the plaintiffs claim the defendants' use of the plaintiffs' marks amounts to service mark infringement. The defendants take the position that the plaintiffs' service marks are too similar to the defendants' federally-registered service marks, and that because the defendants registered their marks with the United States Patent and Trademark Office (USPTO), the Lanham Act⁷⁰ expressly preempts state law with respect to the validity of the plaintiffs' marks.

I would narrowly affirm the trial court's finding that the plaintiffs' service marks are validly registered under state law. However, because there is already a pending federal case involving the applicability of the Lanham Act to these exact marks, I would defer to the federal courts regarding the applicability of federal copyright law.

A. Standard of Review

"Actions for injunctive relief are equitable in nature." *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005). "In an action in equity tried by a judge alone, the appellate court may find facts in accordance with its view of the preponderance of the evidence." *Goldman v. RBC, Inc.*, 369 S.C. 462, 465, 632 S.E.2d 850, 851 (2006). "However, this broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses." *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001). Moreover, appellants are not relieved of their burden of convincing an appellate court that the trial court committed an error in its findings. *Id.* at 387–88, 544 S.E.2d at 623.

B. Merits

⁷⁰ 15 U.S.C. §§ 1051–1141n (2006).

Pursuant to federal law,

Any registration issued under the [Lanham Act] . . . and owned by a party to an action shall be admissible as evidence and *shall be prima facie evidence* of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and *of the registrant's exclusive right to use the registered mark in commerce* on or in connection with the goods or services specified in the registration subject to any conditions or limitations stated therein.

15 U.S.C. § 1115(a) (emphasis added). Moreover,

The ownership by a person of a valid registration under [the Lanham Act] . . . shall be a complete bar to an action against that person, with respect to that mark, that—

(A) is brought by another person under the common law or a statute of a State; and

(B)(i) seeks to prevent dilution by blurring or dilution by tarnishment; or

(ii) asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement.

15 U.S.C. § 1125(c)(6).⁷¹

⁷¹ South Carolina law provides:

The secretary shall cancel from the register, in whole or in part: . . .
(3) a registration concerning which a court of competent jurisdiction finds that the: . . . (f) *registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the [USPTO] before the date of the filing of the application for the registration by the registrant under this article, and not abandoned*; however, if the registrant proves that the registrant is the owner of a concurrent registration mark in the [USPTO] covering an area including this State, the registration under this article may not be canceled for that area of the State

"In the absence of an express congressional command, state law is preempted if the law actually conflicts with federal law, or if federal law so thoroughly occupies the legislative field as to make reasonable the inference that Congress has left no room for the states to supplement it." *City of Cayce v. Norfolk S. Ry. Co.*, 391 S.C. 395, 401, 706 S.E.2d 6, 8 (2011). Under the Lanham Act, the USPTO must refuse to grant a subsequent mark if the "dominant element" of the subsequent mark is already registered in a previous mark. *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1341–45 (Fed. Cir. 2004). Further, there are two "key considerations" in determining the dominant element of the previously-registered mark: (1) the similarities between the names of the previous and subsequent trademarks, and (2) the similarities between the previously and subsequently trademarked goods. *Id.* at 1341–42.

C. Conclusion as to Service Marks

I would find the trial court failed to address the effect, if any, of the Lanham Act on the plaintiffs' claims for service mark infringement. However, because there is a pending federal case filed by Bishop vonRosenberg addressing the same issue, I would decline to address the effect of federal law on the parties' service marks. Thus, I would narrowly affirm the trial court's determination that the plaintiffs' marks are validly registered under South Carolina law, and would leave the application of the Lanham Act to the pending federal case.

CONCLUSION

The lead opinion in this case is nothing less than judicial sanction of the confiscation of church property masquerading as an attempt to promulgate a new deference rule for determining title in this matter. With no discussion of why the neutral principles of law approach to resolving church title determinations should

S.C. Code Ann. § 39-15-1145(3)(f) (Supp. 2016) (emphasis added): Similarly,

A mark by which the goods or services of an applicant for registration may be distinguished from the goods or services of others may not be registered if the mark: . . . (5) consists of a mark which: . . . (b) when used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them

S.C. Code Ann. § 39-15-1110(A)(5)(b) (Supp. 2016).

be abandoned by the State of South Carolina, the lead opinion advocates overruling a framework that has heretofore taken the courts out of ecclesiastical controversies, instead encouraging the Court to devolve to the civil court the authority to undo centuries of well-settled church titles by judicial fiat. Such an opinion, had it obtained the support of a majority of this Court, would have been a crushing blow to centuries of carefully crafted and well-reasoned South Carolina law.

Aside from the fact that I do not believe there were ever any legal trusts created with respect to the property at issue, the simple fact is that the national church, for whatever reason, never acted to take away Bishop Lawrence's legal authority to act for it and the disassociated diocese. Under the authority granted to him by the national church, Bishop Lawrence legally transferred the plaintiffs' property back to them. Thus, to the extent the lead opinion relies on deference to confiscate the plaintiffs' property, that concept cannot overcome the essential problem that the national church itself deeded the property back to the plaintiffs.

Further, many of the plaintiff parishes established their corporate existence under South Carolina corporate law or by legislative charter years before the Dennis Cannon was adopted. Additionally, after *Jones*, all of the plaintiff parishes and the disassociated diocese made sure that they were organized as corporations under South Carolina law. None of these church corporations renounced or limited their ability to amend their charters and bylaws after initial adoption. With a stroke of a pen, the majority vitiates South Carolina's charitable corporation law and invalidates all of the plaintiffs' duly adopted corporate documents.

Because I cannot find any legal basis to support the majority's decision in this case, I would affirm the decision of the trial court. I respectfully dissent.⁷²

⁷² As I stated at the outset, this is unfortunately a difficult case leading us to five different, strongly-held opinions. Because we all write separately, my summary of my understanding of the Court's holdings is as follows. A majority of the Court—consisting of Chief Justice Beatty, Justice Kittredge, and me—agree that *Pearson* and *All Saints* (and their progeny) remain good law in this state, and that in secular church disputes, our state courts should apply neutral principles of law to resolve the case. As it relates to this particular case, the same majority would find this is a secular church dispute, and the Court must therefore apply longstanding trust law to resolve the questions before us. I would find the parties' actions did not comply with the formalities required to create a trust in this state. In short, I believe the parties did not embody their intentions to create a trust in favor of the defendants in a "legally cognizable form." Justice Kittredge would find the parties created a

revocable trust in favor of the national church, but the plaintiffs later took steps to revoke their accession to the trust. Therefore, both Justice Kittredge and I would declare all of the disputed titles in favor of the individual plaintiffs, with no trust formed in favor of the defendants. However, we are in the minority, because a different majority of the Court—consisting of Chief Justice Beatty, Justice Hearn, and Acting Justice Pleicones—would reverse the trial court and transfer title of all but eight of the plaintiffs' properties to the defendants. While Justice Hearn and Acting Justice Pleicones would do so because they believe this is an ecclesiastical dispute and the Court must therefore defer to the national church's decision on the matter, Chief Justice Beatty would do so because he believes all but eight of the plaintiffs acceded to the Dennis Canon in a manner recognizable under South Carolina's trust law. Thus, the result reached on title is: 1) with regard to the eight church organizations which did not accede to the Dennis Canon, Chief Justice Beatty, Justice Kittredge, and I would hold that title remains in the eight plaintiff church organizations; 2) with regard to the twenty-eight church organizations which acceded to the Dennis Canon, a majority consisting of Chief Justice Beatty, Justice Hearn, and Acting Justice Pleicones would hold that a trust in favor of the national church is imposed on the property and therefore, title is in the national church; and 3) with regard to Camp St. Christopher, Chief Justice Beatty, Justice Hearn, and Acting Justice Pleicones would hold title is in the trustee corporation for the benefit of the associated diocese, whereas Justice Kittredge and I would hold that the trustee corporation holds title for the benefit of the disassociated diocese.

As to the second issue on appeal, involving the plaintiffs' claims for service mark infringement, Chief Justice Beatty, Justice Kittredge, and I would find the marks are validly registered under state law, but leave the ultimate resolution of the parties' conflicting claims to the pending federal case.



The Supreme Court of South Carolina

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CLERK OF COURT

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Dallas, TX 75204

Re: Protestant Episcopal v. Episcopal Church
Appellate Case No. 2015-000622

Dear Counsel:

The following order has been endorsed on your Motion to Argue Against Precedent in the above matter.

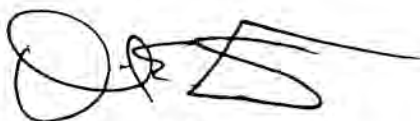
Granted.

s/ Jean H. Toal C.J.
For the Court

September 9, 2015."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "D. S. S.", with a long horizontal flourish extending to the right.

CLERK

cc:

Andrew Spencer Platte, Esquire
Henrietta U. Golding, Esquire
Charles H. Williams, Esquire
C. Pierce Campbell, Esquire
Ivon Keith McCarty, Esquire
Harry Arthur Oxner, Esquire
Thornwell F. Sowell, III, Esquire
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Mark V. Evans, Esquire
Saunders M. Bridges, Jr., Esquire
Steven Smith McKenzie, Esquire
Robert S. Shelton, Esquire
John Furman Wall, III, Esquire
William A. Bryan, Esquire
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Susan Pardue MacDonald, Esquire
James Kent Lehman, Esquire
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Allan Poe Sloan, III, Esquire
Joseph C. Wilson, IV, Esquire
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Robert Walker Humphrey, II, Esquire
Bess Jones DuRant, Esquire
Amanda A. Bailey, Esquire
C. Mitchell Brown, Esquire

The Supreme Court of South Carolina

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; St. Matthews Church; St. Andrews Church-Mt. Pleasant Land Trust; St. Bartholomews Episcopal Church; St. David's 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 Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens 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. Andrews,

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.

Appellate Case No. 2015-000622

ORDER

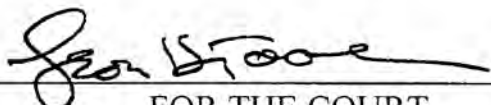
By order dated April 15, 2015, this Court certified this case for review; set oral argument for September 23, 2015; and allowed the parties to provide copies of the briefs, record on appeal, and other materials to one another in electronic format. We reminded the parties that it is the duty of appellate attorneys to pare the lower court record in a manner that will aid and assist the appellate court in rendering an educated decision on the issues before it without having to wade through volumes of unnecessary materials. We directed counsel for the parties, as officers of this Court, to scour the proposed record with a practical eye and consider which materials therein were critical to a decision by this Court.

On July 28, 2015, the parties filed a record on appeal that was nearly 6,000 pages long and included twelve volumes of material. The same day, we were advised that there were numerous pages and exhibits included in the record on appeal that were "unnecessary." Specifically, counsel informed us that neither party cited to more than 3,000 pages in the record, or in other words, more than half of the record.

We certainly understand there will be times when materials, such as the pleadings, are furnished to the Court because the documents are central to the dispute, but the parties do not cite to them in their briefs. However, we explicitly directed the parties to scour the record and include only those materials that were critical to the Court's decision.

Accordingly, expecting counsel for the parties to fully cooperate with one another, we again direct the parties to reach an agreement on which pages and exhibits in the record on appeal are unnecessary and, therefore, should be removed. Our previous scheduling order dated July 22, 2015, is modified as follows:

- (1) The record on appeal shall be prepared and served on counsel for the respondents by **August 5, 2015**. This deadline can be met by e-mailing a copy to the counsel for the respondents using their e-mail addresses shown in the Attorney Information System (www.sccourts.org/attorneys/dspSearchAttorneys.cfm).
- (2) The record on appeal in the required number of copies shall be filed with this Court by **August 10, 2015**. These copies must be actually received by this Court by that date.
- (3) The final briefs of the parties shall be served and filed by **August 10, 2015**. The copies filed with this Court must be actually received by this Court by that date.



FOR THE COURT C.J.

Columbia, South Carolina

July 30, 2015

cc:

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Jason S. Smith, Esquire
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David Booth Beers, Esquire
Mary E. Kostel, Esquire
Andrew Spencer Platte, Esquire
Henrietta U. Golding, Esquire
Charles H. Williams, Esquire
C. Pierce Campbell, Esquire
Ivon Keith McCarty, Esquire
Harry Arthur Oxner, Esquire
Thornwell F. Sowell, III, Esquire
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Robert Walker Humphrey, II, Esquire
Bess Jones DuRant, Esquire
Timothy O'Neill Lewis, Esquire
Amanda A. Bailey, Esquire
C. Mitchell Brown, Esquire

The Supreme Court of South Carolina

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SC Court of Appeals

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; St. Matthews Church; St. Andrews Church-Mt. Pleasant Land Trust; St. Bartholomews Episcopal Church; St. David's 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 Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens 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. Andrews, Respondents.

v.

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

Appellate Case No. 2015-000626

ORDER

The Episcopal Church in South Carolina (TECSC) requests this appeal be certified to this Court pursuant to Rule 204(b), SCACR. TECSC also states it "would like to explore whether the other parties and the Court would be willing to relax certain rules in an effort to avoid unnecessary expense." Noting there are over three dozen respondents and many lawyers involved in the case, TECSC suggests that rather than serving all parties with bound copies of the briefs and record, the parties be allowed to provide the materials to one another in electronic format.¹ TECSC also proposes the use of an abbreviated caption in the filings before this Court.² TECSC indicates The Episcopal Church consents to the motion.

Respondents also consent to certification of the appeal, as well as the use of appropriate and reasonable procedures for electronic service of briefs, records and other appellate documents.

Respondents have filed a motion to expedite. TECSC has filed a return in

¹ According to the final order, the transcript is 2,523 pages in length and includes the testimony of 59 witnesses and the admission into evidence of 1,200 exhibits.

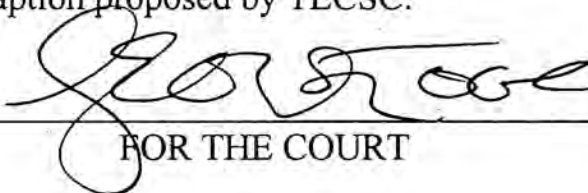
² The caption TECSC proposes is as follows: The Protestant Episcopal Church in the Diocese of South Carolina et. al., Respondents, v. The Episcopal Church (a/k/a The Protestant Episcopal Church in the United States of America) and The Episcopal Church in South Carolina, Appellants.

opposition to the motion to expedite and The Episcopal Church consents to the return.

The motion to certify is granted; however, we deny the motion to expedite. Oral argument in this matter will be held on September 23, 2015. No extensions of time will be granted.

The request that the parties be allowed to provide copies of the briefs, record on appeal and other materials to one another in electronic format is granted. Moreover, we reduce the number of hard copies of the final briefs and record on appeal that must be filed with this Court to ten. However, we remind the parties that it is the duty of appellate attorneys to pare the lower court record in a manner that will aid and assist the appellate court in rendering an educated decision on the issues before it. It is imperative that the record be culled in such a way to allow this Court to make a decision in an efficient and timely manner without having to wade through volumes of unnecessary materials. We therefore direct counsel for the parties, as officers of this Court, to scour the record they propose to present to this Court with a practical eye and consider which materials therein are critical to a decision by this Court in its capacity as an appellate court. Only those materials shall be submitted to this Court in the record on appeal. We expect counsel for the parties to fully cooperate with one another in this endeavor.

Finally, the request to use an abbreviated caption in the materials filed with this Court is granted and we approve the caption proposed by TECSC.


C.J.
FOR THE COURT

Columbia, South Carolina

April 15, 2015

cc:

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C. Alan Runyan, Esquire
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Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

June 11, 2018

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S.C. SUPREME COURT

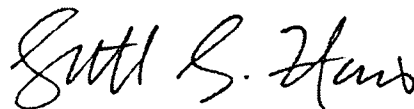
-----Re: The Protestant Episcopal Church in the Diocese of South
Carolina, et al.
v. The Episcopal Church, et al.
No. 17-1136
(Your No. 27731)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

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

The Right Reverend Charles G.
vonRosenberg, et al.,

Plaintiffs,

The Episcopal Church,

Plaintiff in Intervention

v.

The Right Reverend Mark J. Lawrence,
et al.,

Defendants.

Civil Action No. 2:13-587-RMG

ORDER AND OPINION

This matter is before the Court on Plaintiffs The Right Reverend Charles G. vonRosenberg, *et al.*'s Motion for Summary Judgment (Dkt. No. 584), Plaintiff-in-Intervention The Episcopal Church's Motion for Summary Judgment (Dkt. No. 595), Defendants The Right Reverend Mark J. Lawrence, *et al.*'s Motion for Summary Judgment (Dkt. No. 603), and Defendants The Right Reverend Mark J. Lawrence, *et al.*'s Motion for Summary Judgment as to Genericness. (Dkt. No. 610.).¹

I. Background

This case arises out of a schism in 2012 in the Historic Diocese, originally known as the “Protestant Episcopal Church in the State of South Carolina,” in which certain members and parishes sought to dissociate from The Episcopal Church, a nationwide hierarchical church. The parties have litigated property issues related to the schism in the state courts of South Carolina,

¹ In addition to this Order, the Court issues orders on the Disassociated Parishes' motions for summary judgment (Dkt. Nos. 556 – 570, 572 – 579, 581 – 583; 587 – 593, 599 – 600) and on the Parties' *Daubert* motions (Dkt. Nos. 580, 585, 597, 598.)

culminating in a 2017 decision in the South Carolina Supreme Court. In this action, the Parties have raised issues surrounding the use of certain trademarks in contest between The Episcopal Church and its affiliates and the disassociating diocese and its affiliates.

It is important at the outset to identify the major parties in this dispute, a process complicated by the fact that the Defendant disassociating diocese has attempted to identify itself through the use of marks which the national church and its affiliates assert infringe on and dilute their trademarks and constitute false advertising. The principal parties are as follows:

- 1) Plaintiff The Episcopal Church (hereafter “TEC”) is the national church and an Intervenor Plaintiff in this action;
- 2) The Protestant Episcopal Church in the State of South Carolina (hereafter the “Historic Diocese”), which was formed as early as 1785 and was long affiliated with TEC;
- 3) Plaintiff The Episcopal Church in South Carolina (hereafter “TECSC”), which was headed initially by Plaintiff Bishop Charles G. vonRosenberg and subsequently by Plaintiff Provisional Bishop Gladstone B. Adams, III and is affiliated with TEC;
- 4) Defendant The Diocese of South Carolina (hereafter the “Disassociated Diocese”²), headed by Defendant Right Reverend Mark Lawrence and was formed following the schism in 2012 to disassociate from TEC.
- 5) The Defendant parishes associated with the Disassociated Diocese (hereafter “Disassociated Parishes”).

By way of background, in 1784 former members of the Church of England in multiple states, including in South Carolina, formed a convention as part of an effort to form a church that would continue the rites and ceremonies of the Church of England but conform to the principles of the nascent American Revolution and the constitutions of the many states. (Dkt. 595-3 at 14,

² The term “disassociated diocese” was utilized by Chief Justice Beatty in the controlling decision of the South Carolina Supreme Court in *Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church*, 421 S.C. 211, 250 n. 29 (S.C. 2017), when he stated: “In my view, the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.”

17 – 19, 24 – 26; 603 at 17.) By October 4, 1785, this new organization was called “The Protestant Episcopal Church in the United States of America.” (Dkt. No. 595-3 at 24.) The convention was successful, and in October 1789, TEC adopted its first constitution under the name “The Protestant Episcopal Church in the United States of America.” (Dkt. Nos. 595-3 at 102; 603 at 17.) Around the same time, and perhaps as early as May 1785, the “Protestant Episcopal Church in the State of South Carolina,” began a similar process of planning the transition from the Church of England to a new organization. (Dkt. Nos. 603 at 23; 608-1 at 1; 609-7 at 15.)

This current dispute arises out of a schism in the Historic Diocese that occurred in 2012. Two competing entities, TECSC and the Disassociated Diocese, now claim to be the successor to the Historic Diocese. TECSC was initially led after the schism by a bishop, Plaintiff vonRosenberg following his appointment by the leadership of TEC. The Disassociated Diocese is led by Plaintiff Lawrence, who had formerly been appointed the bishop of the Historic Diocese by TEC but was removed from that position when he moved to disassociate from TEC. The disputes in this litigation center on the use of various marks by the Disassociated Diocese and its affiliates which Plaintiffs assert are owned by TEC or its affiliate and successor to the Historic Diocese, TECSC. On the other hand, the Disassociated Diocese claims to be the successor of the Historic Diocese and thus entitled to use certain marks owned by the Historic Diocese.

In 2007, TEC registered five marks with the United States Patent and Trademark Office:

- “The Protestant Episcopal Church in the United States”;
- “The Episcopal Church”;
- “The Episcopal Church Welcomes You”;
- “La Iglesia Episcopal”, and;

- The Episcopal Shield.³

(Dkt. No. 595-5 – 595-12; 595-64 – 595-69.) All five marks have since had declarations of incontestability filed. (*Id.*) The trademark registration for “The Episcopal Church” includes a first use date of January 1, 1967. (Dkt. Nos. 595-8; 595-9.)

In November 2010, two years before the schism, the Historic Diocese, then led by Defendant Lawrence as bishop, registered the following marks with the South Carolina Secretary of State:

- “Diocese of South Carolina”;
- “The Episcopal Diocese of South Carolina”;
- “The Protestant Episcopal Church in the Diocese of South Carolina”;
- “The Diocesan Seal”.⁴

(Dkt. No. 584-3.) In October 2012, the Disassociated Diocese withdrew its association with TEC and its accession to the Constitution of The Episcopal Church. (Dkt. Nos. 439 at ¶ 86; 603 at 17.) After the disassociation, Defendant Lawrence began to lead an organization calling itself the “Diocese of South Carolina.”⁵ Fifty-five parishes that are part of the Disassociated Diocese are



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⁵ The Disassociated Diocese now styles itself as the “Diocese of South Carolina” with additional text stating “An Anglican Diocese, Making Biblical Anglicans for a Global Age,” using the registered Diocesan Seal. (Dkt. Nos. 621-2; 636-1.)

named as Defendants here.⁶ (Dkt. No. 621-2 at 17 – 20; 621-3 at 1 – 11.)

Concurrently, TECSC, under the leadership of Plaintiff Bishop Charles G. vonRosenberg, continued as the local diocese associated with TEC. (Dkt. Nos. 595-1 at 12; 603 at 25.) Because of a state trial court injunction (later overturned by the South Carolina Supreme Court), TECSC was prohibited from using the marks of the Historic Diocese and adopted the name of “The Episcopal Church in South Carolina.” Later, Plaintiff vonRosenberg was succeeded as bishop by Plaintiff Gladstone Adams, who was appointed by the duly authorized leadership of TEC.

On January 4, 2013, the Disassociated Diocese and certain associated churches and parishes sued TEC in the Dorchester County Court of Common Pleas seeking a determination of real and personal property rights. On March 5, 2013, Bishop vonRosenberg filed this federal action, alleging trademark infringement and false advertising by the Disassociated Diocese. While this action was pending in federal court, a state trial court issued an order on February 3, 2015 in favor of the Disassociated Diocese on a broad range of issues, including the service marks at issue. (Dkt. No. 86-3 – 83-6.) TEC appealed. On August 2, 2017, the South Carolina Supreme Court held that TEC owned most of the property in dispute and finding that twenty-eight of the Disassociated Parishes held real and personal property in trust for TEC. *Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church*, 421 S.C. 211, 265, 806 S.E.2d 82, 111 (2017), *reh’g denied* (Nov. 17, 2017), *cert. denied sub nom. Protestant Episcopal Church in the Diocese of S.C. v. The Episcopal Church*, 138 S. Ct. 2623 (2018).

After the South Carolina Supreme Court’s decision, this Court allowed TEC and TECSC to intervene as plaintiffs in this action. (Dkt. Nos. 87, 140.) On April 16, 2018, this Court allowed

⁶ The amended complaints name fifty-five parishes. (Dkt. Nos. 146 at ¶ 9, 150 at ¶ 8.) Two Defendant parishes have been dismissed by stipulation. (Dkt. Nos. 400; 659.)

the Plaintiffs to amend their pleadings to assert false advertising and trademark infringement claims against the Disassociated Diocese, fifty-five Disassociated Parishes, and the Trustees of the Disassociated Diocese. *vonRosenberg v. Lawrence*, No. CV 2:13-587-RMG, 2018 WL 1790827, at *3 (D.S.C. Apr. 16, 2018). The Court prohibited Plaintiffs from amending their pleadings to include trust claims, finding that those claims should remain in state court. *Id.* at *4.

All Parties have now made cross-motions for summary judgment as to all claims. This Order rules on TECSC's Motion for Summary Judgment (Dkt. No. 584), TEC's Motion for Summary Judgment (Dkt. No. 595) and Defendants' Motion for Summary Judgment (Dkt. No. 603) and Motion for Summary Judgment as to Genericness. (Dkt. No. 610.) The issues have been extensively briefed, and each Party filed responses and replies. (Dkt. Nos. 618, 619, 621, 622, 625, 626, 641, 643, 647, 650, 649.)

II. Legal Standard

To prevail on a motion for summary judgment, the movant must demonstrate that there is no genuine issue of any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The party seeking summary judgment has the burden of identifying the portions of the "pleadings, depositions, answers to interrogatories, any admissions on file, together with the affidavits, if any, which show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The Court will construe all inferences and ambiguities against the movant and in favor of the non-moving party. *U.S. v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). The existence of a mere scintilla of evidence in support of the non-moving party's position is insufficient to withstand a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). However, an issue of material fact is genuine if the evidence is such that a reasonable jury could return a verdict in favor of the non-movant. *Id.* at 257.

“When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). “In the language of the Rule, the nonmoving party must come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Id.* at 587. “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Id.* (quoting *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968)).

III. Discussion

The Plaintiffs TEC and TECSC collectively bring five causes of action: trademark infringement under the Lanham Act, trademark dilution under the Lanham Act, false advertising under the Lanham Act, trademark infringement under state law, and cancellation of trademarks under state law. The Court addresses each in turn. However, a significant amount of the briefing has focused on the South Carolina Supreme Court’s ruling in *Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (2017), *reh’g denied* (Nov. 17, 2017), *cert. denied sub nom. Protestant Episcopal Church in the Diocese of S.C. v. The Episcopal Church*, 138 S. Ct. 2623 (2018) (hereinafter “*Protestant Episcopal Church*”). The South Carolina Supreme Court decision has produced vastly differing interpretations by the Parties, with various implications for this Court’s ruling. The Court therefore begins by discussing the South Carolina Supreme Court’s decision.

A. The South Carolina Supreme Court’s Decision in *Protestant Episcopal Church*

The South Carolina Supreme Court’s majority opinion, the result of three opinions by a majority consisting of former Chief Justice, and then-Acting Justice, Pleicones, Chief Justice Beatty, and Associate Justice Hearn, collectively reversed the lower state court’s decision on service marks and deferred to this Court on all trademark-related issues. The opinions by Pleicones

and Hearn reversed the trial court's holding that the state registered trademarks prevailed over TEC's federally registered trademarks and dissolved the injunction. *Id.* at 231, 248. Chief Justice Beatty, in the controlling opinion, held that his decision "express[ed] no opinion concerning the rights to the service marks," and instead left the decision of service marks to this Court. *Id.* at 251 n. 28 ("[T]his determination should remain with the federal court."). The Beatty opinion drew no distinction between the state and federal trademark claims, and instead explicitly deferred all questions regarding rights to the service marks to this Court, reversing the trial court's attempt to rule on those issues. *Id.*

Defendants argue, rather inexplicably, that this Court should defer to the findings of fact of the reversed state lower court decision regarding service marks, a contention plainly without merit. Under South Carolina law, the party asserting issue preclusion (collateral estoppel) "must demonstrate that the issue in the present lawsuit was (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Carolina Renewal, Inc. v. S.C. Dept. Transp.*, 385 S.C. 550, 554 (S.C. Ct. App. 2009).⁷ The issue of the service marks, under either federal or state law, was not "directly determined in the prior action," and the trial court's holdings and findings on this issue were reversed, pending determination by this Court, as held by Justice Beatty. *Protestant Episcopal Church*, 421 S.C. at 251.

Defendants further argue that this Court should look past the South Carolina Supreme Court's ruling on the issue of which organization is the successor to the Historic Diocese. (Dkt.

⁷ Defendants also cite the standard for claim preclusion. (Dkt. No. 625 at 12.) The party asserting claim preclusion must establish three elements: "(1) identity of parties; (2) identity of the subject matter; and (3) prior adjudication of this issue." *Catawba Indian Nation v. State*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014). Similarly, the issue of the service marks does not have a binding prior adjudication and was not an unraised claim in the state court action: instead, the trademark claims were explicitly deferred to this Court.

No. 625 at 16.) Justices Pleicones and Hearn held that the South Carolina Supreme Court must accept as “final and binding” the rulings of TEC recognizing the “Associated Diocese to be the true Lower Diocese of South Carolina....” *Protestant Episcopal Church*, 421 S.C. at 229, 231, 232, 234. Justice Beatty, constituting the third member of the majority, stated that “[i]n my view, the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.” *Id.* at 251 n. 29. Justice Beatty’s holding is clear: the Disassociated Diocese is not the successor to the Historic Diocese, instead the TECSC has succeeded and is the “Protestant Episcopal Church in the Diocese of South Carolina.” *Id.*

Defendants contend that the holding in the footnote where Chief Justice Beatty plainly stated that the Disassociated Diocese was not the successor of the Historic Diocese should be limited only to ownership of a single disputed property, Camp St. Christopher. (Dkt. No. 625 at 16 – 20.) A reading of the entire footnote instead mandates the opposite conclusion. Justice Beatty’s decision focused, almost exclusively, on the effect of accession to the Dennis Canon on each individual parish, answering the fundamental question of the state case regarding who owned the property occupied by the Disassociated Parishes. The footnote in question, Footnote 29, by contrast, discussed the sole piece of non-parish Diocesan property addressed in his opinion, Camp St. Christopher. Further, as with the state registered trademarks that he deferred to this Court, Justice Beatty ruled clearly: “the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.” *Protestant Episcopal Church*, 421 S.C. at 251 n.29. This holding was vigorously litigated in the state courts, was determined by the three-person majority of Pleicones, Hearn and Beatty and was necessary to support the judgment regarding Camp St. Christopher, and therefore is precluded from re-

litigation. *Carolina Renewal, Inc. v. S.C. Dept. Transp.*, 385 S.C. 550, 554 (S.C. Ct. App. 2009) (test for issue preclusion). The Court will not disturb this ruling.⁸

Finally, Defendants argue that the Court is collaterally estopped by *Protestant Episcopal Church* regarding the proper interpretation of First Amendment jurisprudence and is mandated to apply a certain interpretation of the South Carolina Supreme Court's prior decision in *All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 685 S.E.2d 163 (2009) (hereinafter, "*All Saints*"). (Dkt. No. 625 at 15 – 16, 20 – 21.) The Court, however, will not assess whether each Justice properly applied *All Saints* to their own decision, and instead is bound by the actual ruling articulated by the South Carolina Supreme Court majority which, as explained above, conclusively reversed the trial court on all holdings or findings related to trademarks, leaving the issue to this Court, and held that the TECSC is the successor to the Historic Diocese. This is the plain reading of Chief Justice Beatty's opinion, the narrowest ruling, which therefore controls. *See Weil v. Weil*, 299 S.C. 84, 90, 382 S.E.2d 471, 474 (Ct. App. 1989) ("[I]f the language employed is plain and unambiguous, there is no room for construction or interpretation, and the effect thereof must be declared in the light of the literal meaning of the language used.") (citations omitted); *State v. Harrison*, 402 S.C. 288, 298, 741 S.E.2d 727, 732 (2013) ("The controlling position is the one 'taken by those Members who concurred in the judgments on the narrowest grounds.'") *citing Marks v. United States*, 430 U.S. 188 (1977).

⁸ Defendants additionally argue that the ruling of the South Carolina Supreme Court did not resolve these issues since the Court split two to two on granting a petition for rehearing. However, while the vote to grant the petition for rehearing was split, the petition itself was denied by all four members of the South Carolina Supreme Court as the petition failed to receive a majority. (Order on Petition for Rehearing, Dkt. No. 647-1.) The Order on the petition for rehearing therefore has no effect on the finality of the South Carolina Supreme Court's ruling.

Regardless, it is clear that the South Carolina Supreme Court held that the “neutral principles of law approach,” articulated in *All Saints*, applies to the state law issues: the justices merely disagreed on the correct outcome based on the application of the *All Saints* rule.⁹ The Court therefore is bound by the Justices’ actual holding on the ultimate issues, and will not parse, as the Defendants suggest, whether each Justice properly applied *All Saints*.

Having ruled on the relevance of *Protestant Episcopal Church*, the Court turns to the claims at issue here.

B. Continuation of the Historic Diocese

A core issue related to ownership of the marks is whether TECSC or the Disassociated Diocese is the lawful successor of the Historic Diocese for purposes of trademark ownership, as length of use and prior use of marks is relevant to the determination of trademark rights.

At the outset, as held above, it is settled by a majority of the South Carolina Supreme Court that TECSC is the lawful successor to the Historic Diocese. *Protestant Episcopal Church*, 421 S.C. at 229, 231, 232, 234, 251 n.29. This issue has already been litigated, directly determined and necessary to support a judgment, and therefore Defendants are collaterally estopped from relitigating this issue. Therefore, for legal purposes of intellectual property, Plaintiff TECSC is the successor to the historic Diocese.

Furthermore, this Court independently holds that TECSC is the lawful successor of the Historic Diocese since this Court is mandated to accept as binding the decision of the highest

⁹ Two justices, Pleicones and Hearn, would have overruled *All Saints* only as to its specific holding regarding the efficacy of the Dennis Canon, but otherwise applied *All Saints*’ legal framework. *Protestant Episcopal Church*, 421 S.C. at 223. (“I would now overrule *All Saints* to the extent it held the Dennis Canon and the 1987 amendment to the Lower Diocese’s Constitution were ineffective in creating trusts over property....”). Nevertheless, all justices applied *All Saints*’ “neutral principles” approach, though they disagreed over its proper application. *Id.* at 220, 236, 249, 251, 277.

ecclesiastical body in a hierarchical religious organization. TEC is a hierarchical church. Plaintiffs have submitted un rebutted evidence that TEC is a three-tiered, hierarchical church composed of the “Church’s General Convention at the topmost tier, regional dioceses in the middle tier” and congregations on the bottom tier.¹⁰ (Dkt. No. 595-2 at ¶ 3.) This matter is not for dispute, and every other court to assess the issue, including the Fourth Circuit, has determined that TEC is hierarchal.¹¹ See *Dixon v. Edwards*, 290 F.3d 699, 716 (4th Cir. 2002) (“the Canons of the Episcopal Church clearly establish that it is a hierarchy.”); *Dixon v. Edwards*, 172 F. Supp. 2d 702, 715 (D. Md. 2001), *aff’d and remanded*, 290 F.3d 699 (4th Cir. 2002) (“Courts have repeatedly and invariably recognized that the Church is hierarchical. Indeed, there appears to be no case to the contrary and Defendants have noted none.”) (collecting cases); *Hiles v. Episcopal Diocese of Massachusetts*, 51 Mass. App. Ct. 220, 227, 744 N.E.2d 1116, 1121 (2001), *rev’d in part on other grounds*, 437 Mass. 505, 773 N.E.2d 929 (2002) (“It is undisputed that the Episcopal Church is hierarchical in structure; ‘there are no judicial holdings to the contrary.’”); *Par. of St. Paul’s Episcopal Church v. Episcopal Diocese of Connecticut Donations & Bequests for Church Purposes, Inc.*, No. 3:05CV1505 (JBA), 2006 WL 8448063, at *7 (D. Conn. Aug. 21, 2006) (“the Episcopal Church has been held to be a hierarchical religious denomination.”).

Therefore, since TEC is hierarchical, “[i]t is axiomatic that the civil courts lack any authority to resolve disputes arising under religious law and polity, and they must defer to the highest ecclesiastical tribunal within a hierarchical church applying its religious law.” *Dixon*, 290 F.3d at 714 citing *Serbian E. Orthodox Diocese for the United States & Canada v. Milivojevich*,

¹⁰ Defendants do not rebut this evidence, and instead assert that “whether TEC is a hierarchy is not relevant.” (Dkt. No. 625 at 21.)

¹¹ The Court notes that a majority of the South Carolina Supreme Court also determined that TEC is a hierarchical church. See *Protestant Episcopal Church*, 421 S.C. at 229, 233, 248. Collateral estoppel therefore applies to this issue as well.

426 U.S. 696, 709, 96 S.Ct. 2372 (1976). *See also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 185, 132 S. Ct. 694, 704 (2012) (“Our decisions in that area confirm that it is impermissible for the government to contradict a church’s determination of who can act as its ministers.”). The issue of the leader of the Historic Diocese is therefore left to the determination of TEC. *See Dixon*, 290 F.3d at 718 (“In the final analysis, it was for the Episcopal Church to determine whether Bishop Dixon was acting within the bounds of her role as Bishop Pro Tempore of the Diocese of Washington.”). The Court thus defers to TEC’s removal of Bishop Lawrence in 2012 and installation of Bishop vonRosenberg as head of the Historic Diocese. (Dkt. No. 6-16 at ¶¶ 12 – 15.) Anything less would ask this Court to become involved with the question of who is the proper religious leader of a diocese, something that would necessitate impermissible entangling with a religious controversy. *See Serbian E. Orthodox Diocese*, 426 U.S. at 709 (“To permit civil courts to probe deeply enough into the allocation of power within a[]hierarchical[] church so as to decide . . . religious law (governing church polity) . . . would violate the First Amendment in much the same manner as civil determination of religious doctrine.”).

In sum, this dispute, regarding church polity and administration of TEC’s administrative structure is precisely the type of case in which the Court must defer to a religious institutions’ highest ecclesiastical tribunal, which here removed Defendant Lawrence as the head of the Historic Diocese. Therefore, it was for TEC to determine which Bishop was leading the Historic Diocese and the Court is mandated to defer to TEC’s designation of Bishop vonRosenberg, and later Provisional Bishop Adams, as the head of the Historic Diocese, and thus the TECSC as the successor to the Historic Diocese.

Finally, Defendants argue that the Court is bound to apply South Carolina substantive law as the rule of decision on “state substantive law” here. (Dkt. No. 625 at 15.) The South Carolina

Supreme Court, in *All Saints Par. Waccamaw v. Protestant Episcopal Church in Diocese of S.C.*, 385 S.C. 428, 442, 685 S.E.2d 163, 171 (2009), held that “South Carolina courts are to apply the neutral principles of law approach....” However, even though South Carolina courts are required to apply the neutral principles of law to state claims, with the exception of the state trademark cause of action brought by the TECSC, this Court is asked to rule on claims arising under federal law, namely, the Lanham Act. Therefore, as the Court is asked to rule on federal law, it is axiomatic that the Court must apply federal law. See *Gorby v. Weiner*, No. CIV.A. TDC-13-3276, 2014 WL 4825962, at *4 (D. Md. Sept. 23, 2014) (“In regard to the federal causes of action—the Lanham Act claims—this Court applies federal law as interpreted by the Fourth Circuit.”); *Simone v. VSL Pharm., Inc.*, No. CV TDC-15-1356, 2017 WL 66323, at *2 (D. Md. Jan. 5, 2017) (“On VSL’s federal Lanham Act claims, this Court applies federal law as interpreted by the United States Court of Appeals for the Fourth Circuit.”).

Indeed, the Supreme Court in *Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020 (1979), recognized that “a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute.” *Id.* at 604 (emphasis added). Here, this Court is not determining a state law property dispute, but instead is asked to determine the lawful leader and successor of the Historic Diocese, which is an issue of church polity and administration intertwined with the appointment of a new bishop.¹² Therefore, as stated above, this Court must defer to TEC’s

¹² The Eleventh Circuit made clear the line between the applicability of *Jones* and *Serbian Eastern Orthodox*, explaining the while *Jones* was concerned with resolving “disputes concerning ownership rights to property,” *Serbian Eastern Orthodox* articulated “the principle of deference to decisions of church authorities applies to disputes concerning matters of internal church governance.” *Crowder v. S. Baptist Convention*, 828 F.2d 718, 724 – 25 (11th Cir. 1987). Here, in the first instance, the issue of the continuation of the Historic Diocese is a matter of internal church governance and therefore the Court defers to TEC’s determination. By contrast, when actually applying the Lanham Act rather than this preliminary issue of church governance, the Court applies the neutral principles that always govern trademark claims. See *Maktab Tarighe*

acceptance of Bishops vonRosenberg and Adams, and thus TECSC, as the lawful successor of the Historic Diocese.

C. TEC's Claims for Trademark Infringement

As Plaintiffs TEC and TECSC claim ownership of different marks, the Court assesses each separately. As previously mentioned, TEC claims ownership of five marks. TEC alleges that, while Defendants do not use any of these marks precisely, Defendants are engaging in trademark infringement by using substantially similar marks, such as "The Protestant Episcopal Church in the Diocese of South Carolina," "The Episcopal Diocese of South Carolina," and various institutional names that incorporate "The Episcopal Church" or a variation of the mark. (Dkt. Nos. 150 at ¶¶ 27 – 33; 595-1 at 18 – 19.) Defendants argue that TEC cannot make out a claim for trademark infringement and additionally assert that the mark "The Episcopal Church" is generic. (Dkt. Nos. 610, 622, 626, 603, 649, 650.)

As the Fourth Circuit has explained, to establish trademark infringement a plaintiff must prove:

(1) that it owns a valid mark; (2) that the defendant used the mark 'in commerce' and without plaintiff's authorization; (3) that the defendant used the mark (or an imitation of it) 'in connection with the sale, offering for sale, distribution, or advertising' of goods or services; and (4) that the defendant's use of the mark is likely to confuse customers.

Rosetta Stone, Ltd. v. Google, Inc., 676 F.3d 144, 152 (4th Cir. 2012); *see also* 15 U.S.C. § 1114(1)(a). As explained below, since there are no disputes of material facts regarding all four

Oveyssi Shah Maghsoudi, Inc. v. Kianfar, 179 F.3d 1244, 1249 (9th Cir. 1999) ("[plaintiffs] seek various forms of relief for trademark infringement and false designation of origin, under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a). We have previously applied neutral principles of trademark infringement in disputes between religious organizations.")

elements and Defendants have not demonstrated that “The Episcopal Church” is generic, the Court grants summary judgment to TEC on its claim for trademark infringement.

1. Ownership of the Marks

There is no dispute that TEC owns five trademarks:

- “The Protestant Episcopal Church in the United States”;
- “The Episcopal Church”;
- “The Episcopal Church Welcomes You”;
- “La Iglesia Episcopal,” and;
- The Episcopal Shield.

Each is federally registered with the United States Patent and Trademark Office. (Dkt. No. 595-5 – 595-12; 595-64 – 595-69.) Further, all five marks have since reached incontestable status and have declarations of incontestability filed. (*Id.*)

Where an affidavit is filed after a mark has been “in continuous use for five consecutive years,” without an adverse decision or pending proceedings, a mark achieves incontestable status. 15 U.S.C. § 1065. There is no dispute, and Defendants have presented no evidence to the contrary that TEC has used its marks for over five consecutive years, having registered the marks in 2007, there are no adverse final decisions, no pending proceedings regarding ownership of the marks, and TEC filed declarations of incontestability as to all five marks. (Dkt. No. 595-5 – 595-12; 595-64 – 595-69.) Where a registered trademark becomes incontestable, “the rebuttable presumption that a registered mark has acquired secondary meaning becomes ‘conclusive evidence of the registrant’s exclusive right to use the registered mark’ subject to a number of affirmative defenses enumerated in the Lanham Act.” *Retail Servs., Inc. v. Freebies Publ’g*, 364 F.3d 535, 548 (4th Cir. 2004) (citations omitted) *abrogation on other grounds recognized by Verisign, Inc. v.*

XYZ.COM LLC, 891 F.3d 481, 488 (4th Cir. 2018) (recognizing abrogation *Retail Servs.* on issue of availability of attorneys' fees). TEC's marks have therefore reached incontestable status.

Defendants, instead, raise a variety of defenses they contend defeat the incontestable status of the marks. Defendants argue that "The Episcopal Church" name is generic and therefore not subject to trademark protections, TEC cannot demonstrate prior use, and that, regardless, TEC's marks have not acquired secondary meaning. (Dkt. Nos. 603 at 22 – 27, 610, 626 at 13 – 35, 650 at 7 – 10.) However, for the reasons set forth below, Defendants have created no dispute of material fact on any of these arguments, and the Court holds that TEC owns five valid and legally enforceable marks registered with the USPTO.

a. Genericness of "The Episcopal Church"

Defendants argue that the registered mark "The Episcopal Church" is a generic name, and therefore is not entitled to any trademark protection. (Dkt. Nos. 610, 626 at 15 – 31.) "Under the Lanham Act, the issuance of a certificate of registration arms the registrant with 'prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark.'" *Retail Servs., Inc.*, 364 F.3d at 542 *citing* 15 U.S.C. § 1057(b). "Because the PTO may not register a generic mark, the fact that a mark is registered is strong evidence that the mark satisfies the statutory requirements for the distinctiveness necessary for trademark protection." *Id.* Five years of continuous use of a registered mark renders a mark incontestable, and the registration becomes "conclusive evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce." 15 U.S.C. § 1065; 15 U.S.C. § 1115(b). However, even an incontestable mark is subject to cancellation for certain enumerated reasons, such as if the mark is functional, abandoned, was obtained fraudulently, or if the registered mark "becomes the generic name for

the goods or services.” 15 U.S.C. § 1064(3). This is because, “a generic word can never function as a trademark or receive a certificate of registration as one,” and therefore, “[e]ven an incontestable mark...comes within the reach of § 1064(3) and may be canceled if it becomes generic.” *Retail Servs., Inc.*, 364 F.3d at 548.¹³

Defendants, as the party seeking to establish that “The Episcopal Church” has become generic, must: “(1) identify the class of product...to which use of the mark is relevant; (2) identify the relevant purchasing public of the class of product...; and (3) prove that the primary significance of the mark to the relevant public is to identify the class of product...to which the mark relates.” *Glover v. Ampak, Inc.*, 74 F.3d 57, 59 (4th Cir. 1996). The party challenging that a registered mark is generic bears the burden of producing “sufficient evidence to establish that the mark is generic by a preponderance of evidence.” *Retail Servs., Inc.*, 364 F.3d at 542. This burden-shifting is “one of production rather than persuasion,” and therefore, if “sufficient evidence of genericness is produced to rebut the presumption, the presumption is ‘neutralize[d]’ and essentially drops from the case, although the evidence giving rise to the presumption remains.” *Id.* at 543 (citations omitted). Evidence of genericness may include: “purchaser testimony, consumer surveys, listings and dictionaries, trade journals, newspapers, and other publications.” *Glover*, 74 F.3d at 59.

Defendants make two overall arguments regarding the genericness of “The Episcopal Church.” First, that “The Episcopal Church” was generic *ab initio*, or from the beginning of the use of the term, and therefore cannot be trademarked. Second, Defendants argue that, even if “The Episcopal Church” was not generic from the beginning, the mark “The Episcopal Church” is generic today. However, under either theory, “The Episcopal Church” is not generic.

¹³ While § 1064 discusses a petition to cancel a registration before the USPTO, 15 U.S.C. § 1119 permits a court to determine the right to registration, including cancellation, in civil actions.

Assuming, without deciding, that an incontestable mark can be generic *ab initio*, Defendants have failed to identify any evidence creating a dispute of material fact that “The Episcopal Church” is generic under the relevant standard for assessing genericness, either at the time of TEC’s creation or now. It is well-settled that a religious organization is entitled to the same protection of the federal trademark laws under the same principles applied to other businesses. *See Purcell v. Summers*, 145 F.2d 979, 985 (4th Cir. 1944). Here, the relevant class of the product is religion,¹⁴ and the question then is whether “The Episcopal Church” identifies a specific religion’s service to the consuming public or whether it “signifies the source of goods” or “distinguishes the particular product from other products on the market.” *George & Co. LLC v. Imagination Entm’t Ltd.*, 575 F.3d 383, 394 (4th Cir. 2009). While the Fourth Circuit has yet to opine on drawing this line for religious services, multiple courts of appeal addressing the same question have held that a mark for a religious organization is generic where it names a religion but is descriptive where it properly differentiates a specific denominational organization offering religious services. *See TE-TA-MA Truth Found.--Family of URI, Inc. v. World Church of Creator*, 297 F.3d 662, 666 (7th Cir. 2002) (“A mark is ‘generic’ when it has become the name of a product (e.g., ‘sandwich’ for meat between slices of bread) or class of products (thus ‘church’ is generic)” but finding mark not generic where “[i]t does not name the class of monotheistic religions[, as] [i]n the contemporary United States, variations on ‘Church of [Deity]’ are used to differentiate individual denominations, not to denote the class of all religions.”); *Jews For Jesus v. Brodsky*,

¹⁴ This is confirmed by both the registration of the marks, which, among other classes, registered the mark for “religious services,” (Dkt. Nos. 595-5; 595-7), and courts of appeals’ decisions which assess whether a term refers to a “particular faith.” *See Glover*, 74 F.3d at 59 (“The relevant class of goods and services may be that identified in the mark’s certificate of registration.”); *Gen. Conference Corp. of Seventh-Day Adventists v. McGill*, 617 F.3d 402, 412 (6th Cir. 2010) (“well-known terms that society understands to refer to a particular faith in general are generic, and no single party can prevent others from using them.”) (collecting cases).

993 F. Supp. 282, 297 (D.N.J.), *aff'd*, 159 F.3d 1351 (3d Cir. 1998) (“although the Plaintiff Organization sometimes refers to its members as ‘Jews’ who are ‘for Jesus,’ during the past twenty-four years the Plaintiff Organization has consistently used the phrase ‘Jews for Jesus’ to refer to the organization itself.”); *Gen. Conference Corp. of Seventh-Day Adventists v. McGill*, 617 F.3d 402, 413 (6th Cir. 2010) (“It would be inappropriate to conclude as a matter of law... that the public considers ‘Seventh-day Adventist’ to refer generically to a religion.”); *Cnty. of Christ Copyright Corp. v. Devon Park Restoration Branch of Jesus Christ's Church*, 634 F.3d 1005, 1011 (8th Cir. 2011) (finding mark not generic where defendant could not demonstrate that “registered marks have become generic because they identify religion, not COC as an institution.”).

Defendants’ cited cases are not to the contrary. The Supreme Court of New Jersey, in *Christian Sci. Bd. of Directors of First Church of Christ, Scientist v. Evans*, 105 N.J. 297, 520 A.2d 1347 (1987), found the name “Christian Science Church” generic as it was “the common name of a religion” founded by Mary Baker Eddy and held that a plaintiff has “no right to a monopoly of the name of a religion.” *Id.* at 306, 313. Defendants also point to *Universal Church, Inc. v. Universal Life Church/ULC Monastery*, No. 14 CIV. 5213 (NRB), 2017 WL 3669625, at *10 (S.D.N.Y. Aug. 8, 2017), *aff’d sub nom. Universal Church, Inc. v. Toellner*, 752 F. App’x 67 (2d Cir. 2018), which found “Universal Church” to be generic. Defendants focus on *Universal Church*’s statement that “universal church” was generic as it referred a “type of church rather than [the] plaintiff,” and the court further noted that “[t]he fact that ‘Universal’ does not name a religion is not dispositive.” *Id.* at 9, 9 n.23. However, the undisputed facts in *Universal Church* focused on the same question as every other similar case: the court found evidence that “universal” referred to “the entire Christian Church or all Christians collectively.” *Id.* at *7. The Second Circuit

reiterated this important evidence on appeal, finding that a universal church was “[d]esignating the whole Christian Church or all Christians collectively.” *Universal Church, Inc. v. Toellner*, 752 F. App’x 67, 69 (2d Cir. 2018). The court in *Universal Church* even acknowledged that “The Episcopal Church” is a mark “far more distinctive than ‘Universal Church.’” *Id.* at 10, 10 n.25. To say the least, as the court found evidence that the name “Universal Church” referred to the entirety of Christianity, the generic name at issue in *Universal Church* denoted an entire religion.

By contrast, Defendants here have introduced no evidence indicating that “The Episcopal Church” refers to a whole religion rather than a specific recognized denominational organization. To begin with, the undisputed record evidence presented by Defendants’ experts indicates that the terms “episcopal” or “episcopal church” were used as descriptive terms, rather than the generic name of a religion, to “describe churches who either were current or former parishes in the Church of England” (Dkt No. 609-6 at 4) (emphasis added), and was used by “North American Anglicans” who were “dissevered from their mother church in the aftermath of the American Revolution....” (Dkt. No. 609-7 at 2.) While the use of “episcopal” in the name of certain parishes and churches predated the creation of the TEC, the undisputed evidence nonetheless demonstrates that the “adjectives ‘Episcopal’ and ‘Episcopalian’ were in use in South Carolina as *descriptive* terms” after churches “lost their relationship as local parishes to the Church of England....” (Dkt. No. 609-6 at 5 – 6) (emphasis added).¹⁵

Defendants also focus on the individual words making up the term “The Episcopal Church” rather than the mark as an entirety. Defendants reiterate that the word episcopal, coming from the

¹⁵ This evidence dating back to before the TEC registered “The Episcopal Church” as a trademark indicates that, even if a mark could be cancelled as generic *ab initio*, “The Episcopal Church” was not generic when first used and therefore, as an undisputed factual matter, the mark was not generic *ab initio*.

Greek *episkopos*, denotes an organization with a “spiritual governance,” almost always by a council of bishops. (Dkt. No. 609-8 at 3.) Defendants sole focus on “episcopal,” however, is misguided, and instead “courts should not parse terms to determine that they are made up of generic components.” *Hunt Masters, Inc. v. Landry’s Seafood Rest., Inc.*, 240 F.3d 251, 254 (4th Cir. 2001). The Court is permitted to review the meaning of individual words, yet it is still mandated to look at the “mark as a whole” to determine whether it is generic. *Id.* The meaning of “The Episcopal Church,” as a whole does not refer to churches run by bishops in general, and instead, as demonstrated by Defendants’ experts and Defendants’ briefing, is a descriptive term for a United States-based organization of churches that are aligned with the Anglican communion.¹⁶ (Dkt. No. 626 at 22, 24.) The term is therefore descriptive, and not generic.

Defendants further point to the survey conducted by their expert Hal Poret. However, in addition to the Court ruling the survey inadmissible (Dkt. No. 665), even if it was admitted the survey is unhelpful in demonstrating genericness. The survey juxtaposes a “trademark name,”

¹⁶ Defendants repeated refrain that an “episcopal” church is merely one governed by bishops does not mandate that “The Episcopal Church” is generic or that Defendants will be prevented from accurately describing themselves. Though it should not need saying, the holding here does not provide protection solely for the word “episcopal.” As the Fourth Circuit recognized decades ago:

It is said that the words ‘Methodist’ and ‘Episcopal’ are generic terms and that defendants have the right to use them for that reason, but defendants are not proposing to use either of these words in a new name so different from the old that no confusion could result. They are using the precise name of the old church; and the question is, not whether they have the right to use ‘Methodist’ or ‘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.

Purcell, 145 F.2d at 988. The finding that “The Episcopal Church” is not generic does not affect an organization’s rights to use the word “episcopal” in a name sufficiently distinct to avoid confusion with TEC’s marks, as many other denominations have done, they merely do not have the right to use TEC’s names or imitations of them in a way that misrepresents their affiliation.

defined as used by “one organization, or by branches of that organization,” and a “category name” which “is a name that identifies a category that *can* include various organizations that are not affiliated with each other” and “*can* be used by more than one organization to identify what *type* of organization they are.” (Dkt. No. 609-1) (emphasis added). In addition to these questions leading to incredibly close results, with 43.7% stating that “The Episcopal Church” is a trademark and 55.3% stating it to be a “category,” the survey fails to ask the relevant question for genericness. (*Id.* at 18.) The survey does not identify whether the “The Episcopal Church” is perceived as a religion, as would be relevant to determining whether TEC’s mark, as a denominational organization, is generic.¹⁷

Furthermore, as an independent reason for finding the survey flawed and irrelevant, Poret’s survey permits a respondent to identify the mark as a “category” if the mark refers to a “*type* of organization,” which the survey states “*can*” be, but is not necessarily, used by organizations that are not affiliated with each other. (Dkt. No. 609-1 at 8.) Disturbingly, the “*can*” in that sentence would permit the opposite to be true as well: a respondent could choose “category” if the mark refers to a “type of organization” that *is* affiliated with another organization. This question thus permits a respondent to respond “category” even if they perceived “The Episcopal Church” to be a descriptive term for the type of church that is part of the Anglican communion and affiliated with TEC. Poret’s survey therefore is irrelevant.

¹⁷ This is not to say that the name of a church cannot be generic unless it is the name of a religion. See *Universal Church, Inc. v. Universal Life Church/ULC Monastery*, No. 14 CIV. 5213 (NRB), 2017 WL 3669625, at *9 (S.D.N.Y. Aug. 8, 2017), *aff’d sub nom. Universal Church, Inc. v. Toellner*, 752 F. App’x 67 (2d Cir. 2018) (“For example, ‘Spanish church’ would surely be generic as describing a category of Spanish-language churches, even though there is no denomination known as the ‘Spanish Church.’”). However, when assessing the name of a denominational organization, as explained in this Order and multiple other decisions, the correct class of product is a religion and the court must assess whether a mark names a religion such that other religious organizations would be prevented from describing themselves.

Additionally, trademark protection for a generic term would make it “difficult for competitors to market their own brands of the same product. Imagine being forbidden to describe a Chevrolet as a ‘car’ or an ‘automobile’ because Ford or Chrysler or Volvo had trademarked these generic words.” *Retail Servs., Inc.*, 364 F.3d at 538. For this reason, courts have also looked at whether an organizational religious name identifies a religion so to “leave so few alternatives so as to monopolize the concept and debilitate potential competitors.” *Jews For Jesus v. Brodsky*, 993 F. Supp. 282, 297 (D.N.J.), *aff’d*, 159 F.3d 1351 (3d Cir. 1998). *See also TE-TA-MA Truth Found.--Family of URI, Inc.*, 297 F.3d at 666 (“‘Church of the Creator’ as a denominational name leaves ample options for other sects to distinguish themselves and achieve separate identities. It is not remotely like one firm appropriating the word ‘sandwich’ and thus disabling its rivals from explaining to consumers what’s to eat.”). In this regard, while Defendants point to multiple other denominational organizations which use the word “episcopal” in their name, e.g. the Reformed Episcopal Church; African Methodist Episcopal Church, Christian Methodist Episcopal Church, these names highlight the fact that trademark protection for “The Episcopal Church” does not prevent other denominations from defining themselves and achieving separate identities. (Dkt. No. 610-1 at 20.) These names therefore demonstrate the propriety of finding that “The Episcopal Church” is not generic. *See Jews For Jesus*, 993 F. Supp. at 297 (finding “Jews for Jesus” not generic where “there are several other names that could be used to refer to individuals of Jewish heritage who believe in Jesus, for example, ‘Messianic Jews,’ ‘Hebrew Christians,’ ‘Jews for Christ,’ or ‘Jews for Christianity.’”).¹⁸

¹⁸ To determine the “primary significance” of a mark, courts also review “purchaser testimony, consumer surveys, listings and dictionaries, trade journals, newspapers, and other publications.” *Glover v. Ampak, Inc.*, 74 F.3d 57, 59 (4th Cir. 1996). While, here, as described above, the Court finds there to be no indication that “The Episcopal Church” refers to a religion and therefore is not generic, the Court also reviews the evidence contemplated by *Glover*. As described below, in

The importance of the distinction set out in this order, between a religion and an organizational name for a denomination, cannot be overstated. The United States is a remarkable country home to many denominational organizations with which a person can affiliate and exercise their religion. Yet, as the Fourth Circuit held decades ago:

[W]hile such organizations exist for...worship...and for the purpose of benefiting mankind and not for purposes of profit, they are nevertheless dependent upon the contributions of their members for means to carry on their work, and anything which tends to divert membership or gifts of members from them injures them with respect to their financial condition in the same way that a business corporation is injured by diversion of trade or custom.

Purcell, 145 F.2d at 985. Defendants' argument, seeking to declare generic "The Episcopal Church" as a "type" of church, would jeopardize the trademark rights, and thus the commercial existence, not only of the Plaintiffs here, but of many denominational religious organizations, even where they have operated for decades or centuries as a specific organization offering specific services among the class of religions.¹⁹ Indeed, it is unclear whether any organization name chosen

discussing the strength of the mark, purchaser testimony, including the testimony of multiple 30(b)(6) witnesses for the Disassociated Parishes, confirmed that "The Episcopal Church" refers to TEC, encyclopedia listings demonstrated that "The Episcopal Church" has been used to refer to TEC and an overwhelming number of newspaper articles indicate that "The Episcopal Church" refers to TEC. (See Dkt. Nos. 595-1 at 41 – 47.)

¹⁹ Multiple courts have recognized organization names that would be put in jeopardy if Defendants' definition of "generic" was adopted. See *TE-TA-MA Truth Found.--Family of URI, Inc. v. World Church of Creator*, 297 F.3d 662, 666 (7th Cir. 2002) ("Church of God; Church of God (Anderson, Indiana); First Church of God; Worldwide Church of God...; Church of God in Christ; Assembly of God; Korean Assembly of God; Church of the Nazarene; Church of Christ; United Church of Christ; Disciples of Christ; Church of Christ, Scientist; Church of Jesus Christ of Latter Day Saints.") (citations omitted); *Universal Church, Inc. v. Universal Life Church/ULC Monastery*, No. 14 CIV. 5213 (NRB), 2017 WL 3669625, at *10 (S.D.N.Y. Aug. 8, 2017), *aff'd sub nom. Universal Church, Inc. v. Toellner*, 752 F. App'x 67 (2d Cir. 2018) (noting that the following names are "far more distinctive" than "Universal Church," "Church of Religion of God, Divine Church of God, The World's Church of the Living God, Church of God Ministry of Jesus Christ, The United States Church, The Lord of the Universe Church, The Church of Good Karma, Church of God in Christ, Living Church of God, True Jesus Church, Church of the King, Christ's Sanctified Holy Church, The Episcopal Church, New Apostolic Church, and United Church of God and Worldwide Church of God.").

by the Defendants could maintain a trademark under their own proposed genericness test which seeks to parse individual words in a denomination's name and ask whether the denominational organization is a "type" of church. There is therefore no dispute of material fact that "The Episcopal Church" is not generic.

b. Priority of Rights

Defendants next argue that TEC cannot demonstrate prior use as to the claimed marks, and therefore may not enforce its trademark rights against the Defendants. (Dkt. 626 at 32; 603 at 22.) In general, "the party claiming ownership of a mark must be the first to use the mark in the sale of goods." *George & Co. LLC*, 575 F.3d at 400. While prior use is not a ground to cancel a registered trademark that has reached incontestable status under the Lanham Act,²⁰ Defendants are correct that the Lanham Act permits a defense from a claim for trademark infringement on even an incontestable mark where the defendant was the prior user.

Under 15 U.S.C. § 1065, an incontestable mark does not act as a bar to "a valid right acquired under the law of any State or Territory by use of a mark or trade name *continuing from a date prior to the date of registration* under this chapter of such registered mark...." *Id.* (emphasis added). Relatedly, 15 U.S.C. § 1115 provides a defense to an alleged infringer where the mark "was adopted without knowledge of the registrant's prior use *and* has been continuously used by such party or those in privity with him from a date prior to" either the date of constructive use, the registration (depending on the date of filing), or publication of the registered mark. 15 U.S.C. § 1115(5). The Fourth Circuit has recognized such as defense to trademark infringement, even where a mark is incontestable. *See Armand's Subway, Inc. v. Doctor's Assocs., Inc.*, 604 F.2d 849,

²⁰ *See Am. Cruise Lines, Inc. v. HMS Am. Queen Steamboat Co. LLC*, 223 F. Supp. 3d 207, 213 (D. Del. 2016) (holding that incontestable mark cannot be cancelled based on prior use).

850 (4th Cir. 1979) (“Registration does not become incontestable with respect to a party whose prior use within a particular area dates from a time prior to publication of registrant’s mark pursuant to the Lanham Act.”).

However, while Defendants are correct on the law, they have not presented any record evidence indicating prior use, either nationwide or in South Carolina. As explained above, TECSC is the continuation of the Historic Diocese in determining trademark ownership. Therefore, while the Disassociated Diocese argues that its use dates back to 1785, (*See* Dkt. Nos. 603 at 23, 609-7 at 15; 626 at 33), this prior use is not the Defendants’ to claim. Therefore, while Defendants claim that the undisputed evidence indicates that TEC did not exist until, at the earliest, October 1789, after the first use of the phrase “Protestant Episcopal Church” in South Carolina in 1785, the Disassociated Diocese cannot demonstrate prior use as it was not the organization using those marks in 1785. The marks belong to the successor of the Historic Diocese, TECSC, and therefore the Disassociated Diocese cannot rely on that alleged prior use as a defense under 15 U.S.C. § 1115 as it was neither the prior user nor in privity with the prior user.

Furthermore, even if the Disassociated Diocese could demonstrate prior use as the successor of the Historic Diocese (which it cannot), its arguments would still be foreclosed under the merger doctrine. As held by the Fourth Circuit, “[w]here a name, not merely generic or descriptive is adopted by an order, there is no reason why seceding members should be allowed to use it. Such use by seceding members, over whom the order has no further control, has obviously every element of unfairness that would arise from use by strangers.” *Grand Lodge Improved, B.P.O.E. of the World, v. Eureka Lodge No. 5, Indep. Elks*, 114 F.2d 46, 48 (4th Cir. 1940). *See also Nat’l Bd. of Young Women’s Christian Ass’n of U.S. A. v. Young Women’s Christian Ass’n of Charleston, S. C.*, 335 F. Supp. 615, 621 (D.S.C. 1971) (“In this connection, a religious, benevolent

or fraternal organization is entitled to protect the use of its name against those who secede.”). As explained by the Fourth Circuit, this rule applies even where the schismatic group used the mark prior to joining a plaintiff’s organization. *See Grand Lodge Improved*, 114 F.2d at 48 (“plaintiff order was organized a number of years before it was incorporated, and unquestionably granted a charter to [Defendant] Eureka Lodge in the year 1899 under which that lodge operated until the relationship was severed in 1939. *Any separate existence which Eureka Lodge may have had prior to 1899 was merged with that of plaintiff on acceptance of the charter.*”) (emphasis added).

It is undisputed that the Historic Diocese joined TEC upon its founding in 1789. (595-3 at 14, 17 – 19, 24 – 26; 603 at 17.) Furthermore, Defendant’s record historical evidence, from their expert Dr. Jeremy Bonner, confirms that the Historic Diocese continuously acceded to the Constitution and Canons of TEC since at least 1841. (Dkt. No. 609-7 at 23, “The Diocese of South Carolina was a founding Diocese of PECUSA,” *Id.*, “[t]here was no explicit acknowledgement of diocesan accession to the PECUSA Constitution and Canons until 1841”; 609-7 at 24, “[a]t South Carolina’s Diocesan Convention of 1790, ‘the General Constitution and Canons [of PECUS] being read, were unanimously agreed to....’”) (emphasis in original). Dr. Bonner disagrees about the nature of the associations, and particularly the ability to disassociate, but there is no dispute that the Historic Diocese acceded to TEC’s Constitutions and Canons. Therefore, even had the Disassociated Diocese demonstrated that it was the continuation of the Historic Diocese for purposes of trademark rights (which, as explained above, it is not), it would be prohibited from using TEC’s marks under the doctrine of merger as “any separate existence which [the Historic Diocese] had” it lost upon joining the national church. *See Grand Lodge Improved*, 114 F.2d at 48.

Defendants make two arguments against the application of the merger doctrine here. First, Defendants argue that merger only applies where the seceding group was a licensee of the marks, not merely a group that joined a national organization. However, courts in the Fourth Circuit do not require that the merger include a license agreement. In a similar case involving the YMCA, a court in this district found the merger doctrine applicable where a seceding group had used the marks prior to ratifying the plaintiff's constitution, as the Historic Diocese undisputedly did here. *See Nat'l Council of Young Men's Christian Associations of U.S. v. Columbia Young Men's Christian Ass'n of Columbia, SC*, No. CIV.A. 3:86-3304-16, 1988 WL 144985, at *4 (D.S.C. Aug. 2, 1988) ("the Court agrees that the defendant should not be permitted to assert a defense of prior use based on its use of the plaintiff's name or marks before it ratified the plaintiff's constitution and became a charter member of the national organization."). Similarly, in *Grand Lodge Improved*, the agreement between the Parties was a fraternal order that granted a "charter" to the lodge that would ultimately secede. 114 F.2d at 48. Therefore, some form of agreement is certainly necessary, as existed here by the Historic Diocese's accession to TEC's Constitution and Canons, a formal licensing agreement, however, is not.²¹ *See Id.* at *5 (applying merger doctrine based on ratification of constitution and declining to rely on plaintiff's arguments regarding

²¹ Defendants point to *N.A.A.C.P. v. N.A.A.C.P. Legal Def. & Educ. Fund, Inc.*, 753 F.2d 131 (D.C. Cir. 1985), where the court held that the lack of a licensing agreement did not permit the national organization to sue to prohibit use of a mark, "NAACP," twenty-five years after the affiliation ceased. The court was concerned that any contrary rule would lead to the unjust result that "an affiliate's right to use the parent's name [would] cease[] anytime the parent choose." *Id.* at 140. Instead, the court did not apply the merger doctrine and held that "[a] revocable license cannot be contrived from the record." Here, the same issue does not exist as this case was filed in 2013, only one year after the Disassociated Diocese left the TEC. Additionally, the court in *N.A.A.C.P.* recognized that *Grand Lodge Improved* and *Nat'l Bd. of Young Women's Christian Ass'n* established an "affiliate's right [to use the parent's name] expires *when the affiliation ceases*." *Id.* at 140 (emphasis in original). Here, the affiliation has ceased, therefore the right to use TEC's marks, and substantially similar marks, does as well.

licensing agreement). The concern, instead, as expressed by the Fourth Circuit, is that a former-affiliates' use of a mark, after they previously agreed to be part of a parent organization, "amounts to a fraud upon the order and upon the public...." *Grand Lodge Improved*, 114 F.2d at 48.

Defendants additionally argue that the merger doctrine does not apply to marks that are "merely generic or descriptive," citing to *Grand Lodge Improved*, 114 F.2d at 48. (Dkt. No. 650 at 9 – 10.) Defendants are correct, as terms that are "merely generic" or "merely descriptive" are not protectable as a trademark. However, where a mark has achieved incontestable status, as TEC's marks have here, the mark is presumed to have secondary meaning, and therefore is no longer "merely" descriptive. *See Retail Servs., Inc.*, 364 F.3d at 548 ("The validity of the same registered mark, after qualifying for incontestable status, is conclusively presumed and may not be challenged as merely descriptive."). The merger rule therefore is applicable here.

Therefore, there is no dispute of material fact that the Defendants are not entitled to use the marks owned by TEC, or imitations of those marks, based on prior use.

c. Secondary Meaning

Defendants next argue that the marks are descriptive and lack secondary meaning. (Dkt. No. 626 at 34.) This argument is misplaced. A mark is only "subject to challenge based on its lack of distinctiveness *until* it acquires incontestable status." *Retail Servs., Inc.*, 364 F.3d at 548. "[A]fter qualifying for incontestable status, [validity] is conclusively presumed and may not be challenged as merely descriptive." *Id.* *See also Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 196, 105 S. Ct. 658, 662 (1985) ("The language of the Lanham Act also refutes any conclusion that an incontestable mark may be challenged as merely descriptive."). Regardless, as explained in discussing the primary significance of the marks, the strength of the marks, and the

fame of the marks, these marks have secondary meaning.²² Defendants therefore may not challenge TEC's marks as merely descriptive and lacking secondary meaning; instead, the marks are presumed to be distinctive.

2. Used in Commerce Without Consent

It is undisputed that the Defendants are using TEC's marks in commerce without its authorization. (Dkt. No. 595-2 at ¶ 10.) Plaintiffs submitted an affidavit attesting that TEC did not give Defendants authorization to use the marks, and Defendants have submitted no evidence that they have authorization to use the marks.²³ (*Id.*) Instead, this lawsuit centers on ownership, protectability and likelihood of confusion related to the marks, and no party claims any authorization for use. Therefore, it is undisputed that Defendants used the marks in commerce without authorization.

3. Mark or Imitation Used to Sell or Advertise Goods or Services

It is undisputed that Defendants used TEC's marks, or imitations of them, in advertising goods and services. As with the second factor above, Defendant does not specifically contest this prong. Defendants acknowledge, in their Answer, that they refer to the Disassociated Diocese as "The Episcopal Diocese of South Carolina" and "The Protestant Episcopal Church in the Diocese of South Carolina," and in addition to other evidence, Plaintiffs submitted evidence that various institutions associated with the Disassociated Diocese use similar terms, such as "The Episcopal Church Home," and that a publication produced by the Disassociated Diocese, *Jubilate Deo*,

²² Defendants' further claim that TEC must demonstrate that their marks had secondary meaning in the relevant market, South Carolina, prior to Defendant's entry into the market. (Dkt. No. 626 at 34 – 35.) However, as held above and by the South Carolina Supreme court, the Plaintiff TECSC is the successor Diocese, and therefore the Disassociated Diocese did not enter the market until 2012, long after it is undisputed that TEC's marks achieved secondary meaning.

²³ Additionally, Plaintiffs submitted undisputed evidence that the marks were used in commerce. (*See, e.g.* Dkt. No. 439 at ¶ 27; 595-7; 595-72; 595-73; 595-94 – 595-95.)

referred to the Disassociated Diocese as the “Episcopal Diocese of South Carolina.” (*See, e.g.* Dkt. No. 439 at ¶ 27; 595-71; 595-72; 595-73; 595-94 – 595-95.) Therefore, as it is undisputed that Defendants use TEC’s marks, or similar imitations of them, in referring to the Disassociated Diocese to the public, there is no dispute of material fact that Defendants used TEC’s marks, or imitations of them, in advertising goods and services.

4. Likelihood of Confusion

There is no material dispute that Defendants’ use of marks substantially similar to TEC’s marks is likely to cause, and has caused, confusion with consumers. The Fourth Circuit has articulated nine factors relevant to determining likelihood of confusion:

(1) the strength or distinctiveness of the plaintiff’s mark as actually used in the marketplace; (2) the similarity of the two marks to consumers; (3) the similarity of the goods or services that the marks identify; (4) the similarity of the facilities used by the markholders; (5) the similarity of advertising used by the markholders; (6) the defendant’s intent; (7) actual confusion; (8) the quality of the defendant’s product; and (9) the sophistication of the consuming public.

Rosetta Stone Ltd., 676 F.3d at 153. The Court considered each of these factors and, as discussed below, determined there is no material dispute regarding likelihood of confusion.

a. Strength and Distinctiveness of Mark

It is undisputed that TEC’s marks are strong. The Court assess this factor first, as “encroachment upon a strong mark is more likely to cause confusion.” *Rosetta Stone Ltd.*, 676 F.3d at 154. There are two steps to determining strength of a mark: first, the “conceptual strength,” and next the “commercial strength.” *See CareFirst of Maryland, Inc. v. First Care, P.C.*, 434 F.3d 263, 269 (4th Cir. 2006).

“A mark’s conceptual strength is determined in part by its placement into one of four categories of distinctiveness: (1) generic; (2) descriptive; (3) suggestive; or (4) arbitrary or fanciful.” *George & Co. LLC*, 575 F.3d at 393–94. As held above, the mark, “The Episcopal

Church,” is not generic, and Defendants present no evidence indicating any other registered mark is generic. Instead, The Episcopal Church’s marks are descriptive, imparting information regarding characteristics of the church. *Id.* at 394. (“Descriptive marks define a particular characteristic of the product in a way that does not require any exercise of the imagination. Examples of descriptive marks include ‘After Tan post-tanning lotion’ and ‘5 Minute glue.’”). There is therefore no dispute that the marks are descriptive.²⁴ Further, the Court presumes secondary meaning, necessary to find the descriptive marks distinctive for purposes of trademark protection, as the marks have all achieved incontestable status. *See CareFirst of Maryland, Inc.*, 434 F.3d at 269 (“Thus...although CareFirst need not show secondary meaning [as its mark is incontestable], it still must demonstrate commercial strength.”).²⁵ Therefore, the Court finds no dispute of material fact that TEC’s marks are descriptive and have acquired secondary meaning.

However, regardless of whether a mark has conceptual strength, the Court must determine whether it has commercial strength. To determine commercial strength, the Court considers the following factors: “(1) the plaintiff’s advertising expenditures; (2) consumer studies linking the mark to a source; (3) the plaintiff’s record of sales success; (4) unsolicited media coverage of the plaintiff’s business; (5) attempts to plagiarize the mark; and (6) the length and exclusivity of the plaintiff’s use of the mark.” *George & Co. LLC*, 575 F.3d at 395.²⁶

²⁴ As the Court has ruled that “The Episcopal Church” is not generic, Defendants conceded that, if the mark was not generic, it is descriptive. (Dkt. No. 603 at 29 – 30, “To the extent they [the marks] are not [generic], they are at best geographically descriptive...and descriptive.”). TEC also stated the marks were descriptive. (Dkt. No. 643 at 14, “the Church concedes that it is [descriptive], but also that it has acquired distinctiveness”)

²⁵ Further, for the same reasons described below for commercial strength, the Court finds that TEC’s marks have become “sufficiently distinctive to establish a mental association in buyers’ minds between the alleged mark and a single source of the product,” and thus have secondary meaning. *George & Co. LLC*, 575 F.3d at, 394.

²⁶ While relevant to a presumption of conceptual distinctiveness, the Court does not consider the incontestability of a mark when assessing commercial strength or the overall strength of the mark.

Defendants fault TEC for not adducing any evidence of its advertising expenditures or record of sales success, and TEC does not dispute that it has not presented evidence on those factors. (Dkt. No. 643 at 22.) However, a plaintiff does not need to meet each factor in order for their mark to be strong, and instead the Fourth Circuit, in initially articulating the test, held that “the following factors [are] relevant...though not dispositive....” *Perini Corp. v. Perini Const., Inc.*, 915 F.2d 121, 125 (4th Cir. 1990). *See also George & Co. LLC*, 575 F.3d at 395 (adopting *Perini* test for commercial strength). *See Booking.com B.V. v. Matal*, 278 F. Supp. 3d 891, 921 (E.D. Va. 2017), *aff’d sub nom. Booking.com B.V. v. United States Patent & Trademark Office*, 915 F.3d 171 (4th Cir. 2019) (“a party need not prove all six factors....”). Further, courts have found a mark strong where evidence only supports a subset of the relevant factors. *See, e.g. Mayson-Dixon Strategic Consulting, LLC v. Mason-Dixon Polling & Strategic Consulting, Inc.*, 324 F. Supp. 3d 569, 578 (D. Md. 2018) (finding mark strong based on extensive use, media attention, and consumer understanding). The lack of evidence regarding advertising expenditures or sales success is therefore not dispositive and, in this case, not surprising as the Court is assessing the strength of a religious organizations’ marks rather than a for-profit enterprise.

Plaintiffs have presented voluminous and unrebutted evidence of unsolicited media coverage of TEC’s marks and widespread recognition of TEC’s marks. Most notably, the number of newspaper and other media references to the TEC as “The Episcopal Church” is overwhelming. The articles come from national media outlets, such as CNN, Fox News, the Washington Post, USA Today and the Chicago Tribune, and state-wide major outlets, such as The State newspaper.

See Oreck Corp. v. U.S. Floor Sys., Inc., 803 F.2d 166, 171 (5th Cir. 1986) (“Incontestable status does not make a weak mark strong.”). *See also* Challenge to strength of an incontestably registered mark, 6 McCarthy on Trademarks and Unfair Competition § 32:155 (5th ed.) (incontestability relevant to “*inherent* distinctiveness of a mark” but is irrelevant to the “*acquired* distinctiveness and strength of the mark in the real world marketplace.”) (emphasis in original).

(Dkt. No. 595-92 at 59 – 122.) The articles refer to major news events, such as a royal wedding in the United Kingdom, the funeral of President George H.W. Bush, and matters regarding the theology and mission of the Episcopal Church. (*Id.*) Other media entries confirm that “The Episcopal Church” refers to the TEC.²⁷ Major encyclopedias, such as the Academic American Encyclopedia, Collier’s Encyclopedia, Encyclopedia Americana, and The World Book Encyclopedia, each refer to TEC as the “Protestant Episcopal Church,” and make clear that it is also known as “The Episcopal Church.” (Dkt. No. 595-115 at 4 – 15; *See e.g.* Dkt. No. 595-115 at 8, “The Episcopal Church operates 14 theological seminaries.”). Most compellingly, and again undisputed, Plaintiffs submitted substantial evidence that Defendants, in their own media publication, such as newsletters and pamphlets, refer to TEC as “The Episcopal Church.” (Dkt. Nos. 595-94 – 595-109.) This media evidence is overwhelming evidence of commercial strength.

Though not truly “sales” success since, as explained above, that factor is of more limited relevance in the non-profit religious context, the record evidence also demonstrates that TEC has had wide consumer success and recognition with their marks. As acknowledged by the Defendants, TEC has at least 1.9 million members.²⁸ (Dkt. Nos. 626 at 39; 626-2 at 13.) While Defendants note other churches, also with “episcopal” in their name, also have broad memberships, this does not negate the success demonstrated by TEC’s large membership. TEC also showed other uncontroverted forms of commercial success, or at least marketplace recognition, of the mark. The leadership of many of the Disassociated Parishes each confirmed that “The Episcopal Church” referred solely to TEC. (*See, e.g.* Dkt. Nos. 595-15 at 34; 595-17 at

²⁷ Indeed, even the newspaper articles submitted by Defendants, likely to show disclaimers and knowledge of the disassociation, uniformly refer to TEC as “The Episcopal Church.” (Dkt. No. 624.)

²⁸ TEC has up to 2.9 million members based on Pew Research center data. (Dkt. No. 607-1 at 2.)

27; 595-21 at 25 – 26; 595-25 at 32; 595-27 at 31; 595-31 at 32; 595-42 at 32 – 33; 595-53 at 29; 595-55 at 28; 595-56 at 41.) This was reiterated by the leadership of various other Christian denominations. (Dkt. Nos. 595-89 at 5; 595-110 at 5; 595-111 at 5.) This un rebutted evidence demonstrates recognition by the relevant consuming public that “The Episcopal Church” refers to TEC and therefore supports a finding of a commercially strong mark.

The Court also finds relevant additional uncontroverted evidence submitted by Plaintiffs. Plaintiffs submitted uncontroverted evidence of internet search engine results, from Yahoo and Google, from 2018. (Dkt. Nos. 585-4; 595-116.) The searches performed in South Carolina produced 267 results on the first 20 pages of a Google search, and 246 results on the first 20 pages of a Yahoo search.²⁹ (*Id.*) Notably, each result for “The Episcopal Church” referred to TEC. (*Id.*) Though not traditionally one of the six *Perini* factors, courts recognize that search engine results may reflect the strength of a mark.³⁰ See *Codename Enterprises, Inc. v. Fremantlemedia N. Am., Inc.*, No. 16CIV1267ATSN, 2018 WL 3407709, at *7 (S.D.N.Y. Jan. 12, 2018) (“The Court does not take such a cramped view; prominence in search engine results may inform the commercial strength of a mark.... Given the importance of search engines in today’s internet-based economy, search results may be one indicator of commercial strength.”) (citations omitted); *Am. Eagle Outfitters, Inc. v. Am. Eagle Furniture, Inc.*, No. 11 C 02242, 2013 WL 6839815, at *12 (N.D. Ill. Dec. 27, 2013) (“[t]he number of Google results may say something of the mark’s strength.”).

²⁹ In a separate Order, the Court excluded the evidence of searches performed by Dr. Walter Edgar’s son-in-law in Massachusetts on the basis of relevancy and admissibility regarding authentication, but held that the searches performed directly by Dr. Edgar are admissible through Dr. Edgar as a fact witness.

³⁰ The Court notes that search engine results could be considered a part of the unsolicited media coverage factor. Nonetheless, given the fact that the *Perini* factors were articulated in 1990 as “relevant...though not dispositive” factors, the Court finds it important to consider search engine evidence in assessing commercial strength given the importance of search-engines to any commercial or advertising activity today. *Perini Corp.*, 915 F.2d at 125.

Therefore, this evidence of search results, with each result pointing to TEC and not any other organization, points to the commercial strength of TEC's marks.

Finally, the sixth factor looks at the length and exclusivity of TEC's use of "The Episcopal Church." The mark was incorporated into TEC's Constitution in 1967, and 1967 is listed as the year of first use in the trademark registration. Additionally, Defendants have submitted no evidence of any other denomination or church known simply as "The Episcopal Church." When looking at the name, TEC has shown exclusive, and lengthy, use of "The Episcopal Church."

Defendants did not present any evidence to create a dispute of material fact regarding the unsolicited media coverage, commercial success, or length and exclusive use of "The Episcopal Church" mark. Nonetheless, Defendants argue vociferously that extensive third-party use of the words "episcopal" and "church" in names of other denominational organizations demonstrates that "The Episcopal Church" is a weak mark. To support their argument, Defendants present a list of twenty organizations that use the phrase "episcopal" and "church" in their name, though sometimes not in sequence. (Dkt. Nos. 609-9; 625 at 38.)

The Fourth Circuit has recognized that third-party use may be relevant to the issue of commercial strength. *See CareFirst of Maryland, Inc.*, 434 F.3d at 269–70; *Renaissance Greeting Cards, Inc. v. Dollar Tree Stores, Inc.*, 227 F. App'x 239 (4th Cir. 2007). However, it is undisputed that the third-party use identified here does little to weaken the commercial strength of "The Episcopal Church." To begin with, the evidence submitted by Defendants, through the expert report of Dr. Grant Wacker, reflects that, of the twenty organizations identified, Dr. Wacker was only able to present more detailed information regarding fourteen of the churches, and of those fourteen, ten have no presence in South Carolina and seem to have limited membership or geographic presence. (*See* Dkt. No. 609-8, the following churches have no presence in South

Carolina: The United Episcopal Church of North America, The Christian Episcopal Church, The Communion of Evangelical Episcopal Churches, The Christian Methodist Episcopal Church, The Charismatic Episcopal Church of North America, Celtic Episcopal Church, St. Luke's Episcopal Church, Episcopal Missionary Church, White Rock Independent Methodist Episcopal Church, The Apostolic Episcopal Church.). *See John H. Harland Co. v. Clarke Checks, Inc.*, 711 F.2d 966, 975 (11th Cir. 1983) (strength of mark partially "based...upon the amount of use of the term by others in this product and *geographical area*") (emphasis added) *citing* 1 J.T. McCarthy, *Trademarks & Unfair Competition* § 11:24, at 401 (1973).

More fundamentally, none of the church names identified by the Defendants use the TEC's mark in its entirety, "The Episcopal Church," and instead intersperse other dominant features that distinguish it from "The Episcopal Church."³¹ *See* 4 McCarthy on Trademarks and Unfair Competition § 23:42 (5th ed.) ("It is appropriate in determining the question of likelihood of confusion to give greater weight to the important or 'dominant' parts of a composite mark, for it is that which may make the greatest impression on the ordinary buyer."). These added words include, among others, "African Methodist," "African Methodist...Zion," "Charismatic," "Christian," "Methodist," Reformed," "Southern," and "White Rock." (Dkt. No. 626 at 8.)

This is not the case of a single word essentially comprising a mark repeatedly being used by third-parties. *See Petro Stopping Centers, L.P. v. James River Petroleum, Inc.*, 130 F.3d 88, 94 (4th Cir. 1997) (finding mark weak where Plaintiff had word "Petro" registered in fourteen marks, and there was evidence of third-party registration of marks containing Petro). Instead, here,

³¹ At least four of the identified other organizations, The Reformed Episcopal Church, The Southern Episcopal Church, United Episcopal Church and The Christian Episcopal Church, were schismatic groups from TEC which have an additional dominant word or phrase in their name to distinguish themselves from TEC, as opposed to the Defendants here. (Dkt. No. 609-8 at 7.)

no organization identified by Defendants use “The Episcopal Church” mark in its entirety, and to the extent other churches use the words “episcopal church,” the marks contain additional dominant words, sometimes separating the words “episcopal” and “church.” These additional distinctive and dominant words in the third-party uses therefore would not permit any reasonable juror to determine that the “The Episcopal Church” is not a strong mark.³² See *Safeway Stores, Inc. v. Safeway Disc. Drugs, Inc.*, 675 F.2d 1160, 1165 (11th Cir. 1982) *abrogated on other grounds*, *Tobinick v. Novella*, 884 F.3d 1110 (11th Cir. 2018) (“third-party users that incorporate the word Safeway along with distinctive additional words...may not diminish the strength of the Safeway mark.”); *Alabama Credit Union v. Credit Union of Alabama Fed. Credit Union*, No. CV 05-B-1692-W, 2008 WL 11422068, at *4 (N.D. Ala. Mar. 31, 2008) (“the proper inquiry is not simply how many total third-party uses exist, but ‘whether the unauthorized third-party uses significantly diminish the public’s perception that the mark identifies items connected with the owner of the mark.’ Because of its distinctive additional words, it is doubtful that the existence of the Alabama Mental Health Credit Union significantly diminishes the connection in the consumer’s mind between [Alabama Credit Union] and its mark.”) (citations omitted); *Pub. Impact, LLC v. Bos. Consulting Grp., Inc.*, 169 F. Supp. 3d 278, 293 (D. Mass. 2016) (finding evidence of “third-party use is not...sufficient to counteract the evidence that the PUBLIC IMPACT mark has some strength,” in part, because “[f]or the most part, the third-party uses to which BCG refers are of limited value in assessing the strength of the PUBLIC IMPACT mark. As noted, many of the uses

³² Further, while Defendants introduce the names of the other denominational organizations, and limited facts about the churches’ membership and history, Defendants have not introduced evidence specific to the extent of the use of those third-party names. See *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373 (Fed. Cir. 2005) (“As this court has previously recognized where the ‘record includes no evidence about the extent of [third-party] uses ... [t]he probative value of this evidence is thus minimal.’”) (citations omitted).

include only one of the words “PUBLIC” or “IMPACT,” and most do not use the words consecutively, as they are in plaintiff’s mark.”).³³

Therefore, based on the overwhelming and unrebutted evidence of repeated and voluminous unsolicited media coverage, widespread success, marketplace recognition, including among Defendants, and the length and exclusive use of “The Episcopal Church” mark, the Court finds no dispute of material fact that “The Episcopal Church” is a strong mark. The evidence of third-party use, albeit often in disparate geographic regions and with the addition of distinct dominant words, somewhat lessens the strength of the mark. Yet, the core question when ascertaining the strength of a mark is what the mark means to the relevant consuming public. *See Coryn Grp. II, LLC v. O.C. Seacrets, Inc.*, 868 F. Supp. 2d 468, 485 (D. Md. 2012) *citing George & Co. LLC*, 575 F.3d at 393 – 95. Here, considering all factors, including the overwhelming evidence submitted by Plaintiffs, the Court finds there is no dispute that the mark is strong.

Finally, for the same reasons as above, the Court finds that “Protestant Episcopal Church in the United States of America” is a strong mark. Notably, Defendants have presented *no* evidence rebutting the fact that this mark is a strong, instead focusing solely on “The Episcopal Church.” Further, based on the evidence cited above, particularly testimony from the

³³ Defendants also focus on TEC’s initial trademark application in 2006, where TEC argued that “Reformed Episcopal Church” was a weak mark, in part, because of third party use of the term “episcopal church.” (Dkt. Nos. 604-1 at 91; 626 at 37.) Defendants’ arguments are misplaced. First, the evidence is from thirteen years ago, and six years prior to the schism at issue here, and therefore is of limited value compared to the overwhelming recent evidence submitted by Plaintiffs. Further, the fact that “Reformed Episcopal Church” may be a weak mark for an organization with a distinct history and smaller organization does not affect the multi-factor assessment of the strength of TEC’s marks. Finally, in 2006 the USPTO was assessing whether “The Episcopal Church” could be registered based on another already registered mark and not ruling on the strength of “The Episcopal Church, and to the extent “Reformed Episcopal Church” is a weak mark, it only supports the determination that its third-party use does not affect the strength of the mark “The Episcopal Church.”

Disassociated Parishes, search results, encyclopedias, and the exclusive use dating back to 1789, the Court finds it undisputed that the “Protestant Episcopal Church in the United States of America” is a strong mark.

Therefore, the strength of the marks weighs in favor of finding a likelihood of confusion.

b. Similarity of Marks

It is undisputed that Defendants use exceptionally similar marks to TEC. To determine similarity of marks, courts “focus on the dominant portions of the parties’ marks.... In other words, we focus on whether there exists a similarity in sight, sound, and meaning which would result in confusion.” *George & Co. LLC*, 575 F.3d at 396. To begin with, certain marks used by Defendants include substantially TEC’s entire mark, such as “The Episcopal Church Home.” Furthermore, the use of the mark “Protestant Episcopal Church in the Diocese of South Carolina” is substantially the same as The Episcopal Church’s mark “The Protestant Episcopal Church in the United States in America.” The only difference is a geographic term substituted as the end: South Carolina instead of the United States. It is well settled that merely changing a geographic term will not avoid confusion. *See Atlas Copco AB v. Atlascopcoiran.com*, 533 F. Supp. 2d 610, 614 (E.D. Va. 2008) (“These ‘dominant’ terms are paired with the generic terms “CASPIAN” and “IRAN,” which are generic geographic terms that do not distinguish the Defendant Domain Names from the ATLAS COPCO trademark.”). *See also* 4 McCarthy on Trademarks and Unfair Competition § 23:50 (5th ed.) (“the fact that defendant places an indication of different geographical origin on its goods...will usually not be sufficient to prevent confusion of ordinary buyers.”).

Defendants further argue that they have not adopted similar typefaces or graphics to TEC. (Dkt. No. 626 at 50 – 51.) However, to the extent there is some difference in the typeface between the two marks, which is minimal at best, the Defendants have not presented any evidence that the

different stylization sufficiently distinguishes Defendants marks from TEC's marks.³⁴ Additionally, any difference of typefaces is of limited value here. While for consumer products, like the cases cited by Plaintiffs, typefaces appearing on the front of the products can distinguish products on a shelf, here the marks appear in newspapers, and in the Parties' signs and publications without *any* stylization. (*See, e.g.* Dkt. Nos. 567-11; 595-71; 595-72; 595-73; 595-92 at 59 – 122; 595-94 – 595-95.) Therefore, any style or typeface sometimes used on Defendants' marks do not affect their similarity to TEC's marks here.

Defendants' reliance on a disclaimer to argue that the marks are not similar is also misplaced. In general, a disclaimer "does not serve to cure an otherwise clear case of likely confusion." 4 McCarthy on Trademarks and Unfair Competition § 23:51 (5th ed.). Further, any disclaimer here does not affect the similarity of the marks or confusion overall. Defendants rely on allegedly "lengthy and publicly accessible explanations of its disassociation from Plaintiffs." (Dkt. No. 626 at 51.) Yet, there is no evidence that these disclaimers were actually present with the marks or that consumers would see the disclaimers when encountering Defendants' marks in the marketplace, instead relying on disclaimers that appeared in newspaper articles or that are accessible, but not readily apparent, on the Disassociated Diocese's website. (Dkt. Nos. 624; 636.) *See, e.g. Lamparello v. Falwell*, 420 F.3d 309, 311 (4th Cir. 2005) (finding disclaimer effective where "the homepage prominently stated, 'This website is NOT affiliated with Jerry Falwell or his ministry'" and included a link to Falwell's website). To the contrary, where there is no evidence that consumers will see the disclaimer when using a defendants' services, just as potential members, parishioners or other interested individuals will not see "accessible explanations" when

³⁴ The argument about stylization is further undercut as the Disassociated Diocese has adopted the identical marks, including the Diocesan Seal, that the TECSC claims ownership over.

attending church, seeing signs, or visiting Defendants' webpages, courts find that disclaimers do not dispel confusion. *See The Shell Co. (Puerto Rico) v. Los Frailes Serv. Station, Inc.*, 605 F.3d 10, 22 (1st Cir. 2010) ("signs stating 'We Do Not Sell Shell Gasoline' were not enough to avoid likely confusion, not least because customers could only see those signs after they were already at the gas pump."). Any disclaimers here therefore do not affect the similarity of marks or overall likelihood of confusion.

The Court also finds it undisputed that "The Episcopal Diocese in South Carolina" is similar to Plaintiffs' marks. When considering the similarity of marks, courts "compare whole words, not parts...and generally use the phrase 'dominant portion' to refer to the non-generic words in multiword marks." *Swatch AG v. Beehive Wholesale, LLC*, 739 F.3d 150, 159 (4th Cir. 2014). Here, the dominant phrase is "Episcopal Church," a descriptive phrase for a church governed by bishops/broke off from the church of England. Notably, as held below, TECSC is the owner of the mark the "Diocese of South Carolina." Defendants' argument, comparing "The Episcopal Diocese of South Carolina" solely to "The Episcopal Church" is therefore nonsensical: it would lead to the perverse result that a mark simultaneously imitating two of a plaintiff's marks would be entitled to greater protection as the amalgamation means the marks are not sufficiently similar. Instead, here, "Episcopal Church" is the dominant phrase repeated by the two marks, and the substitution of Diocese of South Carolina for Church, especially as a mark owned by TECSC, acts as no more than a geographical marker. As held above, this geographical addition does nothing more than lead a consumer to believe that the geographic modifier identifies a regional affiliate of "The Episcopal Church." *See Atlas Copco AB*, 533 F. Supp. 2d at 614; 4 McCarthy on Trademarks and Unfair Competition § 23:50 (5th ed.) ("This kind of addition of a geographically descriptive modifier to another's mark may lead buyers to think that a territorially customized

version of the brand is being offered.”). The is particularly true here, where the added geographical modifier, “Diocese of South Carolina” is the name of the regional affiliate of TEC. There is therefore no dispute of material fact that “The Episcopal Diocese of South Carolina” is similar to TEC’s marks.

This factor therefore weighs in favor of finding a likelihood of confusion.

c. Similarity of Goods and Services

There is no dispute that the Parties offer similar services. Both offer religious services and religious education. Additionally, the nature of the religious services has significant overlap as well, as the Disassociated Diocese and Parishes use the Book of Common Prayer and TEC’s hymnals. (Dkt. No. 595-77.) While the Defendants argue that they have disclaimed any affiliation, as explained above, the disclaimer here was undisputedly ineffective and, regardless, does not cure a clear likelihood of confusion. While Defendants conclusorily state that parishioners “recognize a difference” in services, (Dkt. Nos. 626 at 53; 650 at 18), for this factor to be met “the goods in question need not be identical or in direct competition with each other.” *George & Co. LLC*, 575 F.3d at 397. Therefore, as all Parties offer religious services and often use identical prayer books and hymnals, there is no dispute of material fact that Defendants offer similar services and this factor weighs in favor of finding a likelihood of confusion.

d. Similarity of Facilities

There is further no dispute of material fact regarding the similarity of facilities. “[W]hen considering the similarity of facilities, courts are trying to determine if confusion is likely based on ‘how and to whom the respective goods of the parties are sold,’ and the key question is whether ‘both products [are] sold in the same ‘channels of trade.’” *Rosetta Stone Ltd.*, 676 F.3d at 155. While this case is unique, as a church is not generally presumed to be involved in traditional “channels of trade,” it is clear that services are provided in the same manner to the same class of

consumers in the same context: namely, to parishioners, potential parishioners or other interested individuals in parishes, educational facilities, and other religious institutions.

The similarity of the facilities here is further heightened as many of the Disassociated Parishes, though not all, inhabit facilities that were formerly affiliated with the Historic Diocese. (Dkt. No. 595-76.) The fact that a company later occupied the same building as a plaintiff is a relevant when analyzing the similarity of facilities. *See Choice Hotels Int'l, Inc. v. Zeal, LLC*, 135 F. Supp. 3d 451, 467 (D.S.C. 2015) (“The facilities used by the parties are as similar as they could possibly be because the defendants are operating a facility that used to be an ECONO LODGE.”); *Putt-Putt, LLC v. 416 Constant Friendship, LLC*, 936 F. Supp. 2d 648, 658 (D. Md. 2013) (“Due to Defendant 416 CF's use of the same building that once housed a former authorized Putt-Putt franchise, the similarity of facilities factor is easily satisfied.”).³⁵ Therefore, there is no dispute of material fact that the services are offered in similar facilities, and this factor weighs in favor of finding a likelihood of confusion.

e. Similarity of Advertising

All Parties acknowledge that they engage in limited advertising, though any advertising is similar based on “shared use of certain advertising media.” (Dkt. Nos. 595-1 at 28; 603 at 41; 626 at 54; 619 at 24.) Because of the limited advertising here, the Court considers this factor neutral.

³⁵ Defendants confusingly argue that there must be “overlap in individual retail outlets” to find similar facilities, relying on *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC*, 507 F.3d 252, 263 (4th Cir. 2007). (Dkt. No. 626 at 53 – 54.) While in *Louis Vuitton*, and other cases related to retail goods, considering individual retail outlets is relevant, that is distinct from the facts of this case where the Court is considering parties that provide religious services, which are not offered on a store shelf. Instead, this factor looks at “how and to whom the respective goods of the parties are sold,” *Rosetta Stone Ltd.*, 676 F.3d at 155, which is undoubtedly similar here.

f. Defendants' Intent

There is no dispute in the record that the Defendants intended to infringe on TEC's marks. "If there is intent to confuse the buying public, this is strong evidence establishing likelihood of confusion, since one intending to profit from another's reputation generally attempts to make his signs, advertisements, etc., to resemble the other's so as deliberately to induce confusion." *Pizzeria Uno Corp. v. Temple*, 747 F.2d 1522, 1535 (4th Cir. 1984). However, "[t]he intent of a junior user is relevant only if the junior user intended to capitalize on the good will associated with the senior user's mark." *CareFirst of Maryland, Inc.*, 434 F.3d at 273. The Fourth Circuit has indicated that continued use of infringing names after a civil complaint can support a finding of intent. *See Lone Star Steakhouse & Saloon, Inc. v. Alpha of Virginia, Inc.*, 43 F.3d 922, 937 (4th Cir. 1995) (finding bad faith where "Alpha opened a new restaurant in Baltimore under the same name after the commencement of this lawsuit and despite Lone Star's requests that Alpha change the name of its restaurant."); *JFJ Toys, Inc. v. Sears Holdings Corp.*, 237 F. Supp. 3d 311, 339 (D. Md. 2017) (finding intent after two cease and desist letters).

It is undisputed that, even after following the Complaint here was served in 2013, Defendants continued to use allegedly infringing names, including confirming in their 2018-filed Answer that the Disassociated Diocese continue to use "The Episcopal Diocese of South Carolina" and "The Protestant Episcopal Diocese of South Carolina," and various other uses of similar marks long-after 2013. (*See, e.g.* Dkt. No. 439 at ¶ 27; 595-7; 595-72; 595-73; 595-94 – 595-95). This alone supports a finding of intent.

Further, significantly more probative and uncontroverted is the Defendants' continued insistence that they are the continuation of the Historic Diocese and "adopted [the] marks well prior to the dates of first use [The Episcopal Church] has claimed[.]" (Dkt. No. 626 at 49.) The Disassociated Diocese, however, is *not* the continuation of the Historic Diocese. Defendants

admit, in their briefing, in their publications, and throughout all stages of the litigation, that they are *intentionally* using the marks of the Historic Diocese and claiming to be the successor of the Historic Diocese, and thus are intending to capitalize on the good will of that organization. The Disassociated Diocese is an organization formed in 2012 that maintains the right to use the marks of a group with which it is not associated. There is therefore no dispute of material fact regarding the Disassociated Diocese's intent to use the marks of the Plaintiffs.

g. *Actual Confusion*

"Actual confusion can be demonstrated by both anecdotal and survey evidence." *Rosetta Stone Ltd.*, 676 F.3d at 156 citing *George & Co. LLC*, 575 F.3d at 398. "Both types of evidence are relevant, and neither category is necessarily required to prove actual confusion." *Id.* Plaintiffs have presented both anecdotal and survey evidence here, and while Defendants present arguments regarding the weight and admissibility of this evidence, Defendants have presented no evidence of their own rebutting Plaintiffs' evidence. Further, Plaintiffs' evidence is both overwhelming and admissible. There is therefore no dispute of material fact of actual confusion here.

The anecdotal evidence is substantial. As examples, Plaintiffs presented uncontroverted evidence that Bishop Adams, the bishop of TECSC, received "many phone calls" from individuals confused about churches which had the word "episcopal in" the name. Bishop Adams also testified that he had conversations with an individual who misdirected a hurricane-relief check to Defendants rather than Plaintiff. Further, a couple attended St. Michael's Church in Charleston not realizing it was not affiliated with TEC, and multiple individuals called, e-mailed, and mailed items to the TECSC, either misdirecting their communications or inquiring regarding which churches were associated with which diocese. Additionally, at least one priest and multiple parishioners and other individuals contacted Bishop Adams to attempt to determine the affiliation of a parish and the Porter-Gaud School. Services in the name of "The Episcopal Church" were

also offered at the Citadel, in Charleston, when no clergy from TEC was present. Gifts and Christmas cards were misdirected between the Dioceses. Summing up this confusion, Bishop Adams testified that “at every parish visi[t], somebody brings up something about confusion, their confusion about...what is a part of The Episcopal Church and what isn’t.” (Dkt. No. 595-1 at 20 – 22; 595-81 at 6 – 5, 15, 18; 595-83 at 4 – 9, 12 – 16; 595-85 at 4 – 5; 595-119 at 6 – 10; 696-120 at 4 – 7.) This evidence, standing alone, sufficiently demonstrates actual confusion. Indeed, far fewer instances of anecdotal evidence have been sufficient to demonstrate actual confusion. *See Choice Hotels Int’l, Inc. v. Zeal, LLC*, 135 F. Supp. 3d 451, 469 (D.S.C. 2015) (finding that two instances of anecdotal evidence of confusion support finding of actual confusion). Yet, while Defendants construe this evidence as “de minimis at best,” (Dkt. No. 626 at 45), it is clear that the testimony refers to numerous known instances of confusion. This is far from *de minimis*. *See Sara Lee Corp. v. Kayser-Roth Corp.*, 81 F.3d 455, 466 (4th Cir. 1996) (holding anecdotal evidence is “overwhelming” from testimony of six women who purchased wrong product and “service merchandisers” testified regarding confusion of store personnel).

Defendants attempt to minimize the evidence here by arguing that much of the testimony, from Bishop Adams and employees of TECSC, is either inadmissible hearsay or should be given limited weight as the testimony of a plaintiff’s employees. The Fourth Circuit, however, has expressly held that this type of testimony, of an individual testifying regarding the effect of a similar mark on a third-party, is admissible since the testimony does not go to “the truth of the matter asserted” (here that the different Dioceses are in fact the same), but rather merely to prove that third-parties “expressed their belief” that they were confused as to a parish, church or organization’s affiliation. *See Lyons P’ship, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 804 (4th Cir. 2001) (crediting testimony of school principal and parents regarding children’s responses to a

costume, and holding that “[plaintiff] did not offer the children’s statements or the newspaper articles to prove the truth of the matter asserted—i.e., that the persons wearing the Duffy costume were in fact Barney—but rather merely to prove that the children and the newspaper reporters *expressed their belief* that those persons were Barney. This was direct evidence of the children’s and the reporters’ reactions and not hearsay.”) (emphasis in original). This type of testimony, from individuals regarding the effect of confusing marks on third-parties is the precise type of evidence that the Fourth Circuit often relies on to find strong anecdotal evidence. *See Sara Lee Corp.*, 81 F.3d at 466 (relying on testimony that “service merchandisers also told of massive confusion by store personnel.”).

Defendants also argue the Court should discount the anecdotal evidence of confusion as it is largely from Plaintiffs’ employees. (Dkt. No 626 at 43.) However, while this critique may go to the weight of the evidence at trial, it does not create a dispute of material fact at summary judgment. Defendants argument fail factually as well: while some evidence here is from Plaintiffs’ employees, the expressions of confusion are from unrelated third-parties, not Plaintiffs employees. Further, the Disassociated Diocese’s own treasurer testified to misdirected phone-calls and at least one misdirected check. (Dkt. No. 595-84 at 5.) Finally, as above, this type of testimony from employees regarding third-party confusion has been explicitly relied upon by the Fourth Circuit. *See Sara Lee Corp.*, 81 F.3d at 466 (relying on testimony of “service merchandisers”).³⁶ There is therefore substantial anecdotal evidence of actual confusion.

³⁶ Defendants allege that any confusion is only because of the “disassociation,” seemingly distinguishing the disassociation from the use of Plaintiffs’ marks. (Dkt. No. 626 at 42.) However, this argument purports to create a distinction where there is none: the disassociation created the confusion in part *because* the Disassociated Diocese utilized the names, marks, and facilities of the Historic Diocese and substantially similar marks to TEC. Further, Defendants argument ignores that much of Plaintiffs anecdotal evidence of confusion focuses on the marks at issue, such as the father of a Citadel student expressing confusion regarding services offered in the name of

Plaintiffs also submitted an actual confusion survey by Robert Klein, which surveyed whether people believed that “The Protestant Episcopal Church in the Diocese of South Carolina” and “The Episcopal Diocese of South Carolina,” two marks that Defendants acknowledge they use, are affiliated with a “national or international organization,” and, if the respondent answers is yes, they were asked “which” organization. (Dkt. No. 595-86.) Defendants submit no survey evidence of their own, and instead merely argue that the survey should be excluded as inadmissible under *Daubert*. However, as explained in a separate Order, Klein’s survey is both admissible and relevant to actual confusion here. Klein’s survey results are striking: forty-one percent of Episcopalians, and eighteen percent of South Carolina residents overall, associate “The Protestant Episcopal Church in the Diocese of South Carolina” with TEC. Further, sixty-four percent of Episcopalians, and twenty-four percent of South Carolina residents overall, associate “The Episcopal Diocese of South Carolina” with TEC. (*Id.* at 14 – 18.) These results far exceed percentages that the Fourth Circuit has previously held to be “clear evidence” of actual confusion. *See Rosetta Stone Ltd.*, 676 F.3d at 159 (holding that where “17 percent of consumers demonstrate actual confusion[,]...[the] result is clear evidence of actual confusion for purposes of summary judgment.”); *Sara Lee Corp.*, 81 F.3d at 467 (holding that survey would show “significant degree” of actual confusion even if the “true figure” was half the survey results of “thirty to forty percent” confusion).

“The Episcopal Church” at the Citadel, confusion regarding which churches were affiliated with TEC and similar evidence. (See Dkt. No. 595-1 at 20 – 22; 595-83 at 5, 8.)

Therefore, based on clear and un rebutted anecdotal and survey evidence of actual confusion, there is no dispute of material fact regarding actual confusion and this factor weighs in favor of finding a likelihood of confusion.³⁷

h. Quality of Defendants' Product

Both Parties concede that that their services are of similar quality. (Dkt. Nos. 595-1 at 28; 626 at 52.) The concern here is not regarding whether the alleged infringer has a low-quality product, no Party here alleges that any services provided are low-quality and it seems clear to the Court that the services provided are high-quality and meaningful to the Parties and consumers, but rather whether similar quality will lead to confusion. As the Second Circuit recognized, "where the junior user's products are of approximately the same quality as the senior user's, there is a greater likelihood of confusion, but less possibility of dilution." *Savin Corp. v. Savin Grp.*, 391 F.3d 439, 461 (2d Cir. 2004). Therefore, as all Parties agree the quality of services is similar, this factor weighs in favor of finding a likelihood of confusion.

i. Sophistication of the Consuming Public

The Parties concede that parishioners are generally sophisticated. (Dkt. Nos. 595-1 at 28; 622 at 22; 626 at 40.) Defendants support their contention by TEC's own submissions to the USPTO, which acknowledges that consumers of religious services make careful decisions, and by

³⁷ The Disassociated Parishes separately argue that Plaintiffs cannot show actual confusion as to the Disassociated Parishes. (Dkt. No. 622 at 9.) This however, ignores that much of the evidence specifically relates to anecdotes of confusion regarding parishes, and the survey evidence of confusion is generally applicable to all Defendants as it focused on the specific marks at issue. Further, the Disassociated Parishes ignore that evidence of similarity, strength, and similar services, facilities and strength are also all generally applicable. Therefore, Plaintiffs have carried their burden on these claims as to the Disassociated Parishes. Further, as affiliates of the Disassociated Diocese that have used the Plaintiffs' marks, they are within the scope of any injunctive relief. However, to the extent that the Disassociated Parishes argue that the Plaintiffs' evidence does not go to the parish-specific similar marks, such as inclusion of certain words in parish names, those issues are dealt with in a separate Order.

unchallenged expert reports submitted by Defendants. (Dkt Nos. 609-4; 609-5.) Yet, the Parties' views are overly narrow: while the most-relevant consuming public is potential parishioners, the anecdotal evidence of confusion demonstrates that the potential consuming public includes individuals who may never attend a Parties' church or have to decide between doctrines and communities. Instead, the uncontroverted evidence shows that the consuming public includes relatives of local students, students at The Porter-Gaud School and carriage tour-guides in Charleston. (Dkt. No. 595-1 at 20 – 22; 595-81 at 6 – 5, 15, 18; 595-83 at 4 – 9, 12 – 16; 595-85 at 4 – 5; 595-119 at 6 – 10; 696-120 at 4 – 7.) This should not be surprising: many individuals may visit, attend services, donate or attend events run by either diocese even if they are not affiliated with a church or are Christian.³⁸ As the Fourth Circuit has recognized, “[b]arring an unusual case, buyer sophistication will only be a key factor when the relevant market is not the public at-large.” *Sara Lee Corp.*, 81 F.3d at 467.³⁹ Parishioners are sophisticated. However, the public at large, who can equally take advantage of the Parties' services, may not be, and the Parties have submitted no evidence regarding the sophistication of these other individuals.⁴⁰

³⁸ Defendants evidence regarding consumer sophistication related solely to individuals, eighteen and older, who are “Protestant” or non-denominational Christian and who have “visited churches seeking to find a church or to consider switching churches.” (Dkt. No. 609-05 at 7.)

³⁹ The Court is cognizant of the holding in *Perini Corp. v. Perini Const., Inc.*, 915 F.2d 121, 128 (4th Cir. 1990), which held that, even where every other factor indicates a likelihood of confusion, “in a market with extremely sophisticated buyers, the likelihood of consumer confusion cannot be presumed on the basis of the similarity in trade name alone....” Here, as opposed to the district court in *Perini*, the Court has considered consumer sophistication, and while *Perini* found “extremely sophisticated buyers” relevant, namely “a highly trained procurement professional,” there is no evidence in the record that most consumers at issue here, even parishioners, have the extreme level of sophistication that concerned the court in *Perini*.

⁴⁰ While the Court does not weigh this evidence, it is important to note that the survey evidence showing actual confusion actually *increases* with more sophisticated consumers. Namely, while Episcopalians, likely the most sophisticated consumers surveyed, reported a net confusion of sixty-four percent regarding an association between “The Episcopal Diocese of South Carolina” and TEC, other Christians reported a net confusion of thirty-percent, and all South Carolina residents in general reported a net confusion of only twenty-four percent. (Dkt. No. 595-86 at 18.) The

The Sixth Circuit in *Gen. Conference Corp. of Seventh-Day Adventists v. McGill*, 617 F.3d 402 (6th Cir. 2010) rejected a similar argument to Defendants' argument here that sophistication of consumers should preclude summary judgment. In *McGill*, the defendant, who separated from the Seventh-Day Adventist church because of a theological dispute, argued that the relevant public "are so discerning," particularly related to theological beliefs, "that there is a genuine issue of material fact about the likelihood that they would confuse McGill's church for the plaintiffs' church." *Id.* at 416. The Sixth Circuit rejected that argument, holding "while it may indeed be hard to envision a person mistakenly joining the wrong church, it is not at all difficult to imagine a person consuming McGill's published materials and ascribing his teachings to the General Conference, especially in light of the relatedness of the parties' services and similarity of the marks." *Id.* So too here, while Defendants demonstrated that potential parishioners are discerning, there is no proof that the public-at large, or even the casual parishioner, is sophisticated such to preclude summary judgment.

The Court therefore finds that consumer sophistication is, at most, neutral regarding a finding of actual confusion given the lack of consideration or evidence regarding non-Episcopalian sophistication.

j. Likelihood of Confusion Overall

Having reviewed all factors articulated by the Fourth Circuit, the Court finds that there is no dispute of material fact that Defendants' use of TEC's marks, or marks substantially similar to TEC's marks, creates a likelihood of consumer confusion. Reviewing all the elements, the Court finds that the following factors strongly support finding a likelihood of confusion: (1) TEC's

general theory is that the more sophisticated the consumer, the less likely they will be confused. However, here the opposite is true: the evidence of actual confusion indicates that the more knowledgeable the consumer, the *more* likely confusion.

marks, “The Episcopal Church” and “The Protestant Episcopal Church in the United States,” are strong marks; (2) Defendants’ use marks that are substantially similar to TEC’s marks, including “The Protestant Episcopal Church in the Diocese of South Carolina” and “The Episcopal Diocese of South Carolina”; (3) the marks identify similar religious and religious educational services; (4) the facilities used are substantially similar, namely, churches and other religious buildings; (5) the Defendants intended to capitalize on the goodwill by intentionally holding themselves out as the continuation of the Historic Diocese and using marks substantially similar to TEC’s marks; (6) there is substantial anecdotal evidence of actual confusion and clear survey evidence of actual confusion, and (7) the similar quality of the Parties’ services. Two factors are neutral: advertising is a neutral factor given the limited advertising conducted by the Parties, and consumer sophistication is neutral given the limited scope of evidence regarding potential consumers. Regardless, even if those factors weighed in favor of finding confusion, given the clear and uncontroverted evidence regarding all other factors, particularly regarding actual confusion and strength of marks, there is no dispute of material fact that The Episcopal Church is entitled to summary judgment.

As the Fourth Circuit held over two decades ago:

If the strength of the senior mark is the alpha of infringement analysis, then evidence of actual confusion is surely the omega; where the defendant in an infringement case has elected to use a mark similar to that of a competitor’s distinctive mark, and, as a result, has actually confused the public, our inquiry ends almost as soon as it begins.

Sara Lee Corp., 81 F.3d at 467.⁴¹ Having determined that TEC’s marks are strong and that there is substantial evidence of actual confusion, in addition to other undisputed factors, TEC’s claims

⁴¹ Further, the Fourth Circuit has recognized that, where marks are strong and actual confusion is present, there is a likelihood of confusion regardless of whether there are other factors not weighing in favor of a likelihood of confusion. *See Sara Lee Corp.*, 81 F.3d at 467 (“Even if most of the

are easy to resolve: it is clear and undisputed that Defendants have been infringing on TEC's marks dating back to 2012. Defendants are not the successor to the Historic Diocese, yet continue to claim they are. Defendants are not affiliated with the "Protestant Episcopal Church," yet continue to use marks indicating that they are. If Defendants wish to leave TEC, they have every right to do so; the law simply prohibits them from appropriating their former-church's marks as they go.

Once it is established that TECSC is the lawful successor of the Historic Diocese under the control of TEC, a hierarchical church, the dispute over the Disassociated Diocese's use of the Plaintiffs' marks becomes straightforward. This is obviously not the first instance where courts have been confronted with the situation of a religious schismatic group, after breaking away, has continued to use the marks of its former church organization. In an early and thoughtfully reasoned opinion of Chief Judge John J. Parker, the Fourth Circuit observed:

The fact that the seceding members had been members of the Methodist Episcopal Church, South, does not justify their use of the name of that organization after they had ceased to be members thereof. The right to use the name inheres in the institution, not in its members; and, when they cease to be members of the institution, use by them of the name is misleading and, if injurious to the institution, should be enjoined. No question of religious liberty is involved. Men have the right to worship God according to the dictates of conscience; *but they have no right in doing so to make use of a name which will enable them to appropriate the good will which has been built up by an organization with which they are no longer connected.*

Purcell, 145 F.2d at 987 (emphasis added). This Court follows the principles of *Purcell*, and multiple other courts, in holding that a schismatic religious organization, like any organization, has no right to continue to use the same mark, or substantially similar marks, to the organization

other factors did not indicate—as they do in this case—a strong likelihood of confusion, the strength of the L'eggs mark in conjunction with the solid evidence of actual confusion compels us to conclude that Kayser–Roth's current use of its Leg Looks mark is an infringing one.”). *See also Synergistic Int'l, LLC v. Korman*, 470 F.3d 162, 171 (4th Cir. 2006) (“Not all of these factors will be relevant in every trademark dispute, and there is no need for each factor to support Synergistic's position on the likelihood of confusion issue.”).

with which they were previously affiliated. *See also Cmty. of Christ Copyright Corp. v. Devon Park Restoration Branch of Jesus Christ's Church*, 634 F.3d 1005, 1010 (8th Cir. 2011) (granting summary judgment on trademark infringement claim against church formed by former members of Community of Christ); *Gen. Conference Corp. of Seventh-Day Adventists v. McGill*, 617 F.3d 402, 416 (6th Cir. 2010) (granting summary judgment on trademark infringement against defendant who separated from Seventh-Day Adventists); *Nat'l Bd. of Young Women's Christian Ass'n of U.S. A. v. Young Women's Christian Ass'n of Charleston, S. C.*, 335 F. Supp. 615, 628--29 (D.S.C. 1971) (Blatt, J.) (finding trademark infringement by local YWCA that disaffiliated from national organization). *See also* 1 McCarthy on Trademarks and Unfair Competition § 9:7.50 (5th ed.) ("A parent religious group is entitled to protection against a schismatic group or a dissident minority's confusing use of the same name.").

The Court therefore grants summary judgment to TEC on its claim for trademark infringement under the Lanham Act.

D. Trademark Dilution

As explained by the Fourth Circuit, in addition to trademark infringement, the Lanham Act prohibits trademark dilution, providing:

[T]he owner of a famous mark ... shall be entitled to an injunction against another person who ... commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

15 U.S.C. § 1125(c)(1).⁴² *Rosetta Stone Ltd.*, 676 F.3d at 167. There are two forms of dilution: first, "dilution by blurring" occurs from the "association arising from the similarity between a mark

⁴² "Dilution is not concerned with confusion in the marketplace. Rather, dilution theory provides that 'if customers or prospective customers see the plaintiff's famous mark used by other persons in a non-confusing way to identify other sources for many different goods and services, then the

or trade name and a famous mark that impairs the distinctiveness of the famous mark,” second, “[d]ilution by tarnishment’ is defined as the ‘association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.’” *Id.* To state a claim for trademark dilution under the Lanham Act, the plaintiff must demonstrate:

- (1) that the plaintiff owns a famous mark that is distinctive;
- (2) that the defendant has commenced using a mark in commerce that allegedly is diluting the famous mark;
- (3) that a similarity between the defendant’s mark and the famous mark gives rise to an association between the marks; and
- (4) that the association is likely to impair the distinctiveness of the famous mark or likely to harm the reputation of the famous mark.

Id. at 168. While TEC includes a conclusory allegation of dilution by tarnishment in its Complaint, (Dkt. No. 150 at ¶ 40), it alleges no facts regarding reputational harm, and therefore the Court solely focuses on dilution by blurring.⁴³

There is no dispute of material fact that Defendants are diluting TEC’s marks. First, as held above in discussing the strength of TEC’s marks, Plaintiffs have submitted substantial and un rebutted evidence of overwhelming unsolicited media coverage in major media outlets, commercial success in terms of the membership of TEC and widespread recognition of the mark by relevant individuals, such as the Disassociated Parishes and representatives of churches not

ability of the famous mark to clearly identify and distinguish only one source might be ‘diluted’ or weakened.’” *Rosetta Stone Ltd.*, 676 F.3d at 167 (citations omitted).

⁴³ Defendants also argue that their adoption of the allegedly diluting marks prior to TEC’s first use precludes TEC’s claim for dilution. (Dkt. Nos. 622 at 27; 626 at 56.) As held previously, this argument fails as the Disassociated Diocese is not the continuation of the Historic Diocese and therefore the Disassociated Diocese did not commence using the mark prior to Plaintiffs.

affiliated with TEC, a lengthy duration of uninterrupted use throughout the United States,⁴⁴ federal registration, and inclusion in various widely-distributed encyclopedias and dictionaries.⁴⁵ There is therefore no dispute of material fact that the marks at issue, The Episcopal Church and The Protestant Episcopal Church in the United States of America, are “widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark’s owner.” 15 U.S.C. § 1125(c)(2)(A).⁴⁶

Second, as held previously, the Court finds there is no dispute of material fact that Defendants are using marks in commerce that allegedly dilute TEC’s marks, namely, “The Protestant Episcopal Church in the Diocese of South Carolina” and “The Episcopal Diocese of South Carolina.”

Third, based on the same facts above there, there is no dispute of material fact that there is a similarity between Defendants’ marks and TEC’s famous marks giving rise to an association. In addition to explaining at length the similarity of the marks at issue, the Court also relies on Klein’s survey which found that individuals associated marks used by Defendants with TEC’s famous marks. Sixty-four percent of Episcopalians, and twenty-four percent of South Carolina residents overall associated “The Episcopal Diocese of South Carolina” with TEC. (Dkt. No. 595-86 at 14 – 18.) There is therefore no dispute of material fact that the similarity between Defendants’ marks and TEC’s famous marks gives rise to an association.

⁴⁴ It is uncontroverted that TEC has used “The Protestant Episcopal Church in the United States of America” since 1789 and “The Episcopal Church” since 1967.

⁴⁵ The Court is guided by the factors articulated in 15 U.S.C. § 1125(c)(2)(A)(i) – (iv).

⁴⁶ The Court finds these marks famous not because the Court held them to be strong marks: rather, it is based on the voluminous, and uncontroverted, evidence that supports both a finding that the marks are strong and famous.

Finally, reviewing the factors in 15 U.S.C. § 1125(c)(2)(B)(i) – (iv), the Court finds no dispute of material fact that the association is likely to dilute the marks by impairing their distinctiveness. As held previously, the marks used by Defendants have a high degree of similarity to TEC's famous marks, TEC's famous marks are distinctive with secondary meaning and have a strong commercial strength, TEC is the exclusive user of the famous marks at issue, there is widespread recognition of the famous marks (as demonstrated by a substantial amount of media coverage and the repeated testimony of representatives from Defendants and other churches), Defendants' intended to create an association to the famous marks by continuing to claim they are the successor to the Historic Diocese and, as discussed with evidence of actual confusion, there is clear evidence of individuals associating the marks Defendants' use with TEC's famous marks.

Therefore, there is no dispute of material fact that TEC is entitled to summary judgment on its claim for trademark dilution.

E. TECSC's Claim for Trademark Infringement

Plaintiff TECSC separately brings a claim for trademark infringement against Defendants, claiming ownership of the following marks:

- Diocese of South Carolina;
- The Episcopal Diocese of South Carolina;
- The Protestant Episcopal Church in the Diocese of South Carolina;
- The Diocesan Seal.

(Dkt. Nos. 581-1 at 7; 584-3.) As there is no dispute that these marks are not federally registered, TECSC's claim for trademark infringement arises under 15 U.S.C. § 1125(a), which applies the same test for trademark infringement. Under § 1125(a), a plaintiff must prove:

(1) that it possesses a mark; (2) that the defendant used the mark; (3) that the defendant's use of the mark occurred "in commerce"; (4) that the defendant used

the mark “in connection with the sale, offering for sale, distribution, or advertising” of goods or services; and (5) that the defendant used the mark in a manner likely to confuse consumers.

People for Ethical Treatment of Animals v. Doughney, 263 F.3d 359, 364 (4th Cir. 2001). *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768, 112 S. Ct. 2753, 2757 (1992) (“it is common ground that § 43(a) protects qualifying unregistered trademarks and that the general principles qualifying a mark for registration under § 2 of the Lanham Act are for the most part applicable in determining whether an unregistered mark is entitled to protection under § 43(a).”).

First, it is undisputed that Plaintiff TECSC owns the marks at issue. To demonstrate ownership of a mark, in the absence of a presumption raised by a federal registration, “so long as a person is the first to use a particular mark to identify his goods in a given market, and so long as that owner continues to make use of the mark, he is ‘entitled to prevent others from using the mark to describe their own goods’ in that market.” *George & Co. LLC*, 575 F.3d at 400. It is undisputed that the TECSC was the first to use these marks, and that it has continued to use the mark. As the Court held that the TECSC, for purposes of trademark rights, is the successor to the Historic Diocese, its first use of the marks dates prior to Defendants’ first use, which could be no earlier than 2012. Additionally, the TECSC used the marks continuously and only ceased in response to a Court-order. Therefore, the TECSC owns the Historic Diocese’s marks at issue.

Additionally, Defendants, throughout their pleadings and briefing, have conceded to using the Diocesan seal and the name “The Diocese of South Carolina” in commerce to offer religious services, as is apparent by Defendants’ briefing asserting their right to use “Diocese of South Carolina,” by webpages submitted throughout summary judgment briefing and by compilations of the Disassociated Parishes’ use of “The Diocese of South Carolina,” “The Protestant Episcopal Church in the Diocese of South Carolina” and the Diocesan Seal. (Dkt. No. Dkt. No, 439 at ¶ 27; 595-75; 595-78; 595-79; 621-2; 621-3.)

While Defendants have not submitted their own evidence regarding likelihood of confusion, they have incorporated the arguments contained in TEC's briefing that dealt with the issue at length. (Dkt. No. 584-1 at 7; 595-1.) To begin with, no party has submitted evidence regarding the strength of TECSC's marks, yet it is clear at the very least that "The Episcopal Diocese of South Carolina," "Protestant Episcopal Church in the Diocese of South Carolina," for the reasons described above, are descriptive, and the Diocesan Seal is, at least, a suggestive, if not arbitrary, mark.⁴⁷ Importantly, assessing commercial strength, the only evidence in the record regarding commercial strength demonstrates long and exclusive use of the marks at issue, with the Historic Diocese, and the TECSC as a successor, using the Diocesan Seal since 1869, the Diocesan Seal with color since 1911, "The Episcopal Diocese of South Carolina" since 1997, "The Diocese of South Carolina" since 1930, and "The Protestant Episcopal Church in the Diocese of South Carolina" since 1821. (Dkt. Nos. 584-3.) The Court therefore finds it undisputed that the marks have some strength, especially given the lack of evidence presented by Defendants regarding the strength of TECSC's marks. Yet, TECSC's marks, even if weak, are entitled to protection from the use of identical marks in the same geographic region by directly competing goods. *Choice Hotels Int'l, Inc. v. Zeal, LLC*, 135 F. Supp. 3d 451, 465 (D.S.C. 2015) ("even a relatively weak mark is entitled to protection from sufficiently similar marks used to promote sufficiently similar product.") (citations omitted); *Plus Prod. v. Plus Disc. Foods, Inc.*, 722 F.2d 999, 1006 (2d Cir. 1983) ("the scope of protection accorded a weak mark...will be confined to competing products"). See also 2 McCarthy on Trademarks and Unfair Competition § 11:77 (5th ed.) ("A mark which is relatively weak in the overall market for all goods and services can nonetheless be strong enough

⁴⁷ No party has briefed the conceptual strength of "Diocese of South Carolina," or whether it has secondary meaning. At most, therefore, the Court finds that it is a weak mark based on its use by the Historic Diocese since 1930. (Dkt. No. 584-3.)

to make confusion likely when a junior user uses a similar mark in the same general line of business.”).

The Court next assess actual confusion, as it is the only other factor that differs from the assessment of TEC’s marks. To begin with, there is some limited anecdotal evidence of actual confusion regarding the Disassociated Diocese’s use of TECSC’s marks. At least one man reported to Bishop Adams that he had difficulty identify a church affiliated with TEC to attend because he had “looked at the Diocese of South Carolina and assumed that was the Episcopal diocese.” (Dkt. No. 595-83 at 8.) In another instance, an organization affiliated with TECSC received a gift that was “listed as a gift to The Diocese of South Carolina,” and there were four or five instances overall of money having been sent to the wrong diocese. (*Id.* at 12.) Further, as above, there are multiple anecdotes of actual confusion overall with individuals calling the incorrect diocese or inquiring as to the affiliation of individual parishes. No party presented any survey evidence of actual confusion focusing on TECSC’s marks. Yet, it is well settled, that while both survey and anecdotal evidence are relevant, “neither category is necessarily required to prove actual confusion.” *Rosetta Stone Ltd.*, 676 F.3d at 156 (citations omitted).⁴⁸ Based on this evidence, and the lack of any evidence creating a dispute of material fact from Defendants, the Court finds that this factor weighs in favor of finding a likelihood of confusion.

The other factors the Court must review for a likelihood of confusion of TECSC’s marks are substantially similar to the analysis above for TEC’s marks: TECSC’s marks and the marks used by the Disassociated Diocese are similar as they are identical; the good or services are similar

⁴⁸ Indeed, the Fourth Circuit has even made clear that no evidence of actual confusion is necessary to make out a likelihood of confusion. *See Lone Star Steakhouse & Saloon, Inc.*, 43 F.3d at 933 (“In applying this standard, this Court has emphasized that a trademark owner need not demonstrate actual confusion.”).

as both TECSC and the Disassociated Diocese offer religious services and religious education and many use the Book of Common Prayer and the same hymnal; the facilities are highly similar as both Parties offer their services in churches and, indeed, many of the Disassociated Parishes offer services in building previously associated with TECSC; the Defendant's intent to use the infringing marks is clear as they incorrectly claim to be the successor to the Historic Diocese, and; quality of the services offered is highly similar. As above, similarity of advertising and consumer sophistication are neutral factors.

Therefore, the Court finds it undisputed that Defendants are infringing of TECSC's marks. This conclusion is based on the straightforward facts of the case: TECSC is the lawful successor to the Historic Diocese and therefore owns those marks, and Defendants are using the identical marks in the identical market offering substantially identical services. Therefore, TECSC is granted summary judgment on its claim for trademark infringement under the Lanham Act.

F. Trademark Infringement and Cancellation Under South Carolina Law

As held above, Plaintiff TECSC is the common law owner of the state-registered marks. Additionally, as the lawful successor to the Historic Diocese,⁴⁹ TECSC owns the state registrations of these marks. *See* S.C. Code Ann. § 39-15-1105 ("Registrant' means the person to whom the registration of a mark under this article is issued and the legal representatives, *successors*, or

⁴⁹ As held by the South Carolina Supreme Court. To the extent TECSC is not the owner of the registrations under South Carolina law, the registrations must be cancelled as TECSC owns the federal marks. *See* S.C. Code Ann. § 39-15-1145 (registration shall be cancelled where "registrant is not the owner of the mark"); 3 McCarthy on Trademarks and Unfair Competition § 22:2 (5th ed.) ("State trademark law and registrations cannot override rights provided by federal law for federal registrations. That is, when state rules conflict with federal law, the federal trademark law preempts state rules.") (collecting cases). *See also Purolator, Inc. v. EFRA Distributors, Inc.*, 687 F.2d 554, 560 (1st Cir. 1982) ("(t)he Supremacy Clause...bars ... state statutes or doctrine that would permit the sort of confusing or deceptive practices the draftsmen of the Lanham Act sought to prevent.") (citations omitted).

assigns of that person.”) (emphasis added). South Carolina law permits injunctive relief where an infringer uses a “counterfeit or imitation of the registered mark.” S.C. Code Ann. § 39-15-1170(A). As the marks are identical, the Defendants’ use of TECSC’s marks here easily meets that test, and TECSC is entitled to an injunction prohibiting Defendants’ use of their marks.

Finally, TECSC has requested, in the alternative, that the Court cancel the state registrations. (Dkt. No. 584-1 at 28.) As TECSC is the owner of the marks, they may request that the Secretary of State cancel the registrations at any time. *See* S.C. Code Ann. § 39-15-1145 (1) (“The secretary shall cancel from the register, in whole or in part: (1) a registration concerning which the secretary receives a voluntary request for cancellation of it from the registrant or the assignee of record[.]”) The Court therefore finds that TECSC is entitled to injunctive relief under South Carolina law.

G. False Advertising Under the Lanham Act

In addition to claims for trademark infringement and dilution, the Lanham Act prohibits “false or misleading description of fact, or false or misleading representation of fact, which ... in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services, or commercial activities.” 15 U.S.C. § 1125(a)(1). A plaintiff asserting a claim for false advertising must establish:

(1) the defendant made a false or misleading description of fact or representation of fact in a commercial advertisement about his own or another's product; (2) the misrepresentation is material, in that it is likely to influence the purchasing decision; (3) the misrepresentation actually deceives or has the tendency to deceive a substantial segment of its audience; (4) the defendant placed the false or misleading statement in interstate commerce; and (5) the plaintiff has been or is likely to be injured as a result of the misrepresentation, either by direct diversion of sales or by a lessening of goodwill associated with its products.

Scotts Co. v. United Indus. Corp., 315 F.3d 264, 272 (4th Cir. 2002)

For the first factor, false misrepresentation, it is undisputed that Defendants made false statements. There are two theories of falsehood: literal falsity and an implied falsehood likely to mislead consumers. *Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 272 (4th Cir. 2002). Here, Plaintiff TECSC have demonstrated literal falsity. The Disassociated Diocese is not the successor to the Historic Diocese and therefore any reference in commercial advertisements to the Disassociated Diocese as the “Diocese of South Carolina,” including use of the Diocesan Seal of the Historic Diocese which states “Diocese of South Carolina,” is literally false. Further, Defendants do not dispute, and cannot dispute, that they use “Diocese of South Carolina” or the Diocesan seal in advertisements. Indeed, the premise of Defendants’ briefing is that they are permitted to use the name and the seal.

For the second factor, materiality, Plaintiff TECSC must show that “the defendants misrepresented an ‘inherent quality or characteristic’ of the product.” *S.C. Johnson & Son, Inc. v. Clorox Co.*, 241 F.3d 232, 238 (2d Cir. 2001). It is manifest that a religious organization’s history, denominational affiliation and name is an “inherent quality or characteristic” of the religious organization. *See Purcell*, 145 F.2d at 983 (recognizing that using name of religious organization by seceding faction “will result in injury and damage” is “so clear to our minds as hardly to admit of argument.”). Materiality is therefore undisputed.

For the third factor, Plaintiff must demonstrate that the misrepresentation “actually deceives or has the tendency to deceive a substantial segment of its audience.” *Scotts Co.*, 315 F.3d at 272. Yet, as recognized by the Fourth Circuit and other courts of appeal, “[w]here the advertisement is literally false, a violation may be established without evidence of consumer deception.” *Id. citing Cashmere & Camel Hair Mfrs. Inst. v. Saks Fifth Ave.*, 284 F.3d 302, 311 (1st Cir. 2002). *See also Balance Dynamics Corp. v. Schmitt Indus., Inc.*, 204 F.3d 683, 693 (6th

Cir. 2000) (“most of the circuits have ruled that when a statement is literally false, a plaintiff need not demonstrate actual customer deception in order to obtain relief under the Lanham Act.”). Therefore, as the statements that the Disassociated Diocese is the “Diocese of South Carolina,” including use of the seal, is literally false, it is undisputed that Defendants’ statements actually deceive.

For the fourth factor, Plaintiff TECSC has submitted numerous publications and websites demonstrating that Defendants made the false statements in interstate commerce. (Dkt. No. 621-1 – 621-5.) *See TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 829 n.3 (9th Cir. 2011) (“A plaintiff bringing a false advertising claim must also show that defendant caused its false or misleading statement to enter interstate commerce...but this is virtually automatic for websites.”) (citations omitted). Defendants do not contest this factor. (Dkt. No. 603 at 50.)

Finally, TECSC must demonstrate that it has been or is likely to be injured as a result of the misrepresentation, either by a diversion of sales or lessening of goodwill. Defendants argue that TECSC’s claim for false advertising must fail as TECSC cannot demonstrate damages or financial harm, relying on the statement by the Fourth Circuit that “it is the core requirement that a plaintiff ‘show economic or reputational injury flowing directly from the deception wrought by the defendant’s advertising’ that assures Article III standing in Lanham Act cases.” *Verisign, Inc. v. XYZ.COM LLC*, 848 F.3d 292, 299–300 (4th Cir. 2017). Yet, the section cited by Defendants is specifically regarding actions “[t]o recover damages under the Lanham Act,” and here TECSC solely seeks injunctive and declaratory relief. Furthermore, as the Fourth Circuit held in *Verisign*, standing can be met “either by direct diversion of sales or by a lessening of goodwill associated with its product.” *Id.* at 300. Therefore, as Plaintiffs have shown a lessening of goodwill in a religious institution, the injury is one recognized by the Fourth Circuit. As the Fourth Circuit held:

That the use of the name of the Methodist Episcopal Church, South, by the seceding members as the name of the new and rival organization that they are creating will result in injury and damage to the united church into which the Methodist Episcopal Church, South, has been merged, is not only established by allegation and proof but it seems so clear to our minds as hardly to admit of argument.

Purcell, 145 F.2d at 983. The Fourth Circuit recognized an injury to a plaintiff's goodwill where members use the precise name of their former affiliation and went on to note that any confusion would ultimately effect donations and bequests. *Id.* at 983 – 84. So too here, the injury and loss of goodwill is clear. Defendants are using Plaintiff TECSC's precise marks, effectively barring TECSC from using their own name, and therefore Defendants are clearly harming TECSC's goodwill and ability to operate as a religious organization. Further, Plaintiffs' have presented evidence of the exact type of injuries contemplated by *Purcell*, including mail, e-mails, checks and donations that were sent to the Disassociated Diocese when they were intended for TECSC. (Dkt. No. 595-81 at 8; 595-81 at 5; 595-120 at 4 – 7.) Therefore, there is no dispute of material fact that Plaintiff TECSC has been, and is likely to be, injured as a result of the misrepresentation.

As TECSC presented uncontroverted evidence on all five factors of their false advertising claim for an actual falsehood, namely Defendants representing themselves as the Diocese of South Carolina, TECSC is entitled to summary judgment on their Lanham Act false advertising claim.

H. The Court is Not Barred From Ruling On These Motions

Defendants also argue that the Court is barred from ruling on these motions by the doctrine of laches and the Anti-Injunction Act. As held below, both arguments are without merit.⁵⁰

⁵⁰ Defendants also make repeated reference to certain Defendants who have ceased using some of Plaintiffs' marks, or allegedly related marks. For the sake of completeness, the Court holds that "it is well established that the voluntary discontinuance of challenged activities by a defendant does not necessarily moot a lawsuit." *Lyons P'ship, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 800 (4th Cir. 2001). Therefore, as Defendants continue to claim the right to use the marks "The Episcopal Diocese of South Carolina" and "The Protestant Episcopal Church in the Diocese of South Carolina," the Court holds that there is a reasonable expectation that, if the Disassociated

1. Laches

Defendants argue that laches bars TEC's claims here. (Dkt. No. 603 at 57.) Defendants correctly note that the Lanham Act borrows "analogous state limitations period," which here is three years. *Secret of the Islands, Inc v. Hymans Seafood Co. Inc.*, No. 2-17-CV-00342, 2018 WL 1566706, at *3 (D.S.C. Mar. 30, 2018) (citations omitted). Therefore, Defendants argue that TEC did not bring their claims in a timely manner and are therefore barred by laches from asserting their trademark claims.⁵¹ Though addressed in the context of a statute of limitations defense, the Court has already addressed and denied a similar argument. (Dkt. No. 411 at 5.) As explained previously, Plaintiffs solely seek prospective remedies, namely injunctive and declaratory relief, and do not seek any damages. These claims do not relate to an injury that occurred only in 2012, and instead the allegations assert ongoing violations. This includes the Defendants' acknowledgment, in their Answer filed in 2018, that they refer to the Disassociated Diocese as "The Episcopal Diocese of South Carolina" and "The Protestant Episcopal Church in the Diocese of South Carolina." (See, Dkt. No. 439 at ¶ 27.) As the Fourth Circuit has held, "even in equity under the Lanham Act, laches does not bar a claim for prospective injunctive relief." *Lyons P'ship, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 797 (4th Cir. 2001) ("A prospective injunction is entered only on the basis of current, ongoing conduct that threatens future harm. Inherently, such conduct cannot be so remote in time as to justify the application of the doctrine of laches"). Therefore, since Plaintiffs do not seek damages and seek equitable relief for ongoing violations, their claims are not barred by laches.

Further, the Court finds that equitable relief remains necessary and TEC did not

Diocese or certain Disassociated Parishes have ceased using certain marks, their pleadings and briefing indicates they will resume using the phrases absent an injunction.

⁵¹ The Episcopal Church intervened in this action in August 2017. (Dkt. Nos. 83, 89.)

“unreasonably delay” in seeking redress. The Fourth Circuit, in *Sara Lee Corp.*, 81 F.3d 455, held that, “[i]n a trademark case, courts may apply the doctrine of estoppel by laches to deny relief to a plaintiff who, though having knowledge of an infringement, has, to the detriment of the defendant, unreasonably delayed in seeking redress.” The court further held that “the doctrine is sparingly applied where, as here, a plaintiff seeks only equitable relief” and that “in consideration of the public interest, estoppel by laches may not be invoked to deny injunctive relief if it is apparent that the infringing use is likely to cause confusion.” Equitable relief is clearly necessary here for the public interest. As demonstrated by uncontroverted evidence, there is widespread actual confusion and a likelihood of confusion caused by Defendants’ infringement affecting a matter of public interest, namely, the identity of a major denominational religious organizations. Additionally, TEC did not “unreasonably” delay. Instead, TEC moved to intervene only twelve days after the South Carolina Supreme Court issued its decision in *The Protestant Episcopal Church*, (Dkt. No. 83), when it became clear that trademark matters would be decided before this Court. Therefore, as Plaintiffs seek prospective relief, equitable relief is necessary in consideration of the public interest, and TEC did not unreasonably delay, laches does not bar the claims here.

2. Anti-Injunction Act

The Anti-Injunction Act states that “[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28 U.S.C. § 2283. Defendants argue that the Court cannot provide relief under the Lanham Act as it would act as an injunction on the state proceedings currently on remittitur to the trial court after the South Carolina Supreme Court’s ruling. (Dkt. No. 625 at 24 – 31.) However, the relief requested in no way affects or enjoins any state court proceedings. Rather, as explained above, the South Carolina Supreme Court, by a majority of three to two, reversed all of the state trial court’s holdings on

trademarks and, as the narrowest ruling, explicitly deferred those determinations to this Court. Any rulings, findings, injunctions or judgments on trademarks from the state trial court were therefore reversed prior to reaching this Court and deferred to this Court,⁵² and this Court's ruling therefore does not enjoin the pending state court action. The Court has the ability, the record and the jurisdiction to rule on these motions and this Order has no injunctive effect on state court proceedings.⁵³ The Anti-Injunction Act therefore does not bar any requested relief here.

I. Permanent Injunctive Relief

The Lanham Act, 15 U.S.C. § 1116, gives the Court the “power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office or to prevent a violation under subsection (a), (c), or (d) of section 1125 of this title.” 15 U.S.C. § 1116(a). To be granted a permanent injunction, a plaintiff must satisfy the traditional permanent-injunction analysis. *Mary Kay Inc. v. Ayres*, 827 F. Supp. 2d 584, 595 (D.S.C. 2011). Namely, a plaintiff must demonstrate irreparable harm, inadequacy of purely legal remedies, hardships balancing in its favor, and that the public interest would not be disserved by the injunction. *See PBM Products, LLC v. Mead Johnson & Co.*, 639 F.3d 111, 126 (4th Cir. 2011). The Fourth Circuit has noted that “an injunction is the preferred remedy to ensure that future violations will not occur....” *Lone Star Steakhouse & Saloon, Inc.*, 43 F.3d at 939.

An injunction is necessary here. As has been cited throughout this Order, the Fourth Circuit

⁵² A fourth Justice, Justice Toal, also “decline[d] to address the effect of federal law on the parties’ service marks.” *Protestant Episcopal Church*, 421 S.C. 211, at 290.

⁵³ The Fourth Circuit on two previous occasions has held that this Court may not abstain from determining these claims. Defendants arguments seemingly ignore these holdings, instead again asking for the Court to defer to the state courts even after the South Carolina Supreme Court explicitly deferred to this Court.

has made clear the necessity of enjoining a breakaway organization from continuing to use the name of its prior affiliate:

Upon these facts, we do not think that there can be any doubt as to the right of plaintiffs to the injunction prayed. 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 the wrong known to the law as unfair competition, against which courts of equity have not hesitated, in any jurisdiction, to use the full power of the injunctive process.

Purcell, 145 F.2d at 984. The obvious and ongoing infringement and dilution of TEC's marks will continue to cause irreparable harm to TEC, and the ongoing false advertising co-opting the Historic Diocese's name will also continue to cause irreparable harm to the Historic Diocese's successor, TECSC. Further, purely legal remedies are plainly inadequate: this is not a matter of monetary damages, instead it is the issue of an adoption of the Plaintiffs' history, goodwill, and name. Further, legal remedies would not sufficiently protect against future violations. The hardships weigh strongly in TEC's and TECSC' favor as they are subject to trademark infringement, trademark dilution and false advertising by Defendants and Defendants have no right to infringe on, dilute or otherwise falsely advertise with Plaintiffs' marks. Finally, the public interest would be served by preventing future consumers from being misled.

The time has come for this dispute to be resolved. The Defendants have every right to disassociate from the TEC and pursue their doctrine and community as they see fit, yet they may not leave with the Plaintiffs' goodwill and marks generated over the course of over two centuries. The Court is cognizant that Defendants have since associated with a new denominational organization, and there may be other marks that properly identify their affiliation with this organization and would be sufficiently distinct to not cause any confusion with or dilute TEC's marks or constitute false advertising. However, on the facts presented here, the Court finds it undisputed that the Defendants infringed on TEC and TECSC's marks, diluted TEC's marks and

engaged in false advertising regarding their affiliation with TECSC and their identity. Therefore, as detailed below, the Court issues an injunction against further trademark infringement, trademark dilution, and false advertising.⁵⁴

IV. Conclusion

For the foregoing reasons, the Court **GRANTS** Plaintiffs The Right Reverend Charles G. vonRosenberg, *et al.*'s Motion for Summary Judgment (Dkt. No. 584). The Court **GRANTS** TEC's Motion for Summary Judgment (Dkt. No. 595). The Court **DENIES** Defendants The Right Reverend Mark J. Lawrence, *et al.*'s Motion for Summary Judgment (Dkt. No. 603). The Court **DENIES** Defendants The Right Reverend Mark J. Lawrence, *et al.*'s Motion for Summary Judgment as to Genericness. (Dkt. No. 610.)

The Court further **DECLARES** that TEC owns its five federally registered marks (Dkt. Nos. 595-5; 595-7; 595-8; 595-9; 595-11; 595-64; 595-65; 595-67; 595-68) and that TECSC owns the marks designated in the state registrations (Dkt. No. 584-3).

Additionally, the Court hereby issues the following **PERMANENT INJUNCTION** and **ENJOINS** all Defendants, their officers, agents, servants, employees, associates, subsidiaries and

⁵⁴ While the evidence focused on "The Episcopal Diocese of South Carolina," "The Protestant Episcopal Church in the Diocese of South Carolina," and Defendants' use of identical marks to TECSC's marks (the two marks previously mentioned and the "Diocese of South Carolina" and the Diocesan Shield), the Court enjoins Defendants from using any of TEC and TECSC's marks, including "The Episcopal Church Welcomes You," "La Iglesia Episcopal" and The Episcopal Shield in addition to those previously mentioned, as "[t]o ensure...that relief is effectual, otherwise permissible practices connected with the acts found to be illegal must sometimes be enjoined. *United States v. Loew's, Inc.*, 371 U.S. 38, 53, 83 S. Ct. 97, 106 (1962), *abrogated on other grounds by Illinois Tool Works Inc. v. Indep. Ink, Inc.*, 547 U.S. 28, 126 S. Ct. 1281 (2006). See also 5 McCarthy on Trademarks and Unfair Competition § 30:4 (5th ed.) ("In a clear case, the court has power to enjoin an act, which if done alone could be legal, but when performed in the context of a totality of acts does constitute unfair competition." (collecting cases)).

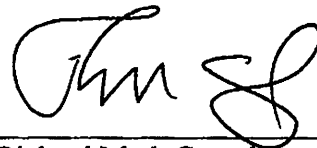
affiliates from using the following marks or any mark confusingly similar:⁵⁵

- The Protestant Episcopal Church in the United States;
- The Episcopal Church;
- The Episcopal Church Welcomes You;
- La Iglesia Episcopal, and;
- The Episcopal Shield.⁵⁶

The Court further enjoins Defendants their officers, agents, servants, employees, associates, subsidiaries and affiliates from using the following marks or any mark confusingly similar:

- Diocese of South Carolina;
- The Episcopal Diocese of South Carolina;
- The Protestant Episcopal Church in the Diocese of South Carolina;
- The Diocesan Seal.⁵⁷

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

September 19, 2019
Charleston, South Carolina

⁵⁵ The Court holds explicitly that “The Episcopal Diocese of South Carolina” and “The Protestant Episcopal Church in the Diocese of South Carolina” are likely to cause confusion with TEC’s marks and Defendants are enjoined from using those marks.



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“resolution of their real and personal property rights.” The property at issue included the Lawrence Diocese’s service marks, which the state-court plaintiffs alleged TEC had used in violation of South Carolina law. TEC filed an answer and counterclaims, including claims of trademark infringement and dilution under the Lanham Act.

On March 5, 2013, Bishop vonRosenberg filed this federal action, alleging Bishop Lawrence’s continued assertions that he remains the Bishop of the Lawrence Diocese was false advertising in violation of the Lanham Act. In response, Bishop Lawrence asked this Court to abstain in favor of the state proceeding. In August 2013, Judge C. Weston Houck granted Bishop Lawrence’s motion to abstain and dismissed the case.

Meanwhile, on February 3, 2015, the state court issued a final order in favor of the Lawrence Diocese. (Dkt. No. 86-6.) It held that the Lawrence Diocese had validly dissociated from The Episcopal Church and therefore owned the property at issue in the litigation, including the service marks. The state court permanently enjoined TEC and its agents from using the Lawrence Diocese’s marks. The Lawrence Diocese appealed to the South Carolina Court of Appeals on March 24, 2015.¹

Shortly thereafter, on March 31, 2015, the Fourth Circuit vacated Judge Houck’s dismissal and remanded for determination of whether “exceptional” circumstances under *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), justified abstention. On remand, Judge Houck again abstained, staying the federal proceeding until the conclusion of the state action. Bishop vonRosenberg again appealed and on February 21, 2017, the Fourth Circuit again vacated Judge Houck’s order. The mandate issued on March 15, 2017, and Bishop vonRosenberg shortly thereafter filed an amended complaint, rewording certain allegations and

¹ The appeal was transferred to the South Carolina Supreme Court under Rule 204(b), SCACR.

adding his successor, Bishop Adams, as a Plaintiff. After Judge Houck passed away in July 2017, this case was assigned to the undersigned United States District Judge.

On August 2, 2017, the South Carolina Supreme Court held TEC owned most of the property at issue, reversing the Court of Common Pleas. *Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church*, 806 S.E.2d 82 (S.C. 2017), *reh'g denied* (Nov. 17, 2017), *petition for cert. filed*, No. 17-1136 (Feb. 9, 2018). The court also held that twenty-eight parishes associated with the Diocese held real and personal property in trust for the benefit of TEC. On the issue of service marks the court was fragmented, with Acting Justice Pleicones and Justice Hearn finding the trial court erred in holding the Lawrence Diocese's state-registered trademarks prevail over TEC's federal trademarks, Chief Justice Beatty expressing no opinion because the issue should be decided in this pending federal proceeding, and Acting Justice Toal and Justice Kittredge finding that the Lawrence Diocese's service marks are validly registered under state law but that determination of the effect of federal trademark law on the marks should be decided in this pending federal proceeding. A petition for rehearing was denied and the remittitur issued. A petition for a writ of certiorari is pending before the United States Supreme Court.

On August 15, 2017, TEC moved for leave to intervene of right or, alternatively, for permissive intervention. The Court granted the motion and TEC's complaint-in-intervention was filed on September 1, 2017 (Dkt. No. 83.) Now before the Court are

- TEC's motion to amend its complaint to join as parties (1) the Lawrence Diocese, incorporated as The Protestant Episcopal Church in the Diocese of South Carolina, (2) the Trustees of The Protestant Episcopal Church in the Diocese of South Carolina (the "Trustees Corporation"), a nonprofit religious corporation allegedly under Bishop Lawrence's control, (3) a large number of

parishes associated with the Lawrence Diocese. TEC also moves to add claims under South Carolina trust law against the twenty-eight parishes associated with the Lawrence Diocese holding real and personal property in trust for the benefit of TEC.

- Bishops vonRosenberg and Adams's motion to amend their complaint to add claims under the Lanham Act for false advertising and trademark infringement against (1) Bishop Lawrence, (2) the Lawrence Diocese, (3) the Trustees Corporation, (3) a large number of parishes associated with the Diocese led by Bishop Lawrence, and (4) John Doe defendants. They also move to add claims under South Carolina trust law against the Trustees Corporation and the twenty-eight parishes associated with the Lawrence Diocese holding real and personal property in trust for the benefit of TEC.
- ECSC's motion to intervene and to file a complaint in intervention, asserting Lanham Act and state law false advertising and trademark infringement claims against against (1) Bishop Lawrence, (2) the Lawrence Diocese, (3) the Trustees Corporation, (3) a large number of parishes associated with the Lawrence Diocese, and (4) John Doe defendants. ECSC also moves to assert claims under South Carolina trust law against the Trustees Corporation and the twenty-eight parishes associated with the Lawrence Diocese holding real and personal property in trust for the benefit of TEC
- Bishop Lawrence's motion to amend his answer to TEC's complaint-in-intervention to add counterclaims. Plaintiffs consent to the amendment.

II. Legal Standard

A. Amendment of Pleadings

Under Rule 15(a)(2) of the Federal Rules of Civil Procedure, after the time has passed to amend a pleading as a matter of course, “a party may amend its pleading only with the opposing party's written consent or the court’s leave. The court should freely give leave when justice so requires.” Rule 15(a) is a “liberal rule [that] gives effect to the federal policy in favor of resolving cases on their merits instead of disposing of them on technicalities.” *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006) (en banc). However, “[m]otions to amend are committed to the discretion of the trial court.” *Keller v. Prince George’s County*, 923 F.2d 30, 33 (4th Cir. 1991). Thus, “[a] district court may deny a motion to amend when the amendment would be prejudicial to the opposing party, the moving party has acted in bad faith, or the amendment would be futile.” *Equal Rights Ctr. v. Niles Bolton Assocs.*, 602 F.3d 597, 602-03 (4th Cir. 2010).

B. Intervention

Rule 24 of the Federal Rules of Civil Procedure provides for two types of intervention. “Intervention of Right” requires the court to permit anyone to intervene upon timely motion who “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). Thus, to intervene as of right, a movant must show: (1) timely application; (2) an interest in the subject matter of the underlying action; (3) that a denial of the motion for leave to intervene would impair or impede the movant’s ability to protect its interest; and (4) that the movant’s interest is not adequately represented by the existing parties to the litigation. *Houston Gen. Ins. Co. v. Moore*, 193 F.3d 838, 839 (4th Cir. 1999). “A party moving for intervention under 24(a) bears the burden of establishing a right to intervene, and must do so by satisfying all four

requirements.” *U.S. ex rel. MPA Constr., Inc. v. XL Specialty Ins. Co.*, 349 F. Supp. 2d 934, 937 (D. Md. 2004). Failure to satisfy even one of these requirements is sufficient to warrant denial of a motion for leave to intervene as a matter of right. *See NAACP v. New York*, 413 U.S. 345, 369 (1973).

“Permissive Intervention,” on the other hand, allows the court, in its discretion, to permit anyone to intervene upon timely motion who “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). In exercising discretion under Rule 24(b), “the court shall consider whether the intervention will unduly delay or prejudice the application of the rights of the original parties.” Fed. R. Civ. P. 24(b)(3).

III. Discussion

Plaintiffs’ various motions to add claims and to add parties are most efficiently addressed in the following order: (1) whether Plaintiffs should be permitted to assert false advertising and trademark infringement claims against the Lawrence Diocese, the associated parishes, and the Trustees Corporation, (2) whether Plaintiffs should be permitted to add trust law claims against 28 associated parishes, and (3) whether the ECSC should be permitted to intervene.

Before addressing those issues, the Court dispenses with a threshold issue. Defendants argue this Court should not consider any issue raised in their petition to the United States Supreme Court for a writ of certiorari in the state litigation. They also ask this Court to stay this matter until the Supreme Court disposes of their petition. (Dkt. No 138 at 22–24.)

That argument is without merit. The judgment of the South Carolina Supreme Court is a final judgment and is the law of that case. The losing parties’ decision to petition for a writ of certiorari does not place the South Carolina Supreme Court’s decision into abeyance. Nor does it provide any reason for this Court to abstain from hearing any issue properly before this Court. The

Supreme Court knows how to stay a lower court decision pending review when it wishes to do so. *See, e.g., Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080 (2017).

A. Whether Plaintiffs should be permitted to assert false advertising and trademark infringement claims against the Lawrence Diocese, parishes associated with the Lawrence Diocese, and the Trustees Corporation

Plaintiffs allege the Lawrence Diocese, 54 parishes associated with the Lawrence Diocese, and the Trustees Corporation are infringing TEC's trademarks and engaging in false advertising in a manner similar to and in concert with Bishop Lawrence and the John Doe Defendants. (*See* Dkt. No. 125-2.) Plaintiffs seek injunctive and declaratory relief. (*Id.*) If the Lawrence Diocese, the parishes, and the Trustees Corporation are not joined in this action, any injunctive or declaratory relief granted against Bishop Lawrence and the John Doe Defendants would not apply to the associated parishes or the Trustees Corporation. Thus, according to Plaintiffs, the Court cannot accord complete relief to Plaintiffs without joinder of the additional allegedly infringing parties, which makes their joinder mandatory under Rule 19 of the Federal Rules of Civil Procedure.

Defendants can respond to that straightforward and persuasive argument only by arguing joinder of the Lawrence Diocese, the parishes, and the Trustees Corporation is not needed for Plaintiffs to obtain complete relief. Defendants argue this is so because the present complaints only allege infringement by Bishop Lawrence, not the diocese he leads or the constituent parishes of that diocese. That argument might be sound if the additional Defendants were unassociated with Bishop Lawrence, but it is obviously without merit where the additional Defendants are, allegedly, constituent organizations acting under his leadership and jointly with him. The Court therefore grants Plaintiffs' motions insofar as they seek to assert trademark infringement and false advertising claims against the Lawrence Diocese, parishes associated with the Lawrence Diocese, and the Trustees Corporation.

B. Whether Plaintiffs should be permitted to add their proposed trust law claims against 28 associated parishes

The South Carolina Supreme Court has held that 28 parishes associated with the Diocese hold their real and personal property in trust for the benefit of TEC. In Count Three of TEC's proposed second amended complaint-in-intervention and Count Four of Bishops vonRosenberg and Adams's proposed third amended complaint and ECSC's proposed complaint-in-intervention, Plaintiffs invoke this Court's supplemental jurisdiction to assert a claim under South Carolina Code § 62-7-706, which permits a trust beneficiary to seek a court order removing a trustee. Plaintiffs allege the parishes have breached their fiduciary duties by allowing property held in trust for TEC to be used "in connection with a denomination" other than TEC. (Dkt. No. 125-2 ¶ 45.) Plaintiffs pray the Court to "Declare that the 28 Trustee Parishes have committed a serious breach of the trust they owe to The Episcopal Church and have demonstrated their unfitness, unwillingness, and persistent failure to administer the trust effectively" and to "Order the 28 Trustee Parishes to remove from their vestries any persons who cannot demonstrate to this Court's satisfaction that they are capable of and willing to carry out their fiduciary obligations to The Episcopal Church, and replace them with persons who can make such demonstration to the Court's satisfaction." (Dkt. No. 125-2.)

The United States Supreme Court has held that a statute must "not foster 'an excessive government entanglement with religion.'" *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971). *Lemon* concerned state aid to parochial schools, not an injunction issued under a facially neutral law-of-trusts statute, but that distinction does not mean this Court is free to use trust law entangle itself with religion like a fly in a spider web. Entry of a judicial order telling 28 congregations whom they may or may not elect to their respective parish vestries would foster excessive judicial entanglement with religion. The parish rector presides over the vestry. Would he be required to

demonstrate his willingness “to carry out [his] fiduciary obligations to The Episcopal Church”—*i.e.*, demonstrate his loyalty to a particular Protestant denomination—to the Court’s satisfaction? If he were not sufficiently loyal to TEC, would Plaintiffs’ have the Court remove him from his church? Other vestry members are elected by the congregation. What would Plaintiffs have the Court do were the congregation to refuse to elect any person sufficiently loyal to TEC?

Of course, there are other ways for TEC to enforce its property rights. For example, TEC could take legal possession of the parish property held in trust for its benefit, rather than asking a federal court to supervise the local congregation’s use the property. The Court therefore denies Plaintiffs’ motions to the extent they seek injunctive relief regarding the composition of parish vestries.

Plaintiffs’ request for declaratory relief regarding the vestries is similarly problematic. In principle, declaring whether a vestry holding real property in trust met its fiduciary obligation need not involve any judicial entanglement with religion. For example, a vestry might hold a commercial property in trust for the benefit of a national church. If the vestry members engaged in self-dealing with the trust *res*, that would be a clear breach of fiduciary duty. But here, the alleged breach is allowing the trust *res* to be used “in connection with a denomination” other than TEC. This Court cannot involve itself in determining exactly what religious services are or are not allowable in various parish churches across the Lowcountry. Churches often permit other denominations to use their facilities. *See, e.g.*, Emma Sapon, *Many congregations, one roof: Aging churches rent space to growing ones*, Minn. Public Radio (July 1, 2016), available at <https://www.mprnews.org/story/2016/07/01/church-rentals-immigrant-congregations>. Indeed, TEC does not really argue that allowing parish properties to be used “in connection with a denomination” other than TEC is a breach of fiduciary duty. Rather, TEC argues that allowing the

Lawrence Diocese to use parish facilities is a breach of fiduciary duty because the Lawrence Diocese contests TEC's claim to be the "true" Episcopal Church. Essentially, TEC asks the Court to declare parish vestrymen unfit for lay ministry because they allow schismatics to use church property. The Court cannot do that.

Moreover, even if concerns about judicial entanglement with religion were placed aside, the Court would decline to exercise supplemental jurisdiction over Plaintiffs' proposed trust claims. District courts may decline to exercise supplemental jurisdiction over a state-law claim if the claim would substantially predominate over the claims over which the district court has original jurisdiction. 28 U.S.C. § 1367(c)(2). Here, the proposed trust claims would, if allowed, substantially predominate the trademark claims in this federal trademark case. The Court would be called upon to make individual determinations as to whether a dozen or so vestrymen in 28 parishes (over 300 persons) made property management decisions that "demonstrate to this Court's satisfaction that they are capable of and willing to carry out their fiduciary obligations to The Episcopal Church." The Court understands that a breakaway group using a TEC property for its services could be seen as giving the public a false impression of association with TEC. But asking the Court to decide who may give permission to use parish property for what purposes would submerge the trademark issues under real property issues not before this Court. Again, the better solution to the problem might be for TEC to take possession of the properties, rather than asking a federal court to assist the management of the properties. And the better forum for enforcement of the South Carolina Supreme Court's decision concerning TEC's real property rights is the court

that received the remittitur, the Dorchester County Court of Common Pleas, where these issues have been litigated for over five years.²

The Court therefore denies Plaintiffs' motions insofar as they seek to assert trust law claims against parishes associated with the Lawrence Diocese.

C. ECSC's motion to intervene

Defendants object to any Plaintiffs joining additional Defendants or adding trust law claims against any Defendant, but they do not articulate an objection to ECSC being a plaintiff regarding what false advertising and trademark claims may be permitted against those Defendants that may be joined. For the reasons set forth above, the Court therefore grants in part and denies in part ECSC's motion to intervene. The motion is granted insofar as ECSC may file a complaint-in-intervention asserting false advertising and trademark claims against any Defendant, including associated parishes and the Trustees Corporation, and denied insofar as ECSC seeks to assert trust claims against individual parishes.

D. Bishop Lawrence's motion to amend his answer

Bishop Lawrence's motion to amend his answer (Dkt. No. 134) is timely and Plaintiffs consent (Dkt. No. 137). The Court therefore grants the motion to amend.

² The Court notes in passing that Defendants' arguments in opposition to Plaintiffs' motions regarding trust claims, other than the argument that the state trust law claims would predominate over the federal trademark claims, are without merit. The alleged breach of fiduciary duty—allowing the Lawrence Diocese to use property held in trust for TEC—plainly arises from a nucleus of operative fact common to the trademark infringement claims. The “Betterment Act” action currently pending in state court is an *in personam* action, not an *in rem* or *quasi in rem* action over the trust *res* that would deprive this Court of jurisdiction. As the Fourth Circuit has repeatedly held, there is no basis for abstention in this case. Defendants' petition for review of the final judgment of the South Carolina Supreme Court certainly does not create a basis for abstention.

IV. Conclusion

For the foregoing reasons, the Court **GRANTS IN PART AND DENIES IN PART** Bishops vonRosenberg and Adams's motion to amend their complaint, to join parties, and to add claims (Dkt. No. 124); The Episcopal Church of the United States' motion to amend its complaint-in-intervention, to join parties, and to add claims (Dkt. No. 125); and The Episcopal Church in South Carolina's motion to intervene (Dkt. No. 126). The Court **GRANTS** Bishop Lawrence's motion to amend his answer to The Episcopal Church of the United States' complaint-in-intervention (Dkt. No. 134).

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Gergel', is written over a horizontal line.

Richard Mark Gergel
United States District Court Judge

April 16, 2018
Charleston, South Carolina

**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

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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).

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.")).

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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.

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(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

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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.

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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.

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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

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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

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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

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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.

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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,

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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

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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

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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.

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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.

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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.

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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.

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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

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FILED: October 27, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2112 (L)
(2:13-cv-00587-RMG)

THE RIGHT REVEREND CHARLES G VONROSENBERG, individually and in his capacity as Provisional Bishop of the Protestant Episcopal Church in the Diocese of South Carolina; THE RIGHT REVEREND GLADSTONE B. ADAMS, III, individually and in his capacity as the Provisional Bishop of The Episcopal Church in South Carolina

Plaintiffs - Appellees

THE EPISCOPAL CHURCH; THE EPISCOPAL CHURCH IN SOUTH CAROLINA

Intervenors/Plaintiffs - Appellees

v.

THE RIGHT REVEREND MARK J. LAWRENCE; THE CORPORATION CURRENTLY CALLING ITSELF "THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA"; THE TRUSTEES OF THE PROTESTANT EPISCOPAL CHURCH IN SOUTH CAROLINA

Defendants - Appellants

and

ALL SAINTS EPISCOPAL CHURCH, INC.; CHRIST ST. PAUL'S EPISCOPAL CHURCH; 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; ST. BARTHOLOMEW'S EPISCOPAL CHURCH; ST. DAVID'S CHURCH; ST. JAMES' CHURCH, JAMES ISLAND, S.C.; ST. PAUL'S EPISCOPAL CHURCH OF BENNETTSVILLE, INC.; 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 CHURCH OF THE PARISH OF ST. HELENA AND THE PARISH CHURCH OF ST. HELENA TRUST; THE VESTRY AND CHURCH WARDENS 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; CHRIST THE KING, WACCAMAW; ST. MATTHEWS CHURCH; ST. ANDREWS CHURCH-MT. PLEASANT LAND TRUST; ST. JOHN'S EPISCOPAL CHURCH OF FLORENCE, S.C.; ST. MATTHIAS EPISCOPAL CHURCH, INC.; ST. PAUL'S EPISCOPAL CHURCH OF CONWAY; THE VESTRY AND CHURCH WARDENS OF THE EPISCOPAL CHURCH OF THE PARISH OF PRINCE GEORGE WINYAH; THE VESTRIES AND CHURCHWARDENS OF THE PARISH OF ST. ANDREWS; HOLY APOSTLES, BARNWELL; ST. JAMES ANGLICAN, BLACKVILLE; BERKELEY COUNTY STRAWBERRY CHAPEL; ST. ALBAN'S CHAPEL, THE CITADEL; ST. ANDREW'S MISSION; ST. JOHN'S EPISCOPAL, CHARLESTON; ST. BARNABAS, DILLON; CHRIST CHURCH, FLORENCE; ST. JAMES, GOOSE CREEK; HOLY TRINITY, GRAHAMVILLE; ASCENSION, HAGOOD; CHURCH OF THE ADVENT, MARION; THE WELL BY THE SEA, MYRTLE BEACH; CHURCH OF THE RESURRECTION, MYRTLE BEACH; GRACE PARISH, NORTH MYRTLE BEACH; ST. PAUL'S, ORANGEBURG; ST. TIMOTHY'S, CANE BAY;

ATONEMENT, WALTERBORO; CHURCH OF THE HOLY CROSS,
SULLIVAN'S ISLAND; JOHN DOES 1-10

Defendants

O R D E R

Upon consideration of submissions relative to appellants' motion to stay case, which the court construes as a motion for abeyance, the court grants the motion and places this case in abeyance pending a decision by the South Carolina Supreme Court in *Protestant Episcopal Church v. Episcopal Church*, No. 2020-000993 (S.C.).

The parties are directed to file a status report on November 30, 2020, and every 30 days thereafter, and shall immediately notify this court upon issuance of a decision by the South Carolina Supreme Court.

For the Court

/s/ Patricia S. Connor, Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

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.)

Case No. 2013-CP-18-00013

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

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CLERK OF COURT
DORCHESTER COUNTY

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 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.)

Plaintiffs, through their respective undersigned counsel, bring this action against the Defendant seeking a declaratory judgment pursuant to §§ 15-53-10 *et. seq.* of the South Carolina Code of Laws (1976) that they are the sole owners of their respective real and personal property in which the Defendant, The Episcopal Church ("TEC") has no legal, beneficial or equitable interest. The Plaintiffs (except for St. Andrew's Church, Mount Pleasant) also seek a declaratory judgment that the Defendants and those under their control have improperly used and may not continue to use any of the names, styles, seals and emblems of any of the Plaintiffs or any imitations or substantially similar names, styles, seals and emblems and that the Court enter injunctions prohibiting the Defendants and those under their control from such uses pursuant to §§ 39-15-1105 *et. seq.* and §§ 16-17-310 and 320 of the South Carolina Code of Laws (1976).

In support of these claims, Plaintiffs allege as follows:

PLAINTIFFS

The Protestant Episcopal Church in The Diocese of South Carolina ("Diocese of South Carolina")

1. The Diocese of South Carolina is a South Carolina non-profit, charitable, corporation. It was incorporated on November 14, 1973 as "The Protestant Episcopal Diocese of South Carolina." Its Articles of Incorporation were amended on February 19, 1987 to change its name to "The Protestant Episcopal Church in the Diocese of South Carolina."

2. The Diocese's Board of Directors has 12 members, who generally meet on a monthly basis. Each Board Member presently is also a member of the Diocesan Standing Committee.

3. The Protestant Episcopal Church In The Diocese of South Carolina has 44 employees (excluding seasonal employees) and an annual budget of ~ \$5.5MM (\$2.3MM for Diocesan operations and ~ \$3.25 MM for Camp St. Christopher operations). Among its employees is Mark J. Lawrence who is its Chief Operating Officer. He is also its 14th Bishop. Mark J. Lawrence is an *ex officio* member of the Board of Directors with seat and voice but with no vote. Paul J. Fuener is President of the Board of Directors.

4. Prior to its incorporation, the Diocese of South Carolina was organized and operated as an unincorporated association holding its first convention on May 12, 1785 at The State House in Charleston, South Carolina. Between May 1785 and October 1789, the Diocese of South Carolina held seven conventions attended by twenty different parishes.

5. The Diocese of South Carolina has met in convention at least annually since 1785, except for the 6 years between 1798 and 1804. The last annual convention of the Diocese of

South Carolina was on March 9th and 10th, 2012. The last Special Convention was on November 17, 2012.

6. Twelve of the parishes in which Plaintiff churches are located, preexisted the formation of the United States of America, the Diocese of South Carolina and the Defendant TEC, one by more than 100 years and all by more than 20 years: St. Philip's (1681), Christ Church (1706), St. James', James Island (1706), St. Paul's, Summerville (1706), St. Helena's (1712), Prince George (1721), St. John's, John's Island (1734), St. Michael's (1757), Church of the Cross and St. Luke's (1767), St. Matthew's and St. Davids (1768).

7. These churches as well as the Diocese of South Carolina were called "episcopal" before the formation of the Defendant TEC.

8. The first constitution of the Diocese of South Carolina was adopted at its 4th convention on May 31, 1786. It was signed, among others, by St. Philip's, St. Michael's, St. Helena's, Trinity, Edisto Island, and Prince George. Articles 1, 2 and 6 provided:

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.

9. The Diocese of South Carolina was one of the participating entities that joined together to form the Defendant TEC. It voluntarily joined the Defendant TEC.

10. The first constitution of the Defendant TEC was considered and revised in August through October 1789 and adopted in final form on October 2, 1789. The Diocese of South Carolina, through its delegates, subscribed to the constitution.

11. At its 19th Convention in 1806, the Diocese of South Carolina 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.

12. In 1861, the Diocese of South Carolina withdrew its association with the Defendant TEC, immediately declaring "null and void" any constitutional or canonical provisions inconsistent with that disassociation.

13. In 1862, the Diocese of South Carolina together with other dioceses who were formerly associated with the Defendant TEC formed and voluntarily joined an unincorporated association called "The Protestant Episcopal Church in The Confederate States of America."

14. In 1865, the Standing Committee of the Diocese of South Carolina, upon being asked to consent to the election of the bishop of the Diocese of Pittsburgh, refused because the Diocese of South Carolina was not associated with the Defendant TEC.

15. In 1866, the Diocese of South Carolina withdrew its association with The Protestant Episcopal Church in The Confederate States of America and voluntarily re-associated with the Defendant 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."

16. On May 12, 1920 the Diocese of South Carolina voted to divide the diocese into two dioceses. The new diocese was established in the upper part of South Carolina and was called "The Diocese of Upper South Carolina". The plans for this division were adopted at the Diocesan Convention on May 17, 1922.

17. Throughout its 227-year history, the Diocese of South Carolina has done business under a variety of names. These include "The Protestant Episcopal Church in South Carolina" (or "in the State of") (1785-1819, 1838-1868); "The Protestant Episcopal Church in the Diocese of South Carolina" (since 1821); "The Protestant Episcopal Diocese of South Carolina" (since 1997); "The Diocese of South Carolina" (since 1869); and "The Episcopal Diocese of South Carolina" (since 1979).

18. The seal of the Diocese of South Carolina is inherently distinctive in this state, has been used by the Diocese of South Carolina since the late 1800's, has been used in the course of business of the Diocese of South Carolina, including on its correspondence, at its Conventions, in its Convention journals, on its website, in its releases to the public, in newspapers and in its periodicals as well as in other uses. It is highly recognized as the seal of the Diocese and until on or about November 7, 2012, it was exclusively so used by the Diocese of South Carolina.

19. The Diocese of South Carolina is the owner of four service marks registered on November 8, 2010 pursuant to §§39-15-1105 *et. seq* of the South Carolina Code of Laws (1976). These 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.

20. On September 9, 2010, the Diocese of South Carolina amended its articles of incorporation to restate its purpose to “continue operations under the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina.”

21. On October 15, 2010, the Diocese of South Carolina amended its Constitution removing its accession to the Canons of the Defendant TEC and providing that “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.”

22. On October 15, 2010, the Diocese of South Carolina amended its canons to conform to the actions taken in paragraph 21.

23. On November 1, 2011, the Board of Directors of the Diocese of South Carolina unanimously passed a resolution that automatically called a convention of the Diocese of South Carolina within 30 days after any attempted action being taken by the Defendant TEC against Mark J. Lawrence.

24. On October 2, 2012, the Board of Directors of the Diocese of South Carolina unanimously passed a resolution that stated:

“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.”

25. The Diocese of South Carolina withdrew its accession to the Constitution of the Defendant TEC and withdrew its membership in the association comprising the Defendant TEC.

26. A Special Convention of the Diocese of South Carolina was called for November 17, 2012 at St. Philip’s Church, Charleston, South Carolina.

27. At the Special Convention of November 17, 2012, the delegates overwhelmingly affirmed the Diocese of South Carolina’s disaffiliation from the Defendant TEC and made conforming changes to its Constitution and Canons.

28. The Defendant TEC has no legal, beneficial or equitable interest in any of the real or personal property of the Diocese of South Carolina.

The Trustees of the Protestant Episcopal Church in South Carolina (“Trustees”)

29. The Trustees were incorporated by the General Assembly on February 20, 1902. The Trustees were successors to the “Bishop and Standing Committee” incorporated by the General Assembly on February 20, 1880.

30. The Board of Directors of the Trustees consists of 8 members meeting at least quarterly. Mark J. Lawrence is an *ex officio* member with seat and voice but with no vote.

31. The Trustees purpose is to "receive and hold any property, currently or formerly, held by any other corporation which may desire to surrender same and shall voluntarily do so" and to "receive and hold any and all property which may come into their hands under this Act upon the terms, conditions and trusts, and for the exclusive purpose of the gift, donation, contribution, or testamentary devise upon which each such piece of property was originally given, contributed, bequeathed or donated."

32. The Trustees have "all the power of a corporate body, and may from time to time make such rules and bylaws for their government and for the management of the property under their charge as shall be approved by a majority of said Trustees."

33. As of December 31, 2011, the assets of the Trustees totaled approximately \$12MM of which \$4.4MM consists of cash and investments and \$7.7MM consists of real property and other non-liquid assets.

34. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of the real or personal property of the Trustees.

All Saints Protestant Episcopal Church, Inc. ("All Saints")

35. All Saints is a South Carolina non-profit corporation. Its business address is 1425 Cherokee Road, Florence, South Carolina. It was incorporated on September 11, 1958.

36. In 1957, All Saints was planted and supported by St. John's Episcopal Church of Florence, SC. in 1958, voluntarily associating with the Diocese of South Carolina as a mission and in 1960, as a parish. Originally meeting in Royall School, All Saints built its current sanctuary in 1960 and has worshipped there and expanded its campus since then.

37. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

38. As of December 2011, All Saints had 162 baptized members and an annual operating income of \$206,157.

39. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, All Saints reaffirmed its disaffiliation from the Defendant by a vote of its Board of Directors on December 9, 2012.

40. All Saints is the fee simple owner of all its real property.

41. During its 56-year history, the acquisition of All Saints' real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of All Saints without any assistance or contributions from the Defendant TEC.

42. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of All Saints' real or personal property.

43. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted All Saints' name and emblems by:

- i. Posting All Saints' name or a name substantially similar on a website and improperly asserting that All Saints is "in union with" the Defendants.
- ii. Using All Saints' name or a name substantially similar to it to send email and other correspondence improperly asserting that All Saints is "in union with" the Defendants.

Christ St. Paul's Episcopal Church ("Christ St. Paul's")

44. Christ St. Paul's is a South Carolina non-profit corporation. Its business address is 4981 Chapel Road, Yorges Island, South Carolina. It was incorporated on December 3, 1997.

45. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

46. In 1706 the Church Act passed by the Colonial Assembly created the nine original parishes in South Carolina. In 1708 the Act defined St. Paul's Parish as one of the Parishes making up Colleton County, (now Charleston County).

47. Christ Church, Wilton was established in 1835 and a church built in 1836. In 1886 a new church was completed in Adam's Run (Christ Church) using materials from the former church on Willtown Bluff. Christ Church, Wilton voluntarily associated with the Diocese of South Carolina.

48. In 1848, a Chapel of Ease was built in what is present day Adams Run that is in close proximity to the present church and was called the "Meggett Chapel."

49. The churches in St. Paul's Parish left the Defendant TEC in 1861 along with the rest of the Diocese. They returned with the Diocese of South Carolina when it voluntarily reassociated with the Defendant TEC in 1866.

50. In February 1925, St. Paul's Church was recognized as a separate and independent parish known as St. Paul's Meggett. St. Paul's Church voluntarily associated with the Diocese of South Carolina.

51. In 1962 St. Paul's Meggett merged with Christ Church Wilton becoming known then by its present name.

52. As of December 2011, Christ St. Paul's had 380 baptized members and an annual operating income of \$467,191.

53. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, Christ St. Paul's reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors on December 2, 2012.

54. Christ St. Paul's is the fee simple owner of all its real property.

55. During its 178-year history, the acquisition of Christ St. Paul's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Christ St. Paul's without any assistance or contributions from the Defendant TEC.

56. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Christ St. Paul's real or personal property.

57. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Christ St. Paul's name and emblems by:

- i. Posting Christ St. Paul's name or a name substantially similar on a website and improperly asserting that Christ St. Paul's is "in union with" the Defendants.

- ii. Using Christ St. Paul's name or a name substantially similar to it to send email and other correspondence improperly asserting that Christ St. Paul's is "in union with" the Defendants.

Christ The King, Waccamaw ("Christ The King")

58. Christ The King is a South Carolina non-profit corporation. Its business address is 10172 Ocean Highway, Pawleys Island, South Carolina. It was incorporated on June 7, 2010.

59. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

60. Christ The King voluntarily associated with the Diocese of South Carolina.

61. As of December 2011, Christ The King had 174 baptized members and an annual operating income of \$303,736.

62. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, Christ The King reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors.

63. Christ The King is the fee simple owner of all its real property.

64. During its history, the acquisition of Christ The King's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Christ The King without any assistance or contributions from the Defendant TEC.

65. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Christ The King's real or personal property.

66. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Christ The King's name and emblems by:

- i. Posting Christ The King's name or a name substantially similar on a website and improperly asserting that Christ The King is "in union with" the Defendants.
- ii. Using Christ The King's name or a name substantially similar to it to send email and other correspondence improperly asserting that Christ The King is "in union with" the Defendants.

Church Of The Cross, Inc. and Church Of The Cross Declaration Of Trust ("The Cross")

67. The Church of the Cross is a South Carolina non-profit corporation. Its business address is 110 Calhoun Street, Bluffton, South Carolina 29910. The Cross was incorporated as a separate entity from St. Luke's Parish on July 3, 1979.

68. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

69. St. Luke's Parish, within which The Cross is located, was created by an act of the Colonial Assembly on May 23, 1767.

70. By 1842, a chapel stood near the current location of the present church building (completed in 1857) and worship services commenced.

71. The churches in St. Luke's parish left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant TEC in 1866.

72. The Cross voluntarily associated with the Diocese of South Carolina.

73. Between 1863 and 1870, services were interrupted starting because of the presence of union troops.

74. As of December 2011, The Cross had 1,702 baptized members and an annual operating income of \$1,996,117.

75. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, The Cross reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors on December 8, 2012.

76. The Cross is the fee simple owner of all its real property.

77. During its 170-year history, the acquisition of The Cross's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of The Cross without any assistance or contributions from the Defendant TEC.

78. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in the real or personal property of The Cross.

79. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted The Cross' name and emblems by:

- i. Posting The Cross' name or a name substantially similar on a website and improperly asserting that The Cross is "in union with" the Defendants.

- ii. Using The Cross' name or a name substantially similar to it to send email and other correspondence improperly asserting that The Cross is "in union with" the Defendants.

Church Of The Holy Comforter ("Holy Comforter")

80. Holy Comforter is a South Carolina non-profit corporation incorporated by an act of the General Assembly on December 21, 1857. Its business address is 213 N. Main Street, Sumter, South Carolina.

81. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

82. Holy Comforter began worship services in Sumter, South Carolina in 1844 and constructed its first church building in 1859. Thereafter, Holy Comforter acquired its current location and constructed the present church building in 1909 where the parish has continually conducted services to the present.

83. Upon becoming a Parish, Holy Comforter voluntarily associated with the Diocese of South Carolina.

84. Holy Comforter left the Defendant TEC in 1861 along with the rest of the Diocese of South Carolina. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant TEC in 1866.

85. As of December 2011, Holy Comforter had 727 baptized members and an annual operating income of \$684,692.

86. Holy Comforter is the fee simple owner of all its real property.

87. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, Holy Comforter affirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors on October 23, 2012.

88. During its 168-year history, the acquisition of Holy Comforter's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Holy Comforter without any assistance or contributions from the Defendant TEC.

89. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Holy Comforter's real or personal property.

90. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Holy Comforter's name and emblems by:

- i. Posting Holy Comforter's name or a name substantially similar on a website and improperly asserting that Holy Comforter is "in union with" the Defendants.
- ii. Using Holy Comforter's name or a name substantially similar to it to send email and other correspondence improperly asserting that Holy Comforter is "in union with" the Defendants.

Church Of The Redeemer ("Redeemer")

91. Redeemer is a South Carolina non-profit corporation. Its business address is 1606 Russell Street, Orangeburg, South Carolina. It was incorporated on May 27, 1922.

92. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation in 1922.

93. Redeemer is a part of St. Matthews Parish, which was established, by an Act of the Colonial Assembly on August 12, 1768. This Act provided that a chapel was to be built in "Orangeburgh Territory."

94. Prior to its incorporation, Redeemer began worship services in Orangeburg, South Carolina in 1851. Its church building was occupied in 1857. It was moved and renovated at its current location in 1895.

95. Upon becoming a Parish, Redeemer voluntarily associated with the Diocese of South Carolina.

96. Redeemer left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant TEC in 1866.

97. As of December 2011, Redeemer had 292 baptized members and an annual operating income of \$273,038.

98. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, Redeemer reaffirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors on December 23, 2012.

99. Redeemer is the fee simple owner of all its real property.

100. During its 161-year history, the acquisition of Redeemer's real and personal property and the maintenance, repair and renovation of its real property has been accomplished

from funds donated or obtained from the parishioners of Redeemer without any assistance or contributions from the Defendant TEC.

101. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Redeemer's real or personal property.

102. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Redeemer's name and emblems by:

- i. Posting Redeemer's name or a name substantially similar on a website and improperly asserting that Redeemer is "in union with" the Defendants.
- ii. Using Redeemer's name or a name substantially similar to it to send email and other correspondence improperly asserting that Redeemer is "in union with" the Defendants.

Holy Trinity Episcopal Church ("Holy Trinity")

103. Holy Trinity is a South Carolina non-profit corporation. Its business address is 95 Folly Road, Charleston, South Carolina. It was incorporated on February 11, 1957.

104. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

105. Holy Trinity held its first services in a theater on October 21, 1956.

106. Holy Trinity voluntarily associated with the Diocese of South Carolina.

107. As of December 2011, Holy Trinity had 167 baptized members and an annual operating income of \$236,949.

108. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, Holy Trinity reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors on December 30, 2012.

109. Holy Trinity is the fee simple owner of all its real property.

110. During its 57-year history, the acquisition of Holy Trinity's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Holy Trinity without any assistance or contributions from the Defendant TEC.

111. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Holy Trinity's real or personal property.

112. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Holy Trinity's name and emblems by:

- i. Posting Holy Trinity's name or a name substantially similar on a website and improperly asserting that Holy Trinity is "in union with" the Defendants.
- ii. Using Holy Trinity's name or a name substantially similar to it to send email and other correspondence improperly asserting that Holy Trinity is "in union with" the Defendants.

Saint Luke's Church, Hilton Head ("St. Luke's")

113. St. Luke's is a South Carolina non-profit corporation incorporated on March 4, 1969. Its business address is 50 Pope Avenue, Hilton Head Island, South Carolina.

114. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

115. St. Luke's Parish was established by an act of The Colonial Assembly on May 23, 1767.

116. In 1788 parishioners built a wooden chapel known as Zion Chapel of Ease on Hilton Head Island. The chapel was abandoned in 1862 because of the island's occupation by union troops.

117. On February 29, 1788 the General Assembly incorporated "The Vestries and Church Wardens of the Episcopal Church in the Parish of St. Luke's."

118. On December 21, 1964, worship services resumed as a mission under the name "St. Luke's". It was expanded in 1970 and became a parish, voluntarily associating with the Diocese of South Carolina. These additional expansions were completed in 1978, 1989 and 2000.

119. As of December 2011, St. Luke's had 1,173 baptized members and an annual operating income of \$974,681.

120. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. Luke's reaffirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors on December 11, 2012.

121. St. Luke's is the fee simple owner of all its real property.

122. During its 224-year history, the acquisition of St. Luke's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Luke's without any assistance or contributions from the Defendant TEC.

123. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. Luke's real or personal property.

124. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Saint Luke's name and emblems by:

- i. Posting Saint Luke's name or a name substantially similar on a website and improperly asserting that Saint Luke's is "in union with" the Defendants.
- ii. Using St. Luke's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Luke's is "in union with" the Defendants.

Saint Matthews Church ("Saint Matthews")

125. Saint Matthews is a South Carolina non-profit corporation. Its business address is 238 S. Main Street, Darlington, South Carolina. It was incorporated on April 26, 1905.

126. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

127. Saint Matthews first began holding services when they were held jointly with Christ Church Mars Bluff first in the Darlington Courthouse and then in the Methodist Baptist and Presbyterian churches.

128. In 1886, Saint Matthews was first organized securing a lot and being funded for a church building which was occupied by January 1892. Saint Matthews voluntarily joined the Diocese of South Carolina first as a mission in 1887 and subsequently as a parish.

129. Saint Matthews moved to a new location on Florence Street and the old church was moved to the new location to be a parish house. Services were first held there in 1906. A new parish house was completed in 1956.

130. As of December 2011, Saint Matthews had 149 baptized members and an annual operating income of \$259,337.

131. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, Saint Matthews reaffirmed its disaffiliation from the Defendant TEC by a vote of its Wardens and Vestry, acting as its Board of Directors on January 15, 2012.

132. Saint Matthews is the fee simple owner of all its real property and improvements thereon and the sole owner of all of its personal property.

133. During its 127- year history, the acquisition of Saint Matthews' real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Saint Matthews without any assistance or contributions from the Defendant TEC.

134. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Saint Matthews' real or personal property.

135. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Saint Matthews' name and emblems by:

- i. Posting Saint Matthews' name or a name substantially similar on a website and improperly asserting that Saint Matthews is "in union with" the Defendants.
- ii. Using Saint Matthews' name or a name substantially similar to it to send email and other correspondence improperly asserting that Saint Matthews is "in union with" the Defendants.

St. Andrews Church – Mt. Pleasant and The St. Andrews Church – Mt. Pleasant Land Trust ("St. Andrews Church")

136. St. Andrews Church is a South Carolina non-profit corporation. Its business address is 440 Whilden Street, Mt. Pleasant, South Carolina. It was incorporated on September 15, 1954 as the Vestry and Wardens of the Episcopal Church of the Parish of St. Andrews Church, Mt. Pleasant, and on March 30, 2010, filed Nonprofit Articles of Amendment changing its corporate name to "St. Andrew's Church – Mt. Pleasant."

137. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

138. St. Andrews Church started as a Chapel of Ease within Christ Church Parish. Worship in "St. Andrew's Chapel" began on September 29, 1835. A new chapel was built in 1858.

139. St. Andrews Church left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese voluntarily reassociated with the Defendant TEC in 1866.

140. St. Andrews Church became the primary center of worship between the mid-1860's and 1874 when the parish church, Christ Church, was in ruin having been used, first as a hospital for the Confederate Army and then, as a stable for the Federal Cavalry.

141. In 1954, with the incorporation of St. Andrews Church, the two churches, Christ Church and St. Andrews Church, were separated. During the years between 1835 and 1954, one hundred nineteen years, Christ Church and St. Andrew's Chapel shared the same rector and vestrymen, when they had a rector and church to attend. In 1954, St. Andrews Church voluntarily associated with the Diocese of South Carolina.

142. As of December 31, 2011, St. Andrews Church had 2,740 baptized members and an annual operating income of \$2,900,000.

143. During its 178-year history, the acquisition of St. Andrews Church's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Andrews Church without any assistance or contributions from the Defendant TEC.

144. Prior to June 24, 2009, St. Andrews Church was the fee simple owner of all its real property.

145. The St. Andrew's Church never incorporated the accession to the Constitution of the Defendant TEC in its by-laws.

146. The St. Andrews Church-Mt. Pleasant Land Trust is an irrevocable charitable trust established on June 24, 2009 for the purpose of among other things, receiving, holding title to, improving and managing real estate and improvements thereon for the benefit of St. Andrews Church.

147. On June 24, 2009 St. Andrews Church transferred all its right title and interest to certain real and personal property it then owned to The St. Andrews Church-Mt. Pleasant Land Trust.

148. St. Andrews Church did not require the consent of any party to transfer its property as aforesaid, but nevertheless obtained the consent for such transfer from the Diocese of South Carolina by Consent dated October 02, 2009.

149. St. Andrews Church is informed and believes that it was the owner in fee simple absolute and forever, of the property as aforesaid at all times relevant hereto, but nevertheless obtained a quitclaim deed from the Diocese of South Carolina.

150. On March 28, 2010, St. Andrews Church withdrew from the Diocese of South Carolina and from the Defendant TEC.

151. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. Andrews Church's real or personal property.

St. Bartholomews Episcopal Church ("St. Bartholomews")

152. St. Bartholomews is a South Carolina non-profit corporation. Its business address is 103 Campus Drive, Hartsville, South Carolina. It was incorporated on February 8, 1922.

153. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

154. St. Bartholomews began holding worship services on June 27, 1902 in a building loaned for that purpose. A church building was constructed in 1909-1910 and St. Bartholomews

voluntarily associated with the Diocese of South Carolina as a mission and then as a parish on May 13, 1914.

155. A rectory was constructed in 1922 and a church school building was constructed in 1923. In 1987, a fire destroyed the church buildings and the present building was built on the site thereafter.

156. As of December 2011, St. Bartholomews had 177 baptized members and an annual operating income of \$257,369.

157. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, St. Bartholomews reaffirmed its disaffiliation from the Defendant TEC by a vote of its Vestry serving as its Board of Directors on January 12, 2013.

158. St. Bartholomews is the fee simple owner of all its real property.

159. During its 110-year history, the acquisition of St. Bartholomews' real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Bartholomews without any assistance or contributions from the Defendant TEC.

160. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. Bartholomews' real or personal property.

161. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted St. Bartholomews' name and emblems by:

- i. Posting St. Bartholomews' name or a name substantially similar on a website and improperly asserting that St. Bartholomews is "in union with" the Defendants.
- ii. Using St. Bartholomews' name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Bartholomews is "in union with" the Defendants.

St. Davids Church ("St. Davids")

162. St. Davids is a South Carolina non-profit corporation. Its business address is 420 Market Street, Cheraw, South Carolina. It was first incorporated on May 7, 1885 and then again on October 1, 1915.

163. St. David's Parish (named after the patron saint of Wales) was established by an Act of the Colonial Assembly on April 12, 1768. The Act directed that a church, chapel and a parsonage be built. The church was completed in 1773.

164. In 1830, a vestry room was added and in 1833-34 a steeple modeled after St. Martin-in-the-Fields, London, was added as well as a vestibule. In 1848, the vestry room was rebuilt and enlarged and in 1850 the exterior of the church was extensively repaired. In 1858, the interior was extensively remodeled.

165. St. Davids left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese voluntarily reassociated with the Defendant TEC in 1866.

166. Between 1861 and 1865, St. Davids was an inland refuge for coastal worshipers. There were no cessation of services during this period and no serious damage to St. Davids during this period.

167. A parsonage was secured in 1871 and in 1883, a recessed chapel, new vestry room and organ chamber was added. In 1909, a new rectory was completed at the corner of High and Market Streets.

168. In 1912, a lot was purchased for a new church at the corner of Market and Hagen Streets. Services were first held there on June 4, 1916. Property adjoining the church was acquired in 1924. In 1953, old St. Davids Church was restored and in 1956-57, an addition was added to the parish house.

169. St. Davids voluntarily associated with the Diocese of South Carolina.

170. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

171. As of December 2011, St. Davids had 113 baptized members and an annual operating income of \$168,556.

172. St. Davids affirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors on January 13, 2013.

173. St. Davids is the fee simple owner of all its real property.

174. During its 230-year history, the acquisition of St. Davids' real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Davids without any assistance or contributions from the Defendant TEC.

175. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. Davids' real or personal property.

176. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted St. Davids' name and emblems by:

- i. Posting St. Davids' name or a name substantially similar on a website and improperly asserting that St. Davids is "in union with" the Defendants.
- ii. Using St. Davids' name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Davids is "in union with" the Defendants.

St. James' Church, James Island, S.C. ("St. James")

177. St. James is a South Carolina non-profit corporation. Its business address is 1872 Camp Road, James Island, South Carolina. It was incorporated on February 15, 1832.

178. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

179. Under the 1706 Church Act, James Island was a part of St. Andrews Parish.

180. The first Anglican church on Island was built at an early but undetermined date. This Chapel of Ease for St. Andrews, was destroyed by a hurricane in 1730 but was rebuilt by 1733. An Act was passed March 19, 1756 officially establishing the church as a Chapel of Ease for St. Andrews church.

181. The chapel was destroyed during the Revolutionary War. A third chapel was built after the war. The chapel went out of use from 1800 to 1831 when it was reorganized as the parish church of St. James, James Island.

182. In 1853 a new and larger church was erected, which burned in 1864. The church was replaced with a new structure in 1898-99. The current church was erected in 1959-60.

183. Saint James left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese voluntarily reassociated with the Defendant TEC in 1866.

184. Saint James voluntarily associated with the Diocese of South Carolina as a mission in 1902 and subsequently as a parish.

185. As of December 2011, Saint James had 627 baptized members and an annual operating income of \$692,975.

186. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, Saint James reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors on December 6, 2012.

187. Saint James is the fee simple owner of all its real property.

188. During its 282-year history, the acquisition of Saint James' real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Saint James without any assistance or contributions from the Defendant TEC.

189. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Saint James' real or personal property.

190. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Saint James' name and emblems by:

- i. Posting Saint James' name or a name substantially similar on a website and improperly asserting that Saint James is "in union with" the Defendants.
- ii. Using Saint James' name or a name substantially similar to it to send email and other correspondence improperly asserting that Saint James is "in union with" the Defendants.

St. John's Episcopal Church of Florence, S.C. ("St. John's Florence")

191. St. John's Florence is a South Carolina non-profit corporation. Its business address is 252 S. Dargan Street, Florence, South Carolina. It was originally chartered December 3, 1875 and was thereafter incorporated by the Secretary of State on November 26, 1915.

192. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

193. St. John's Florence was established in 1866, beginning worship in 1867. Construction began on its first church building in 1868 and it was completed in 1871. This church was badly damaged by the earthquake of 1886 and the cornerstone for the present church was laid in 1889.

194. Upon becoming a Parish, St. John's Florence voluntarily associated with the Diocese of South Carolina.

195. As of December 2011, St. John's Florence had 680 baptized members and an annual operating income of \$724,473.

196. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. John's Florence reaffirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors on December 3, 2012.

197. St. John's Florence is the fee simple owner of all its real property.

198. During its 146-year history, the acquisition of St. John's Florence's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. John's Florence without any assistance or contributions from the Defendant TEC.

199. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. John's Florence's real or personal property.

200. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted St. John's Florence's name and emblems by:

- i. Posting St. John's Florence's name or a name substantially similar on a website and improperly asserting that St. John's Florence is "in union with" the Defendants.
- ii. Using St. John's Florence's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. John's Florence is "in union with" the Defendants.

St. Matthias Episcopal Church, Inc. ("St. Matthias")

201. St. Matthias is a South Carolina non-profit corporation. Its business address is 9 North Dukes Street, Summerton, South Carolina. It was incorporated on March 26, 1984.

202. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

203. In 1899, a meeting in the yard of The Presbyterian Church marked the beginning of St. Matthias. The land on which the church was built was donated and the church was built and paid for through donations and accumulated funds. Worship began in the church building on February 24, 1899, St. Matthias Day. An adjoining rectory was erected in 1903. In 1910, many improvements were made in the church.

204. Upon becoming a Parish, St. Matthias voluntarily associated with the Diocese of South Carolina.

205. As of December 2011, St. Matthias had 132 baptized members and an annual operating income of \$151,049.

206. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. Matthias reaffirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors in December 2012.

207. St. Matthias' is the fee simple owner of all its real property.

208. During its 113-year history, the acquisition of St. Matthias' real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Matthias' without any assistance or contributions from the Defendant TEC.

209. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. Matthias' real or personal property.

210. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted St. Matthias' name and emblems by:

- i. Posting St. Matthias' name or a name substantially similar on a website and improperly asserting that St. Matthias is "in union with" the Defendants.
- ii. Using St. Matthias' name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Matthias is "in union with" the Defendants.

**St. Paul's Episcopal Church Of Bennettsville, Inc.
("St. Paul's, Bennettsville")**

211. St. Paul's, Bennettsville is a South Carolina non-profit corporation. Its business address is 306 Fayetteville Avenue, Bennettsville, South Carolina. It was incorporated on March 4, 2002.

212. St. Paul's, Bennettsville held its first worship services on May 29-30, 1894 as "The Bennettsville Mission." In 1896, St. Paul's was called "St. Paul's Mission." In 1897, the lot where the present church is located was acquired and the church was built, the first services being held on Christmas Day, 1897. A parish house was completed in 1948.

213. In 1914, St. Paul's, Bennettsville voluntarily associated with the Diocese of South Carolina as a parish.

214. As of December 2011, St. Paul's, Bennettsville had 72 baptized members and an annual operating income of \$129,668.

215. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, St. Paul's, Bennettsville reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors in January 20, 2013.

216. St. Paul's, Bennettsville is the fee simple owner of all its real property.

217. During its 119 year history, the acquisition of St. Paul's, Bennettsville's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Paul's, Bennettsville without any assistance or contributions from the Defendant TEC.

218. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. Paul's, Bennettsville's real or personal property.

219. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted St. Paul's, Bennettsville's name and emblems by:

- i. Posting St. Paul's, Bennettsville's name or a name substantially similar on a website and improperly asserting that St. Paul's, Bennettsville is "in union with" the Defendants.
- ii. Using St. Paul's, Bennettsville's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Paul's, Bennettsville is "in union with" the Defendants.

St. Paul's Episcopal Church Of Conway ("St. Paul's, Conway")

220. St. Paul's, Conway is a South Carolina non-profit corporation. Its business address is 710 Main Street, Conway, South Carolina. It was incorporated on November 1, 1979.

221. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

222. About the middle of the 18th Century, Church of England immigrants built a church which was still standing in 1867. Within a few feet of the ruins of that church, services were first held for St. Paul's in 1908. Regular services began in 1910.

223. St. Paul's first church building was constructed in early 1913 but was destroyed in that same year by a hurricane. It was rebuilt in 1914 and first called "St. Paul's Conway" in 1915 having voluntarily associated with the Diocese of South Carolina as a mission and later, in 1947, as a parish.

224. The church building was renovated in the early 1930's and again in 1946.

225. As of December 2011, St. Paul's, Conway had 467 baptized members and an annual operating income of \$663,641.

226. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, St. Paul's, Conway reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors on December 17, 2012.

227. St. Paul's, Conway is the fee simple owner of all its real property.

228. During its 145-year history, the acquisition of St. Paul's, Conway's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Paul's, Conway without any assistance or contributions from the Defendant TEC.

229. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. Paul's, Conway's real or personal property.

230. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted St. Paul's, Conway's name and emblems by:

- i. Posting St. Paul's, Conway's name or a name substantially similar on a website and improperly asserting that St. Paul's, Conway is "in union with" the Defendants.
- ii. Using St. Paul's, Conway's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Paul's, Conway is "in union with" the Defendants.

The Church Of St. Luke and St. Paul, Radcliffeboro ("The Cathedral")

231. The Cathedral is a South Carolina non-profit corporation. Its business address is 126 Coming Street, Charleston, South Carolina. It was incorporated on April 7, 1951.

232. The Cathedral is the successor by merger to St. Luke's, Charleston and The Protestant Episcopal Church of St. Paul, Radcliffeboro ("St. Paul's").

233. St. Luke's, Charleston was incorporated by an act of General Assembly on December 21, 1858.

234. St. Luke's began its services in 1858. It voluntarily associated with the Diocese of South Carolina in 1858. Its first church building was occupied in 1862 and it was regularly used and until October 7 1864 when struck by a shell. Services resumed in October 1865. In 1899 it ceased to be used but was revived as a mission in 1904 and as a parish later that year. It again voluntarily associated with the Diocese of South Carolina in 1905.

235. St. Paul's was incorporated by the General Assembly on December 21, 1814 as the Protestant Episcopal Church of St. Paul in Radcliffeboro. As the church primarily served the outlying plantation families, it was known as the "planters' Church". It voluntarily associated with the Diocese of South Carolina upon its becoming a Parish.

236. St. Luke's, Charleston and the Protestant Episcopal Church of St. Paul, Radcliffeboro left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant TEC in 1866.

237. St. Luke's and St. Paul's have continually existed and acted as duly formed corporations with their Vestry and Wardens serving as their Board of Directors pursuant to their governance documents since their incorporation until their merger.

238. The Church of St. Luke and St. Paul held their first service together on July 17, 1949 at St. Paul's.

239. On May 11, 1950, St. Luke's Church, Charleston and The Protestant Episcopal Church of St. Paul in Radcliffeboro were merged into The Church of St. Luke and St. Paul, Radcliffeboro, using the church building of St. Paul's for their worship services.

240. In 1963 the church was designated as the Cathedral Church for the Diocese of South Carolina.

241. As of December 2011, The Cathedral had 341 baptized members and an annual operating income of \$493,048.

242. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, The Cathedral reaffirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors on December 17, 2012.

243. The Cathedral is the fee simple owner of all its real property.

244. During its 198-year history, the acquisition of The Cathedral's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of The Cathedral without any assistance or contributions from the Defendant TEC.

245. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of The Cathedral's real or personal property.

246. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted The Cathedral's name and emblems by:

- i. Posting The Cathedral's name or a name substantially similar on a website and improperly asserting that The Cathedral is "in union with" the Defendants.
- ii. Using The Cathedral's name or a name substantially similar to it to send email and other correspondence improperly asserting that The Cathedral is "in union with" the Defendants.

The Church Of Our Saviour Of The Diocese Of South Carolina ("Our Saviour")

247. Our Saviour is a South Carolina non-profit corporation. Its business address is 4416 Betsy Kerrigan Parkway, Johns Island, South Carolina. It was incorporated on March 10, 1981.

248. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

249. Prior to its incorporation, Our Saviour conducted worship services on Johns Island, South Carolina beginning in the early 1970's. Our Saviour was established as a mission on November 20, 1980. In 1982, the Church purchased nine acres of property along Bohicket Road (now Betsy Kerrison Parkway), just outside the entrances to Kiawah and Seabrook. A multipurpose building was completed in May of 1986. Upon its becoming a Parish, Our Saviour voluntarily associated with the Diocese of South Carolina.

250. As of December 2011, Our Saviour had 195 baptized members and an annual operating income of \$631,418.

251. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, Our Saviour reaffirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors on December 11, 2012.

252. Our Saviour is the fee simple owner of all its real property.

253. During its 42-year history, the acquisition of Our Saviour's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Our Saviour without any assistance or contributions from the Defendant TEC.

254. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Our Saviour's real or personal property.

255. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Our Saviour's name and emblems by:

- i. Posting Our Saviour's name or a name substantially similar on a website and improperly asserting that Our Saviour is "in union with" the Defendants.
- ii. Using Our Saviour's name or a name substantially similar to it to send email and other correspondence improperly asserting that Our Saviour is "in union with" the Defendants.

The Church Of The Epiphany (Episcopal) ("Epiphany")

256. Church of the Epiphany is a South Carolina non-profit corporation. Its business address is Palmer Street at Porcher Avenue, Eutawville, South Carolina. It was incorporated on July 10, 1972.

257. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

258. Church of the Epiphany voluntarily associated with the Diocese of South Carolina.

259. As of December 2011, Church of the Epiphany had 152 baptized members and an annual operating income of \$120,482.

260. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, Church of the Epiphany reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors.

261. Church of the Epiphany is the fee simple owner of all its real property.

262. During its 41-year history, the acquisition of Church of the Epiphany's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Church of the Epiphany without any assistance or contributions from the Defendant TEC.

263. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Church of the Epiphany's real or personal property.

264. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Church of the Epiphany's name and emblems by:

- i. Posting Church of the Epiphany's name or a name substantially similar on a website and improperly asserting that Church of the Epiphany is "in union with" the Defendants.
- ii. Using Church of the Epiphany's name or a name substantially similar to it to send email and other correspondence improperly asserting that Church of the Epiphany is "in union with" the Defendants.

The Church Of The Good Shepherd, Charleston, S.C. ("Good Shepherd")

265. Good Shepherd is a South Carolina non-profit corporation. Its business address is 1393 Miles Drive, Charleston, South Carolina. It's predecessor was incorporated on December 19, 1833, as The St. Peter's Church of Charleston.

266. In 1927, St. Peter's Church of Charleston was reorganized by an Act of the General Assembly.

267. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its reorganization.

268. Good Shepherd, as the successor to St. Peter's Church, held its first service in an army tent in February of 1922. The lot on which the tent stood was bought and the first chapel was opened for services on May 14, 1922.

269. In 1933, the Church building was improved. At this time a lot north of the Church was acquired. In 1948, the congregation built a rectory adjoining the Church. In 1951 Good Shepherd voluntarily associated with the Diocese of South Carolina when it became a parish.

270. As of December 2011, Good Shepherd had 406 baptized members and an annual operating income of \$471,833.

271. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, Good Shepherd reaffirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors on December 9, 2012.

272. Good Shepherd's is the fee simple owner of all its real property.

273. During its 90-year history, the acquisition of Good Shepherd's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Good Shepherd without any assistance or contributions from the Defendant TEC.

274. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Good Shepherd's real or personal property.

275. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Good Shepherd's name and emblems by:

- i. Posting Good Shepherd's name or a name substantially similar on a website and improperly asserting that Good Shepherd is "in union with" the Defendants.
- ii. Using Good Shepherd's name or a name substantially similar to it to send email and other correspondence improperly asserting that Good Shepherd is "in union with" the Defendants.

The Church Of The Holy Cross ("Holy Cross")

276. Holy Cross is a South Carolina non-profit corporation. Its business address is 335 N. Kings Highway, Statesburg, South Carolina.

277. Holy Cross was incorporated by an act of the General Assembly in 1788 as "The Vestry and Church Wardens of the Episcopal Church of Claremont."

278. The first church was built in 1788 on land donated by General Thomas Sumter. A new church was built between 1850 and 1852 on the same site. The name was changed to "Church of the Holy Cross."

279. Holy Cross has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

280. Holy Cross voluntarily associated with the Diocese of South Carolina.

281. Holy Cross left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese voluntarily reassociated with the Defendant TEC in 1866.

282. As of December 2011, Holy Cross had 177 baptized members and an annual operating income of \$120,548.00.

283. In addition to its votes at the Special Convention of the Protestant Episcopal Church in the Diocese of South Carolina held on November 17, 2012, Holy Cross reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors on January 11, 2013.

284. Holy Cross is the fee simple owner of all its real property.

285. During its 225-year history, the acquisition of Holy Cross' real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Holy Cross without any assistance or contributions from the Defendant TEC.

286. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Holy Cross' real or personal property.

287. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Holy Cross' name and emblems by:

- i. Posting Holy Cross' name or a name substantially similar on a website and improperly asserting that Holy Cross is "in union with" the Defendants.
- ii. Using Holy Cross' name or a name substantially similar to it to send email and other correspondence improperly asserting that Holy Cross is "in union with" the Defendants.

The Church Of The Resurrection, Surfside ("Resurrection")

288. Resurrection is a South Carolina non-profit corporation. Its business address is 8901 Hwy. 17 Bypass, Surfside Beach, South Carolina. It was incorporated on July 12, 1971.

289. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

290. Resurrection voluntarily associated with the Diocese of South Carolina first as a mission in 1971 and then as a parish.

291. As of December 2011, Resurrection had 451 baptized members and an annual operating income of \$497,831.

292. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, Resurrection reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors.

293. Resurrection is the fee simple owner of all its real property.

294. During its 42-year history, the acquisition of Resurrection's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Resurrection without any assistance or contributions from the Defendant TEC.

295. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Resurrection's real or personal property.

296. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Resurrection's name and emblems by:

- i. Posting Resurrection's name or a name substantially similar on a website and improperly asserting that Resurrection is "in union with" the Defendants.
- ii. Using Resurrection's name or a name substantially similar to it to send email and other correspondence improperly asserting that Resurrection is "in union with" the Defendants.

The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston, In The State Of South Carolina ("St. Philip's")

297. Pursuant to the Church Act of 1704 adopted by the Colonial Assembly on November 4, 1704, the Colonial Assembly officially established worship in the Province of Carolina according to the Church of England.

298. The Church Act of 1704 divided the Province into Parishes, and provided that "Charlestown, and the Neck between Cooper and Ashley Rivers...is and shall be from

henceforth forever a distinct parish of itself, and be called by the name of the Parish of St. Philip's, in Charlestown."

299. The Church Act of 1704 further provided that the "church situate in Charlestown, and the ground thereunto adjoining, enclosed and used for a cemetery or church yard, shall be the parish church and church-yard of St. Philip's, Charlestown; and the same is hereby enacted and declared to be forever separated and dedicated to the service of God, and to be applied therein to the use and behalf of the inhabitants from time to time inhabiting and to inhabit there, that are of the religion and profession of the Church of England, and conform to the same."

300. On November 30, 1706, the Colonial Assembly repealed the Church Act of 1704 replacing it with the Church Act of 1706. Like the Act of 1704, the Church Act of 1706 divided the Province into various parishes, again establishing Charlestown, and the Neck between the Cooper and Ashley Rivers, as a "distinct parish of itself, and be called by the name of the Parish of St. Philip's, in Charlestown", and further declared, like the 1704 Act, that "...the church situate in Charlestown...and the ground thereunto adjoining, enclosed and used for a cemetery or church yard, shall be the church and church-yard of St. Philip's in Charlestown." Section XV of the Church Act of 1706 also provided that the Rector or Minister of each Parish to be constituted a "corporation sole" with all corporate authority to sue and be sued."

301. On April 8, 1710, the Colonial Assembly enacted "An Act for the Establishment of Religious Worship in this Province [of Carolina] according to the Church of England, and for the erecting of Churches for the Public Worship of God" among other things, this Act designated the Parish of St. Philip's, Charlestown, as the "head or chief place of this Province" and authorized certain debts of St. Philip's to be paid from the public treasury.

302. Historically, St. Philip's Church was known as the "Mother Church" of the Province and later became known and recognized as the Mother Church of the Diocese of South Carolina. Among those buried in the adjoining historic churchyard and cemetery of St. Philip's Church is a signer of the Declaration of Independence, a signer of the Constitution of the United States, a former Justice of the United States Supreme Court, former Justices of the South Carolina Supreme Court, a former Vice-President of the United States, numerous Governors of South Carolina, former United States Senators from South Carolina, former Mayors of the City of Charleston, and former United States Ambassadors; former members of St. Philip's Church who are buried elsewhere include a second Signer of the Declaration of Independence and two former Presidents of the Continental Congress.

303. The original church structure known as St. Philip's, Charlestown, was constructed in 1681-1682 at the southeast corner of Broad and Meeting Streets in Charleston (now the location of St. Michael's Church), but by the first decade of the 1700s, the black cypress church structure began to decay and became too small for the increasing population of Charlestown. As a result, the Colonial Assembly, on March 1, 1710, passed "An Act for the Erecting of a new Brick Church at Charles-Town to be the Parish Church of St. Philip's Charles-Town" and authorized certain appointed commissioners to receive charitable donations to purchase and to take grant of a town lot or lots for the erecting of a new church structure at the location of the present day St. Philip's Church. This Act further provided that once built, the church and adjoining church yard shall be declared and known as the "Parish Church and Church-yard of St. Philip's, Charlestown." Pursuant to the Act, construction was begun on a brick structure at the present day location of St. Philip's Church in 1711, and following interruptions by the hurricane

of 1713 and the Yemassee Indian Wars, the first service in the new St. Philip's Church, at its present day location, was held on Easter Sunday, 1723.

304. This structure was destroyed by fire in 1835 and replaced by the present day structure built in between 1835 and 1838.

305. On June 14, 1751, the Colonial Assembly, as a result of the increasing number of inhabitants in the Parish of St Philip, divided the Parish of St. Philip into two separate parishes, the Parish of St. Philip and the Parish of St Michael, and authorized the construction of a new church, to be known as St. Michael's Church, at the present day location of St. Michael's.

306. Following the American Revolution, in order to remedy any uncertainty following the disestablishment of the Church of England in the United States, including any uncertainty as to the title of various parish properties, the South Carolina General Assembly, on March 24, 1785, incorporated the Vestries and Wardens of the Parishes of St. Philip and St. Michael, declaring "...the present vestries and church wardens of the churches in the parish of St. Philip and St. Michael, and their successors forever hereafter, shall be, and they are hereby declared to be, one body corporate, in deed and in name, by the name 'Vestries and Church-Wardens of the Episcopal Churches of the Parishes of St. Philip and St. Michael, Charleston' and by that name shall, from time to time, and at all times hereafter, have perpetual succession and a common seal, and be capable in law, to have, hold, receive, possess and enjoy all of the lands, tenements and hereditaments, and the rents and income thereof, which now are vested in the said vestries and church wardens respectively, to them and their successors in office, and to sell, alien, exchange, demise or lease the same, or any part thereof, as they or a majority of them, shall think convenient."

307. Thereafter, in 1791, the General Assembly split St. Philip's Church and St. Michael's Church into two separate corporations, making each a separate and distinct body politic and corporate. The Legislature created "The Protestant Episcopal Church, of the Parish of Saint Philip, in Charleston, in the State of South Carolina" and "The Protestant Episcopal Church, of the Parish of Saint Michael, in Charleston, in the State of South Carolina", with each separate corporation having the right to "possess and enjoy their respective properties severally, and shall have, possess and enjoy the same authority, powers and privileges which [by Act No. 1278 adopted on March 24, 1785] are granted to them conjointly; and that the said vestry and church wardens of the Episcopal Church of the Parish of Saint Philip, in Charleston, and their successors in office for ever hereafter, shall be and they are hereby declared to be incorporated, as a body politic and corporate, in deed and in law, by the name 'The Protestant Episcopal Church, of the Parish of Saint Philip, in Charleston, in the State of South Carolina'...capable in law, to have, hold, take, receive, possess and enjoy, all the lands, tenements and hereditaments, and the rents and income thereof, which now are, or hereafter shall be, vested in them, respectively, by gift, devise or purchase, to them and their respective successors in office, forever."

308. St. Philip's Church has been in continuous existence and operation serving the spiritual needs of the people of Charleston and surrounding areas since 1681, and since its incorporation on December 29, 1791, The Protestant Episcopal Church, of the Parish of Saint Philip, in Charleston, in the State of South Carolina, also known as "St. Philip's Church", has continued to validly exist and function as a South Carolina corporation, in good standing, with all such rights and powers granted unto it by law and by the said 1791 Act, along with all such rights and powers under the Act of 1785 that were not implicitly repealed by the Act of 1791,

including, without limitation, the right, power and authority to own, hold, receive, possess and enjoy all real and personal property, lands, tenements and hereditaments, and the rents and income therefrom, then owned and vested in said corporation or thereafter acquired by said corporation, whether by gift, devise or purchase.

309. St. Philip's voluntarily associated with the Diocese of South Carolina, sending delegates to early diocesan conventions. St. Philip's was a signatory to the first Constitution of the Diocese of South Carolina.

310. St. Philip's left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina reassociated with the Defendant TEC in 1866.

311. Its Vestry and Wardens have served as its governing body or Board of Directors pursuant to its governance documents since its incorporation.

312. As of December 2011, St. Philip's had 2,677 baptized members and an annual operating income of \$2,327,280.

313. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. Philip's reaffirmed its disaffiliation with the Defendant TEC by a vote of its Vestry and Wardens serving as its Board of Directors on November 11, 2012.

314. St. Philip's is the fee simple owner of all its real property.

315. During its 331-year history, the acquisition of St. Philip's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Philip's without any assistance or contributions from the Defendant TEC.

316. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. Philip's real or personal property.

317. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted St. Philip's name and emblems by:

- i. Posting St. Philip's name or a name substantially similar on a website and improperly asserting that St. Philip's is "in union with" the Defendants.
- ii. Using St. Philip's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Philip's is "in union with" the Defendants.

**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 ("St. Michael's")**

318. St. Michael's is a South Carolina non-profit corporation. Its business address is 71 Broad Street, Charleston, South Carolina.

319. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation in 1785.

320. St. Michael's voluntarily associated with the Diocese of South Carolina, sending delegates to early diocesan conventions. St. Michael's was a signatory to the first Constitution of the Diocese of South Carolina.

321. On June 14, 1751, an Act of the Colonial Assembly, divided the Parish of St. Philip into two separate parishes, the Parish of St. Philip and the Parish of St Michael, and authorized the construction of a new church, to be known as St. Michael's Church. The parish

church was directed to be built “on or near the place where the old Church of St. Philip formerly stood” at the southeast corner of Broad and Meeting Streets.

322. St. Michael’s Church was opened for worship in February 1761.

323. Following the American Revolution, in order to remedy any uncertainty following the disestablishment of the Church of England in the United States, including any uncertainty as to the title of various parish properties, the South Carolina General Assembly, on March 24, 1785, incorporated the Vestries and Wardens of the Parishes of St. Philip and St. Michael, declaring “...the present vestries and church wardens of the churches in the parish of St. Philip and St. Michael, and their successors forever hereafter, shall be, and they are hereby declared to be, one body corporate, in deed and in name, by the name ‘Vestries and Church-Wardens of the Episcopal Churches of the Parishes of St. Philip and St. Michael, Charleston’ and by that name shall, from time to time, and at all times hereafter, have perpetual succession and a common seal, and be capable in law, to have, hold, receive, possess and enjoy all of the lands, tenements and hereditaments, and the rents and income thereof, which now are vested in the said vestries and church wardens respectively, to them and their successors in office, and to sell, alien, exchange, demise or lease the same, or any part thereof, as they or a majority of them, shall think convenient.”

324. In 1791, the South Carolina Legislature split St. Philip’s Church and St. Michael’s Church into two separate corporations, making each a separate and distinct body politic and corporate. Adopted on December 29, 1791, the legislation created “The Protestant Episcopal Church, of the Parish of Saint Philip, in Charleston, in the State of South Carolina” and “The Protestant Episcopal Church, of the Parish of Saint Michael, in Charleston, in the State of South Carolina”, with each separate corporation having the right to “possess and enjoy their respective

properties severally, and shall have, possess and enjoy the same authority, powers and privileges which [by the March 24, 1785 Act] are granted to them conjointly; ... and that the said vestry and church wardens of the Episcopal Church of the Parish of Saint Michael, in Charleston, and their successors in office for ever hereafter, shall be and they are hereby declared to be, incorporated as a body politic and corporate, in deed and in law, by the name 'The Protestant Episcopal Church of the Parish of Saint Michael, in Charleston, in the State of South Carolina' ...capable in law, to have, hold, take, receive, possess, and enjoy, all the lands, tenements, hereditaments, and the rents and income thereof, which now are, or hereafter shall be, vested in them respectively, by gift, devise or purchase, to them and their respective successors in office, forever."

325. In the fall of 1863, due to the war and shells targeting the steeple, the congregation retreated to St. Paul's Church where services were held until 1865. The Church, being seriously damaged, was repaired and then reopened on November 26, 1865.

326. St. Michael's left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant TEC in 1866.

327. Among those buried in the historic cemetery of St. Michael's are two signers of the Constitution of the United States one of whom was the second Chief Justice of the United States Supreme Court, former members of the Continental Congress, former Revolutionary War Generals, numerous South Carolina Governors, former United States Senators and Congressmen, and former Mayors of the City of Charleston.

328. As of December 2011, St. Michael's had 1,820 baptized members and an annual operating income of \$1,889,269.

329. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. Michael's reaffirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors on October 25, 2012.

330. St. Michael's is the fee simple owner of all its real property.

331. During its 227-year history, the acquisition of St. Michael's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Michael's without any assistance or contributions from the Defendant TEC.

332. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. Michael's real or personal property.

333. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted St. Michael's name and emblems by:

- i. Posting St. Michael's name or a name substantially similar on a website and improperly asserting that St. Michael's is "in union with" the Defendants.
- ii. Using St. Michael's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Michael's is "in union with" the Defendants.

The Vestry and Church Wardens Of St. Jude's Church of Walterboro ("St. Jude's")

334. St. Jude's is a South Carolina non-profit corporation. Its business address is 907 Wichman Street, Walterboro, South Carolina. It was incorporated on December 19, 1855.

335. St. Jude's has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

336. St. Jude's Episcopal Church is located in St. Bartholomew's Parish which was established by the Church Act of 1706. The first Church, "Pon Pon Chapel", was built in 1725 near Jacksonboro. The "Walterborough Chapel" was built in 1826 as a place of worship in the summer months. The first clergyman traveled across the Parish to conduct services as a church structure had not been erected.

337. St. Jude's voluntarily associated with the Diocese of South Carolina, first as a mission and then on October 25, 1855 as a parish. In 1879, the church was destroyed by a hurricane. It's rebuilding was completed in 1882.

338. St. Jude's left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese voluntarily reassociated with the Defendant TEC in 1866.

339. As of December 2011, St. Jude's had 216 baptized members and an annual operating income of \$184,451.

340. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, St. Jude's reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors in November 2012.

341. St. Jude's is the fee simple owner of all its real property.

342. During its 287-year history, the acquisition of St. Jude's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Jude's without any assistance or contributions from the Defendant TEC.

343. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. Jude's real or personal property.

344. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted St. Jude's name and emblems by:

- i. Posting St. Jude's name or a name substantially similar on a website and improperly asserting that St. Jude's is "in union with" the Defendants.
- ii. Using St. Jude's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Jude's is "in union with" the Defendants.

The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of Prince George Winyah ("Prince George")

345. Prince George is a South Carolina non-profit corporation. Its business address is 301 Screven Street, Georgetown, South Carolina.

346. Prince George's Parish at Winyah (often spelled "Winyaw") was created on March 10, 1721 by an Act of the Colonial Assembly. It was named for George, Prince of Wales who became George II of England in 1727; and was located on a bluff overlooking the Black River (Winyah or Winyaw was the local Indian word for "black").

347. In 1734, Prince George's Parish, Winyaw, was divided, as the center of population had moved to present day Georgetown. The parish was now centered in Georgetown, while the Black River parish was renamed "Prince Frederick" (for Frederick, Prince of Wales). Upon this division, planning was started for the present brick church located at the intersection of Highmarket and Broad streets in Georgetown. That structure was largely completed in 1751;

however Sunday services began in this building on August 16, 1747, and have been held continuously ever since.

348. The Parish of Prince George, Winyah, was again divided by act of the Colonial Assembly in 1767, the area between the Waccamaw River and the ocean, north to the North Carolina boundary line becoming "All Saints' Parish".

349. On February 29, 1788, Prince George Parish was incorporated by the General Assembly as "The Vestry and Church Wardens of the Episcopal Church of the Parish of Prince George Winyaw", and granted full title to the property of the parish and full rights to acquire or dispose of property "as they shall think convenient".

350. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

351. Prince George voluntarily associated with the Diocese of South Carolina, sending delegates to early diocesan conventions. Prince George was a signatory to the first Constitution of the Diocese of South Carolina.

352. Prince George left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant TEC.

353. Prince George, through its Board of Directors, voted on November 12, 2012, among other things, to declare that Prince George is not part of the Defendant TEC and to repudiate any claim by any representative of the Defendant TEC to have any right or authority over this Parish or its property.

354. As of December 2011, Prince George had 695 baptized members and an annual operating income of \$750,430.

355. Prince George's is the fee simple owner of all its real property.

356. During its 281-year history, the acquisition of Prince George's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Prince George without any assistance or contributions from the Defendant TEC.

357. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Prince George's real or personal property.

358. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Prince George's name and emblems by:

- i. Posting Prince George's name or a name substantially similar on a website and improperly asserting that Prince George is "in union with" the Defendant.
- ii. Using Prince George's name or a name substantially similar to it to send email and other correspondence improperly asserting that Prince George is "in union with" the Defendant.

**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")**

359. St. Helena is a South Carolina non-profit corporation legislatively incorporated on March 22, 1786. Its business address is 507 Newcastle Street, Beaufort South Carolina.

360. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

361. St. Helena voluntarily associated with the Diocese of South Carolina, sending delegates to early diocesan conventions. St. Helena was a signatory to the first Constitution of the Diocese of South Carolina.

362. St. Helena Parish was created in 1712 by an Act of the Colonial Assembly under the authority of the Church Act of 1706. The area south of Colleton County commonly called Granville County was renamed the Parish of St. Helena. Residents within the parish desired to have "divine worship" and five such residents were designated benefactors, of the parish "willing to contribute to the building a church, and afterwards for the building of a Rector's or Minister's house, without any charge to the public."

363. On Dec. 11, 1717 an act of the Colonial Assembly authorized a Grant of Land not exceeding fifty acres belonging to Beaufort, for a " 'Glebe for the use of the Rector, or Minister of the Parish of St. Helena and his successors forever.' "

364. A brick church, forty feet by thirty feet with a ten square foot chancel, was completed in 1724 within the fifty-acre glebe granted in 1717.

365. In 1778, as a consequence of the Revolutionary War, the Church of England was disestablished in South Carolina. In order to alleviate uncertainty concerning the legal status and title to church property, some parishes, including St. Helena, petitioned the South Carolina legislature for incorporation.

366. On May 12, 1785 the first "Convention of the Protestant Episcopal Church in South Carolina" was held. St. Helena voluntarily associated with the Diocese of South Carolina and it was a signatory to the first Constitution of the Diocese of South Carolina.

367. On March 22, 1786, the legislature passed an act incorporating St Helena as "The Vestry and Churchwardens of the Episcopal Church of the Parish of St. Helena" and affirming its ownership of certain lands including the lands on which the church is located today.

368. In about 1810 St. Helena began raising money to expand the church. The original church building was enlarged in 1817. The church also underwent expansion and renovation in 1842.

369. St. Helena left the Defendant TEC in 1861 along with the rest of the Diocese. They returned with the Diocese of South Carolina when it voluntarily reassociated in 1866.

370. Between November 1861 and 1865, Union forces occupied Beaufort, including St. Helena's Church, which was first used as a chapel and then converted to a hospital. While services continued elsewhere, at the conclusion of the war, it took nearly two years of repair work before services could resume in the church.

371. The church was severely damaged twice more, by a storm in 1896 and by hurricane Gracie in 1959. In both instances extensive restoration was required and completed by the congregation.

372. By 1999, the church was in need of restoration and repairs. After 19 months of work at a cost of some \$2.6 million paid for by the congregation, the Church reopened on Palm Sunday 2000.

373. On January 22, 2012 St. Helena marked the beginning of its tricentennial year with a worship service presided over by the Lord Bishop of London.

374. As of December 2011, St. Helena had 1,885 baptized members and an annual operating income of \$2,059,723.

375. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. Helena reaffirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors on November 13, 2012.

376. St. Helena's is the fee simple owner of all its real property.

377. During its 300-year history, the acquisition of St. Helena's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Helena without any assistance or contributions from the Defendant TEC.

378. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. Helena's real or personal property.

379. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted St. Helena's name and emblems by:

- i. Posting St. Helena's name or a name substantially similar on a website and improperly asserting that St. Helena is "in union with" the Defendants.
- ii. Using St. Helena's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Helena is "in union with" the Defendants.

The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Matthew ("St Matthew's Parish Fort Motte")

380. St. Matthew's Parish Fort Motte is a South Carolina non-profit corporation. Its business address is 1164 Fort Motte Road, Fort Motte, South Carolina.

381. St. Matthew's Parish Fort Motte was established by an act of the Colonial Assembly on August 12, 1768. On February 29, 1788, St. Matthew's Parish Fort Motte was incorporated by the General Assembly as "The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Matthew", and granted full title to the property of the parish and full rights to acquire or dispose of property "as they shall think convenient."

382. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation in 1788.

383. The original Parish Church was located near Halfway Swamp in Orangeburgh Township. The church building was subsequently rebuilt in several locations within St. Matthew's Parish. The present church building was erected in the community of Fort Motte in 1852.

384. St. Matthew's Parish Fort Motte voluntarily associated with the Diocese of South Carolina.

385. St. Matthew's Parish Fort Motte left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant TEC in 1866.

386. As of December 2011, St. Matthew's Parish Fort Motte had 106 baptized members and an annual operating income of \$127,781.

387. In addition to its votes at the Special Convention of The Protestant Episcopal Church in the Diocese of South Carolina held on November 17, 2012, St. Matthew's Parish Fort Motte reaffirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors on January 20, 2013.

388. St. Matthew's Parish Fort Motte is the fee simple owner of all its real property.

389. During its 225 year history, the acquisition of St. Matthew's Parish Fort Motte's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Matthew's Parish Fort Motte without any assistance or contributions from the Defendant TEC.

390. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of the real or personal property of St. Matthew's Parish Fort Motte.

391. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted the name and emblems of St. Matthew's Parish Fort Motte by:

- i. Posting St. Matthew's Parish Fort Motte's name or a name substantially similar on a website and improperly asserting that St. Matthew's Parish Fort Motte is "in union with" the Defendants.
- ii. Using St. Matthew's Parish Fort Motte's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Matthew's Parish Fort Motte is "in union with" the Defendants.

The Vestry and Wardens Of St. Paul's Church, Summerville ("St. Paul's")

392. St. Paul's is a South Carolina non-profit corporation incorporated on December 19, 1855. Its business address is 316 W Carolina Avenue, Summerville, South Carolina.

393. St. Paul's traces history back to colonial Dorchester. For 11 years after the passage of the Church Act of 1706 the area of Dorchester encompassing what is now Summerville was part of St. Andrews Parish. In 1717 Episcopalians within Dorchester petitioned the Colonial Assembly for their own parish. The new parish, formed by an Act passed on Dec. 11, 1717 was named St. George. "The Church and Parsonage-House were directed to be built where the Commissioners should direct, with the consent of a majority of the Parishioners, professing the religion of the Church of England, who should contribute to the expense."

394. By 1720 construction of the outer portion of a church was complete. The construction was paid for by local subscriptions and by a contribution from the Colonial Assembly.

395. In 1734 the Church was renovated and enlarged and in 1751 a bell tower was added. The British occupied the area during the Revolutionary War. In 1782 the British set fire to the church, with only the bell tower surviving.

396. As of 1829 the rector of St. Paul's Stono was holding regular summer services in parishioners homes. St. Paul's Summerville remained a chapel-of-ease under the vestry of St. Paul's Stono until after 1865. In 1830 parishioners built a church in Summerville near the present site.

397. In 1855 the General Assembly of South Carolina incorporated "The Vestry and Wardens of St. Paul's Church, Summerville" and granted ownership of certain property including the property on which the church is located to St. Paul's Summerville.

398. St. Paul's Summerville has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

399. In 1857 the parishioners, needing a larger church, completed and consecrated the present church building that was enlarged in 1878.

400. Since 1857 the church has undergone repairs caused by the 1886 earthquake, has seen the addition of Ambler Hall in 1924, the construction of the parish house in 1974 and a new addition in 1986. The church added an additional 33,000 sq. ft. of space in 2002 and 2003, Doar Hall and the C/4 ("Children/Youth) Building. All work was at the impetus of, under the direction of and at the expense of the rector and parishioners of St. Paul's Summerville.

401. St. Paul's left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant TEC in 1866.

402. As of December 2011, St. Paul's had 952 baptized members and an annual operating income of \$1,140,170.

403. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. Paul's reaffirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors on December 17, 2012.

404. St. Paul's is the fee simple owner of all its real property.

405. During its 295-year history, the acquisition of St. Paul's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Paul's without any assistance or contributions from the Defendant TEC.

406. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. Paul's real or personal property.

407. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted St. Paul's name and emblems by:

- i. Posting St. Paul's name or a name substantially similar on a website and improperly asserting that St. Paul's is "in union with" the Defendants.
- ii. Using St. Paul's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Paul's is "in union with" the Defendants.

Trinity Church Of Myrtle Beach ("Trinity")

408. Trinity is a South Carolina non-profit corporation. Its business address is 3000 N Kings Highway, Myrtle Beach, South Carolina. Trinity was incorporated on May 27, 1949.

409. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation in 1949.

410. Trinity was organized in June 1939 as the "Church of the Messiah." It became a mission of the Diocese of South Carolina in October 1939. In 1949, it voluntarily associated with the Diocese of South Carolina as a parish. In 1951, its name was changed to "Trinity Episcopal Church." In November 2009, its name was changed to "Trinity Church of Myrtle Beach."

411. As of December 2011, Trinity had 650 baptized members and an annual operating income of \$700,533.

412. Trinity's is the fee simple owner of all its real property.

413. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, Trinity reaffirmed its disaffiliation with the Defendant TEC by a vote of its Board of Directors on December 10, 2012.

414. During its 63-year history, the acquisition of Trinity's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Trinity without any assistance or contributions from the Defendant TEC.

415. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Trinity's real or personal property.

416. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Trinity's name and emblems by:

- i. Posting Trinity's name or a name substantially similar on a website and improperly asserting that Trinity is "in union with" the Defendants.
- ii. Using Trinity's name or a name substantially similar to it to send email and other correspondence improperly asserting that Trinity is "in union with" the Defendants.

Trinity Episcopal Church, Edisto Island ("Trinity, Edisto Island")

417. Trinity, Edisto Island is a South Carolina non-profit corporation. Its business address is 1589 Highway 174, Edisto Island, South Carolina. It was incorporated in 1793.

418. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

419. Trinity began as a Chapel of Ease in St. John's parish as the distance to the parish church on John's Island was great. On April 7, 1770 the Colonial Assembly authorized the building of the chapel. The parishioners built a church in 1774. In 1793, it was incorporated by the General Assembly as "The Episcopal Church on Edisto Island." In 1808, the General Assembly added 80 acres to the church property for a glebe.

420. A new church was built in 1841 with an organ added in 1845.

421. Between 1861 and 1865, the church was used as Confederate Cavalry headquarters and afterwards as a U.S. Coast Survey observatory. On February 28, 1876, it was destroyed by fire. In 1881, a new church was completed with renovations occurring in 1896 and in 1905, the later after a lightening strike. The parish hall was built in 1953 with an addition added in 1955.

422. In the 1800's, Trinity changed its name to "Trinity Episcopal Church." On February 12, 2012, Trinity changed its name to "Trinity Episcopal Church."

423. Trinity, Edisto Island left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese voluntarily reassociated with the Defendant TEC in 1866.

424. Trinity Edisto Island voluntarily associated with the Diocese of South Carolina.

425. As of December 2011, Trinity Edisto Island had 208 baptized members and an annual operating income of \$422,156.

426. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, Trinity, Edisto Island reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors on December 30, 2012.

427. Trinity, Edisto Island is the fee simple owner of all its real property.

428. During its 243-year history, the acquisition of Trinity, Edisto Island's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Trinity, Edisto Island without any assistance or contributions from the Defendant TEC.

429. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Trinity, Edisto Island's real or personal property.

430. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Trinity, Edisto Island's name and emblems by:

- i. Posting Trinity, Edisto Island's name or a name substantially similar on a website and improperly asserting that Trinity, Edisto Island is "in union with" the Defendants.
- ii. Using Trinity, Edisto Island's name or a name substantially similar to it to send email and other correspondence improperly asserting that Trinity, Edisto Island is "in union with" the Defendants.

Trinity Episcopal Church, Pinopolis ("Trinity, Pinopolis")

431. Trinity, Pinopolis is a South Carolina non-profit corporation. Its business address is 1915 Pinopolis Road, Pinopolis Island, South Carolina. It was incorporated on February 24, 1971.

432. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

433. Trinity, Pinopolis originated as a Chapel of Ease in the middle of St. John's, Berkeley, the largest of the original parishes created in 1706. Worship first began in the "Black Oak" neighborhood (now submerged under Lake Moultrie) in 1808. In 1846, a chapel was built at Pinopolis and a new church was built at Black Oak and called "Trinity Church, Black Oak." A parish house and a rectory were built in 1944 and 1949, respectively.

434. A new church was built in Pinopolis in 1970 and in 1992 a new parish hall was built as well as additions to the church.

435. Trinity Pinopolis voluntarily associated with the Diocese of South Carolina in February 1856.

436. Trinity Pinopolis left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese voluntarily reassociated with the Defendant TEC in 1866.

437. As of December 2011, Trinity Pinopolis had 230 baptized members and an annual operating income of \$346,525.

438. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, Trinity, Pinopolis reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors on January 20, 2013.

439. Trinity, Pinopolis is the fee simple owner of all its real property.

440. During its 167-year history, the acquisition of Trinity, Pinopolis' real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Trinity, Pinopolis without any assistance or contributions from the Defendant TEC.

441. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Trinity, Pinopolis' real or personal property.

442. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Trinity, Pinopolis' name and emblems by:

- i. Posting Trinity, Pinopolis' name or a name substantially similar on a website and improperly asserting that Trinity, Pinopolis is "in union with" the Defendants.
- ii. Using Trinity, Pinopolis' name or a name substantially similar to it to send email and other correspondence improperly asserting that Trinity, Pinopolis is "in union with" the Defendants.

Vestry and Church-Wardens Of The Episcopal Church Of The Parish Of Christ Church ("Christ Church")

443. Christ Church is a South Carolina non-profit corporation. Its business address is 2304 Highway 17 North, Mount Pleasant, South Carolina. It was incorporated on March 27, 1787.

444. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

445. Christ Church Parish was created by the Church Act of 1706.

446. The first building's foundation was laid in 1707. It was destroyed by fire in 1724, rebuilt with brick in 1727 and destroyed again by the British in 1782, but rebuilt again in 1794.

447. Christ Church voluntarily associated with the Diocese of South Carolina sending delegates to early diocesan conventions. Christ Church was a signatory to the first Constitution of the Diocese of South Carolina.

448. Christ Church left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese voluntarily reassociated with the Defendant TEC in 1866.

449. Christ Church was incorporated by the General Assembly on March 27, 1787 as "The Vestry and Church-Wardens Of The Episcopal Church Of The Parish Of Christ Church."

450. As of December 2011, Christ Church had 1,066 baptized members and an annual operating income of \$967,569.

451. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, Christ Church reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors on January 14, 2013.

452. Christ Church is the fee simple owner of all its real property.

453. During its 306-year history, the acquisition of Christ Church's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Christ Church without any assistance or contributions from the Defendant TEC.

454. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of Christ Church's real or personal property.

455. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted Christ Church's name and emblems by:

- i. Posting Christ Church's name or a name substantially similar on a website and improperly asserting that Christ Church is "in union with" the Defendants.
- ii. Using Christ Church's name or a name substantially similar to it to send email and other correspondence improperly asserting that Christ Church is "in union with" the Defendants.

Vestry and Church-Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County ("St. John's, Parish Church")

456. St. John's Parish Church was created by an act of Assembly on April 9, 1734. Parishioners purchased land on June 18 of that year on which to build a church. In 1739, additional (glebe land) was purchased. On June 28, 1742 St. John's Parish Church secured its first rector, a native of Massachusetts, a missionary in Savannah, GA and a the direct predecessor of John Wesley, an Anglican minister and later founder of Methodism. By 1743 the church and parsonage were complete, all pews had been fully subscribed.

457. Between 1742 and the beginning of the Revolutionary War (1775), nine different ministers served St. John's Parish Church. When the war was over, the church was in ruins.

458. In 1785 and 1786, St. John's Parish Church voluntarily associated with the Diocese of South Carolina sending representatives to the preliminary and first four state diocesan conventions. It was a signatory to the first constitution of the Diocese of South Carolina.

459. St. John's Parish Church was incorporated by an Act of the General Assembly on March 22, 1786. St. John's, Parish Church is a South Carolina non-profit corporation. Its business address is 3673 Maybank Highway, John's Island, South Carolina.

460. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

461. Between 1787 and 1856 ten ministers served St. John's Parish Church. The last of the ministers during this antebellum period lead the memorial service for President Abraham Lincoln.

462. A second church building was completed in 1817. A chapel-of-ease, Grace Chapel, was completed in July of 1840 in Rockville, SC. This building was destroyed by fire in 1864.

463. Between 1858 and 1946, seventeen ministers served St. John's Parish Church. A third church was built in 1873. The Parish House (later named Guerrey Hall) was built in 1948. Due to the financially difficult times of Reconstruction, The Great Depression, and two World Wars, this structure lasted until February 25, 1955. The fourth and current church was built on the same site with services commencing on November 17, 1955.

464. Since 1946, only five different Rectors have served St. John's Parish Church. In 2002, the church built the Parish Life Building and in 2006 renovated the old parish house.

465. St. John's Parish Church left the Defendant TEC in 1861 along with the rest of the Diocese. They returned when the Diocese voluntarily reassociated with the Defendant TEC in 1866.

466. As of December 2011, St. John's, Parish Church had 566 baptized members and an annual operating income of \$788,449.

467. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, St. John's, Parish Church reaffirmed its disaffiliation from the Defendant TEC by a vote of its Board of Directors on December 13, 2011.

468. St. John's, Parish Church is the fee simple owner of all its real property.

469. During its 279-year history, the acquisition of St. John's, Parish Church's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. John's, Parish Church without any assistance or contributions from the Defendant TEC.

470. Neither the Defendant TEC nor any other entity associated with the Defendant TEC has any legal, beneficial or equitable interest in any of St. John's, Parish Church's real or personal property.

471. Defendants and those under their control including individuals claiming to be members of Defendants have assumed, used, adopted St. John's, Parish Church's name and emblems by:

- i. Posting St. John's, Parish Church's name or a name substantially similar on a website and improperly asserting that St. John's, Parish Church is "in union with" the Defendants.

- ii. Using St. John's, Parish Church's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. John's, Parish Church is "in union with" the Defendants.

**DEFENDANT
THE EPISCOPAL CHURCH ("TEC")**

472. TEC is an unincorporated association with a business address of 815 Second Avenue, New York, New York. At least one of its members is a citizen of South Carolina. It does business in the State of South Carolina.

473. TEC is a voluntary association of corporately independent dioceses.

474. Katharine Jefferts Schori is an agent of TEC.

475. Thomas S. Tisdale, Jr. is an agent of TEC and of Katharine Jefferts Schori and has been since at least December 2009.

476. On information and belief, Thomas S. Tisdale, Jr. was asked by TEC, through its agent, Katharine Jefferts Schori, to form a group some months before November 2012 called the "Steering Committee."

477. The Steering Committee is, on information and belief, operated under the auspices of TEC through Katharine Jefferts Schori.

478. Thomas S. Tisdale, Jr. has spoken on behalf of TEC at public meetings since on or about November 7, 2012 where he has stated, among other things, that TEC and those acting at and under its direction and control:

- i. will use the name and symbols of the Diocese of South Carolina;
- ii. have opened a bank account in the name of the Diocese of South Carolina.

- iii. will pursue lawsuits against the Diocese of South Carolina and against its parishes.

479. Since on or about November 7, 2012, TEC has repeatedly assumed, used, adopted and continued to use the names and emblems of the Diocese of South Carolina and of the Plaintiff Parishes without their consent. Specifically, TEC through its agents:

- i. sent an invitation by email at approximately 3:00 p.m. on November 8, 2012 from "Episcopal Diocese of South Carolina" using the email address "episcopaldioceseofsc@gmail.com" to all the Clergy of The Diocese inviting them to a "Clergy Day" to be held on November 15, 2012 at The Church of the Holy Communion, Charleston, SC. The invitation used the seal of the Diocese of South Carolina and the shield of TEC;
- ii. upon information and belief, the meeting location was changed because the rector of The Church of the Holy Communion, Charleston, SC was not aware when he allowed the meeting of its purposes, was not aware of the email that would be sent in the name of the Diocese of South Carolina, and was not aware of the unauthorized use of the Seal of the Diocese of South Carolina and the use of the protected Diocesan name;
- iii. caused to be registered the domain name "episcopaldioceseofsc.com" on October 27, 2012;
- iv. caused to be created a website, "www.episcopaldioceseofsc.com";
- v. caused to be created an address at gmail.com using the name "episcopaldioceseofsc";

- vi. sent another email invitation on November 9, 2012 to clergy in the Diocese of South Carolina which was the same in substance as the November 8th email except with a new location. The email used the same names, and the diocesan Seal together with the TEC shield;
- vii. caused to be published on November 11, 2012 an advertisement in the name of the Steering Committee in The Post & Courier, The Beaufort Gazette and Island Packet which used the Diocese name and its seal;
- viii. caused to be launched a website, "www.episcopalcoeseofsc.org", which used the Diocesan Seal on all of its pages and used the names of the Plaintiff Parishes misrepresenting their status;
- ix. caused to be launched a website called "www.scstewardship.com" using the name and seal of the Diocese which continues to be used;
- x. caused to be duplicated, word for word, from the Diocese of South Carolina's website, and placed on the above website the history and description of the Seal of the Diocese of South Carolina;
- xi. caused to be placed in The Island Packet on December 29, 2012 an invitation to a meeting using imitations of the Seal of the Diocese of South Carolina and using the name of the Diocese of South Carolina.
- xii. Caused the parish Plaintiffs names and website address links to be placed on TEC's website at www.episcopalchurch.org/diocese/south-carolina asserting, without the consent of the Plaintiff parishes and the Diocese of South Carolina, that they are associated with TEC and

improperly using the name of the Diocese of South Carolina in an unauthorized web address called “www.episcopaldioceseofsc.org”;

- xiii. TEC through Katherine Jefferts Schori improperly used the name of the Diocese of South Carolina in her letter of November 16, 2012;
- xiv. TEC through Katherine Jefferts Schori improperly used the name of the Diocese of South Carolina when TEC purportedly called a convention for January 26, 2013 and stated the intent to modify corporate decisions, replace directors and take other unspecified actions.

**DEFENDANT
THE EPISCOPAL CHURCH IN SOUTH CAROLINA (“ECSC”)**

480. ECSC is an unincorporated association with a business address of 98 Wentworth Street, Charleston, South Carolina. At least one of its members is a citizen of South Carolina. It does business in the State of South Carolina.

481. ECSC is a voluntary association of parishes that chose to remain affiliated with the Defendant TEC.

482. Charles vonRosenberg is an agent of ECSC.

483. On or about January 26, 2013, ECSC officially formed as an unincorporated association in South Carolina.

484. During the January 26, 2013 meeting, certain corporate actions were taken by ECSC to address certain undefined governing documents for the association, including changes to a Constitution and Canons.

485. Resolution 6 of the January 26, 2013 Convention of ECSC was "A Resolution Declaring Certain Resolutions, Constitutional and Canonical Changes Null and Void." The resolution stated that "certain resolutions were adopted in 2009 by prior Diocesan Convention" and "certain amendments to the Diocesan Constitution and Canons were purportedly made in 2009, 2010, and 2011 by prior Diocesan Convention action" and "that this Convention of the Episcopal Diocese of South Carolina affirms that all such actions purporting to modify procedures or remove accession clauses from the Diocesan Constitution and Canons are hereby declared null and void and have no legal effect, and that this Convention in its future meetings will make specific and further modifications to this Constitution and Canons of this Diocese."

486. Resolution 6 included attachments of the Prior Amendments to the Constitution and Canons and related resolutions adopted to be declared null and void. These included actions taken by the Diocese of South Carolina in the October 24, 2009 Special Diocesan Convention, the March 26, 2010 219th Diocesan Convention, the October 2010 Diocesan Convention, the February 2011 220th Diocesan Convention, and the November 17, 2012 Special Convention. All these actions occurred before the ECSC had organized during their first convention on January 26, 2013.

487. The January 26, 2013 convention of the ECSC never adopted governing documents, but allegedly adopted the governing documents of the Diocese of South Carolina and declared null and void its corporate actions and in doing so attempted to assume its corporate identity.

488. The ECSC is a new association, but it has attempted to assume the corporate identity of the Diocese of South Carolina.

489. Since on or about January 26, 2013, ECSC has repeatedly assumed, used, adopted and continued to use the names and emblems of the Diocese of South Carolina and of the Plaintiff Parishes without their consent. Specifically, ECSC through its agents:

- i. at their January 26, 2013 Convention, passed resolutions purporting to affect the governing documents of The Episcopal Diocese of South Carolina;
- ii. conducting business in the name of the Episcopal Diocese of South Carolina and conducting said business without the proper quorum necessary;
- iii. adopting the name The Episcopal Church in South Carolina;
- iv. caused to be registered the domain name "episcopalchurchsc.org" on January 28, 2013;
- v. caused to be created a website, "episcopalchurchsc.org";
- vi. caused to be created an address at gmail.com using the name "episcopal.sc" and later an address at episcopalchurchsc.org;
- vii. caused to be placed in The Beaufort Island Packet on February 2, 2013 a advertisement for the visit of the new bishop of the continuing "Diocese of South Carolina" to a church in Beaufort affiliated with the ECSC;
- viii. caused the parish Plaintiffs names to be placed on ECSC's website at <http://www.episcopalchurchsc.org/parishes-and-missions.html> asserting, without the consent of the Plaintiff parishes and the Diocese of South Carolina, that they are associated with ECSC and improperly using the

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

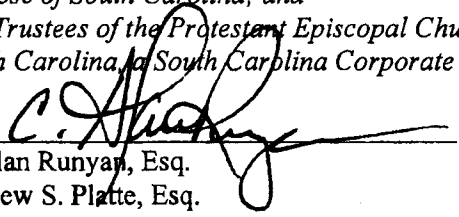
from operating or using under the Plaintiffs' names, filing unauthorized corporate documents under the Plaintiffs' names and using the names, seals, other service marks and intellectual property of the Plaintiffs without their express written authorization all as provided by Sections 16-17-310 and 320 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
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The Trustees of the Protestant Episcopal Church of
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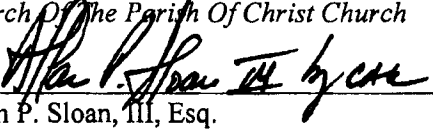
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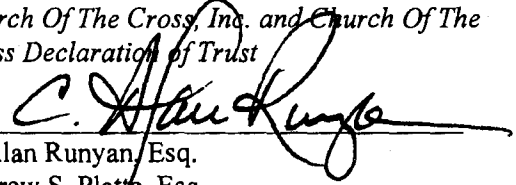
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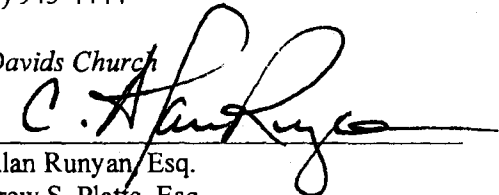
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*Church Of The Cross, Inc. and Church Of The
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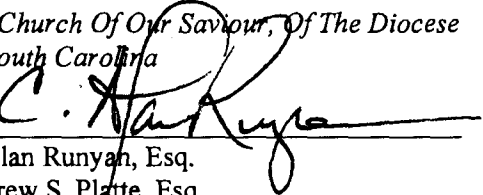
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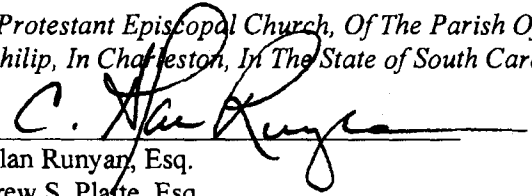
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St. Philip, In Charleston, In The State of South Carolina*

By: 

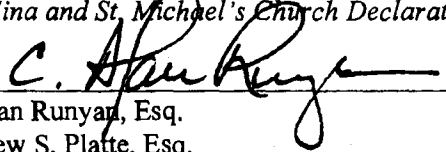
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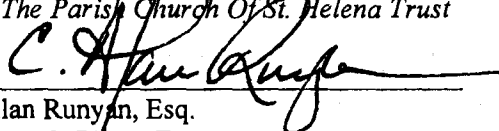
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*The Protestant Episcopal Church, The Parish Of
St. Michael, In Charleston, In The State of South
Carolina and St. Michael's Church Declaration Of Trust*

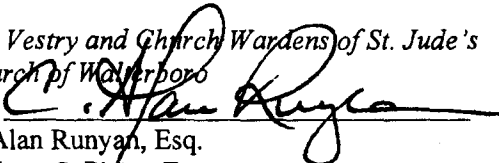
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*The Vestry and Church Wardens Of The
Episcopal Church Of The Parish Of St. Helena
And The Parish Church Of St. Helena Trust*

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*The Vestry and Church Wardens of St. Jude's
Church of Waterboro*

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Trinity Episcopal Church, Edisto Island

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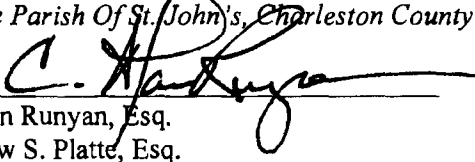
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*Vestry and Church Wardens Of The Episcopal Church
Of The Parish Of St. John's, Charleston County*

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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.,)

Defendant.)

✓ THE EPISCOPAL CHURCH,)

Counterclaim Plaintiff,)

v.)

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

Counterclaim Defendants)

and)

MARK J. LAWRENCE ET AL.,)

Additional Counterclaim Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2013-cp-18-00013

**ANSWER AND COUNTERCLAIMS
OF THE EPISCOPAL CHURCH TO
SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

FILED-RECORDED
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DORCHESTER COUNTY

ANSWER

Defendant The Episcopal Church (the "Church"), answers Plaintiffs' Second Amended Complaint as follows:

1. The Church denies each allegation of Plaintiffs' Second Amended Complaint not hereinafter specifically admitted.

2. The introductory paragraph of Plaintiffs' Second Amended Complaint contains a description of plaintiffs' claims, which does not require a response.

3. In response to the allegations of Paragraph 1, the Church admits and alleges that the entity variously known as the "Diocese of South Carolina," "The Protestant Episcopal Diocese of South Carolina," and "The Protestant Episcopal Church in the Diocese of South Carolina" is, and historically has been, a subordinate unit of the Church (hereinafter the "Episcopal Church Diocese"), and is a South Carolina nonprofit, charitable corporation incorporated on November 14, 1973, as "The Protestant Episcopal Diocese of South Carolina." The Church lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1.

4. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2.

5. In response to the allegations of Paragraph 3, the Church admits that Mark J. Lawrence was the 14th Bishop of the Episcopal Church Diocese; denies that Mark J. Lawrence is an employee or Chief Operating Officer of the Episcopal Church Diocese and that he is an *ex officio* member of the Episcopal Church Diocese's Board of Directors; and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

6. In response to the allegations of Paragraph 4, the Church admits that for some time prior to its incorporation the Episcopal Church Diocese was organized and operated as an unincorporated association and lacks knowledge or information sufficient to form a belief as to the remaining allegations.

7. The Church lacks knowledge or information sufficient to form a belief as to the allegations of the first sentence of Paragraph 5 and denies the remaining allegations of Paragraph 5.

8. The Church denies the allegations of Paragraph 6.

9. In response to the allegations of Paragraph 7, the Church lacks knowledge or information sufficient to form a belief as to whether certain Church of England churches were called “episcopal” before the Church’s formation, and denies the remaining allegations.

10. The Church denies the allegations of Paragraphs 8-9.

11. In response to the allegations of Paragraph 10, the Church admits and alleges that drafts of the first Constitution of the Church’s General Convention were considered before and during 1789 and that the first Constitution was adopted on October 2, 1789, and denies the remaining allegations.

12. The Church denies the allegations of Paragraph 11-15.

13. The Church lacks knowledge or information sufficient to form a belief as to the allegations of the first and third sentences of Paragraph 16. In response to the allegations of the second sentence of Paragraph 16, the Church admits and alleges that the Church’s General Convention divided the Episcopal Church Diocese and established a new diocese in the upper part of South Carolina, called the “Diocese of Upper South Carolina,” in 1922.

14. The Church lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 17-19.

15. The Church admits the allegations of Paragraph 20.

16. In response to the allegations of Paragraph 21, the Church admits and alleges that on October 15, 2010, a majority of the members of the Convention of the Episcopal Church

Diocese voted to amend the Diocese's Constitution as described in this Paragraph, and denies the remaining allegations.

17. In response to the allegations of Paragraph 22, the Church admits that on October 15, 2010, a majority of the members of the Convention of the Episcopal Church Diocese voted to amend the Diocese's canons as described in this Paragraph, and denies the remaining allegations.

18. The Church lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 23-24.

19. The Church denies the allegations of Paragraph 25-28.

20. The Church admits the allegations of Paragraph 29.

21. The Church lacks knowledge or information sufficient to form a belief as to the allegations of the first sentence of Paragraph 30. In response to the second sentence of Paragraph 30, the Church admits and alleges that until he was removed as a bishop from the Church, Bishop Lawrence was an *ex officio* member with seat and voice but no vote of the Board of Directors of the Trustees of the Episcopal Church Diocese, and denies the remaining allegations of the second sentence of Paragraph 30.

22. The Church denies the allegations of Paragraph 31.

23. The Church admits the allegations of Paragraph 32.

24. The Church lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 33.

25. The Church denies the allegations of Paragraph 34.

26. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 35, and admits the allegations of the second sentence of Paragraph 35.

27. In response to the allegations of Paragraph 36, the Church admits and alleges that All Saints is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that All Saints voluntarily associated with the Episcopal Church Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

28. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37-38.

29. The Church denies the allegations of Paragraph 39.

30. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40-41.

31. The Church denies the allegations of Paragraph 42.

32. The Church denies the allegations of Paragraph 43 insofar as they relate to the Church and those under its control, and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

33. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 44, and admits the allegations of the second sentence of Paragraph 44.

34. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 45-46.

35. In response to the allegations of Paragraph 47, the Church admits and alleges that Christ St. Paul's is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that Christ Church, Wilton voluntarily associated with the Episcopal Church

Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

36. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 48.

37. The Church denies the allegations of Paragraph 49.

38. In response to the allegations of Paragraph 50, the Church admits and alleges that Christ St. Paul's is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. Paul's Church voluntarily associated with the Episcopal Church Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

39. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 51-52.

40. The Church denies the allegations of Paragraph 53.

41. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 54-55.

42. The Church denies the allegations of Paragraph 56.

43. In response to the allegations of Paragraph 57, the Church admits that it has used the name "Christ St. Paul's" on its website; denies the remaining allegations of Paragraph 57 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to individuals claiming to be members of the Church.

44. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 58, and admits the allegations of the second sentence of Paragraph 58.

45. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59.

46. In response to the allegations of Paragraph 60, the Church admits and alleges that Christ the King is a parish and subordinate unit of the Episcopal Church Diocese and the Church and denies the remaining allegations.

47. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 61.

48. The Church denies the allegations of Paragraph 62.

49. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 63-64.

50. The Church denies the allegations of Paragraph 65.

51. In response to the allegations of Paragraph 66, the Church admits that it has used the name "Christ the King" on its website; denies the remaining allegations of Paragraph 66 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

52. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 67, and admits the allegations of the second sentence of Paragraph 67.

53. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 68-70.

54. The Church denies the allegations of Paragraph 71.

55. In response to the allegations of Paragraph 72, the Church admits and alleges that Church of the Cross is a parish and subordinate unit of the Episcopal Church Diocese and the Church and denies the remaining allegations.

56. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 73-74.

57. The Church denies the allegations of Paragraph 75.

58. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 76-77.

59. The Church denies the allegations of Paragraph 78.

60. In response to the allegations of Paragraph 79, the Church admits that it has used the name "Church of the Cross" on its website; denies the remaining allegations of Paragraph 79 insofar as they relate to the Church; and others under its control and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

61. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 80, and admits the allegations of the second sentence of Paragraph 80.

62. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 81-82.

63. In response to the allegations of Paragraph 83, the Church admits and alleges that Holy Comforter is a parish and subordinate unit of the Episcopal Church Diocese and the Church and denies the remaining allegations.

64. The Church denies the allegations of Paragraph 84.

65. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 85-86.

66. The Church denies the allegations of Paragraph 87.

67. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 88.

68. The Church denies the allegations of Paragraph 89.

69. In response to the allegations of Paragraph 90, the Church admits that it has used the name "Holy Comforter" on its website; denies the remaining allegations of Paragraph 90 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

70. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 91, denies the allegations of the second sentence of Paragraph 91, and alleges that Redeemer's business address is 606 Russell Street, Orangeburg, South Carolina.

71. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 92-94.

72. In response to the allegations of Paragraph 95, the Church admits and alleges that Redeemer is a parish and subordinate unit of the Episcopal Church Diocese and the Church and denies the remaining allegations.

73. The Church denies the allegations of Paragraph 96.

74. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 97.

75. The Church denies the allegations of Paragraph 98.

76. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 99-100.

77. The Church denies the allegations of Paragraph 101.

78. In response to the allegations of Paragraph 102, the Church admits that it has used the name "Redeemer" on its website; denies the remaining allegations of Paragraph 102 insofar as they relate to the Church and those under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

79. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 103, and admits the allegations of the second sentence of Paragraph 103.

80. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 104-105.

81. In response to the allegations of Paragraph 106, the Church admits and alleges that Holy Trinity is a parish and subordinate unit of the Episcopal Church Diocese and the Church and denies the remaining allegations.

82. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 107.

83. The Church denies the allegations of Paragraph 108.

84. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 109-110.

85. The Church denies the allegations of Paragraph 111.

86. In response to the allegations of Paragraph 112, the Church admits that it has used the name "Holy Trinity" on its website; denies the remaining allegations of Paragraph 112 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

87. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 113, and admits the allegations of the second sentence of Paragraph 113.

88. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 114-117.

89. In response to the allegations of Paragraph 118, the Church admits and alleges that St. Luke's is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. Luke's voluntarily associated with the Episcopal Church Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

90. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 119.

91. The Church denies the allegations of Paragraph 120.

92. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 121-122.

93. The Church denies the allegations of Paragraph 123.

94. In response to the allegations of Paragraph 124, the Church admits that it has used the name "St. Luke's" on its website; denies the remaining allegations of Paragraph 124 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

95. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 125, and admits the allegations of the second sentence of Paragraph 125.

96. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 126-127.

97. In response to the allegations of Paragraph 128, the Church admits and alleges that St. Matthew's is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. Matthew's voluntarily joined the Episcopal Church Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

98. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 129-130.

99. The Church denies the allegations of Paragraph 131.

100. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 132-133.

101. The Church denies the allegations of Paragraph 134.

102. In response to the allegations of Paragraph 135, the Church admits that it has used the name "St. Matthew's" on its website; denies the remaining allegations of Paragraph 135 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

103. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 136, and admits the allegations of the second sentence of Paragraph 136.

104. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 137-138.

105. The Church denies the allegations of Paragraph 139.

106. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 140.

107. In response to the allegations of Paragraph 141, the Church admits and alleges that St. Andrew's Church is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. Andrew's Church voluntarily associated with the Episcopal Church Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

108. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 142-147.

109. In response to the allegations of Paragraph 148, the Church denies the allegation that St. Andrew's Church did not require the consent of any party to transfer its property as

described in Paragraph 147, and lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 148.

110. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 149.

111. The Church denies the allegations of Paragraph 150-151.

112. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 152, and admits the allegations of the second sentence of Paragraph 152.

113. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 153.

114. In response to the allegations of Paragraph 154, the Church admits and alleges that St. Bartholomew's is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. Bartholomew's voluntarily associated with the Episcopal Church Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

115. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 155-156.

116. The Church denies the allegations of Paragraph 157.

117. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 158-159.

118. The Church denies the allegations of Paragraph 160.

119. In response to the allegations of Paragraph 161, the Church admits that it has used the name "St. Bartholomew's" on its website; denies the remaining allegations of Paragraph 161

insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

120. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 162, and admits the allegations of the second sentence of Paragraph 162.

121. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 163-164.

122. The Church denies the allegations of Paragraph 165.

123. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 166-168.

124. In response to the allegations of Paragraph 169, the Church admits and alleges that St. David's is a parish and subordinate unit of the Episcopal Church Diocese and the Church and denies the remaining allegations.

125. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 170-171.

126. The Church denies the allegations of Paragraph 172.

127. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 173-174.

128. The Church denies the allegations of Paragraph 175.

129. In response to the allegations of Paragraph 176, the Church admits that it has used the name "St. David's" on its website; denies the remaining allegations of Paragraph 176 insofar as they relate to the Church and others under its control; and lacks knowledge or information

sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

130. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 177.

131. The Church denies the allegations of Paragraph 183.

132. In response to the allegations of Paragraph 184, the Church admits and alleges that St. James' is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. James' voluntarily associated with the Episcopal Church Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

133. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 185.

134. The Church denies the allegations of Paragraph 186.

135. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 187-188.

136. The Church denies the allegations of Paragraph 189.

137. In response to the allegations of Paragraph 190, the Church admits that it has used the name "St. James'" on its website; denies the remaining allegations of Paragraph 190 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

138. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 191, and admits the allegations of the second sentence of Paragraph 191.

139. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 192-193.

140. In response to the allegations of Paragraph 194, the Church admits and alleges that St. John's Florence is a parish and subordinate unit of the Episcopal Church Diocese and the Church and denies the remaining allegations.

141. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 195.

142. The Church denies the allegations of Paragraph 196.

143. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 197-198.

144. The Church denies the allegations of Paragraph 199.

145. In response to the allegations of Paragraph 200, the Church admits that it has used the name "St. John's" on its website; denies the remaining allegations of Paragraph 200 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

146. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 201, and admits the allegations of the second sentence of Paragraph 201.

147. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 202-203.

148. In response to the allegations of Paragraph 204, the Church admits and alleges that St. Matthias is a parish and subordinate unit of the Episcopal Church Diocese and the Church and denies the remaining allegations.

149. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 205.

150. The Church denies the allegations of Paragraph 206.

151. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 207-208.

152. The Church denies the allegations of Paragraph 209.

153. In response to the allegations of Paragraph 210, the Church admits that it has used the name "St. Matthias Episcopal Church" on its website; denies the remaining allegations of Paragraph 210 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

154. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 211, and admits the allegations of the second sentence of Paragraph 211.

155. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 212.

156. In response to the allegations of Paragraph 213, the Church admits and alleges that St. Paul's, Bennettsville is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. Paul's, Bennettsville voluntarily associated with the Episcopal

Church Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

157. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 214.

158. The Church denies the allegations of Paragraph 215.

159. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 216-217.

160. The Church denies the allegations of Paragraph 218.

161. In response to the allegations of Paragraph 219, the Church admits that it has used the name "St. Paul's, Bennetsville" on its website; denies the remaining allegations of Paragraph 219 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

162. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 220, and admits the allegations of the second sentence of Paragraph 220.

163. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 221-222.

164. In response to the allegations of Paragraph 223, the Church admits and alleges that St. Paul's, Conway is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. Paul's, Conway voluntarily associated with the Episcopal Church Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

165. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 224-225.

166. The Church denies the allegations of Paragraph 226.

167. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 227-228.

168. The Church denies the allegations of Paragraph 229.

169. In response to the allegations of Paragraph 230, the Church admits that it has used the name "St. Paul's, Conway" on its website; denies the remaining allegations of Paragraph 230 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

170. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 231, and admits the allegations of the second sentence of Paragraph 231.

171. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 232-233.

172. In response to the allegations of Paragraph 234, the Church admits and alleges that the Cathedral is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. Luke's voluntarily associated with the Episcopal Church Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

173. In response to the allegations of Paragraph 235, the Church admits and alleges that the Cathedral is a parish and subordinate unit of the Episcopal Church Diocese and the

Church, denies that St. Paul's voluntarily associated with the Episcopal Church Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

174. The Church denies the allegations of Paragraph 236.

175. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 237-241.

176. The Church denies the allegations of Paragraph 242.

177. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 243-244.

178. The Church denies the allegations of Paragraph 245.

179. In response to the allegations of Paragraph 246, the Church admits that it has used the name "Cathedral of St. Luke & St. Paul" on its website; denies the remaining allegations of Paragraph 246 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

180. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 247, and admits the allegations of the second sentence of Paragraph 247.

181. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 248.

182. In response to the allegations of Paragraph 249, the Church admits and alleges that Our Saviour is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that Our Saviour voluntarily associated with the Episcopal Church Diocese, and

lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

183. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 250.

184. The Church denies the allegations of Paragraph 251.

185. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 252-253.

186. The Church denies the allegations of Paragraph 254.

187. In response to the allegations of Paragraph 255, the Church admits that it has used the name "Our Saviour" on its website; denies that such use is improper; denies the remaining allegations of Paragraph 255 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

188. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 256-257.

189. In response to the allegations of Paragraph 258, the Church admits and alleges that Church of the Epiphany is a parish and subordinate unit of the Episcopal Church Diocese and the Church and denies the remaining allegations.

190. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 259.

191. The Church denies the allegations of Paragraph 260.

192. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 261-262.

193. The Church denies the allegations of Paragraph 263.

194. In response to the allegations of Paragraph 264, the Church admits that it has used the name "Historic Church of the Epiphany" on its website; denies the remaining allegations of Paragraph 264 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

195. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 265, and admits the allegations of the second sentence of Paragraph 265.

196. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 266-268.

197. In response to the allegations of Paragraph 269, the Church admits and alleges that Good Shepherd is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that Good Shepherd voluntarily associated with the Episcopal Church Diocese, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

198. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 270.

199. The Church denies the allegations of Paragraph 271.

200. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 272-273.

201. The Church denies the allegations of Paragraph 274.

202. In response to the allegations of Paragraph 275, the Church admits that it has used the name "Church of the Good Shepherd" on its website; denies the remaining allegations of Paragraph 275 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.

203. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 276-279.

204. In response to the allegations of Paragraph 280, the Church admits and alleges that Holy Cross is a parish and subordinate unit of the Episcopal Church Diocese and the Church and denies the remaining allegations.

205. The Church denies the allegations of Paragraph 281.

206. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 282.

207. The Church denies the allegations of Paragraph 283.

208. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 284-285.

209. The Church denies the allegations of Paragraph 286.

210. In response to the allegations of Paragraph 287, the Church admits that it has used the name "Church of the Holy Cross" on its website; denies the remaining allegations of Paragraph 287 insofar as they relate to the Church and others under its control; and lacks knowledge or information sufficient to form a belief as to the truth of those allegations as they relate to others claiming to be members of the Church.