

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2020-000986

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 II

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211. 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 288, and admits the allegations of the second sentence of Paragraph 288.

212. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 289.

213. In response to the allegations of Paragraph 290, the Church admits and alleges that Resurrection is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that Resurrection 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.

214. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 291.

215. The Church denies the allegations of Paragraph 292.

216. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 293-294.

217. The Church denies the allegations of Paragraph 295.

218. In response to the allegations of Paragraph 296, the Church admits that it has used the name "Resurrection" on its website; denies the remaining allegations of Paragraph 296 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.

219. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 297-308.

220. In response to the allegations of Paragraph 309, the Church admits and alleges that St. Philip's is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. Philip'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.

221. The Church denies the allegations of Paragraph 310.

222. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 311-312.

223. The Church denies the allegations of Paragraph 313.

224. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 314-315.

225. The Church denies the allegations of Paragraph 316.

226. In response to the allegations of Paragraph 317, the Church admits that it has used the name "St. Philip's" on its website; denies the remaining allegations of Paragraph 317 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.

227. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 318, and admits the allegations of the second sentence of Paragraph 318.

228. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 319.

229. In response to the allegations of Paragraph 320, the Church admits and alleges that St. Michael's is a parish and subordinate unit of the Episcopal Church Diocese and the

Church, denies that St. Michael'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.

230. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 321-325.

231. The Church denies the allegations of Paragraph 326.

232. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 327-328.

233. The Church denies the allegations of Paragraph 329.

234. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 330-331.

235. The Church denies the allegations of Paragraph 332.

236. In response to the allegations of Paragraph 333, the Church admits that it has used the name "St. Michael's" on its website; denies the remaining allegations of Paragraph 333 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.

237. 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 334, and admits the allegations of the second sentence of Paragraph 334.

238. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 335-336.

239. In response to the allegations of Paragraph 337, the Church admits and alleges that St. Jude's is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. Jude'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.

240. The Church denies the allegations of Paragraph 338.

241. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 339.

242. The Church denies the allegations of Paragraph 340.

243. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 341-342.

244. The Church denies the allegations of Paragraph 343.

245. In response to the allegations of Paragraph 344, the Church admits that it has used the name "St. Jude's" on its website; denies the remaining allegations of Paragraph 344 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.

246. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 345, and admits the allegations of the second sentence of Paragraph 345.

247. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 346-350.

248. In response to the allegations of Paragraph 351, the Church admits and alleges that Prince George is a parish and subordinate unit of the Episcopal Church Diocese and the

Church, denies that Prince George 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.

249. The Church denies the allegations of Paragraph 352-353.

250. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 354-356.

251. The Church denies the allegations of Paragraph 357.

252. In response to the allegations of Paragraph 358, the Church admits that it has used the name "Prince George" on its website; denies the remaining allegations of Paragraph 358 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.

253. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 359, and admits the allegations of the second sentence of Paragraph 359.

254. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 360.

255. In response to the allegations of Paragraph 361, the Church admits and alleges that St. Helena is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. Helena 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.

256. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 362-364.

257. The Church admits the allegations of the first sentence of Paragraph 365. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of Paragraph 365.

258. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 366. In response to the allegations of the second sentence of Paragraph 366, the Church admits and alleges that St. Helena is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. Helena 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.

259. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 367-368.

260. The Church denies the allegations of Paragraph 369.

261. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 370-374.

262. The Church denies the allegations of Paragraph 375.

263. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 376-377.

264. The Church denies the allegations of Paragraph 378.

265. The Church denies the allegations of Paragraph 379 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.

266. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 380, and admits the allegations of the second sentence of Paragraph 380.

267. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 381-383.

268. In response to the allegations of the second sentence of Paragraph 384, the Church admits and alleges that St. Matthew's Parish Fort Motte is a parish and subordinate unit of the Episcopal Church Diocese and the Church and denies the remaining allegations..

269. The Church denies the allegations of Paragraph 385.

270. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 386.

271. The Church denies the allegations of Paragraph 387.

272. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 388-389.

273. The Church denies the allegations of Paragraph 390.

274. In response to the allegations of Paragraph 391, the Church admits that it has used the name "St. Matthew's, Fort Motte" on its website; denies the remaining allegations of Paragraph 391 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.

275. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 392, and admits the allegations of the second sentence of Paragraph 392.

276. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 393-400.

277. The Church denies the allegations of Paragraph 401.

278. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 402.

279. The Church denies the allegations of Paragraph 403.

280. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 404-405.

281. The Church denies the allegations of Paragraph 406.

282. In response to the allegations of Paragraph 407, the Church admits that it has used the name "St. Paul's" on its website; denies the remaining allegations of Paragraph 407 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.

283. 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 408, and admits the allegations of the second sentence of Paragraph 408.

284. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 409.

285. In response to the allegations of Paragraph 410, the Church admits and alleges that Trinity is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that Church of the Messiah or Trinity 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.

286. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 411-412.

287. The Church denies the allegations of Paragraph 413.

288. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 414.

289. The Church denies the allegations of Paragraph 415.

290. In response to the allegations of Paragraph 416, the Church admits that it has used the name "Trinity" on its website; denies the remaining allegations of Paragraph 416 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.

291. 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 417, and admits the allegations of the second sentence of Paragraph 417.

292. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 418-422.

293. The Church denies the allegations of Paragraph 423.

294. In response to the allegations of Paragraph 424, the Church admits and alleges that Trinity, Edisto Island is a parish and subordinate unit of the Episcopal Church Diocese and the Church and denies the remaining allegations.

295. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 425.

296. The Church denies the allegations of Paragraph 426.

297. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 427-428.

298. The Church denies the allegations of Paragraph 429.

299. In response to the allegations of Paragraph 430, the Church admits that it has used the name "Trinity, Edisto Island" on its website; denies the remaining allegations of Paragraph 430 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.

300. 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 431, and admits the allegations of the second sentence of Paragraph 431.

301. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 432-434.

302. In response to the allegations of Paragraph 435, the Church admits and alleges that Trinity, Pinopolis is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that Trinity, Pinopolis 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.

303. The Church denies the allegations of Paragraph 436.

304. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 437.

305. The Church denies the allegations of Paragraph 438.

306. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 439-440.

307. The Church denies the allegations of Paragraph 441.

308. In response to the allegations of Paragraph 442, the Church admits that it has used the name "Trinity, Pinopolis" on its website; denies the remaining allegations of Paragraph 442 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.

309. 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 443, and admits the allegations of the second sentence of Paragraph 443.

310. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 444-446.

311. In response to the allegations of Paragraph 447, the Church admits and alleges that Christ Church is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that Christ 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.

312. The Church denies the allegations of Paragraph 448.

313. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 449-450.

314. The Church denies the allegations of Paragraph 451.

315. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 452-453.

316. The Church denies the allegations of Paragraph 454.

317. In response to the allegations of Paragraph 455, the Church admits that it has used the name "Christ Church" on its website; denies the remaining allegations of Paragraph 455 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.

318. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 456-457.

319. In response to the allegations of Paragraph 458, the Church admits and alleges that St. John's Parish Church is a parish and subordinate unit of the Episcopal Church Diocese and the Church, denies that St. John's Parish 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.

320. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and second sentences of Paragraph 459, and admits the allegations of the third sentence of Paragraph 459.

321. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 460-464.

322. The Church denies the allegations of Paragraph 465.
323. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 466.
324. The Church denies the allegations of Paragraph 467.
325. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 468-469.
326. The Church denies the allegations of Paragraph 470.
327. In response to the allegations of Paragraph 471, the Church admits that it has used the name "St. John's" on its website; denies the remaining allegations of Paragraph 468 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.
328. The Church admits the allegations of Paragraph 472.
329. The Church denies the allegations of Paragraph 473.
330. The Church admits the allegations of Paragraph 474.
331. The Church denies the allegations of Paragraph 475-477.
332. The Church lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 478.
333. The Church denies the allegations of Paragraph 479.
334. The Church denies the allegations of Paragraphs 480-489.
335. In response to Paragraph 490, the Church incorporates by reference its responses to Paragraphs 1-489.
336. The Church denies the allegations of Paragraph 491-492.

337. Paragraph 493 sets out a legal conclusion and requires no response.

338. Paragraph 494 describes Plaintiffs' request for relief under its first cause of action and requires no response.

339. In response to Paragraph 495, the Church incorporates by reference its responses to Paragraphs 1-494.

340. The Church denies the allegations of Paragraphs 496-497.

341. In response to the allegation of Paragraph 498, the Church admits and alleges that the marks at issue in this case belong to the Episcopal Church Diocese and are "famous" with the meaning of the statute cited in Paragraph 498.

342. Paragraph 499 describes Plaintiffs' legal theory under its second cause of action and requires no response.

343. In response to Paragraph 500, the Church incorporates by reference its responses to Paragraphs 1-499.

344. The Church admits the allegations of Paragraph 501.

345. The Church denies the allegations of Paragraph 502-503.

346. Paragraphs 504 and 505 describe Plaintiffs' legal theory under its third cause of action and require no response.

347. The remainder of the document sets out Plaintiffs' prayer for relief and requires no response.

AFFIRMATIVE DEFENSES

1. The complaint fails to state facts sufficient to constitute a cause of action.
2. The plaintiffs lack authority to bring this suit.

3. The Church explicitly reserves the right to amend this pleading to add further defenses and/or counterclaims that may arise upon discovery of material facts.

COUNTERCLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF

The Episcopal Church hereby states its counterclaims as follows:

COUNT I

Parties

1. Counterclaim plaintiff The Episcopal Church, also known as the Protestant Episcopal Church in the United States of America (hereinafter “The Episcopal Church” or the “Church”), is a hierarchical religious denomination and a non-profit unincorporated association with its headquarters in New York, New York.

2. Counterclaim defendant the Protestant Episcopal Church in the Diocese of South Carolina is a South Carolina nonprofit charitable corporation and a diocese and subordinate unit of the Church, with its headquarters in Charleston, South Carolina (hereinafter “The Episcopal Church Diocese”); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraph 4 below.

3. Counterclaim defendant The Trustees of the Protestant Episcopal Church in South Carolina is a South Carolina nonprofit corporation and a subordinate unit of the Episcopal Church Diocese, with its headquarters in Charleston, South Carolina (hereinafter the “Trustees”); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraph 5.

4. The Church is informed and believes that individual counterclaim defendants the Rt. Rev. Mark Lawrence, the Rev. Paul Fuener, the Rev. John Barr, Reid Boylston, Ann Hester Willis, the Rev. Greg Snyder, the Rev. Andrew O’Dell, Edward Mitman, Suzanne Schwank, the

Rev. Tripp Jeffords, the Rev. Ken Weldon, William Lyles, Elizabeth Pennewill, and John Does 1-10 (identity and residence unknown) are former members of the Church who currently hold themselves out as members of the Board of Directors and of the Standing Committee of the Episcopal Church Diocese. The Church is informed and believes that individual counterclaim defendants Lawrence, Willis, Snyder, and Lyles reside in Charleston County, O'Dell and Pennewill in Darlington County, Fuener in Georgetown County, Barr in Sumpter County, Boylston in Barnwell County, Mitman in Clarendon County, Schwank in Beaufort County, Jeffords in Horry County, and Weldon in Florence County, all in South Carolina.

5. The Church is informed and believes that individual counterclaim defendants Ivan Anderson, Jr., Nancy Armstrong, the Rev. Craige Borrett, R. Edward Holt, III, the Rev. J. Robert Horn, IV, John Jordan, Jr., Robert Kilgo, Jr., the Rev. Robert Kunes, the Rt. Rev. Mark Lawrence, the Rev. James Lewis, Wade Logan, III, the Rev. Jeffrey Miller, K. Glynn Watson, and John Does 11-20 (identity and residence unknown) are former members of the Church who currently hold themselves out as members of the Board of Directors of the Trustees. The Church is informed and believes that individual counterclaim defendants Anderson, Borrett, Holt, Jordan, Kunes, Lawrence, Lewis, and Logan reside in Charleston County, Armstrong and Watson in Dorchester County, Norris in Jasper County, Kilgo in Darlington County, and Miller in Beaufort County, all in South Carolina.

The Structure and Governance of The Episcopal Church

6. The Episcopal Church is comprised of 111 geographically-defined, subordinate units known as "dioceses" and more than 7,600 worshipping congregations, usually "parishes" or "missions," in the United States and other countries.

7. The Church has a three-tiered, democratic form of governance that is prescribed by its Constitution and canons, under which dioceses belong to, are subordinate to, and are under

the jurisdiction of the Church, and under which local worshipping congregations, belong to, are subordinate to, and are under the jurisdiction of the Church and the individual dioceses in which the congregations are located.

8. The Church is governed by a legislative body called its "General Convention," which generally meets once every three years to establish the general policies, rules, and programs of the Church. The General Convention is comprised of a House of Bishops, consisting of most of the Church's active and retired bishops, and a House of Deputies, consisting of lay and clergy representatives elected by each of the Church's dioceses.

9. The General Convention has adopted and from time to time amends the Church's governing documents, its Constitution, bylaws called "canons," and Book of Common Prayer ("Prayer Book"), which are binding on every subordinate unit and member of the Church.

10. The "Presiding Bishop" of The Episcopal Church is the "Chief Pastor and Primate" of the Church, is elected by the General Convention, and is charged with responsibility for leadership in initiating and developing policy and strategy in the Church and speaking for the Church as to the policies, strategies, and programs authorized by the General Convention.

11. The Church has an Executive Council comprised of elected bishops, priests, and lay persons who, under the leadership of the Presiding Bishop, manage the fiscal and programmatic affairs of the Church between meetings of the General Convention.

12. A diocese of The Episcopal Church may be formed only by action of the General Convention, and only with an unqualified accession to the Church's Constitution and canons.

13. Each diocese exercises authority over the parishes and other congregations within its geographical area, in obedience to the Constitution, canons, and Prayer Book of the Church.

14. The local governing body of each diocese, generally called its “Convention,” is a legislative body comprised of clergy of the diocese and laity elected by their congregations. The governing body of the Episcopal Church Diocese is its Diocesan Convention.

15. Each diocesan Convention adopts and from time to time amends its own diocesan Constitution and canons which supplement and may not conflict with the Church’s Constitution, canons, or Prayer Book.

16. The principal leader of each diocese is a bishop who is elected by the diocesan Convention and, after receiving consent from the leadership of a majority of the other dioceses of the Church, is ordained by the Church’s Presiding Bishop or his or her designee and other bishops of the Church in accordance with the Church’s Constitution, canons, and Prayer Book. The Diocesan Bishop is in charge of both spiritual and temporal affairs within that diocese. The Bishop is advised by and, as to certain matters, shares authority with a “Standing Committee” of clergy and lay persons elected by the Diocesan Convention.

17. At the third level of the Church’s governance, each of the Church’s nearly 7,600 parishes and other worshipping congregations is located in one of the Church’s dioceses and subject to the authority of the Church and that diocese.

18. The Church’s hierarchical structure provides for representative participation in each level of governance. Parishes and other congregations send representatives to the diocesan Convention, and dioceses send bishops, other clergy, and lay representatives to the Church’s General Convention.

19. Canon I.17(8) of the Church, entitled “Fiduciary Responsibility,” which applies to officers at each level of the Church’s governance, provides that “[a]ny person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with

the Constitution and Canons of [the] Church and of the Diocese in which the office is being exercised.”

20. Article VIII of the Church’s Constitution and the Ordination Services of its Prayer Book require all clergy of the Church, as a condition of ordination, to subscribe to the following written declaration:

“I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.”

This statement is generally referred to as the “Declaration of Conformity.”

21. Under the Church’s Constitution, canons, and polity, no diocese or parish may unilaterally divide or separate or otherwise disaffiliate from the Church.

Dioceses of The Episcopal Church

22. Since the Church’s first Constitution adopted by the General Convention in 1789, the Constitution has provided that all diocese are subject to the authority of the General Convention.

23. Subsequent versions of the Church’s Constitution and canons have prescribed the methods by which a new diocese of the Church may be formed. Those documents have required, and currently require, that a diocese of the Church be formed only with the consent of the General Convention and only if the new diocese accedes to the legislative authority of the General Convention as expressed in the Church’s Constitution, canons, or both.

24. Each diocese is a subordinate unit of the Church, bound by the provisions of the Church’s Constitution, canons, and Prayer Book, which govern both temporal and spiritual matters.

25. The Church's Constitution and canons, as well as in some instances the Prayer Book, in part:

- a. govern the ordination, installation, spiritual and temporal duties, discipline, and retirement of bishops and other clergy;
- b. require dioceses and parishes to adopt prescribed business methods, including submission of annual reports to the Church's Executive Council, annual audits by certified public accountants, and adequate insurance of all buildings and their contents;
- c. set forth requirements and conditions for the formation and operation of parishes and other worshipping congregations under the oversight of the dioceses;
- d. provide requirements for the care, control, use, and disposition of church property;
- e. provide rules under which dioceses may select, train, ordain, deploy, and supervise the clergy of parishes and other worshipping congregations; and
- f. provide for discipline of bishops and other clergy for, among other things, violation of the Constitutions or canons of the Church or of the diocese in which he or she is resident, violation of the vows required at ordination, and "abandonment of the Communion" of the Church.

26. A "Missionary Diocese" is a defined geographic area outside of any of the Church's established dioceses that is entrusted to the pastoral care of a bishop elected by the Church's House of Bishops under Article VI of the Church's Constitution. The Church's canons permit and set forth the process by which a "Missionary Diocese" of the Church that is outside of the United States may, with the consent of the General Convention, leave the jurisdiction of the

Church and join another Province of the Anglican Communion. The Constitution and canons of the Church do not provide for or permit the release, withdrawal, or transfer of any other diocese.

27. The Episcopal Church Diocese is not a Missionary Diocese.

The Episcopal Church's Rules Governing Property

28. The Episcopal Church's canons govern both temporal and spiritual matters and contain a number of provisions that specifically relate to the use and control of property.

29. Church Canon II.6, adopted in part in 1868 and in part in 1871, provides that parish real property may not be "consecrated," that is, set aside for worship and other sacred uses by the bishop of the diocese "until the Bishop shall have been sufficiently satisfied" that the property is "secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with this Church and subject to its Constitution and Canons." Canon II.6 also provides that parishes may not "encumber or alienate any dedicated and consecrated Church or Chapel . . . without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese."

30. Church Canon III.9(5)(a)(2), adopted in 1904, provides that the rector shall be entitled "to use and control ... the Church and Parish buildings together with all appurtenances and furniture," provided the property is used "[f]or the purposes of the office and for the full and free discharge of all functions and duties pertaining thereto." Church Canon III.9(5)(a)(1) provides that the rector shall carry out his or her duties, including the use of parish property, "subject to the Rubrics of the [Church's] Book of Common Prayer, the Constitution and Canons of [The Episcopal] Church, and the pastoral direction of the Bishop."

31. Church Canon I.7(3), adopted in 1940, provides that "[n]o Vestry, Trustee, or other Body, authorized by Civil or Canon law to hold, manage, or administer real property for

any Parish, Mission, Congregation, or Institution, shall encumber or alienate” the property
“without the written consent of the Bishop and Standing Committee.”

32. Church Canons I.7(4) and (5), adopted in 1979, confirm the Church’s and its
dioceses’ historic interest in parish property. These canons provide:

“Sec. 4: 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.

“Sec. 5: 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.”

33. The foregoing canons restate the Church’s historic polity, discipline, and rules, by
which all property held by or for any of the Church’s constituent parts is held and must be used
for the Church’s mission and may not be diverted to other purposes, and by which dioceses and
their leaders are charged with ensuring that this requirement is satisfied.

The Episcopal Church Diocese

34. The Church is informed and believes that between 1785 and 1789, an association
of unknown form consisting of clergy ordained in the Church of England and lay persons in
South Carolina sent delegates to meetings of the Church’s General convention who joined with
delegates from other states in adopting the Church’s first Constitution, canons, and Prayer Book.

35. In 1790, at a meeting of the Convention of the Episcopal Church Diocese, the
Episcopal Church Constitution and canons, “being read, were unanimously agreed to.”

36. In 1806, the Convention of the Episcopal Church Diocese adopted "Rule XVI," which provided that "the book of common prayer . . . , according to the use of the Prot. Epis. Church, in the U.S.A. shall be used in all the Churches in this association."

37. In 1860, Article 1 of the Constitution of the Episcopal Church Diocese provided that the diocese "accedes to, reorganizes and accepts the general Constitution and Canons of the Prot. Epis. Church in the United States of America, and acknowledges their authority accordingly."

38. The Church is informed and believes that in 1902, the Trustees of the Episcopal Church Diocese were incorporated as a South Carolina nonprofit corporation to hold and administer real and personal property of the Diocese.

39. In 1973, the Episcopal Church Diocese was incorporated as a South Carolina nonprofit corporation. Paragraph "FOURTH" of its "Certificate of Incorporation" provided that the "purpose of the said proposed Corporation is 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 Church is informed and believes that Paragraph "FOURTH" was still in effect in 2010 when members of the Board of the Episcopal Church Diocese purportedly amended the foregoing to provide that the "purposed of the proposed said Corporation is to continue operation under the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina."

40. Since its founding, the Episcopal Church Diocese has remained a subordinate entity of the Church.

41. Throughout its history, the Episcopal Church Diocese has consistently participated in the life of the Church as a subordinate unit and has generally complied with the

requirements imposed on it by the Church's Constitution, canons, and Prayer Book. The Church is informed and believes that:

a. The Episcopal Church Diocese has consistently sent representatives to meetings of both Houses of the Church's General Convention, including to its most recent meeting in 2012;

b. The Episcopal Church Diocese and its clergy have participated in and accepted the valuable benefits of the Church Pension Fund, reserved solely for clergy and institutions of the Church, as required by Church's canons;

c. All bishops of the Episcopal Church Diocese have been elected, ordained, and installed pursuant to the requirements of the Church's Constitution, canons, and Prayer Book;

d. The clergy of the Episcopal Church Diocese have been ordained or received, and parish rectors and other ordained clergy have been elected or installed, pursuant to requirements of the Church's Constitution, canons, and Prayer Book;

e. The Episcopal Church Diocese has adopted and implemented business methods prescribed by the Church's canons, submitted annual reports to the Church's Executive Council, conducted audits, and maintained adequate insurance of buildings and their contents, in compliance with the Church's requirements;

f. The Episcopal Church Diocese has overseen the formation and operation of parishes and other worshipping congregations of the Diocese according to the Church's requirements; and

g. The Episcopal Church Diocese has provided for the care, control, use, and disposition of property according to the Church's requirements.

The Current Dispute

42. At meetings of the Convention of the Episcopal Church Diocese in October 2010 and November 2011, a majority of voting delegates present voted for various resolutions that purported to amend the Episcopal Church Diocese's Constitution to withdraw its accession to the Constitution and canons of the Church and to remove all other references to the Church.

43. At a meeting of the individual counterclaim defendants and others that purported to be a special meeting of the Convention of the Episcopal Church Diocese in November 2012, a majority of voting delegates present voted to "disaffiliate" from the Church.

44. The actions described in Paragraphs 42 and 43 above violated the respective constitutional and canonical obligations and prior commitments of the Episcopal Church Diocese and of the members of its Convention, were invalid, and did not affect the status or continuing existence of the Episcopal Church Diocese.

45. Beginning at least by November 17, 2012, the individual counterclaim defendants have supported the purported withdrawal of the Episcopal Church Diocese from the Church. By those acts they have left the Church; and, as to those who held offices in the Episcopal Church Diocese, by those acts they violated their obligations under the Church's Declaration of Conformity or Church Canon I.17(8) or both, as well as the Constitution and canons of the Episcopal Church Diocese, and they ceased to be eligible to hold any office in the Church, the Episcopal Church Diocese, or the Trustees of the Protestant Episcopal Church in the Diocese of South Carolina; and their offices became vacant.

46. In January 2013, the Episcopal Church Diocese held a special meeting of its Convention to elect persons to fill the vacancies referred to in Paragraph 41 above, including vacancies on the Episcopal Church Diocese's Board of Directors and Standing Committee and The Trustees of the Protestant Episcopal Church in Diocese of South Carolina. The Convention

at that meeting also elected a Provisional Bishop of the Diocese. The Church recognizes all these persons as the leadership of the Episcopal Church Diocese and the foregoing Episcopal Church Diocesan corporations.

47. The Church does not recognize the October 2010, November 2011, and November 2013 meeting votes referred to in Paragraphs 42 and 43 above as effective under the polity and rules of the Church or agree that the foregoing votes had the effect of removing the Episcopal Church Diocese from the Church.

48. Although the individual counterclaim defendants have left the Church and the Episcopal Church Diocese, they continue to hold themselves out as the Bishop and other members of the Standing Committee and Boards of Directors of the foregoing corporations of the Episcopal Church Diocese. The individual counterclaim defendants have asserted authority over Episcopal parishes, congregations, and other organizations in the Episcopal Church Diocese and are asserting exclusive possession and control of the foregoing corporations and substantially all of the real and personal property of the Episcopal Church Diocese.

49. The Church takes the position that the actions described in Paragraphs 42, 43, 45, and 48 above are contrary to the Constitution, canons, and Prayer Book of the Church and are otherwise contrary to law and without any effect; that all property held by or for the Episcopal Church Diocese is held and may only be used for the mission and benefit of the Church and its subordinate Episcopal Church Diocese, subject to the Constitutions and canons of the Church and the Episcopal Church Diocese; that the Episcopal Church Diocese remains a subordinate unit of the Church for all purposes; that the foregoing diocesan corporations remain subordinate parts of the Episcopal Church Diocese; that the authorized directors of the foregoing corporations are

those individuals described in Paragraph 46 above; and that the individual counterclaim defendants are not authorized directors of the foregoing diocesan corporations.

50. The Church is informed and believes that the individual counterclaim defendants take the position that they are properly in control of the governance of the Episcopal Church Diocese and the foregoing diocesan corporations that they allege to have withdrawn the Episcopal Church Diocese from the Church; and that their actions are not in conflict with the Constitution or canons of the Church or South Carolina law.

51. An actual controversy exists, therefore, between the parties regarding the legal issues identified in Paragraphs 49 and 50 above. A declaratory judgment is therefore necessary and proper to determine the parties' rights and duties with respect to those issues.

52. As a result of the individual counterclaim defendants' continued control of the foregoing corporations of the Episcopal Church Diocese, and the resultant use, possession, and control of the property of the Episcopal Church Diocese for purposes other than the mission of the Church and the Episcopal Church Diocese, in derogation of the Constitutions and canons of the Church and Episcopal Church Diocese and in disregard of the rights of the Church, the Church has suffered and will continue to suffer irreparable injury. Injunctive relief is therefore necessary and proper to enforce the parties' rights and duties with respect to the issues described above.

Count II

1. Counterclaim plaintiff incorporates by reference Paragraphs 1-52 of Count I above.

2. Counterclaim plaintiff The Episcopal Church owns the following trademarks, each of which has been registered with the U.S. Patent & Trademark Office: THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA (Reg. No.

3342725) and THE EPISCOPAL CHURCH (Reg. Nos. 3195455, 3195454, and 3379870) (collectively, the “Episcopal Church Marks”).

3. The Church has been using the Episcopal Church Marks continuously in commerce since at least 1967.

4. The individual counterclaim defendants in Count I have been using the Episcopal Church Marks, or variants thereof (including, for example, the mark THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA) in commerce since November 2012, without the Church’s consent.

5. The individual counterclaim defendants’ use of the Episcopal Church Marks, or variants thereof, is likely to cause confusion, cause mistake, or deceive as to the affiliation, connection, or association of individual counterclaim defendants with the Church, and as to the origin, sponsorship, or approval of individual counterclaim defendants’ services and activities by the Church.

6. The individual counterclaim defendants’ unauthorized use of the Episcopal Church Marks constitutes trademark infringement under two provisions of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a)(1)(A). 15 U.S.C. § 1114 imposes liability upon those who

“use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.”

15 U.S.C. § 1125(a)(1)(A) imposes liability upon those who use a mark that

“is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.”

7. As a result of the individual counterclaim defendants' trademark infringement, the Church has suffered actual damage and irreparable injury, for which there is no adequate remedy at law, which will continue until individual counterclaim defendants' conduct is enjoined.

Count III

1. The Church incorporates by reference Paragraphs 1-52 of Count I and Paragraphs 2-5 of Count II above.

2. The Episcopal Church Marks are famous marks, because they are distinctive.

3. The individual counterclaim defendants' use of the Episcopal Church Marks, or variants thereof, is likely to cause dilution by blurring or dilution by tarnishment of the Episcopal Church Marks.

4. The individual counterclaim defendants' unauthorized use of the Episcopal Church Marks constitutes trademark dilution under 15 U.S.C. § 1125(c), which provides that:

"the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, 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."

5. As a result of the individual counterclaim defendants' trademark dilution, the Church has suffered actual damage and irreparable injury, for which there is no adequate remedy at law, which will continue until individual counterclaim defendants' conduct is enjoined.

Count IV

1. The Church incorporates by reference Paragraphs 1-52 of Count I and Paragraphs 2-5 of Count II above.

2. The individual counterclaim defendants' unauthorized use of the Episcopal Church Marks constitutes trademark infringement under South Carolina common law.

3. As a result of the individual counterclaim defendants' common law trademark infringement, the Church has suffered actual damages and irreparable injury, for which there is no adequate remedy at law, which will continue until individual counterclaim defendants' conduct is enjoined.

Count V

1. The Church incorporates by reference Paragraphs 1-52 of Count I and Paragraphs 2-5 of Count II above.

2. The individual counterclaim defendants' use of the Episcopal Church Marks is offensive to public policy, immoral, unethical, and oppressive in that it falsely implies a connection between counterclaim defendants and the Church.

3. The individual counterclaim defendants' use of the Episcopal Church Marks has a tendency to deceive concerning the source of the religious services with which the counterclaim defendants are affiliated.

4. The individual counterclaim defendants' use of the Episcopal Church Marks violates the South Carolina Unfair Trade Practices Act (the "UTPA"), S.C. Code. Ann. § 39-5-10 *et seq.*, which declares unlawful "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."

5. The individual counterclaim defendants' use of the Episcopal Church Marks in violation of the UTPA has affected, and continues to affect, the public interest by creating confusion as to the source of the religious services with which the individual counterclaim defendants are affiliated.

6. The individual counterclaim defendants' use of the Episcopal Church Marks in violation of the UTPA is ongoing and has the potential for repetition.

7. The individual counterclaim defendants' use of the Episcopal Church Marks in violation of the UTPA is willful.

8. As a result of the individual counterclaim defendants' violation of the UTPA, the Church has suffered irreparable injury, for which there is no adequate remedy at law, which will continue until individual counterclaim defendants' conduct is enjoined.

9. As a result of the individual counterclaim defendants' violation of the UTPA, the Church has suffered ascertainable loss of property.

Count VI

1. The Church incorporates by reference Paragraphs 1-52 of Count I and Paragraphs 2-5 of Count II above.

2. The individual counterclaim defendants have been using the Episcopal Church Marks with knowledge that the Church has rights in those marks and that the Church uses the marks in connection with the goods and services that it provides.

3. The individual counterclaim defendants' use of the Episcopal Church Marks has created, and risks creating, confusion because some of the public may associate individual counterclaim defendants' goods and/or services with the Church's goods and/or services.

4. The individual counterclaim defendants' use of the Episcopal Church Marks constitutes unfair competition under South Carolina common law.

5. As a result of the individual counterclaim defendants' unfair competition, the Church has suffered actual damage and irreparable injury, for which there is no adequate remedy at law, which will continue until individual counterclaim defendants' conduct is enjoined.

COUNT VII

Parties

1. Counterclaim plaintiff incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant All Saints Protestant Episcopal Church, Inc., is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4 below.

3. The Church is informed and believes that individual counterclaim defendants John Does 21-30 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants John Does 31-40 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

The Structure and Governance of The Episcopal Church

5. The Church incorporates by reference the allegations of Paragraphs 6-21 of Count I above.

Dioceses of The Episcopal Church

6. The Church incorporates by reference the allegations of Paragraph 22-27 of Count I above.

The Episcopal Church's Parishes and Missions

7. There are nearly 7,700 worshipping congregations of the Church. Each congregation belongs to the Episcopal diocese in which it is geographically located. Most of these worshipping congregations are called "parishes." Other, usually newly-forming,

congregations that do not meet all of the requirements for acceptance as parishes, are generally called “missions.”

8. A congregation may only be constituted a parish or mission upon application to and acceptance by the diocese in which it is located.

9. A parish may not unilaterally dissolve its relationship with the Diocese or the Church, otherwise disaffiliate from either the Diocese or the Church, upon a majority vote of its members or vestry, or through any other means.

10. An Episcopal parish’s vestry is comprised of lay persons elected by the voting membership of the parish and the “rector” of the parish who is an ordained priest of the Church. Members of the vestry serve as officers of the parish.

11. The rector is elected by the vestry in consultation with the bishop of the diocese to which the parish belongs, and has authority over the spiritual and temporal affairs of the parish which must be exercised in accordance with the Church’s Constitution, canons, and Book of Canon Prayer and under the pastoral direction of the bishop.

12. In order for a person to become a priest in a process called “ordination” under Article VIII of the Church’s Constitution, he or she must first “solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.”

13. Where there is no rector in a parish, Episcopal Church Canon III.9.3 provides that the bishop may, in consultation with the vestry, appoint a “priest-in-charge” who exercises the duties of a rector under the bishop’s supervision.

14. Church Canon I.17(8) provides that “[a]ny person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with the

Constitution and Canons of this Church and of the Diocese in which the office is being exercised.”

The Episcopal Church's Rules Governing Property

15. The Church incorporates by reference the allegations of Paragraphs 28-33 of Count I above.

History of the Parish

16. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the diocese.

17. The Church is informed and believes that throughout its history, the Parish has held itself out and participated as a full subordinate unit of the Church and the Episcopal Church Diocese, inter alia, in the following respects:

a. The Parish has regularly sent elected representatives to participate in annual meetings of the Convention of the Episcopal Church Diocese; and through this participation, the Parish has effectively participated in the adoption of all amendments to the canons of the Church and the Episcopal Church Diocese that have occurred since its founding;

b. For many years, the Parish has submitted regular “parochial reports” to the Episcopal Church Diocese, as required by the Church’s and the Diocese’s canons;

c. For many years, until sometime in 2012, the Parish complied with business methods insurance programs required by the Diocese’s canons and;

d. For many years, until sometime in 2013, the Parish made payments into the Church Pension Fund, as required by the Church’s canons, for the benefit of the Parish’s clergy.

18. The Church is informed and believes that throughout its history, the Parish has submitted to the authority of the Church and the Episcopal Church Diocese in matters involving property.

19. The Church is informed and believes that throughout its history the Parish has recognized and acceded to the authority of the Church and the Episcopal Church Diocese in matters relating to the Parish and its clergy, including compliance with the canons of the Church and of the Episcopal Church Diocese in seeking and obtaining the consent of the Bishop in connection with the calling of new rectors.

20. The Church is informed and believes that personal property held by the Parish includes the Parish records, reports, vestry minutes, books, books of account, bank accounts, trust accounts, securities, equipment, computers, furniture, furnishings, objects used in worship and the administration of the Episcopal Church's sacraments, and all other property of the Parish wherever located. Each of these items has been acquired while the Parish has been a constituent member of the Church and the Episcopal Church Diocese and subject to the governance of both bodies.

21. The Church is informed and believes that real property owned by the Parish includes the property where the Parish church buildings are now located in South Carolina.

The Current Dispute

22. The Episcopal Church is informed and believes that the clergy and elected lay representatives to the Parish attended the meetings of the Episcopal Church Diocese in October 2010 and November 2011 referred to in Paragraph 42 of Count I above, and voted in favor of the actions purportedly taken in those meetings.

23. The Church is informed and believes that the clergy and elected lay representatives of the Parish attended the November 2012 purported meeting of the Episcopal Church Diocese referred in Paragraph 43 of Count I above and voted in favor of the actions purportedly taken at that meeting.

24. The Church does not recognize the foregoing October 2010, November 2011, and November 2013 meeting votes referred to in Paragraphs 42 and 43 of Count I above as effective under the polity and rules of the Church or agree that the foregoing votes had the effect of removing the Parish from the Church or the Episcopal Church Diocese.

25. Since at least as early as November 2012, the individual counterclaim defendants have not been, and are not currently members of the Church, the Episcopal Church Diocese, or the Parish.

26. The individual counterclaim defendants hold themselves out as members of the vestry of the Parish. The individual counterclaim defendants have asserted full authority over the Parish and are asserting exclusive possession and control of substantially all of the real and personal property of the Parish.

27. The Church takes the position that the actions described in Paragraphs 23, 24, and 27 above are contrary to the Constitution, canons, and Prayer Book of the Church and are otherwise contrary to law and without any effect; that all property held by or for the Parish is held and may only be used for the mission and benefit of the Church and its subordinate Episcopal Church Diocese, subject to the Constitutions and canons of the Church and the Episcopal Church Diocese; that the Parish remains a subordinate unit of the Church and the Episcopal Church Diocese for all purposes; and that the individual counterclaim defendants are not authorized members of the vestry of the Parish.

28. The Church is informed and believes that the individual counterclaim defendants take the position that they are entitled to possess and control the real and personal property of the Parish for use by a denomination other than the Church and the Episcopal Church Diocese and to continue to possess and exercise control over such property.

29. An actual controversy therefore exists between the Church and the individual counterclaim defendants as to the interests of the Church and the Episcopal Church Diocese in the real and personal property of the Parish. A declaratory judgment is necessary and appropriate to set forth and determine the parties' rights.

30. As a result of the individual counterclaim defendants' continued assertion of control over the Parish and its assets, including the use, control, and diversion of the real and personal property held by the Parish for purposes other than for the mission of the Church and the Episcopal Church Diocese in derogation of the Church's and the Diocese's Constitutions and canons and the Church's and the Diocese's trust and other legally enforceable interests in that property, the Church has suffered and will continue to suffer irreparable injury.

COUNT VIII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Christ St. Paul's Episcopal Church, Inc., is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants John Does 41-50 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants John Does 51-60 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT IX

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Christ the King Waccamaw, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants John Does 61-70 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants John Does 71-80 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT X

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Church of the Cross, Inc., is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it and counterclaim defendant Church of the Cross Declaration of Trust are currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants John Does 81-90 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants John Does 91-100 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XI

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Church of the Holy Comforter, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Jane Does 1-10 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Jane Does 11-20 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Church of the Redeemer, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Jane Does 21-30 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants John Does 31-40 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XIII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Holy Trinity Episcopal Church, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Jane Does 41-50 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Jane Does 51-60 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XIV

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant St. Luke's Church, Hilton Head, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Jane Does 61-70 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants John Does 71-80 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XV

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant St. Matthew's Church, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Jane Does 81-90 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Jane Does 91-100 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XVI

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant St. Bartholomews Episcopal Church, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants James Does 1-10 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants James Does 11-20 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XVII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant St. David's Church is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants James Does 21-30 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants James Does 31-40 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XVIII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant St. James' Church, James Island, S.C., is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants James Does 41-50 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants James Does 51-60 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XIX

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant St. John's Episcopal Church of Florence, S.C., is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants James Does 61-70 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants James Does 71-80 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XX

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Christ St. Matthias Episcopal Church, Inc. is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants James Does 81-90 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants James Does 91-100 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXI

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant St. Paul's Episcopal Church of Bennettsville, Inc., is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Richard Roes 1-10 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Richard Roes 11-20 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant St. Paul's Episcopal Church of Conway, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Richard Roes 21-30 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Richard Roes 31-40 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXIII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant the Church of St. Luke and St. Paul, Radcliffeboro, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Richard Roes 41-50 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Richard Roes 51-60 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXIV

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant the Church of Our Saviour of the Diocese of South Carolina, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Richard Roes 61-70 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Richard Roes 71-80 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXV

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Church of the Epiphany (Episcopal), is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Richard Roes 81-90 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Richard Roes 91-100 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXVI

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Church of the Good Shepherd, Charleston, S.C., is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Jane Roes 1-10 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Jane Roes 11-20 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXVII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant the Church of the Holy Cross, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Jane Roes 21-30 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Jane Roes 31-40 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXVIII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Church of the Resurrection, Surfside, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Jane Roes 41-50 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Jane Roes 51-60 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXIX

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant the Protestant Episcopal Church, of the Parish of St. Philip, in Charleston, in the State of South Carolina, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Jane Roes 61-70 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Jane Roes 71-80 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXX

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph I of Count I above.

2. Counterclaim defendant the Parish of St. Michael, in Charleston, in the State of South Carolina, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); and counterclaim defendant St. Michael's Church Declaration of Trust are currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Jane Roes 81-90 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Jane Roes 91-100 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXXI

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant the Vestry and Church Wardens of St. Jude's Church of Walterboro, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants John Roes 1-10 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants John Roes 11-20 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXXII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant the Vestry and Church Wardens of the Episcopal Church of the Parish of Prince George Winyah, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants John Roes 21-30 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants John Roes 31-40 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXXIII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant the Vestry and Church Wardens of the Episcopal Church of the Parish of St. Helena, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it and counterclaim defendant The Parish Church of St. Helena Trust are currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants John Roes 41-50 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants John Roes 51-60 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXXIV

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant the Vestry and Church Wardens of the Episcopal Church of the Parish of St. Matthew is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants John Roes 61-70 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants John Roes 71-80 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXXV

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant the Vestry and Wardens of St. Paul's Church, Summerville, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants John Roes 81-90 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants John Roes 91-100 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXXVI

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Trinity Church of Myrtle Beach, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Mary Roes 1-10 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Mary Roes 11-20 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXXVII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Trinity Episcopal Church, Edisto Island, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Mary Roes 21-30 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Mary Roes 31-40 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXXVIII

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Christ Trinity Episcopal Church, Pinopolis, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Mary Roes 41-50 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Mary Roes 51-60 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XXXIX

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant Vestry and Church-Wardens of the Episcopal Church of the Parish of Christ Church, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Mary Roes 61-70 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Mary Roes 71-80 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XL

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant the Vestry and Church Wardens of the Episcopal Church of the Parish of St. John's, Charleston County, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it is currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Mary Roes 81-90 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Mary Roes 91-100 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-30 of Count VII above.

COUNT XLI

Parties

1. Counterclaim plaintiff the Episcopal Church incorporates by reference Paragraph 1 of Count I above.

2. Counterclaim defendant St. Andrews-Mt. Pleasant, is a South Carolina nonprofit corporation and a parish and subordinate unit of the Church and its Diocese of South Carolina (hereafter the "Parish"); it and counterclaim defendant the St. Andrews-Mt. Pleasant Land Trust are currently under the unlawful de facto control of the individual counterclaim defendants listed in Paragraphs 3-4.

3. The Church is informed and believes that individual counterclaim defendants Andrew Does 1-10 (identity and residence unknown) are former members of the Church and former members of the vestry of the Parish who continue to hold themselves out as members of the vestry of the Parish.

4. The Church is informed and believes that individual counterclaim defendants Andrew Does 11-20 (identity and residence unknown) hold themselves out as members of the vestry of the Parish.

5. The Church incorporates by reference the allegations of Paragraphs 5-15 of Count VII above.

History of the Parish

6. The Church is informed and believes that the Episcopal Church Diocese formed the Parish or its predecessor as a parish of the Episcopal Church Diocese.

7. The Church incorporates by reference the allegations of Paragraphs 17-21 of Count VII above.

Current Dispute

8. The Episcopal Church is informed and believes that in or about June 2009, the vestry of the Parish purported to transfer certain of its real and personal property to counterclaim defendant The St. Andrews Church-Mt. Pleasant Land Trust. The Episcopal Church is informed and believes that the foregoing transfer was unlawful and contrary to the Constitutions and canons of the Church and the Episcopal Church Diocese.

9. The Church is informed and believes that in or about March 2010 the clergy, vestry, and certain members of the Parish purported to withdraw or disaffiliate from the Episcopal Church and from the Episcopal Church Diocese. The Church is informed and believes

that the foregoing action was unlawful and contrary to the Constitutions and canons of the Church and the Episcopal Church Diocese.

10. The Church does not recognize the foregoing actions referred to in Paragraphs 8-9 above as effective under the polity and rules of the Church or agree that the foregoing actions had the effect of removing the Parish or any of its property from the Church or the Episcopal Church Diocese.

11. Since at least as early as March 2010, the individual counterclaim defendants have not been, and are not currently members of the Church, the Episcopal Church Diocese, or the Parish.

12. The individual counterclaim defendants hold themselves out as members of the vestry of the Parish. The individual counterclaim defendants have asserted full authority over the Parish and are asserting exclusive possession and control of substantially all of the real and personal property of the Parish.

13. The Church takes the position that the actions described in Paragraphs 8-9, and 12 above are contrary to the Constitution, canons, and Prayer Book of the Church and are otherwise contrary to law and without any effect; that all property held by or for the Parish is held and may only be used for the mission and benefit of the Church and its subordinate Episcopal Church Diocese, subject to the Constitutions and canons of the Church and the Episcopal Church Diocese; that the Parish remains a subordinate unit of the Church and the Episcopal Church Diocese for all purposes; and that the individual counterclaim defendants are not authorized members of the vestry of the Parish.

14. The Church incorporates by reference the allegations of Paragraphs 28-30 of Count VII.

WHEREFORE, The Episcopal Church prays that the Court:

(a) dismiss the complaint with prejudice;

(b) declare that the individual counterclaim defendants in Count I are not the directors of the South Carolina nonprofit corporations called "The Protestant Episcopal Church in the Diocese of South Carolina" or the "South Carolina Trustees of Protestant Episcopal Church in Diocese of South Carolina";

(c) declare that the directors of the foregoing South Carolina nonprofit corporations are those persons elected by the Convention of the Episcopal Church Diocese and recognized as such by the Church;

(d) declare that all property held by or for the Episcopal Church Diocese is held for and may be used only for the mission of the Church and the Episcopal Church Diocese, subject to the Constitutions and canons of the Church and the Episcopal Church Diocese;

(e) enjoin the individual counterclaim defendants to relinquish control of the foregoing South Carolina nonprofit corporations and all property held by these corporations or any other entity for the Episcopal Church Diocese to the persons whom the Church recognizes as the proper directors of those corporations or other entities;

(f) declare that the Episcopal Church Diocese is the owner of the registered trademarks alleged in Paragraph 2 of Count II and that none of the individual counterclaim defendants has any interest in such property;

(g) declare that the individual counterclaim defendants' use of the foregoing trademarks or variants thereof is unlawful and in violation of federal and South Carolina law;

(h) enjoin the individual counterclaim defendants from making use of foregoing trademarks or variants thereof;

(i) declare that the individual counterclaim defendants in each of Counts VII-XLI are not members of the vestry or otherwise hold any office in any of the parishes referred to in Counts VII-XLI;

(j) declare that the individual counterclaim defendants in each of Counts VII-XLI have no interest in any of the property that is the subject of Counts VII-XLI;

(k) declare that all the property that is the subject of Counts VII-XLI must be held and used solely for the mission and ministry of the Episcopal Church and the Episcopal Church Diocese;

(l) enjoin the individual counterclaim defendants in Counts VII-XLI from exercising any control over any of the property that is the subject of Counts VII-XLI;

(m) order the individual counterclaim defendants in Counts I-XLI, to render an accounting of all property held by those individuals or entities under their control as of October 1, 2010; and

(n) award such further relief as may be necessary and proper.

[Signature page to follow]

Dated: March 27, 2013



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Of Counsel for the Episcopal Church

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

The Protestant Episcopal
Church in the Diocese Of
South Carolina, *et alia*,

Plaintiffs,

v.

The Episcopal Church, *et alius*,

Defendants.

The Episcopal Church,

Counterclaim-Plaintiff,

v.

The Protestant Episcopal
Church in the Diocese of South Carolina,
et alius,

Counterclaim-Defendants.

The Episcopal Church in South Carolina,

Counterclaim-Plaintiff,

v.

The Protestant Episcopal
Church in the Diocese of
South Carolina, *et alia*,

Counterclaim-Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2013-CP-18-00013

**ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIMS OF THE
EPISCOPAL CHURCH IN SOUTH
CAROLINA TO SECOND AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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CLERK OF COURT
DORCHESTER COUNTY
Cheryl Anderson

ANSWER

FOR A FIRST DEFENSE

Defendant The Episcopal Church in South Carolina (hereinafter the “Continuing Diocese”), answers Plaintiffs’ Second Amended Complaint as follows:

As is more fully set forth in its responses below, the Continuing Diocese denies each and every allegation of the Complaint not hereinafter specifically admitted.

The introductory paragraph of Plaintiffs’ Second Amended Complaint contains a description of plaintiffs’ claims, which does not require a response.

1. In response to the allegations of Paragraph 1, the Continuing Diocese admits that the entity known by names including 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 Episcopal Church, and is a South Carolina nonprofit charitable corporation that was incorporated on November 14, 1973, as “The Protestant Episcopal Diocese of South Carolina.” The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1.

2. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2.

3. The Continuing Diocese admits the allegation of Paragraph 3 that Mark J. Lawrence was the 14th Bishop of the Diocese of South Carolina; denies that Mark J. Lawrence is an employee or Chief Operating Officer of the Continuing Diocese and that he is an *ex officio* member of the Diocese’s Board of Directors; and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

4. In response to the allegations of Paragraph 4, the Continuing Diocese admits that some parishes in the State of South Carolina began meeting in 1785 and ultimately formed a loose association in the years following 1785, and denies the remaining allegations of Paragraph 4.

5. The Continuing Diocese denies the allegations of Paragraph 5.

6. The Continuing Diocese denies the allegation of Paragraph 6 that St. Philip's existed as a parish at any time prior to the 18th century, and admits the remaining allegations of such Paragraph.

7. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7.

8. The Continuing Diocese denies that the document that is the subject of Paragraph 8 was signed by all of the parishes that are alleged in Paragraph 8 to have done so, but admits that a document was approved in 1786 by five parishes at a meeting in Charleston, and alleges that such document was never referenced or relied upon thereafter as a source or basis of ecclesiastical or other authority.

9. The Continuing Diocese denies the allegations of Paragraph 9.

10. In response to the allegations of Paragraph 10, the Continuing Diocese admits that drafts of the first Constitution of The Episcopal Church's General Convention were considered before and during 1789 and that the first Constitution was adopted on October 2, 1789, and alleges that the TEC Constitution of 1789 was read at a meeting of the parishes of South Carolina in October 1790, and, according to the Journal of said meeting, was "unanimously agreed to" by those parishes.

11. The Continuing Diocese denies the allegations of Paragraph 11.

12. The Continuing Diocese denies the allegations of Paragraph 12.
13. The Continuing Diocese denies the allegations of Paragraph 13.
14. The Continuing Diocese denies the allegations of Paragraph 14.
15. The Continuing Diocese denies the allegations of Paragraph 15.
16. The Continuing Diocese admits that in 1922 The Episcopal Church's General Convention divided the then Diocese of South Carolina, and established a new diocese, in the upper part of South Carolina, called the "Diocese of Upper South Carolina."
17. The Continuing Diocese admits that, over the past 227 years, former congregations of the Church of England located in South Carolina have been known as or done business under various names, including some or all of the names alleged by the Plaintiffs in Paragraph 17, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 17.
18. The Continuing Diocese denies the allegation of Paragraph 18 that the seal of the diocese was in use prior to 1930, denies that the Plaintiffs are entitled to its use, and admits the remaining allegations of such Paragraph.
19. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 19.
20. The Continuing Diocese admits that the Plaintiffs purported to enact an amendment such as is alleged in Paragraph 20.
21. The Continuing Diocese admits that on October 15, 2010, a majority of the members of the Convention of the Diocese of South Carolina voted in favor of the adoption of measures that purported to amend the Diocese's Constitution as described in Paragraph 21, and denies the remaining allegations of such Paragraph.

22. The Continuing Diocese admits that on October 15, 2010, a majority of the members of the Convention of the Diocese of South Carolina voted in favor of the adoption of measures that purported to amend the Diocese's canons as described in Paragraph 22, and denies the remaining allegations of such Paragraph.

23. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 23.

24. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 24.

25. The Continuing Diocese denies the allegations of Paragraph 25.

26. The Continuing Diocese denies the allegations of Paragraph 26.

27. The Continuing Diocese denies the allegations of Paragraph 27.

28. The Continuing Diocese denies the allegations of Paragraph 28.

29. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 29.

30. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the allegations of the first sentence of Paragraph 30, and denies the remaining allegations of such Paragraph.

31. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 31.

32. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 32.

33. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33.

34. The Continuing Diocese denies the allegations of Paragraph 34.
35. The Continuing Diocese 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.
36. In response to the allegations of Paragraph 36, the Continuing Diocese admits that All Saints is a parish and a subordinate unit of the Diocese of South Carolina and the Episcopal Church, denies that All Saints voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.
37. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37.
38. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38.
39. The Continuing Diocese denies the allegations of Paragraph 39.
40. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40.
41. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 41.
42. The Continuing Diocese denies the allegations of Paragraph 42.
43. In response to the allegations of Paragraph 43, the Continuing Diocese admits that the name of All Saints has appeared on its website; denies the remaining allegations of Paragraph 43 insofar as they relate to the Continuing Diocese; and lacks knowledge or information suffi-

cient to form a belief as to the truth of those allegations as they relate to individuals claiming to be members of The Episcopal Church.

44. The Continuing Diocese 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 such Paragraph.

45. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 45.

46. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 46.

47. In response to the allegations of Paragraph 47, the Continuing Diocese denies that Christ Church, Wilton, voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 47.

48. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 48.

49. The Continuing Diocese denies the allegations of Paragraph 49.

50. In response to the allegations of Paragraph 50, the Continuing Diocese admits that Christ St. Paul's is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that St. Paul's Church voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

51. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 51.

52. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 52.

53. The Continuing Diocese denies the allegations of Paragraph 53.

54. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 54.

55. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 55.

56. The Continuing Diocese denies the allegations of Paragraph 56.

57. In response to the allegations of Paragraph 57, the Continuing Diocese admits that the name of Christ St. Paul's has appeared on its website; denies the remaining allegations of Paragraph 57 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

58. The Continuing Diocese 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.

59. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59.

60. In response to the allegations of Paragraph 60, Continuing Diocese admits that Christ the King is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, and denies the remaining allegations.

61. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 61.

62. The Continuing Diocese denies the allegations of Paragraph 62.
63. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 63.
64. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 64.
65. The Continuing Diocese denies the allegations of Paragraph 65.
66. In response to the allegations of Paragraph 66, the Continuing Diocese admits that the name of Christ the King has appeared on its website; denies the remaining allegations of Paragraph 66 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.
67. The Continuing Diocese 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.
68. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 68.
69. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 69.
70. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 70.
71. The Continuing Diocese denies the allegations of Paragraph 71.

72. In response to the allegations of Paragraph 72, the Continuing Diocese admits that Church of the Cross is a parish and a subordinate unit of the Diocese of South Carolina, and denies the remaining allegations of the Paragraph.

73. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 73.

74. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 74.

75. The Continuing Diocese denies the allegations of Paragraph 75.

76. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 76.

77. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 77.

78. The Continuing Diocese denies the allegations of Paragraph 78.

79. In response to the allegations of Paragraph 79, the Continuing Diocese admits that the name of Church of the Cross has appeared on its website; denies the remaining allegations of Paragraph 79 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

80. The Continuing Diocese 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.

81. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 81.

82. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 82.

83. In response to the allegations of Paragraph 83, the Continuing Diocese admits that Church of the Holy Comforter is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, and denies the remaining allegations.

84. The Continuing Diocese denies the allegations of Paragraph 84.

85. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 85.

86. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 86.

87. The Continuing Diocese denies the allegations of Paragraph 87.

88. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 88.

89. The Continuing Diocese denies the allegations of Paragraph 89.

90. In response to the allegations of Paragraph 90, the Continuing Diocese admits that the name of Church of the Holy Comforter has appeared on its website; denies the remaining allegations of Paragraph 90 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

91. The Continuing Diocese 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, and denies the allegations of the second sentence of Paragraph 91.

92. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 92.

93. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 93.

94. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 94.

95. In response to the allegations of Paragraph 95, the Continuing Diocese admits that Church of the Redeemer is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church and denies the remaining allegations.

96. The Continuing Diocese denies the allegations of Paragraph 96.

97. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 97.

98. The Continuing Diocese denies the allegations of Paragraph 98.

99. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 99.

100. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 100.

101. The Continuing Diocese denies the allegations of Paragraph 101.

102. In response to the allegations of Paragraph 102, the Continuing Diocese admits that the name of Church of the Redeemer has appeared on its website; denies the remaining allegations of Paragraph 102 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

103. The Continuing Diocese 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.

104. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 104.

105. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 105.

106. In response to the allegations of Paragraph 106, the Continuing Diocese admits that Holy Trinity Episcopal Church is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, and denies the remaining allegations.

107. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 107.

108. The Continuing Diocese denies the allegations of Paragraph 108.

109. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 109.

110. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 110.

111. The Continuing Diocese denies the allegations of Paragraph 111.

112. In response to the allegations of Paragraph 112, the Continuing Diocese admits that the name of Holy Trinity Episcopal Church has appeared on its website; denies the remaining allegations of Paragraph 112 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

113. The Continuing Diocese 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.

114. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 114.

115. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 115.

116. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 116.

117. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 117.

118. In response to the allegations of Paragraph 118, the Continuing Diocese admits that St. Luke's Church is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that St. Luke's voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

119. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 119.

120. The Continuing Diocese denies the allegations of Paragraph 120.

121. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 121.

122. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 122.

123. The Continuing Diocese denies the allegations of Paragraph 123.

124. In response to the allegations of Paragraph 124, the Continuing Diocese admits that the name of St. Luke's Church has appeared on its website; denies the remaining allegations of Paragraph 124 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

125. The Continuing Diocese 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.

126. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 126.

127. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 127.

128. In response to the allegations of Paragraph 128, the Continuing Diocese admits that Saint Matthew's Church is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that Saint Matthew's voluntarily joined the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

129. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 129.

130. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 130.

131. The Continuing Diocese denies the allegations of Paragraph 131.

132. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 132.

133. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 133.

134. The Continuing Diocese denies the allegations of Paragraph 134.

135. In response to the allegations of Paragraph 135, the Continuing Diocese admits that the name of Saint Matthew's Church has appeared on its website; denies the remaining allegations of Paragraph 135 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

136. The Continuing Diocese 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.

137. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 137.

138. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 138.

139. The Continuing Diocese denies the allegations of Paragraph 139.

140. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 140.

141. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 141.

142. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 142.

143. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 143.

144. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 144.

145. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 145.

146. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 146.

147. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 147.

148. The Continuing Diocese admits that by, among other things, their actions alleged in Paragraphs 147 and 148, the Plaintiffs conspired to deprive the Continuing Diocese and The Episcopal Church of their equitable interests in parish real and personal property and other rights, and otherwise denies the allegations of Paragraph 148.

149. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 149.

150. The Continuing Diocese denies the allegations in Paragraph 150.

151. The Continuing Diocese denies the allegations in Paragraph 151.

152. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first and third sentences in Paragraph 152, and admits the allegations of the second sentence.

153. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 153.

154. The Continuing Diocese admits that St. Bartholomew's Church is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that St. Bartholomew's voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 154.

155. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 155.

156. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 156.

157. The Continuing Diocese denies the allegations in Paragraph 157.

158. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 158.

159. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 159.

160. The Continuing Diocese denies the allegations in Paragraph 160.

161. In response to the allegations of Paragraph 161, the Continuing Diocese admits that the name of St. Bartholomew's Church has appeared on its website; denies the remaining allegations of Paragraph 161 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

162. The Continuing Diocese 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 that Paragraph.

163. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 163.

164. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 164.

165. The Continuing Diocese denies the allegations of Paragraph 165.

166. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 166.

167. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 167.

168. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 168.

169. The Continuing Diocese denies the allegations in Paragraph 169.

170. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 170.

171. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 171.

172. The Continuing Diocese denies the allegations in Paragraph 172.

173. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 173.

174. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 174.

175. The Continuing Diocese denies the allegations in Paragraph 175

176. In response to the allegations of Paragraph 176, the Continuing Diocese admits that the name of St. David's Church has appeared on its website; denies the remaining allegations of Paragraph 176 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

177. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 177, and denies the allegations of the second sentence of Paragraph 177.

178. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 178.

179. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 179.

180. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 180.

181. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 181.

182. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 182.

183. The Continuing Diocese denies the allegations of Paragraph 183.

184. In response to the allegations of Paragraph 184, the Continuing Diocese admits that Saint James Church is a parish and a subordinate unit of the Continuing Diocese and The Episcopal Church, denies that Saint James voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

185. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 185.

186. The Continuing Diocese denies the allegations of Paragraph 186.

187. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 187.

188. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 188.

189. The Continuing Diocese denies the allegations of Paragraph 189.

190. In response to the allegations of Paragraph 190, the Continuing Diocese admits that the name of Saint James Church has appeared on its website; denies the remaining allegations of Paragraph 190 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

191. The Continuing Diocese 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.

192. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 192.

193. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 193.

194. In response to the allegations of Paragraph 194, Continuing Diocese admits that St. John's Florence is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, and denies the remaining allegations.

195. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 195.

196. The Continuing Diocese denies the allegations of Paragraph 196.

197. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 197.

198. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 198.

199. The Continuing Diocese denies the allegations of Paragraph 199.

200. In response to the allegations of Paragraph 200, the Continuing Diocese admits that the name of St. John's Church has appeared on its website; denies the remaining allegations of Paragraph 200 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

201. The Continuing Diocese 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.

202. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 202.

203. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 203.

204. In response to the allegations of Paragraph 204, the Continuing Diocese admits that St. Matthias is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, and denies the remaining allegations.

205. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 205.

206. The Continuing Diocese denies the allegations of Paragraph 206.

207. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 207.

208. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 208.

209. The Continuing Diocese denies the allegations of Paragraph 209.

210. In response to the allegations of Paragraph 210, the Continuing Diocese admits that the name of St. Matthias Episcopal Church has appeared on its website; denies the remaining allegations of Paragraph 210 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

211. The Continuing Diocese 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.

212. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 212.

213. In response to the allegations of Paragraph 213, the Continuing Diocese admits that St. Paul's, Bennettsville, is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that St. Paul's, Bennettsville, voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

214. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 214.

215. The Continuing Diocese denies the allegations of Paragraph 215.

216. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 216.

217. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 217.

218. The Continuing Diocese denies the allegations of Paragraph 218.

219. In response to the allegations of Paragraph 219, the Continuing Diocese admits that the name of St. Paul's, Bennettsville has appeared on its website; denies the remaining allegations of Paragraph 219 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

220. The Continuing Diocese 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.

221. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 221.

222. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 222.

223. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 223

224. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 224.

225. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 225.

226. The Continuing Diocese denies the allegations of Paragraph 226.

227. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 227.

228. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 228.

229. The Continuing Diocese denies the allegation of Paragraph 229.

230. In response to the allegations of Paragraph 230, the Continuing Diocese admits that the name of St. Paul's, Conway has appeared on its website; denies the remaining allegations of Paragraph 230 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

231. The Continuing Diocese 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.

232. The Continuing Diocese admits the allegations of Paragraph 232.

233. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 233.

234. The Continuing Diocese admits that St. Luke's, Charleston, was a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that St. Luke's, Charleston, voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 234.

235. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 235.

236. The Continuing Diocese denies the allegations of Paragraph 236.

237. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 237.

238. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 238.

239. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 239.

240. The Continuing Diocese admits the allegations of Paragraph 240.

241. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 241.

242. The Continuing Diocese denies the allegations of Paragraph 242.

243. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 243.

244. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 244.

245. The Continuing Diocese denies the allegations of Paragraph 245.

246. In response to the allegations of Paragraph 246, the Continuing Diocese admits that the name of the Cathedral of St. Luke and St. Paul has appeared on its website; denies the remaining allegations of Paragraph 246 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

247. The Continuing Diocese 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.

248. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 248.

249. In response to the allegations of Paragraph 249, the Continuing Diocese admits that Church of Our Saviour is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that Our Saviour voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

250. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 250.

251. The Continuing Diocese denies the allegations of Paragraph 251.

252. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 252.

253. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 253.

254. The Continuing Diocese denies the allegations of Paragraph 254.

255. In response to the allegations of Paragraph 255, the Continuing Diocese admits that the name of Church of Our Saviour has appeared on its website; denies that such use is improper; denies the remaining allegations of Paragraph 255 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

256. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 256, and denies the allegations of the second sentence of Paragraph 256.

257. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 257.

258. In response to the allegations of Paragraph 258, the Continuing Diocese admits that Church of the Epiphany is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, and denies the remaining allegations.

259. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 259.

260. The Continuing Diocese denies the allegations of Paragraph 260.

261. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 261.

262. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 262.

263. The Continuing Diocese denies the allegations of Paragraph 263.

264. In response to the allegations of Paragraph 264, the Continuing Diocese 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 Continuing Diocese; 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 Episcopal Church.

265. The Continuing Diocese 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.

266. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 266.

267. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 267.

268. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 268.

269. In response to the allegations of Paragraph 269, the Continuing Diocese admits that Church of the Good Shepherd is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that Good Shepherd voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

270. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 270.

271. The Continuing Diocese denies the allegations of Paragraph 271.

272. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 272.

273. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 273.

274. The Continuing Diocese denies the allegations of Paragraph 274.

275. In response to the allegations of Paragraph 275, the Continuing Diocese admits that the name of Church of the Good Shepherd has appeared on its website; denies the remaining allegations of Paragraph 275 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

276. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 276, and denies the allegations of the second sentence of Paragraph 276.

277. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 277.

278. The Continuing Diocese admits the allegations of Paragraph 278.

279. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 279.

280. In response to the allegations of Paragraph 280, the Continuing Diocese admits that The Church of the Holy Cross is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, and denies the remaining allegations.

281. The Continuing Diocese denies the allegations of Paragraph 281.

282. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 282.

283. The Continuing Diocese denies the allegations of Paragraph 283.

284. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 284.

285. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 285.

286. The Continuing Diocese denies the allegations of Paragraph 286.

287. In response to the allegations of Paragraph 287, the Continuing Diocese admits that it has used the name "The Church of the Holy Cross" on its website; denies the remaining allegations of Paragraph 287 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

288. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 288, and admits the allegations of the second sentence of Paragraph 288.

289. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 289.

290. In response to the allegations of Paragraph 290, the Continuing Diocese admits that Church of the Resurrection is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that Resurrection voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

291. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 291.

292. The Continuing Diocese denies the allegations of Paragraph 292.

293. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 293.

294. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 294.

295. The Continuing Diocese denies the allegations of Paragraph 295.

296. In response to the allegations of Paragraph 296, the Continuing Diocese admits that the name of Church of the Resurrection has appeared on its website; denies the remaining allegations of Paragraph 296 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

297. The Continuing Diocese admits the allegations of Paragraph 297.

298. The Continuing Diocese admits the allegations of Paragraph 298.

299. The Continuing Diocese admits the allegations of Paragraph 299.

300. The Continuing Diocese admits the allegations of Paragraph 300.

301. The Continuing Diocese admits the allegations of Paragraph 301.

302. The Continuing Diocese admits the allegations of Paragraph 302.

303. The Continuing Diocese admits the allegations of Paragraph 303.

304. The Continuing Diocese admits the allegations of Paragraph 304.

305. The Continuing Diocese admits the allegations of Paragraph 305.

306. The Continuing Diocese admits the allegations of Paragraph 306.

307. The Continuing Diocese admits the allegations of Paragraph 307.

308. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 308.

309. In response to the allegations of Paragraph 309, the Continuing Diocese admits that St. Philip's is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that St. Philip's voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

310. The Continuing Diocese denies the allegations of Paragraph 310.

311. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 311.

312. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 312.

313. The Continuing Diocese denies the allegations of Paragraph 313.

314. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 314.

315. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 315.

316. The Continuing Diocese denies the allegations of Paragraph 316.

317. In response to the allegations of Paragraph 317, the Continuing Diocese admits that the name of St. Philip's Church has appeared on its website; denies the remaining allegations of Paragraph 317 insofar as they relate to the Continuing Diocese; and lacks knowledge or in-

formation sufficient to form a belief as to the truth of those allegations as they relate to individuals claiming to be members of The Episcopal Church.

318. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 318, and admits the allegations of the second sentence of Paragraph 318.

319. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 319.

320. In response to the allegations of Paragraph 320, the Continuing Diocese admits that St. Michael's is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that St. Michael's voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

321. The Continuing Diocese admits the allegations of Paragraph 321.

322. The Continuing Diocese admits the allegations of Paragraph 322.

323. The Continuing Diocese admits the allegations of Paragraph 323.

324. The Continuing Diocese admits the allegations of Paragraph 324.

325. The Continuing Diocese admits the allegations of Paragraph 325.

326. The Continuing Diocese denies the allegations of Paragraph 326.

327. The Continuing Diocese admits the allegations of Paragraph 327.

328. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 328.

329. The Continuing Diocese denies the allegations of Paragraph 329.

330. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 330.

331. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 331.

332. The Continuing Diocese denies the allegations of Paragraph 332.

333. In response to the allegations of Paragraph 333, the Continuing Diocese admits that the name of St. Michael's Church has appeared on its website; denies the remaining allegations of Paragraph 333 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

334. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 334, and admits the allegations of the second sentence of Paragraph 334.

335. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 335.

336. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 336.

337. In response to the allegations of Paragraph 337, the Continuing Diocese admits that St. Jude's Church is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that St. Jude's voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

338. The Continuing Diocese denies the allegations of Paragraph 338.

339. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 339.

340. The Continuing Diocese denies the allegations of Paragraph 340.

341. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 341.

342. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 342.

343. The Continuing Diocese denies the allegations of Paragraph 343.

344. In response to the allegations of Paragraph 344, the Continuing Diocese admits that the name of St. Jude's Church has appeared on its website; denies the remaining allegations of Paragraph 344 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

345. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 345, and admits the allegations of the second sentence of Paragraph 345.

346. The Continuing Diocese admits the allegations of Paragraph 346.

347. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 347.

348. The Continuing Diocese admits the allegations of Paragraph 348.

349. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 349.

350. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 350.

351. In response to the allegations of Paragraph 351, the Continuing Diocese admits that Prince George Winyah Episcopal Church is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that Prince George voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

352. The Continuing Diocese denies the allegations of Paragraph 352.

353. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to whether Prince George and its Board of Directors voted as is alleged in Paragraph 353, and denies that Prince George or its board has, or at the time of such alleged votes had, authority to make any declaration or repudiation such as those that are alleged in Paragraph 353.

354. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 354.

355. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 355.

356. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 356.

357. The Continuing Diocese denies the allegations of Paragraph 357.

358. In response to the allegations of Paragraph 358, the Continuing Diocese admits that the name of Prince George Winyah Episcopal Church has appeared on its website; denies the remaining allegations of Paragraph 358 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

359. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 359, and admits the allegations of the second sentence of Paragraph 359.

360. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 360.

361. In response to the allegations of Paragraph 361, the Continuing Diocese admits that the Episcopal Church of the Parish of St. Helena is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that St. Helena voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

362. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 362.

363. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 363.

364. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 364.

365. The Continuing Diocese admits the allegations of the first sentence of Paragraph 365, and lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of Paragraph 365.

366. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 366. In response to the

allegations of the second sentence of Paragraph 366, the Continuing Diocese admits that St. Helena is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that St. Helena voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

367. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 367.

368. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 368.

369. The Continuing Diocese denies the allegations of Paragraph 369.

370. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 370.

371. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 371.

372. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 372.

373. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 373.

374. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 374.

375. The Continuing Diocese denies the allegations of Paragraph 375.

376. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 376.

377. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 377.

378. The Continuing Diocese denies the allegations of Paragraph 378.

379. In response to the allegations of Paragraph 379, the Continuing Diocese admits that it has used the name “the Episcopal Church of the Parish of St. Helena” on its website; denies the remaining allegations of Paragraph 379 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

380. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 380, and admits the allegations of the second sentence of Paragraph 380.

381. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 381.

382. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 382.

383. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 383.

384. In response to the allegations of Paragraph 384, the Continuing Diocese admits that Saint Matthew’s Parish Fort Motte is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, and denies the remaining allegations.

385. The Continuing Diocese denies the allegations of Paragraph 385.

386. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 386.

387. The Continuing Diocese denies the allegations of Paragraph 387.
388. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 388.
389. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 389.
390. The Continuing Diocese denies the allegations of Paragraph 390.
391. In response to the allegations of Paragraph 391, the Continuing Diocese admits that the name of St. Matthew's, Fort Motte has appeared on its website; denies the remaining allegations of Paragraph 391 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.
392. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 392, and admits the allegations of the second sentence of Paragraph 392.
393. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 393.
394. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 394.
395. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 395.
396. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 396.

397. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 397.

398. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 398.

399. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 399.

400. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 400.

401. The Continuing Diocese denies the allegations of Paragraph 401.

402. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 402.

403. The Continuing Diocese denies the allegations of Paragraph 403.

404. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 404.

405. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 405.

406. The Continuing Diocese denies the allegations of Paragraph 406.

407. In response to the allegations of Paragraph 407, the Continuing Diocese admits that the name of St. Paul's Summerville has appeared on its website; denies the remaining allegations of Paragraph 407 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

408. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 408, and admits the allegations of the second sentence of Paragraph 408.

409. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 409.

410. In response to the allegations of Paragraph 410, the Continuing Diocese admits that Trinity Church, Myrtle Beach, is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that Church of the Messiah or Trinity voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

411. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 411.

412. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 412.

413. The Continuing Diocese denies the allegations of Paragraph 413.

414. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 414.

415. The Continuing Diocese denies the allegations of Paragraph 415.

416. In response to the allegations of Paragraph 416, the Continuing Diocese admits that the name of Trinity Church, Myrtle Beach has appeared on its website; denies the remaining allegations of Paragraph 416 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

417. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 417, and admits the allegations of the second sentence of Paragraph 417.

418. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 418.

419. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 419.

420. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 420.

421. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 421.

422. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 422.

423. The Continuing Diocese denies the allegations of Paragraph 423.

424. In response to the allegations of Paragraph 424, the Continuing Diocese admits that Trinity, Edisto Island, is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, and denies the remaining allegations.

425. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 425.

426. The Continuing Diocese denies the allegations of Paragraph 426.

427. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 427.

428. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 428.

429. The Continuing Diocese denies the allegations of Paragraph 429.

430. In response to the allegations of Paragraph 430, the Continuing Diocese admits that the name of Trinity, Edisto Island, has appeared on its website; denies the remaining allegations of Paragraph 430 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

431. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 431, and admits the allegations of the second sentence of Paragraph 431.

432. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 432.

433. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 433.

434. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 434.

435. In response to the allegations of Paragraph 435, the Continuing Diocese admits that Trinity, Pinopolis, is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that Trinity, Pinopolis, voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

436. The Continuing Diocese denies the allegations of Paragraph 436.

437. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 437.

438. The Continuing Diocese denies the allegations of Paragraph 438.

439. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 439.

440. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 440.

441. The Continuing Diocese denies the allegations of Paragraph 441.

442. In response to the allegations of Paragraph 442, the Continuing Diocese admits that the name of Trinity, Pinopolis, has appeared on its website; denies the remaining allegations of Paragraph 442 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

443. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of Paragraph 443, and admits the allegations of the second sentence of Paragraph 443.

444. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 444.

445. The Continuing Diocese admits the allegations of Paragraph 445.

446. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 446.

447. In response to the allegations of Paragraph 447, the Continuing Diocese admits that Christ Church, Mt. Pleasant, is a parish and a subordinate unit of the Diocese of South Caro-

lina and The Episcopal Church, denies that Christ Church voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

448. The Continuing Diocese denies the allegations of Paragraph 448.

449. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 449.

450. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 450.

451. The Continuing Diocese denies the allegations of Paragraph 451.

452. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 452.

453. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 453.

454. The Continuing Diocese denies the allegations of Paragraph 454.

455. In response to the allegations of Paragraph 455, the Continuing Diocese admits that the name of Christ Church, Mt. Pleasant, has appeared on its website; denies the remaining allegations of Paragraph 455 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

456. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 456.

457. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 457.

458. In response to the allegations of Paragraph 458, the Continuing Diocese admits that St. John's Parish Church is a parish and a subordinate unit of the Diocese of South Carolina and The Episcopal Church, denies that St. John's Parish Church voluntarily associated with the Diocese of South Carolina, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

459. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 459.

460. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 460.

461. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 461.

462. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 462.

463. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 463.

464. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 464.

465. The Continuing Diocese denies the allegations of Paragraph 465.

466. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 466.

467. The Continuing Diocese denies the allegations of Paragraph 467.

468. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 468.

469. The Continuing Diocese lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 469.

470. The Continuing Diocese denies the allegations of Paragraph 470.

471. In response to the allegations of Paragraph 471, the Continuing Diocese admits that the name of St. John's Parish Church has appeared on its website; denies the remaining allegations of Paragraph 471 insofar as they relate to the Continuing Diocese; 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 Episcopal Church.

472. The Continuing Diocese admits the allegations of Paragraph 472.

473. The Continuing Diocese denies the allegations of Paragraph 473.

474. The Continuing Diocese admits the allegations of Paragraph 474.

475. The Continuing Diocese denies the allegations of Paragraph 475.

476. The Continuing Diocese denies the allegations of Paragraph 476.

477. The Continuing Diocese denies the allegations of Paragraph 477.

478. The Continuing Diocese denies the allegations of subparagraph iii. of Paragraph 478, and admits the remaining allegations of such Paragraph.

479. In response to the allegations of Paragraph 479, the Continuing Diocese denies that the consent of any of the Plaintiffs is or was required for any of the acts alleged in such Paragraph or in any subparagraph thereof. The allegations of subparagraph i. are admitted; the Continuing Diocese admits that the location of the meeting referenced in subparagraph ii. was changed, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the subparagraph; the allegations of subparagraphs iii. through x. are admitted; the Continuing Diocese admits that an advertisement was published as is alleged in sub-

paragraph xi., but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of that subparagraph; the Continuing Diocese denies any improper or unauthorized use by it, or by the Church or any agent thereof, as is alleged in subparagraphs xii. through xiv. and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of those subparagraphs.

480. The Continuing Diocese denies the allegations of Paragraph 480.

481. The Continuing Diocese denies the allegations of Paragraph 481.

482. In response to the allegations of Paragraph 482, the Continuing Diocese admits that the Right Reverend Charles vonRosenberg is an agent of the Continuing Diocese and denies the remaining allegations.

483. The Continuing Diocese denies the allegations of Paragraph 483.

484. The Continuing Diocese denies the allegations of Paragraph 484.

485. In response to the allegations of Paragraph 485, the Continuing Diocese admits that, at the special meeting of its Convention on January 26, 2013, it adopted a statement expressing the belief of the Continuing Diocese that certain actions purportedly taken by the Diocese of South Carolina in 2009, 2010, and 2011 had been and remained null and void.

486. The Continuing Diocese denies the allegations of Paragraph 486.

487. The Continuing Diocese denies the allegations of Paragraph 487.

488. The Continuing Diocese denies the allegations of Paragraph 488.

489. The Continuing Diocese denies the allegations of Paragraph 489.

490. The Continuing Diocese hereby incorporates by reference its responses to Paragraphs 1-489, inclusive, as though such responses were fully set forth herein.

491. The Continuing Diocese denies the allegations of Paragraph 491.

492. The Continuing Diocese denies the allegations of Paragraph 492.

493. Paragraph 493 states a legal conclusion as to which no response is required. To the extent that any response may be deemed to be required, the allegations of said Paragraph are denied.

494. Paragraph 494 describes Plaintiffs' legal theories under its first cause of action, as to which no response is required. To the extent that any response may be deemed to be required, the allegations of said Paragraph are denied.

495. The Continuing Diocese incorporates by reference its responses to Paragraphs 1-494, inclusive, as though such responses were fully set forth herein.

496. The Continuing Diocese denies the allegations of Paragraph 496.

497. The Continuing Diocese denies the allegations of Paragraph 497.

498. The Continuing Diocese admits the allegations of Paragraph 498.

499. Paragraph 499 describes Plaintiffs' legal theory under their second cause of action and state legal conclusions as to which no response is required. To the extent that any response may be deemed to be required, the allegations of said Paragraph are denied.

500. The Continuing Diocese hereby incorporates by reference its responses to Paragraphs 1-499, inclusive, as though such responses were fully set forth herein.

501. The Continuing Diocese admits the allegation of Paragraph 501 that the Plaintiffs are charitable organizations, but denies any allegations that would characterize the plaintiffs as being independent and autonomous corporations that are not part of an ecclesiastical entity and subject to its discipline and doctrine.

502. The Continuing Diocese denies the allegations of Paragraph 502.

503. The Continuing Diocese denies the allegations of Paragraph 503.

504. Paragraph 504 describes Plaintiffs' legal theory under their third cause of action and state legal conclusions as to which no response is required. To the extent that any response may be deemed to be required, the allegations of said Paragraph are denied.

505. Paragraph 505 further describes Plaintiffs' legal theory under their third cause of action and state legal conclusions as to which no response is required. To the extent that any response may be deemed to be required, the allegations of said Paragraph are denied.

The remainder of the Second Amended Complaint sets out Plaintiffs' prayer for relief and requires no response.

**FOR A SECOND DEFENSE
(Failure to State a Cause of Action)**

506. Plaintiffs are entitled to no relief because the allegations of the Complaint fail to state a claim upon which relief can be granted.

**FOR A THIRD DEFENSE
(Lack of Jurisdiction To Award Extraterritorial Relief)**

507. Plaintiffs seek relief that would restrict activity beyond the State of South Carolina, and such relief is not within the jurisdiction of this Court.

**FOR A FOURTH DEFENSE
(Misrepresentation)**

508. Plaintiffs knowingly and deliberately misrepresented material facts to Defendants, and concealed material facts from Defendants, and therefore are entitled to no relief.

**FOR A FIFTH DEFENSE
(Estoppel)**

509. Plaintiffs, by their own misconduct, are estopped to seek the relief demanded by their Complaint.

**FOR A SIXTH DEFENSE
(Unclean Hands)**

510. Plaintiffs' claims for relief are barred by the equitable doctrine of unclean hands, as Plaintiffs seek to invoke the equitable jurisdiction of this Court in aid of their wrongful conduct.

**FOR A SEVENTH DEFENSE
(Unjust Enrichment)**

511. Plaintiffs have been unjustly enriched by their wrongful misappropriation and conversion of real and personal property, and interests therein, belonging to Defendants, and have no entitlement to invoke the aid of this Court to preserve or further such unjust enrichment.

**FOR AN EIGHTH DEFENSE
(Lack of Subject Matter Jurisdiction)**

512. Plaintiffs are entitled to no relief on the ground that this Court is without jurisdiction over the subject matter hereof.

**FOR A NINTH DEFENSE
(Improper Anticipatory Declaratory Action)**

513. Plaintiffs sought declaratory relief from this Court at a time when there was no actual dispute between Plaintiffs and Defendants over the matters that are the subject hereof, and Plaintiffs therefore have no lawful entitlement to such relief.

**FOR A TENTH DEFENSE
(No Justiciable Controversy)**

514. Plaintiffs have failed to show the existence of an actual, justiciable case or controversy between Plaintiffs and Defendants.

FOR AN ELEVENTH DEFENSE
(Non-Ownership of Trademarks)

515. Plaintiffs are not the true and lawful owners of the names, marks, and trademarks in which they claim ownership, and they therefore are entitled to no relief.

FOR A TWELFTH DEFENSE
(Fair Use)

516. Any use by any of the Defendants of the names and marks in which Plaintiffs allege they have rights constitutes fair use that is permitted to Defendants, and for which Plaintiffs are entitled to no relief.

FOR A THIRTEENTH DEFENSE
(Authorization)

517. Any such use by any of the Defendants of the said names and marks is and has been lawful and authorized use, for which Plaintiffs are entitled to no relief.

FOR A FOURTEENTH DEFENSE
(Invalidity)

518. The rights and interests claimed by Plaintiffs in the names and marks that are the subject of the Complaint are and were derived by Plaintiffs wholly from and through Defendants, and the rights and interests therein claimed by Plaintiffs against Defendants therefore are invalid and do not constitute a basis for the relief sought.

FOR A FIFTEENTH DEFENSE
(Statute of Limitations)

519. The Plaintiffs' claims are barred by applicable statutes of limitations.

FOR A SIXTEENTH DEFENSE
(Laches)

520. The Plaintiffs' claims are barred by the equitable doctrine of laches, inasmuch as Plaintiffs now seek, for the first time, to have this Court award them relief for alleged violations of rights that the Plaintiffs claim to have acquired more than two centuries ago.

FOR A SEVENTEENTH DEFENSE
(Waiver)

521. By their knowing failure to assert, or to seek by any means to enforce, the alleged rights that are the subject of this action, Plaintiffs have waived any claims for such relief, and their claims accordingly are barred by waiver.

FOR AN EIGHTEENTH DEFENSE
(Consent)

522. Any use by Defendants of any of the names and marks that are the subject of this action has been with the consent of Plaintiffs, who accordingly are barred from seeking any relief therefor.

FOR A NINETEENTH DEFENSE
(Breach of Fiduciary Duty)

523. Plaintiffs are fiduciaries of and for each of the Defendants. The claims asserted herein by the Plaintiffs are in flagrant breach of their fiduciary duties, and other duties owed by them to Defendants, and Plaintiffs have no entitlement to invoke the aid of this Court in furtherance of such wrongful conduct.

Defendant the Continuing Diocese hereby expressly reserves the right to amend this pleading to add any other or further defenses or counterclaims, or both, that hereafter may arise or become known upon discovery of material facts.

**COUNTERCLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF,
AN ACCOUNTING, RESTITUTION, DAMAGES, AND OTHER RELIEF
FOR FRAUDULENT TRANSFERS, MISAPPROPRIATION, CONVERSION,
CIVIL CONSPIRACY, AND BREACH OF FIDUCIARY AND OTHER DUTIES**

The Defendant-Counterclaim Plaintiff The Episcopal Church in South Carolina (the “Continuing Diocese”) hereby alleges as its counterclaims as follows:

524. The Continuing Diocese submits that the facts alleged hereinafter entitle the Continuing Diocese to money damages, an accounting, and declaratory and injunctive relief against the Plaintiffs-Counterclaim Defendants, and to such other, further, and different relief as the Court may deem appropriate and in the interests of justice.

PARTIES

RULE 19(c) REASONS FOR NONJOINDER OF INDISPENSABLE PARTIES

With respect to the counterclaims alleged hereinafter, there are certain individuals who are indispensable parties and who therefore should be named as Counterclaim Defendants, but have not yet been so named because their identities presently are not known to Counterclaim Plaintiff, and those individuals will be joined as parties after their identities are obtained through discovery.

525. The Continuing Diocese is a religious organization that is one of the 111 geographically defined subordinate units of Defendant The Episcopal Church (the “Church”). It is part of a hierarchical religious organization and is subject and subordinate to the Church and to the Constitution, bylaws (called “Canons”), and Book of Common Prayer (“Prayer Book”) of the Church, and, in turn, the parishes and missions that are within the Continuing Diocese are subject

and subordinate to the diocese and to its Constitution and Canons. The Presiding Bishop of the Church is its “Chief Pastor and Primate,” elected by its General Convention, and is charged with responsibility for leadership in initiating and developing policy and strategy in the Church, and speaking for the Church as to the policies, strategies, and programs authorized by the General Convention.

526. Plaintiff-Counterclaim Defendant The Protestant Episcopal Church In The Diocese of South Carolina (the “Lawrence Faction”) is a religious organization that was admitted into union with the Church but that is under the management, direction, and control of persons who have abandoned the communion of the Church, including, but not limited to, the Right Reverence Mark J. Lawrence, who, in January 2008, was ordained as Bishop of the Episcopal Diocese of South Carolina, in accordance with the Constitution, Canons, and Prayer Book of the Church, and who, on December 5, 2012, by action of the Presiding Bishop, with the advice and counsel of her Council of Advice, was found, under Canon III.12.7 of the Church, to have renounced the ordained ministry of the Church.

527. As a result, the Presiding Bishop declared that Bishop Lawrence “is, therefore, removed from the Ordained Ministry of this Church and released from the obligations of all Ministerial offices, and is deprived of the right to exercise the gifts and spiritual authority as a Minister of God’s Word and Sacraments conferred on him in Ordinations.”

528. The business and affairs of the Lawrence Faction, while under the control and direction of Bishop Lawrence and his allies and followers, have wrongfully been conducted, and continue to be so conducted, in open and direct contravention of the Constitution, Canons, Prayer Book, and polity of the Church.

529. Plaintiff-Counterclaim Defendant All Saints Protestant Episcopal Church is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Florence, South Carolina.

530. Plaintiff-Counterclaim Defendant Christ St. Paul's Episcopal Church ("Christ St. Paul's") is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located on Yorges Island, South Carolina.

531. Plaintiff-Counterclaim Defendant Christ the King, Waccamaw ("Christ the King"), is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located on Pawleys Island, South Carolina.

532. Plaintiffs-Counterclaim Defendants Church Of The Cross, Inc., and Church Of The Cross Declaration Of Trust (collectively, "Church of the Cross"), is a parish of the Continuing Diocese and a South Carolina nonprofit corporation, and an affiliated trust, located in Bluffton, South Carolina.

533. Plaintiff-Counterclaim Defendant Church Of The Holy Comforter is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Sumter, South Carolina.

534. Plaintiff-Counterclaim Defendant Church of the Redeemer is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Orangeburg, South Carolina.

535. Plaintiff-Counterclaim Defendant Holy Trinity Episcopal Church is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Charleston, South Carolina.

536. Plaintiff-Counterclaim Defendant Saint Luke's Church is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located on Hilton Head Island, South Carolina.

537. Plaintiff-Counterclaim Defendant Saint Matthew's Church ("Saint Matthew's") is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Darlington, South Carolina.

538. Plaintiffs-Counterclaim Defendants St. Andrews Church-Mt. Pleasant and The St. Andrews Church Mt. Pleasant Land Trust are, respectively, a parish of the Continuing Diocese and a South Carolina nonprofit corporation, and an affiliated trust that allegedly was established for the purpose of holding and managing real property for the benefit of St. Andrews-Mt. Pleasant. They are located in Mt. Pleasant, South Carolina.

539. Plaintiff-Counterclaim Defendant St. Bartholomew's Episcopal Church ("St. Bartholomew's") is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Hartsville, South Carolina.

540. Plaintiff-Counterclaim Defendant St. David's Church is a parish of the Continuing Diocese, and a nonprofit corporation, located in Cheraw, South Carolina.

541. Plaintiff-Counterclaim Defendant Saint James Church is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located on James Island, South Carolina.

542. Plaintiff-Counterclaim Defendant St. John's Episcopal Church ("St. John's-Florence") is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Florence, South Carolina.

543. Plaintiff-Counterclaim Defendant St. Matthias Episcopal Church, Inc., is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Summerton, South Carolina.

544. Plaintiff-Counterclaim Defendant St. Paul's Episcopal Church ("St. Paul's- Bennettsville") is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Bennettsville, South Carolina.

545. Plaintiff-Counterclaim Defendant St. Paul's Episcopal Church ("St. Paul's- Conway") is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Conway, South Carolina.

546. Plaintiff-Counterclaim Defendant the Church of St. Luke and St. Paul is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Charleston, South Carolina.

547. Plaintiff-Counterclaim Defendant The Church Of Our Saviour Of The Diocese Of South Carolina is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located on Johns Island, South Carolina.

548. Plaintiff-Counterclaim Defendant The Church Of The Epiphany is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Eutawville, South Carolina.

549. Plaintiff-Counterclaim Defendant The Church of the Good Shepherd is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Charleston, South Carolina.

550. Plaintiff-Counterclaim Defendant The Church of The Holy Cross is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Stateburg, South Carolina.

551. Plaintiff-Counterclaim Defendant Church of the Resurrection is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Surfside Beach, South Carolina.

552. Plaintiff-Counterclaim Defendant The Protestant Episcopal Church, Of The Parish of Saint Philip (“St. Philip’s Church”), is a parish of the Continuing Diocese located in Charleston, South Carolina.

553. Plaintiffs-Counterclaim Defendants The Protestant Episcopal Church, Of The Parish of Saint Michael (“St. Michael’s Church”) and St. Michael’s Church Declaration Of Trust are, respectively, a parish of the Continuing Diocese, and an affiliated trust, located in Charleston, South Carolina.

554. Plaintiffs-Counterclaim Defendants The Vestry And Church Wardens Of St. Jude’s Church of Walterboro are the governing body of a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Walterboro, South Carolina.

555. Plaintiffs-Counterclaim Defendants The Vestry and Church Wardens Of The Episcopal Church Of The Parish of Prince George Winyah (“Prince George”) are the governing body of a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Georgetown, South Carolina.

556. Plaintiffs-Counterclaim Defendants The Vestry And Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust (collectively, “St. Helena”) are, respectively, the governing body of a parish of the Continuing Diocese and a South Carolina nonprofit corporation, and an affiliated trust, located in Beaufort, South Carolina.

557. Plaintiffs-Counterclaim Defendants The Vestry and Church Wardens Of The Episcopal Church of the Parish of St. Matthew are the governing body of a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Fort Motte, South Carolina.

558. Plaintiff-Counterclaim Defendant The Vestry and Wardens of St. Paul's Church, Summerville ("St. Paul's-Summerville"), are the governing body of a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Summerville, South Carolina.

559. Plaintiff-Counterclaim Defendant Trinity Church ("Trinity-Myrtle Beach") is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Myrtle Beach, South Carolina.

560. Plaintiff-Counterclaim Defendant Trinity Episcopal Church, Edisto Island ("Trinity-Edisto"), is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located on Edisto Island, South Carolina.

561. Plaintiff-Counterclaim Defendant Trinity Episcopal Church, Pinopolis ("Trinity-Pinopolis"), is a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located on Pinopolis Island, South Carolina.

562. Plaintiffs-Counterclaim Defendants the Vestry and Church-Wardens Of The Episcopal Church Of The Parish Of Christ Church are the governing body of a parish of the Continuing Diocese, and a South Carolina nonprofit corporation, located in Mt. Pleasant, South Carolina.

563. Plaintiffs-Counterclaim Defendants the Vestry and Church Wardens Of The Episcopal Church Of The Parish of St. John's, Charleston County ("St. John's-Charleston"), are the governing body of a parish of the Continuing Diocese and a South Carolina nonprofit corporation, located on John's Island, South Carolina.

The Governance of The Episcopal Church and Its Subordinate Units

564. The Episcopal Church is governed by a legislative body called its “General Convention,” which generally meets once every three years to establish the general policies, rules, and programs of the Church. The General Convention comprises a House of Bishops, consisting of most of the Church’s active and retired bishops, and a House of Deputies, consisting of lay and clergy representatives elected by each of the Church’s dioceses.

565. The General Convention has adopted, and from time to time amends, the Church’s governing documents—its Constitution, Canons, and Prayer Book—which are binding on every subordinate unit and member of the Church.

566. Since the Church’s first Constitution, adopted by the General Convention in 1789, the Constitution has provided that all dioceses are subject to the authority of the General Convention.

567. Subsequent versions of the Church’s Constitution and Canons have prescribed the methods by which a new diocese of the Church may be formed. Those documents have required, and currently require, that a diocese of the Church can be formed only with the consent of the General Convention, and only if the new diocese accedes, without qualification, to the authority of the General Convention as expressed in the Church’s Constitution and Canons.

568. Each diocese is a subordinate unit of the Church and is bound by the provisions of the Church’s Constitution, Canons, and Prayer Book, which govern both temporal and spiritual matters.

569. The Church’s Constitution and Canons, as well as in some instances the Prayer Book, in part:

- a. govern the ordination, installation, spiritual and temporal duties, discipline, and retirement of bishops and other clergy;

- b. require dioceses and parishes to adopt prescribed business methods, including submission of annual reports to the Church's Executive Council, having annual audits performed by certified public accountants, and maintaining adequate insurance of all buildings and their contents;
- c. set forth requirements and conditions for the formation and operation of parishes and other worshipping congregations under the oversight of the dioceses;
- d. provide requirements for the care, control, use, and disposition of church property;
- e. provide rules under which dioceses may select, train, ordain, deploy, and supervise the clergy of parishes and other worshipping congregations; and
- f. provide for discipline of bishops and other clergy for, among other things, violation of the Constitutions or Canons of the Church or of the dioceses in which they are resident, violation of the vows taken at ordination, and "abandonment of the Communion" of the Church.

570. The Church also has an Executive Council, consisting of elected bishops, priests, and lay persons, who, under the leadership of the Presiding Bishop, manage the fiscal and programmatic affairs of the Church between meetings of the General Convention.

571. A diocese of The Episcopal Church may be formed only by action of the General Convention, and only if such diocese gives its "unqualified accession to the Constitution and Canons of" the Church.

572. Each diocese exercises authority over the parishes and other congregations within its geographical area, in obedience to the Constitution, Canons, and Prayer Book of the Church.

573. The governing body of each diocese, generally called its "Convention," is a legis-

lative body consisting of clergy of the diocese and laity elected by their congregations. The governing body of the Diocese of South Carolina is its Diocesan Convention.

574. Each diocesan Convention adopts and from time to time amends its own diocesan Constitution and Canons, which supplement and may not conflict with the Church's Constitution, Canons, or Prayer Book.

575. The principal leader of each diocese is a bishop, who is elected by the diocesan Convention and, only after having received consent from the leadership of a majority of the other dioceses of the Church, is ordained by the Church's Presiding Bishop or his or her designee, and other bishops of the Church, in accordance with the Church's Constitution, Canons, and Prayer Book. The Diocesan Bishop is in charge of both spiritual and temporal affairs within the diocese. The Bishop is advised by, and, as to certain matters, shares authority with, a "Standing Committee" of clergy and lay persons elected by the Diocesan Convention.

576. At the third level of the Church's governance, each of its nearly 7,600 parishes and other worshipping congregations is located in one of the Church's dioceses and is subject to the authority of the Church and its diocese.

577. The Church's hierarchical structure provides for representative participation in each level of governance. Parishes and other congregations send representatives to diocesan Conventions, and dioceses send bishops, other clergy, and lay representatives to the Church's General Convention.

578. Canon I.17(8) of the Church, entitled "Fiduciary Responsibility," which applies to officers at all levels of the Church's governance, provides that "[a]ny person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with the

Constitution and Canons of [the] Church and of the Diocese in which the office is being exercised.”

579. Article VIII of the Church’s Constitution, and the Ordination Services of its Prayer Book, require all clergy of the Church, as a condition of ordination, to subscribe to the following written declaration:

I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.

This statement is generally referred to as the “Declaration of Conformity.”

580. Under the Church’s Constitution, Canons, and polity, no diocese or parish has the right or authority, acting unilaterally, to divide or separate or otherwise disaffiliate from the Church.

The Rules of The Episcopal Church Governing Property

581. The Church’s Canons govern both temporal and spiritual matters, and include a number of provisions that specifically relate to the use and control of property.

582. Church Canon II.6, adopted in part in 1868 and in part in 1871, provides that parish real property may not be “consecrated,” that is, set aside for worship and other sacred uses by the bishop of the diocese, “until the Bishop shall have been sufficiently satisfied” that the property is “secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with this Church and subject to its Constitution and Canons.” Canon II.6 also provides that parishes may not “encumber or alienate any dedicated and consecrated Church or Chapel . . . without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese.”

583. Church Canon III.9(5)(a)(2), adopted in 1904, provides that the rector of each parish shall be entitled “to use and control . . . the Church and Parish buildings together with all appurtenances and furniture,” provided the property is used “[f]or the purposes of the office and for the full and free discharge of all functions and duties pertaining thereto.” Canon III.9(5)(a)(1) provides that the rector shall carry out his or her duties, including those relating to use of parish property, “subject to the Rubrics of the Book of Common Prayer, the Constitution and Canons of [The Episcopal] Church, and the pastoral direction of the Bishop.”

584. Canon I.7(3), adopted in 1940, provides that “[n]o Vestry, Trustee, or other Body, authorized by Civil or Canon law to hold, manage, or administer real property for any Parish, Mission, Congregation, or Institution, shall encumber or alienate” such property “without the written consent of the Bishop and Standing Committee.”

585. Church Canons I.7(4) and (5), adopted in 1979, reflect and confirm the careful attention that the Church and its dioceses historically have given to matters relating to parish property. These Canons provide as follows:

Sec. 4. 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.

Sec. 5. 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.

586. The foregoing Canons restate the Church’s historical polity, discipline, and rules, by which (i) all property held by or for any of the Church’s constituent parts is held and must be

used for the Church's mission and may not be diverted to other purposes, and (ii) all dioceses and parishes, and their leaders, are charged with the responsibility of ensuring that these requirements are carried out.

587. Beginning as early as 2010 and continuing to the present, the Plaintiff-Counterclaim Defendant parishes joined and conspired with the Defendant Lawrence Faction, acting through its agent Bishop Lawrence, one or more of the Defendant Trustees, the Board of Directors of the Diocese (also serving as its Standing Committee) and others among the leadership of the Lawrence Faction, and, acting in concert with the Lawrence Faction and its leadership, obtained and received quitclaim deeds, executed by Bishop Lawrence, or others among the aforementioned leadership, on behalf of the diocese, as grantor, and in favor of some or all the Plaintiff-Counterclaim Defendant parishes. Each of the said quitclaim deeds, contrary to, *inter alia*, Church Canons I.7(4) and (5), purports to release and relinquish the interest of the Diocese of South Carolina in the real property of the grantee parish. The quitclaim deeds show on their face that they were executed on the dates given in the subparagraphs of Paragraph 590 hereof below, and, on information and belief, each of them was delivered on the date of execution or shortly thereafter.

588. Each of the purported transfers of interests in real property that are the subjects of the aforementioned quitclaim deeds is and was null and void *ab initio*, because, *inter alia*, under the Constitution and Canons of the Church, neither the diocese, nor any agent or officer thereof, has or had authority to transfer any such interest of the diocese, and any such transfer would have been in breach of the fiduciary duties owed by the diocese, and all of its officers, to The Episcopal Church.

589. On information and belief, the Counterclaim Defendant Lawrence Faction, through Bishop Lawrence and others among its leadership, agreed and conspired with one or more of the Counterclaim Defendant grantee parishes to conceal and hold secret, from members of the Church who now are among the leadership of the Continuing Diocese, from the Church, and from others, the purported property transfers that were the subject of the above-described quitclaim deeds, and agreed between and among themselves to, and did, arrange and carry out such purported transfers in a manner knowingly and deliberately calculated to enable the grantor and the grantees to keep confidential those purported transfers and avoid disclosing or revealing them to others. Such purpose, design, and intent is reasonably inferable from the fact that numerous of the quitclaim deeds were executed many months—some of them as long as twenty-one (21) months—prior to the dates on which they were submitted for filing and recordation in appropriate offices of public property records.

590. The quitclaim deeds described in Paragraphs 587 through 589 hereof were executed by or in the name of the diocese on the dates given in the subparagraphs below, to the grantee shown in each subparagraph, and were recorded on the dates also shown:

- a. To Counterclaim Defendant St. John's-Charleston, executed on February 1, 2010, and recorded on November 17, 2011;
- b. To Counterclaim Defendant St. Philip's Church, quitclaim deeds executed February 1, 2010, and July 11, 2011, both of which were recorded November 17, 2011;
- c. To Counterclaim Defendant Church of the Cross, executed February 1, 2011, and recorded November 16, 2011;
- d. To Counterclaim Defendant Christ St. Paul's, executed March 15, 2010, and recorded November 17, 2011;

- e. To Counterclaim Defendant St. John's-Florence, executed October 28, 2010, and recorded November 16, 2011;
- f. To Counterclaim Defendant The Church Of Our Saviour Of The Diocese Of South Carolina, executed February 1, 2011, and recorded November 22, 2011;
- g. To Counterclaim Defendant The Church of the Good Shepherd, executed July 11, 2011, and recorded November 17, 2011;
- h. To Counterclaim Defendant the Church of St. Luke and St. Paul, executed July 11, 2011, and recorded November 17, 2011;
- i. To Counterclaim Defendant Trinity-Edisto, executed July 11, 2011, and recorded November 17, 2011;
- j. To Counterclaim Defendant Christ the King, executed October 3, 2011, and recorded November 16, 2011;
- k. To Counterclaim Defendant Church of the Resurrection, quitclaim deeds executed October 3 and 4, 2011, both of which were recorded November 16, 2011;
- l. To Counterclaim Defendant St. Paul's-Conway, executed October 4, 2011, and recorded November 16, 2011;
- m. To Counterclaim Defendant The Episcopal Church Of The Parish Of Christ Church, executed October 4, 2011, and recorded November 28, 2011;
- n. To Counterclaim Defendant St. Bartholomew's, executed October 4, 2011, and recorded November 21, 2011;
- o. To Counterclaim Defendant St. Paul's-Summerville, executed October 4, 2011, and recorded January 6, 2012;

p. To Counterclaim Defendant Saint Matthew's, executed October 9, 2011, and recorded November 23, 2011;

q. To Counterclaim Defendant St. Helena, executed October 27, 2011, and recorded November 16, 2011;

r. To Counterclaim Defendant Prince George, executed November 16, 2011, and recorded November 16, 2011; and

s. To Counterclaim Defendant St. Michael's Church, executed November 21, 2011, and recorded November 22, 2011.

On information and belief, the Lawrence Faction caused quitclaim deeds to be executed and delivered to other Episcopal parishes and missions, which, contrary to the Constitution and Canons of the Church, purported to release and relinquish the interest of the Diocese of South Carolina in real property held by or for such parishes and missions.

591. Counterclaim Defendant St. Andrews Church-Mt. Pleasant executed and delivered several instruments, dated at various times beginning in 2009, that purported to convey and transfer, to Counterclaim Defendant The St. Andrews Church Mt. Pleasant Land Trust, title to real property, including improvements thereon commonly known as or called the Historic Old Church Building and the Ministry Center.

592. On information and belief, the primary purpose, if not the sole purpose, of the execution and delivery alleged in Paragraph 591 hereof was to evade and avoid the requirements under the Constitution and Canons of the Church that must be satisfied in order to effect valid transfers of real property, and to impair, defeat, and destroy the equitable interests of the Continuing Diocese and the Church in such property, to the continuing injury, detriment, and damage of the Continuing Diocese and the Church.

Defendant-Counterclaim Plaintiff The Episcopal Church in South Carolina

593. Between 1785 and 1789, an association of clergy ordained in the Church of England and lay persons in South Carolina sent delegates to meetings of the Church's General Convention, who joined with delegates from other states in adopting the Church's first Constitution, Canons, and Prayer Book.

594. The Journal of a meeting of the parishes of the Church in South Carolina held in October 1790 recorded that, at such meeting, the Constitution and Canons of the Church, "being read, were unanimously agreed to" by such parishes.

595. In 1806, the Convention of The Episcopal Church in South Carolina adopted "Rule XVI," which provided that "the book of common prayer . . . , according to the use of the Prot. Epis. Church, in the U.S.A. shall be used in all the Churches in this association."

596. In 1860, Article 1 of the Constitution of The Episcopal Church in South Carolina declared that the diocese "accedes to, recognizes and accepts the general Constitution and Canons of the Prot. Epis. Church in the United States of America, and acknowledges their authority accordingly."

597. In 1973, the Diocese of South Carolina was incorporated as a South Carolina nonprofit corporation. Paragraph FOURTH of its Certificate of Incorporation provided that the "purpose of the said proposed Corporation is 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 Continuing Diocese is informed and believes that Paragraph FOURTH still was in effect in 2010 when members of the Board of Directors of the Episcopal Church Diocese, including Bishop Lawrence, purportedly amended the foregoing provision so that it would state,

instead, that the “purpose of the said proposed Corporation is to continue operation under the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina.”

598. Since its founding, the Diocese of South Carolina has remained a subordinate unit of the Church.

599. Throughout its history, the Diocese has consistently participated in the life of the Church as a subordinate unit and generally has complied with the requirements imposed on it by the Church’s Constitution, Canons, and Prayer Book, as shown by facts and circumstances including, but not limited to, the following:

- a. The Diocese has consistently sent representatives to meetings of both Houses of the Church’s General Convention, including to its most recent meeting, in 2012;
- b. The Diocese and its clergy have participated in and accepted the valuable benefits of the Church Pension Fund, reserved solely for clergy and institutions of the Church, as required by the Church’s Canons;
- c. All bishops of the Diocese have been elected, ordained, and installed pursuant to the requirements of the Church’s Constitution, Canons, and Prayer Book; the clergy of the Diocese have been ordained or received, and parish rectors and other ordained clergy have been elected or installed, pursuant to the requirements of the Church’s Constitution, Canons, and Prayer Book;
- d. The Diocese has adopted and implemented business methods prescribed by the Church’s Canons, submitted annual reports to the Church’s Executive Council, conducted audits, and maintained adequate insurance of buildings and their contents, in compliance with the Church’s requirements;

e. The Diocese has overseen the formation and operation of parishes and other worshipping congregations of the Diocese according to the Church's requirements; and

f. The Diocese has provided for the care, control, use, and disposition of property according to the Church's requirements.

Counterclaim Defendants' Attempts To "Disaffiliate" from the Church

600. At meetings of the Convention of the Diocese in October 2010 and November 2011, a majority of voting delegates present voted for various resolutions that purported to amend the Diocese's Constitution to withdraw its accession to the Constitution and Canons of the Church and to remove all other references to the Church.

601. At a meeting of the Counterclaim Defendants and others that purported to be a special meeting of the Convention of the Diocese in November 2012, a majority of voting delegates present voted to "disaffiliate" from the Church.

602. The actions described in Paragraphs 600 and 601 hereof violated the respective constitutional and canonical obligations and prior commitments of the Diocese and of the members of its Convention, were invalid, and did not alter or affect the status or continuing existence of the Diocese, or its relationship with the Church.

603. Since as early as November 17, 2012, the Counterclaim Defendants, openly, publicly, and repeatedly, have advocated, supported, and promoted the purported withdrawal of the Diocese of South Carolina from the Church. By engaging in those and other acts the Plaintiff-Counterclaim Defendant Trustees and the individuals who held offices in the Diocese or in any of the Plaintiff-Counterclaim Defendant parishes, violated their obligations under the Church's Declaration of Conformity or Church Canon I.17(8), or both, as well as the Constitution and

Canons of the Diocese, and they accordingly ceased to be eligible to hold any office in the Church or the Diocese, or to act as Trustees of the Protestant Episcopal Church in the Diocese of South Carolina; and their offices became vacant.

604. In January 2013, the Continuing Diocese held a special meeting of its Convention to elect persons to fill the vacancies referred to in Paragraph 603 hereof. The Convention at that meeting also elected a Provisional Bishop of the Diocese. The Continuing Diocese is informed and believes that the Church recognizes the persons so elected as the sole leadership of the Diocese of South Carolina.

605. The Continuing Diocese and the Church do not recognize the October 2010, November 2011, and November 2012, meeting votes referred to in Paragraphs 600 and 601 hereof as valid or effective under the polity and rules of the Church, and the Continuing Diocese and the Church dispute and deny that such votes, or any of them, had the effect of removing or disaffiliating the Diocese from the Church.

606. The individual Counterclaim Defendants, and the individuals who held office in the Diocese or any of the Defendant parishes, have vacated their offices as a result of having engaged in the conduct alleged herein, and have wrongfully and without justification asserted authority over Episcopal parishes, congregations, and other organizations in or of the Diocese and continue to assert exclusive possession and control of related corporations and substantially all of the real and personal property of the Diocese. The Counterclaim Defendants accordingly are liable to Counterclaim Plaintiff the Continuing Diocese in damages for misappropriation, conversion, breach of trust, and breach of fiduciary duty. Counterclaim Defendants have been unjustly enriched by their wrongful conduct, to the injury and detriment of the Continuing Diocese, which is entitled to restitution of the property and funds of which it has been unjustly deprived.

607. The actions of the Counterclaim Defendants described in Paragraphs 603, 605, and 606 of these counterclaims are contrary to the Constitution, Canons, and Prayer Book of the Church and are otherwise contrary to law and without any effect. Notwithstanding the machinations undertaken by the Counterclaim Defendants, all property held by or for any parish or mission or the Diocese is held and may be used only for the mission and benefit of the Church and its subordinate Diocese, subject to the Constitutions and Canons of the Church and the Diocese. The Diocese of South Carolina remains a subordinate unit of the Church for all purposes, and the foregoing diocesan corporations remain subordinate parts of the Continuing Diocese.

608. The Continuing Diocese is informed and believes that it is the position of the Counterclaim Defendants that they are entitled to maintain and exercise ownership and control of real and personal property held by or for the Plaintiff-Counterclaim Defendant parishes, and that the actions by which they seek to do so are not in conflict with the Constitution or Canons of the Church or South Carolina law, or the laws of the United States.

609. An actual controversy exists, therefore, between the parties regarding the legal issues arising by reason of, *inter alia*, the allegations of Paragraphs 606 and 607 above. A declaratory judgment is therefore necessary and proper to determine the parties' rights and duties with respect to those issues.

610. As a result of the Counterclaim Defendants' continued control, use, and possession of the real and personal property of the Counterclaim Defendant parishes for purposes other than the mission of the Church and the Continuing Diocese, and their diversion and expenditure of funds, assets, and other personal property of the said parishes, all in derogation of the Constitutions and Canons of the Church and the Continuing Diocese, and in disregard of the rights of the Church and the Continuing Diocese, and Counterclaim Defendants' repeated declarations of

their intentions to continue and persist in their engagement in such acts, Counterclaim Plaintiff the Continuing Diocese has suffered and will continue to suffer irreparable injury. Injunctive relief therefore is necessary and proper to enforce the parties' rights and duties with respect to the issues arising from the facts alleged herein.

COUNT I – DECLARATORY JUDGMENT

611. Counterclaim Plaintiff hereby repeats and realleges the matters set forth in Paragraphs 524 through 610 of these Counterclaims, as though such matters were fully set forth herein.

612. As shown by the foregoing allegations, the Counterclaim Defendants, over a period that commenced more than three years ago, have knowingly, deliberately, and repeatedly engaged in transactions that purported to transfer interests in real property contrary to explicit provisions of the Constitution and Canons of the Church, and contrary to solemn declarations, oaths, and subscriptions made by individuals who held offices in the Church and were and are among the leadership of the said Defendants, all to the injury and detriment of the Church and those in the Church, including the Counterclaim Plaintiff, who seek to uphold its Constitution, Canons, and polity. Through their leaders and agents, the said Defendants have publicly declared, and continue to declare, that their actions were not contrary to the Constitution or Canons of the Church, and that the aforesaid authorities impose no restriction or limitation on their abilities to continue to engage in such transactions.

613. It is the position of the Counterclaim Plaintiff that the aforesaid actions were and are contrary to the Constitution and Canons of the Church, as any future such actions would be, and that the above-described acts of the Counterclaim Defendants were *ultra vires* and of no force and effect, and therefore are due to be set aside by this Court.

614. The foregoing facts present an actual, justiciable case and controversy that, under applicable provisions of the South Carolina Code, appropriately may be heard and determined by this Court.

615. Counterclaim Plaintiff accordingly respectfully requests that the Court enter judgment declaring (1) that each and all of the quitclaim deeds executed by Counterclaim Defendant the Lawrence Faction, for or on behalf of the Diocese of South Carolina, and in favor of any of the other Counterclaim Defendants, and not having been duly authorized in accordance with the Constitution and Canons of the Church, were void *ab initio* and accordingly are declared null, void, and of no force and effect and are set aside; and (2) that all real and personal property held by or for the Counterclaim Defendant Parishes, and each of them, is held in trust for, and is and shall remain, subject to the equitable interests of, The Episcopal Church and the Continuing Diocese.

COUNT II – FRAUDULENT TRANSFERS

616. Counterclaim Plaintiff hereby repeats and realleges the matters set forth in Paragraphs 524 through 615 of these Counterclaims, as though such matters were fully set forth herein.

617. The Counterclaim Defendants' joint participation in purported transfers of parish real property, and in actual or attempted transfers, diversions, and expenditures of personal property, funds, and other assets of the parishes as alleged herein, for little or no consideration, often while retaining possession, use, and control of the purportedly transferred property, and often while concealing such transactions, including, without limitation, the transactions alleged in Paragraphs 590 through 592 and Paragraph 610 hereof, constitute fraudulent transfers within the meaning of S.C. Code Ann. § 27-23-10, and accordingly are due to be declared void and set

aside, and entitle the Continuing Diocese to such other, further, and different relief as the Court may find warranted by the circumstances of such transactions.

COUNT III – INJUNCTIVE RELIEF

618. Counterclaim Plaintiff hereby repeats and realleges the matters set forth in Paragraphs 1 through 94 of these Counterclaims, as though such matters were fully set forth herein.

619. Because Counterclaim Defendants threaten to continue and to repeat their wrongful actions unless restrained by this Court, Counterclaim Plaintiff faces the prospect of irreparable injury, for which there is no adequate remedy at law, and such Plaintiff accordingly is entitled to injunctive relief from this Court.

620. The Continuing Diocese respectfully requests that the Court immediately and permanently enjoin and restrain the Counterclaim Defendants, and each of them, from transferring or purporting to transfer, or receiving any purported transfer of, any interest in parish property or diocesan property that is, was, or shall be, transferred other than in accordance with the provisions of the Constitution and Canons of The Episcopal Church.

COUNT IV – ACCOUNTING

621. Counterclaim Plaintiff hereby repeats and realleges the matters set forth in Paragraphs 524 through 620 of these Counterclaims, as though such matters were fully set forth herein.

622. Counterclaim Defendants, to the extent that they held or continue to hold real property and personal property, including, without limitation, funds, assets, securities, and other investments, are, under South Carolina law and under the Constitution and Canons of the Church, fiduciaries of and for the Church and the Continuing Diocese.

623. The Counterclaim Defendants have transferred and disposed of real property, contrary to the Church's Constitution and Canons, and have diverted and expended funds and other assets in their custody and control for the purpose and with the intent of violating, contravening, and subverting the Constitution, Canons, and polity of the Church, despite their duty to hold, maintain, and use such property and assets solely for the mission and benefit of the Church, and contrary to their fiduciary duties under S.C. Code Ann. § 76-7-103 and Church law.

624. Counterclaim Plaintiff accordingly is entitled to an accounting, and respectfully requests that the Court order each of the Counterclaim Defendants to submit to the Court, and serve upon the Counterclaim Plaintiff, not later than ninety (90) days after the date of the Court's Order, an accounting of all real and personal property, investments, bank accounts, funds, securities, and other property, and all proceeds thereof, in the possession or control of any of the Counterclaim Defendant parishes, the Trustees, or the Lawrence Faction, that is or formerly was held by or for any parish or the diocese, including details of all transfers, dispositions, acquisitions, and exchanges of or for any such property or assets, and all receipts and expenditures of or from any of such funds or other assets, for and during the period commencing on the date on which Bishop Lawrence was ordained as Bishop of South Carolina and continuing through the date of the filing of such accounting.

COUNT V – CONVERSION AND RESTITUTION

625. Counterclaim Plaintiff hereby repeats and realleges the matters set forth in Paragraphs 524 through 624 of these Counterclaims, as though such matters were fully set forth herein.

626. The foregoing allegations show that the Counterclaim Defendants have wrongfully profited and benefited from their unauthorized diversion and appropriation, to their exclusive

use and benefit, of real and personal property and assets which they held in trust for the Church and the Diocese.

627. The Continuing Diocese accordingly is entitled to relief therefor, and respectfully requests that the Court enter an Order directing that each of the Counterclaim Defendants immediately make restitution to the Continuing Diocese of its lawful and proper interests in all real and personal property, funds, and assets, and all proceeds thereof, misappropriated or diverted by any of such Defendants and by them transferred, expended, or otherwise applied for purposes other than furthering the mission of the Church and the Diocese.

COUNT VI – DAMAGES

628. Counterclaim Plaintiff hereby repeats and realleges the matters set forth in Paragraphs 524 through 627 of these Counterclaims, as though such matters were fully set forth herein.

629. The aforesaid conduct of the Counterclaim Defendants constitutes conversion of the Counterclaim Plaintiff's interests in the property held by said Defendants, for which such Plaintiff is entitled to recovery of all damages suffered or incurred by it as a result of Defendants' wrongful conduct.

630. Counterclaim Plaintiff accordingly respectfully requests that the Court enter judgment in its favor and against all Counterclaim Defendants, jointly and severally, in the amount of the value, as proved at trial, of the interests of such Plaintiff that have been converted by said Defendants.

631. Counterclaim Plaintiff the Continuing Diocese further respectfully requests that the Court void and cancel each and all of the quitclaim deeds executed by or on behalf of the

Counterclaim Defendant Lawrence Faction to or for the benefit of any other Counterclaim Defendant or any affiliate thereof.

COUNT VII – CIVIL CONSPIRACY

632. Counterclaim Plaintiff hereby repeats and realleges the matters set forth in Paragraphs 524 through 631 of these Counterclaims, as though such matters were fully set forth herein.

633. The Counterclaim Defendants conspired with and among themselves, and with one or more other persons who will be joined as parties after their identities have been ascertained through discovery, to wrongfully harm Counterclaim Plaintiff by means of the acts alleged hereinabove.

634. Counterclaim Plaintiff accordingly respectfully requests that the Court enter judgment in its favor, and against Counterclaim Defendants who conspired against such Plaintiff, for all damages proximately caused to the Continuing Diocese, as proved at trial, as a result of the wrongful acts of those who joined and participated in such conspiracy.

PRAYER FOR RELIEF

WHEREFORE, Defendant-Counterclaim Plaintiff the Continuing Diocese respectfully requests that the Court enter judgment:

1. Ordering that the Complaint be dismissed with prejudice;
2. In favor of the Defendant-Counterclaim Plaintiff on all claims in the Complaint;
3. In favor of the Defendant-Counterclaim Plaintiff on all counterclaims asserted herein;
4. Awarding to Defendant-Counterclaim Plaintiff actual, consequential, special, and punitive damages as determined by the Court and allowed by law;

5. Awarding to Defendant-Counterclaim Plaintiff injunctive relief as the Court determines is warranted and as is allowed by law; and

6. Awarding to Defendant-Counterclaim Plaintiff such other and further relief as the Court may determine is just, proper, and equitable.

[Signature on following page]

Dated: March 27, 2013

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Counsel for Defendant The Episcopal Church in South Carolina

IN THE UNITED STATES DISTRICT COURT
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, SC; The Church Of The Holy)
Cross; The Church Of The Resurrection,)
Surfside; The Protestant Episcopal Church,)
Of The Parish Of Saint Philip, In Charleston,)
In The State Of South Carolina; The)
Protestant Episcopal Church, The Parish Of)
Saint Michael, In Charleston, In The State)
Of South Carolina and St. Michael's Church)
Declaration Of Trust; The Vestry and)
Church Wardens Of St. Jude's Church Of)
Walterboro; The Vestry and Church)
Wardens Of The Episcopal Church Of The)
Parish Of Prince George Winyah; The)
Vestry And Church Wardens Of The)
Episcopal Church Of The Parish Of St.)
Helena and The Parish Church of St. Helena)

Case No. 2:13-cv-00893-CWH

REPLY BY THE PLAINTIFF, *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*, TO THE
COUNTERCLAIMS OF THE
DEFENDANT THE EPISCOPAL
CHURCH IN SOUTH CAROLINA

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.)

Without waiving any objections to the Defendants' Removal of the above action, and preserving all rights in the Plaintiffs' Motion to Remand, the Plaintiffs, The Protestant Episcopal Church In The Diocese Of South Carolina (hereinafter "Diocese") and The Trustees Of The Protestant Episcopal Church In South Carolina (hereinafter "Trustees") hereby reply to the Counterclaims of The Episcopal Church in South Carolina (hereinafter "ECSC") as follows:

FIRST DEFENSE

1. Each and every allegation in said Counterclaims are denied and strict proof demanded thereof unless herein specifically admitted, modified or qualified.

SECOND DEFENSE

2. The allegations of Paragraphs 524, 525, 527 and 528 are denied.

3. In answering Paragraph 526, it is only admitted that the Plaintiff Diocese is a South Carolina non-profit organization properly organized and existing under the laws of the State of South Carolina. The remaining allegations are denied.

4. In answering Paragraph 529 through 563, it is denied that any of the Plaintiffs are associated with the Defendant ECSC for said Defendant is not a South Carolina non-profit religious corporation, has no authority or standing to assert that it is a South Carolina non-profit religious corporation, and has no authority or control over any of the Plaintiffs. As to the allegations in said Paragraphs that the Plaintiff Parishes are South Carolina corporations such are admitted but none are a subordinate unit of any of the Defendants.

5. With respect to the allegations in Paragraph 564 through 580, entitled “The Governance of The Episcopal Church and its Subordinate Units”, the Answering Plaintiffs specifically deny that any of the Plaintiffs are subordinate to TEC and that all the Plaintiffs, other than the Answering Plaintiff Trustees, are South Carolina non-profit corporations. The Plaintiff Trustees is a South Carolina corporate body.

6. As to the Plaintiff Trustees, this Plaintiff has never been subject to the governance of TEC, nor considered a subordinate unit of TEC, nor has ever been associated with TEC as a member.

7. With respect to the allegations in Paragraphs 581 through 592, entitled “The Rules of The Episcopal Church Governing Property” all said allegations are denied in that the Plaintiffs’ rights to their properties are governed by the laws of the State of South Carolina.

8. With respect to the allegations in Paragraph 590, it is admitted that the Plaintiff Diocese executed certain Quit Claim Deeds to certain Plaintiff Parishes.

9. With respect to the allegations in Paragraphs 593 through 599, entitled “Defendant Counterclaim Plaintiff The Episcopal Church in South Carolina”, said allegations are denied in that said allegations wrongfully contend that the Plaintiff Diocese is a subordinate unit of TEC. As stated in the Second Amended Complaint, the Plaintiff Diocese was associated with TEC, a voluntary non-profit association, and in October, 2012, Plaintiff Diocese effectuated the terms of a Resolution that resulted in the withdrawal of its association with TEC.

10. With respect to the allegations in Paragraphs 600 through 610, entitled “Counterclaim Defendants Attempts to Disaffiliate from the Church”, said allegations are denied in that said allegations imply that the Plaintiffs are subordinate units of TEC and are not separate, standing alone, South Carolina non-profit corporations. All actions taken by the Plaintiffs have been in accordance with the laws of the State of South Carolina and the Plaintiffs’ rights to act in accordance with their respective governing documents.

11. With respect to the allegations in Paragraphs 611 through 615, identified as Count I-Declaratory Judgment, said allegations are denied.

12. With respect to the allegations in Paragraphs 616 through 617, entitled Count II-Fraudulent Transfer, said allegations are denied.

13. With respect to the allegations in Paragraphs 618 through 620, entitled Count III-Injunctive Relief, said allegations are denied.

14. With respect to the allegations in Paragraphs 621 through 624, entitled Count IV-Accounting, said allegations are denied.

15. With respect to the allegations in Paragraphs 625 through 627, entitled Count V-Conversion and Restitution, said allegations are denied.

16. With respect to the allegations in Paragraphs 628 through 631, entitled Count VI-Damages, said allegations are denied.

17. With respect to the allegations in Paragraphs 632 through 634, entitled Count VII-Civil Conspiracy, said allegations are denied.

18. With respect to the ECSC's Prayer for Relief, said requests are denied and the Answering Plaintiffs pray that the relief sought by said Plaintiffs in its Second Amended Complaint be granted.

THIRD DEFENSE

19. The Defendants have improperly removed this civil action from South Carolina State Court to Federal Court even though there is no basis for the Federal Court to exercise jurisdiction over the State law claims alleged by the Plaintiffs in their Second Amended Complaint.

FOURTH DEFENSE

20. The Answering Plaintiffs assert waiver and estoppel as complete defenses to the counterclaims of the Defendant ECSC.

FIFTH DEFENSE

21. The Answering Plaintiffs assert laches and unclean hands as a complete defense to the counterclaims of the Defendant ECSC.

SIXTH DEFENSE

22. The actions of the Defendant ECSC constitute bad faith and as such Defendant's counterclaims should be dismissed.

SEVENTH DEFENSE

23. The Defendant ECSC has no standing to assert any claims against either of the Answering Plaintiffs.

EIGHTH DEFENSE

24. The Answering Plaintiffs are the sole owners of its real and personal property and the Defendant ECSC has no right, title, or interest thereto.

NINTH DEFENSE

25. This Answering Plaintiff is a South Carolina non-profit corporation which is not subordinate nor a unit to any party in this action.

TENTH DEFENSE

26. The Answering Plaintiffs are entitled to all protections and immunities provided under the South Carolina Non-Profit Corporation Act, Section 33-31-101 et seq. of the Code of Laws of the State of South Carolina.

ELEVENTH DEFENSE

27. The applicable statute of limitations bars all counterclaims of the Defendant ECSC.

WHEREFORE, having replied to the Counterclaims of the Defendant Episcopal Church in South Carolina, the Answering Plaintiffs pray that the said Counterclaims be dismissed with prejudice and that the claims of the Answering Plaintiffs as set forth in their Second Amended Complaint be granted, together with such other and further relief may deem just and proper.

April 18, 2013

Respectfully submitted,

*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:*

By: /s/ C. Alan Runyan

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IN THE UNITED STATES DISTRICT COURT
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, SC; The Church Of The Holy)
Cross; The Church Of The Resurrection,)
Surfside; The Protestant Episcopal Church,)
Of The Parish Of Saint Philip, In Charleston,)
In The State Of South Carolina; The)
Protestant Episcopal Church, The Parish Of)
Saint Michael, In Charleston, In The State)
Of South Carolina and St. Michael's Church)
Declaration Of Trust; The Vestry and)
Church Wardens Of St. Jude's Church Of)
Walterboro; The Vestry and Church)
Wardens Of The Episcopal Church Of The)
Parish Of Prince George Winyah; The)
Vestry And Church Wardens Of The)
Episcopal Church Of The Parish Of St.)
Helena and The Parish Church of St. Helena)

Case No. 2:13-cv-00893-CWH

**REPLY BY THE 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, TO THE COUNTERCLAIMS
OF THE DEFENDANT, THE
EPISCOPAL CHURCH**

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.)

Without waiving any objections to the Defendants' Removal of the above action, and preserving all rights in the Plaintiffs' Motion to Remand, the Plaintiffs, The Protestant Episcopal Church In The Diocese Of South Carolina (hereinafter "Diocese") and The Trustees Of The Protestant Episcopal Church In South Carolina (hereinafter "Trustees"), A South Carolina Corporate Body, hereby reply to the Counterclaims of The Episcopal Church (hereinafter "TEC") as follows:

FIRST DEFENSE

1. Each and every allegation in TEC's Counterclaims are denied and strict proof demanded thereof unless herein specifically admitted, modified or qualified.

SECOND DEFENSE

2. In answering Paragraph 1, Count I, it is only admitted that the Defendant TEC is a non-profit unincorporated association with headquarters in New York and the remaining allegations therein are denied.

3. In answering Paragraph 2, Count I, it is only admitted that the Plaintiff Diocese is a South Carolina non-profit corporation but it is denied that it is subordinate to TEC and denied that it is acting under an unlawful defacto control of individuals by individual counterclaim Defendants as alleged therein. All actions of the Plaintiff Diocese are lawful and in accordance with the laws of the State of South Carolina.

4. In answering Paragraph 3, Count I, it is only admitted that the Plaintiff Trustees is a South Carolina non-profit corporation but it is denied that it is subordinate to TEC and denied that it is currently under the unlawful defacto control of others. It is specially admitted that the Trustees is a valid South Carolina corporate entity lawfully acting in accordance with its governing documents and the laws of the State of South Carolina.

5. In answering Paragraph 4, Count I, it is admitted only that the said individuals identified therein reside in the State of South Carolina in various communities. The remaining allegations therein are denied.

6. In answering Paragraph 5, Count I, it is admitted that the individuals identified therein reside in the State of South Carolina and the remaining allegations therein are denied.

7. As to the allegations of Paragraphs 6 through 21, Count I, entitled “The Structure and Governance of the Episcopal Church” the allegations of Paragraphs 8, 10, and 11 are admitted but the remaining allegations are denied in that the Plaintiffs are not subordinate units of TEC, are not subject to TEC’s governance, and are no longer associated with TEC. Further,

the Plaintiffs are South Carolina non-profit corporations with each having separate governing documents and each operating in accordance with the laws of the State of South Carolina.

8. As to the allegations in Paragraphs 22 through 27, entitled “Dioceses of The Episcopal Church”, said allegations therein are denied in that the Plaintiff Diocese is not a subordinate unit of TEC and not subject to its Constitutions and Canons.

9. With respect to the allegations in Paragraphs 28 through 33, Count I, entitled “The Episcopal Church’s Rule Governing Property”, it is denied that the canons referenced in said allegations are not applicable to the Plaintiffs in that the Plaintiffs are South Carolina non-profit corporations subject to the laws of the State of South Carolina and no Plaintiff is associated with TEC.

10. With respect to the allegations in Paragraphs 34 through 41, Count I, entitled “The Episcopal Church Diocese” it is admitted that the Plaintiff Diocese was associated with TEC on multiple occasions and that such was voluntary. It is further admitted that the Plaintiff Diocese was an unincorporated association from 1785 to November 14, 1973 when it became a South Carolina nonprofit corporation, that on October 15, 2010, it amended its Constitution and that in October, 2012, the Plaintiff Diocese, by a duly enacted Resolution, disassociated itself from TEC. The Plaintiff Diocese is not subordinate entity of TEC and even though it has been previously associated with TEC, TEC has no right of control over the Answering Plaintiff Diocese. As to the Plaintiff Trustees, it is a South Carolina non-profit corporation not subject to the control of TEC.. All remaining allegations in the aforesaid Paragraphs are denied.

11. With respect to the allegations in Paragraphs 42 through 52, Count I, entitled “The Current Dispute” it is admitted that the Plaintiff Diocese, on October 15, 2010, amended it’s Constitution, in accordance with the laws of the State of South Carolina, and such

amendment removed its accession to the Canons of the Defendant TEC. It is further admitted that the Plaintiff Diocese, through its Board of Directors and Standing Committee, voted, on October 2, 2012, to withdraw its membership from TEC and such action was in accordance with the laws of the State of South Carolina and its governing documents. It is specifically denied that actions by the Plaintiff Diocese, and its governing body, are invalid and, as such, the allegations of Paragraphs 44 and 45 are denied. Any and all allegations inconsistent with the admissions as set forth herein are specifically denied.

12. With respect to the allegations in Paragraphs 1 through 7, Count II, said allegations are denied.

13. With respect to the allegations in Paragraphs 1 through 5, Count III, said allegations are denied.

14. With respect to the allegations in Paragraphs 1 through 3, Count IV, said allegations are denied.

15. With respect to the allegations in Paragraphs 1 through 9, Count V, said allegations are denied.

16. With respect to the allegations in Paragraphs 1 through 5, Count VI, said allegations are denied.

17. With respect to the allegations in Count VII, Paragraphs 1 through 30, said allegations are denied except that the Plaintiff Parish, ***All Saints Protestant Episcopal Church, Inc.***, is a South Carolina non-profit corporation and is governed in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

18. With respect to Count VIII, all allegations therein are denied except that the Plaintiff ***Christ St. Paul's Episcopal Church*** is a South Carolina non-profit corporation

transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

19. With respect to Count IX, all allegations therein are denied except that the Plaintiff ***Christ the King, Waccamaw*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

20. With respect to Count X, all allegations therein are denied except that the Plaintiff ***Church of the Cross, Inc.*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

21. With respect to Count XI, all allegations therein are denied except that the Plaintiff ***Church of the Holy Comforter*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

22. With respect to Count XII, all allegations therein are denied except that the Plaintiff ***Church of the Redeemer*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

23. With respect to Count XIII, all allegations therein are denied except that the Plaintiff ***Holy Trinity Episcopal Church*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

24. With respect to Count XIV, all allegations therein are denied except that the Plaintiff ***Saint Lukes Church, Hilton Head*** is a South Carolina non-profit corporation

transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

25. With respect to Count XV, all allegations therein are denied except that the Plaintiff ***St. Matthews Church*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

26. With respect to Count XVI, all allegations therein are denied except that the Plaintiff ***St. Bartholomews Episcopal Church*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

27. With respect to Count XVII, all allegations therein are denied except that the Plaintiff ***St. Davids Church*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

28. With respect to Count XVIII, all allegations therein are denied except that the Plaintiff ***St. James Church, James Island, SC*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

29. With respect to Count XIX, all allegations therein are denied except that the Plaintiff ***St. John's Episcopal Church of Florence, South Carolina*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

30. With respect to Count XX, all allegations therein are denied except that the Plaintiff ***St. Matthias Episcopal Church, Inc.*** is a South Carolina non-profit corporation

transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

31. With respect to Count XXI, all allegations therein are denied except that the Plaintiff ***St. Paul's Episcopal Church of Bennettsville, Inc.*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

32. With respect to Count XXII, all allegations therein are denied except that the Plaintiff ***St. Paul's Episcopal Church of Conway*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

33. With respect to Count XXIII, all allegations therein are denied except that the Plaintiff ***The Church of St. Luke and St. Paul, Radcliffeboro*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

34. With respect to Count XXIV, all allegations therein are denied except that the Plaintiff ***The Church of Our Savior of the Diocese of South Carolina*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

35. With respect to Count XXV, all allegations therein are denied except that the Plaintiff ***The Church of the Epiphany (Episcopal)*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

36. With respect to Count XXVI, all allegations therein are denied except that the Plaintiff ***The Church of the Good Shepherd, Charleston, SC*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

37. With respect to Count XXVII, all allegations therein are denied except that the Plaintiff ***The Church of the Holy Cross*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

38. With respect to Count XXVIII, all allegations therein are denied except that the Plaintiff ***The Church of the Resurrection, Surfside*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

39. With respect to Count XXIX, all allegations therein are denied except that the Plaintiff ***The Protestant Episcopal Church of the Parish of Saint Philip, In Charleston, In the State of South Carolina*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

40. With respect to Count XXX, all allegations therein are denied except that the Plaintiff ***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*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

41. With respect to Count XXXI, all allegations therein are denied except that the Plaintiff ***The Vestry and Church Wardens of St. Jude's Church of Walterboro*** is a South

Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

42. With respect to Count XXXII, all allegations therein are denied except that the Plaintiff ***The Vestry and Church Wardens of the Episcopal Church of the Parish of Prince George Winyah*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

43. With respect to Count XXXIII, all allegations therein are denied except that the Plaintiff ***The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Helena and The Parish Church of St. Helena Trust*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

44. With respect to Count XXXIV, all allegations therein are denied except that the Plaintiff ***The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Matthews*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

45. With respect to Count XXXV, all allegations therein are denied except that the Plaintiff ***The Vestry and Wardens of St. Paul's Church, Summerville*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

46. With respect to Count XXXVI, all allegations therein are denied except that the Plaintiff ***Trinity Church of Myrtle Beach*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

47. With respect to Count XXXVII, all allegations therein are denied except that the Plaintiff ***Trinity Episcopal Church*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

48. With respect to Count XXXVIII, all allegations therein are denied except that the Plaintiff ***Trinity Episcopal Church, Pinopolis*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

49. With respect to Count XXXIX, all allegations therein are denied except that the Plaintiff ***Vestry and Church Wardens of the Episcopal Church of the Parish of Christ Church*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

50. With respect to Count XL, all allegations therein are denied except that the Plaintiff ***Vestry and Church Wardens of the Episcopal Church of the Parish of St. John's Charleston County*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

51. With respect to Count XLI, all allegations therein are denied except that the Plaintiff ***St. Andrews Church-Mt. Pleasant*** is a South Carolina non-profit corporation transacting business in accordance with its governing documents and pursuant to the laws of the State of South Carolina.

THIRD DEFENSE

52. The Defendants have improperly removed this civil action from South Carolina State Court to Federal Court even though there is no basis for the Federal Court to exercise

jurisdiction over the State law claims alleged by the Plaintiffs in their Second Amended Complaint.

FOURTH DEFENSE

53. The Answering Plaintiffs assert waiver and estoppel as defenses to the Defendant TEC counterclaims.

FIFTH DEFENSE

54. The Answering Plaintiffs assert laches and unclean hands as complete defenses to the counterclaims.

SIXTH DEFENSE

55. The actions of the Defendant TEC constitute bad faith and as such Defendant's counterclaims should be dismissed.

SEVENTH DEFENSE

56. The Defendant TEC has no standing to assert any claims against either of the Answering Plaintiffs.

EIGHTH DEFENSE

57. The Answering Plaintiffs are the sole owners of its real and personal property and the Defendant TEC has no right, title, or interest thereto.

NINTH DEFENSE

58. This Answering Plaintiff is a South Carolina non-profit corporation which is not subordinate nor a unit to any party in this action.

TENTH DEFENSE

59. The Answering Plaintiffs, to the extent of its applicability, are entitled to all protections and immunities provided under the South Carolina Non-Profit Corporation Act, Section 33-31-101 et seq. of the Code of Laws of the State of South Carolina.

ELEVENTH DEFENSE

60. The applicable statute of limitations bars all counterclaims of the Defendant TEC.

WHEREFORE, having replied to the Counterclaims of the Defendant The Episcopal Church, the Answering Plaintiffs pray that the said counterclaims be dismissed with prejudice and that the claims of the Answering Plaintiffs, as set forth in their Second Amended Complaint, be granted, together with such other and further relief may deem just and proper.

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The Trustees of the Protestant Episcopal Church In
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By: /s/ C. Alan Runyan

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April 18, 2013

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; St. Luke's)
Church, Hilton Head Island;)
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)

Case No. 2013-CP-18-00013

**MOTION FOR CLARIFICATION
OF JURISDICTION AND FOR
OTHER RELIEF**

FILED - RECORDED
2019 MAR 23 PM 4:56
CHERYL DORRAN
CLERK OF COURT
DORCHESTER COUNTY

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	)
DEFENDANTS.	)

Plaintiffs, by and through their undersigned counsel, move the Court for an order of clarification of jurisdiction with respect to the five (5) opinions that comprise the remitted decision of the South Carolina Supreme Court, *The Protestant Episcopal Church in the Diocese of South Carolina, et.al. v. The Episcopal Church, et. al.*, 421 S.C. 211, 800 S.E. 2d 82 (2017) ("The Decision"). This action was designated complex and assigned to Judge Diane S. Goodstein on January 29, 2013. Judge Goodstein assigned this action to Judge Edgar Dickson for administrative purposes on December 29, 2017. As a complex case, the Plaintiffs have asked Judge Dickson that it be assigned to a single judge. ¹

The grounds for the motion are as follows:

Most of the Plaintiffs in this case have filed a petition for writ of certiorari in the Supreme Court of the United States, seeking that Court's review of the Supreme Court of South Carolina's decision. *See* Petition for Writ of Certiorari, *The Protestant Episcopal Church in the Diocese of*

¹ A related case arising out of the same factual background was filed by plaintiffs in Dorchester County on November 19, 2017, 2017-CP-18-1909. A motion has been filed for it to be treated as a complex case and assigned to a single Judge. *See* Letter of C. Alan Runyan to the Honorable Edgar Dickson, March 14, 2018 (without enclosures). Exhibit 1.

South Carolina et al. v. The Episcopal Church et al., No. 17-1136 (U.S. Feb. 9, 2018). Exhibit 2. On February 27, 2018, the Supreme Court of the United States requested that Defendants respond to the petition; even if the Supreme Court of the United States denies the pending petition, this Court must exercise jurisdiction to clarify issues that remain regarding the Supreme Court of South Carolina's decision.

Chief Justice Beatty, applying a hybrid version of neutral principles of law, found that the diocesan beneficiary of Camp St. Christopher is not Plaintiff, The Protestant Episcopal Church In The Diocese Of South Carolina ("The Diocese"). On this issue, Acting Justice Toal described the result of the five opinions as follows: "with regard to Camp St. Christopher, Chief Justice Beatty, Justice Hearn and Acting Justice Pleicones would hold that title is in the trustee corporation for the benefit of the associated diocese [ECSC], whereas Justice Kittredge and I would hold that the trustee corporation holds title for the benefit of the disassociated diocese [The Diocese]." ²

Rather than enforcing whatever rights the Decision provided them in this Court, the defendants have filed motions in a separate federal court action brought in 2013 under the Lanham Act. These motions attempt to displace this Court of its jurisdiction to adjudicate purely state law issues that remain to be decided in light of the Decision (or in light of a potential decision of the Supreme Court of the United States). These new motions ask the federal court to add 65+ parties (including all the Plaintiffs in this action) and state law claims arising out of issues already present in this action and over which the courts of this State have already exercised jurisdiction. ³ Some of

² Chief Justice Beatty does not state that this is an incorrect interpretation of his opinion.

³ See Bishop vonRosenberg and Adams' Motion to Amend Their Complaint to Join Parties and Claims, *The Right Reverend Charles G. vonRosenberg et al. v. The Right Reverend Mark J. Lawrence et al.*, No. 13-cv-587 (D.S.C. March 1, 2018), Doc. 124; Motion of the Episcopal Church to Amend Its Amended Complaint-In-Intervention to Join Parties and Claims, *id.*, Doc. 125; Motion to Intervene and Join Parties and Claims By the Episcopal Church in South Carolina, *id.*, Doc. 126.

those claims, and the requested addition of the Trustees as a party, are based on the assertion that one defendant, the Episcopal Church in South Carolina (“ECSC”) is the “sole beneficiary” of all the Trustees’ assets. In other words, notwithstanding that the plain language of Chief Justice Beatty’s decision speaks solely to Camp St. Christopher, the Defendants do not agree that the opinion of Chief Justice Beatty on the appropriate beneficiary of trustee assets is limited to Camp St. Christopher. Among these proposed claims that Defendants seek to bring before the federal court is a state law breach of trust claim against the Trustees.

Because of the alleged competing fiduciary duties and the attempt to add the Trustees as parties to the federal action to assert a state breach of trust claim against them, an issue that is clearly within this court’s jurisdiction arising out of the Decision, a hearing is requested at the Court’s earliest convenience.

To the extent this Court determines that other State law issues remain to be decided in light of the Decision, this Court should properly exercise jurisdiction over those issues. For example, the dissenting opinion of Justice Toal, in footnote 43 & 49, contains a clerical error on the name of a parish which the Defendants agree did not expressly accede to the Dennis Canon, The Vestries and Churchwardens of the Parish St. Andrew, (commonly called “Old St. Andrews Parish Church”). Old St. Andrews Parish Church has sought correction of this error with the Defendants and has received written indication of their consent to correct, but has been unable to secure agreement on a consent order.

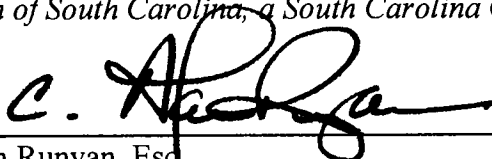
Pending before the United States Supreme Court is movant’s Petition for Writ of Certiorari. Plaintiffs take the position that this Court should clarify that it has jurisdiction over any issues that remain to be decided in light of the Decision, though this Court should stay its hand until the Supreme Court of the United States decides the pending cert petition.

A hearing is respectfully requested at the Court's earliest convenience to address this motion.

March 22, 2018

Respectfully submitted,

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FILED-RECORDED

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER)

2018 MAY -8 PM 2:11

FOR THE FIRST JUDICIAL CIRCUIT

The Protestant Episcopal Church In The
Diocese Of South Carolina, *et al.*

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Case No. 2013-CP-1800013

v.)

The Episcopal Church, *et al.*)

**DEFENDANTS' PETITION
FOR EXECUTION
AND FURTHER RELIEF ON
DECLARATORY JUDGMENTS
OF THE SOUTH CAROLINA
SUPREME COURT AND FOR
THE APPOINTMENT OF A
SPECIAL MASTER**

Defendants, The Episcopal Church (TEC) and The Episcopal Church in South Carolina (TECSC or the Associated Diocese), submit this petition under the authority of the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-120, Rules 69 and 70, SCRCP, S.C. Code Ann. §§ 15-39-10, et seq., and any other applicable authorities under South Carolina law, seeking the execution of and further relief required by the Opinion and declaratory judgments rendered by the Supreme Court of South Carolina in this matter on August 2, 2017, and for the appointment of a Special Master who will be able and authorized to enhance an orderly and expeditious resolution of all such issues.

I.

PROCEDURAL BACKGROUND

On August 2, 2017, the South Carolina Supreme Court issued a final judgment in this case. Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church, 412 S.C. 211, 806 S.E.2d 82 (2017). On November 17, 2017, a petition for a rehearing was denied and the remittitur issued. On February 9, 2018, some of the Plaintiffs filed a petition for

writ of certiorari to the United States Supreme Court, which is pending.¹ The filing of that petition did not stay the decision of the South Carolina Supreme Court, and the final judgment of the South Carolina Supreme Court should not be held in abeyance and should be enforced. A copy of remittitur together with the August 2, 2017 Opinion containing its declaratory judgments is attached hereto as Exhibit A.

There is a related case pending in the United States District Court, vonRosenberg et al. v. Lawrence et al., 2:13-cv-00587-RMG (D.S.C. Filed March 5, 2013). The South Carolina Supreme Court expressly deferred, in its August 2, 2017 Opinion, to the federal court to resolve the trademark and related claims between the parties to this case.

For the purpose of attempting to fully and completely resolve all of the issues between the parties in a single action, The Episcopal Church and the Associated Diocese recently asked the federal court to exercise supplemental jurisdiction over trust claims between the parties and provide appropriate relief required by the August 2, 2017 Opinion of the South Carolina Supreme Court. Judge Gergel, in an Order and Opinion dated April 16, 2018, declined to exercise such supplemental jurisdiction for property ownership distribution issues mandated by the South Carolina Supreme Court and opined that The Episcopal Church and the Associated Diocese should return to this Court to initiate a proceeding to enforce the August 2, 2017 declaratory judgments issued by the South Carolina Supreme Court to take “legal possession” of the property. A copy of Judge Gergel’s Order and Opinion is attached hereto as Exhibit B.

There is another action pending in this Court generally referred to as a Betterment Action, which was instituted under the authority of S.C. Code Ann. § 27-27-10. It is not related to or affected by the relief sought in this Petition. A motion to dismiss it is pending.

¹ Notably, the petition did not raise and therefore did not preserve any issue regarding the non-parish diocesan property that is not related to the parish property issues. The petition raised

II.

FACTUAL BACKGROUND

Plaintiffs announced their disaffiliation from The Episcopal Church and the Associated Diocese in late 2012. Since then, the diocesan and parish property has been in Plaintiffs' possession and control. That property includes land and buildings, along with considerable funds and other personal property such as books, silver, and historical archives.

Plaintiffs continue to possess and control that property in complete disregard of the August 2, 2017 Opinion of the South Carolina Supreme Court, which recognized The Episcopal Church's and the Associated Diocese's interests in the diocesan property and the property of twenty-eight of the parishes.

The Episcopal Church and the Associated Diocese seek the intervention of this Court to effect an orderly transition of possession and control of the property to which they are entitled by the judgment of the South Carolina Supreme Court.

The relief required to effect the judgment of the Supreme Court is therefore requested, as detailed below.

III.

RELIEF REQUESTED

This petition to enforce and provide further relief required by the declaratory judgments of the August 2, 2017 Opinion of the South Carolina Supreme Court is made pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-120, Rules 69 and 70, SCRPC, S.C. Code Ann. §§ 15-39-10 et seq., and any other applicable authorities under South Carolina law.

The Uniform Declaratory Judgments Act, S.C. Code Ann. §15-53-120 provides as

follows:

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

S.C. Code Ann. §15-53-120; see also S.C. Code Ann. § 15-53-130 (“This chapter . . . is to be liberally construed and administered.”). This Court has jurisdiction to enforce and provide further relief under this statute.

It is clear, however, that this Court does not have jurisdiction to consider Plaintiffs’ pending motion to “clarify” the August 2, 2017 Opinion of the South Carolina Supreme Court. “The judgment of the South Carolina Supreme Court is a final judgment and is the law of the case.” Judge Gergel’s April 16, 2018 Order and Opinion at 6, vonRosenberg, 2:13-cv-00587-RMG. See also Hampton Building Supply, Inc. v. Wilson, 328 S.E.2d 635, 637, 285 S.C. 135, 138 (1985) (“Once jurisdiction vested in the Supreme Court it would not re-vest in the Circuit Court except by order of the Supreme Court, such as for example, by granting a new trial.”); Mueller v. Myrtle Beach Golf and Yacht Club, 438 S.E.2d 248, 250, 313 S.C. 412, 415 (1993) (distinguishing Hampton and holding that the lower court could award statutory attorney’s fees after remittitur under the limited jurisdiction the lower court has to “enforce the judgment and take any action consistent with the Supreme Court ruling”).

1. The Diocesan Property

With respect to the diocesan property, this Court should enforce and provide further relief based upon the August 2, 2017 Opinion of the South Carolina Supreme Court by ordering that

the members of the Board of Trustees elected by the Associated Diocese be installed as the Board of the Trustees of the Protestant Episcopal Church in the Diocese of South Carolina (the “Trustees”) to hold the diocesan property in trust for Associated Diocese, in accordance with the Trustees’ legislative charter, as further explained below.

All diocesan property is held in trust by the Trustees for the benefit of “the Protestant Episcopal Church for the Diocese of South Carolina,” also referred to as “said Diocese” in “said Church,” according to the legislative charter of the Trustees, the 1880 Act of the General Assembly of South Carolina (the “Act”), as amended by the 1902 Act:

. . . Section 1 . . . That the Bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina . . . are hereby appointed trustees for the purpose of holding in trust any property heretofore given or acquired, or hereafter to be given or acquired, for objects connected with said Church, in said Diocese . . .

. . . Sec. 3 The title to the real and personal property described in the first Section shall become vested in the said trustees by operation of law without further deed or conveyance other than that which is therein specified, and the trustees shall report annually to the Convention of the Diocese of the said Church.

1880 Act.

. . . Sec. 3. That the Trustees herein provided for and incorporated and their successors in office are hereby constituted such Trustees for the purpose of holding any and all property . . .

1902 Act.

A copy of that legislative charter, the 1880 Act, as amended by the 1902 Act, is attached as Exhibit C.

The August 2, 2017 Opinion of the South Carolina Supreme Court recognizes that the beneficiary of the Trustees, referred to in the legislative charter as “the Protestant Episcopal Church for the Diocese of South Carolina,” as well as “said Diocese” in “said Church,” is the

Associated Diocese; and is not the dissociated diocese led by Bishop Lawrence named in this case as a Plaintiff:

. . . title is in the trustee corporation for the benefit of the associated diocese . . .

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting and summarizing the majority decision on diocesan property); id. at 251, n.29 (Beatty, J., “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.”); id. at 231 (Pleicones, J., “...the Associated Diocese as the true Lower Diocese of South Carolina...”); id. at 248 (Hearn, J., “...the Appellants represent the true Lower Diocese of the Protestant Episcopal Church in South Carolina and are therefore entitled to all property...”).

The legislative charter of the Trustees, the 1880 Act, as amended by the 1902 Act, gives the beneficiary of the Trustees, the Associated Diocese, the right to elect its Board:

Sec. 2. That a Board of Trustees is hereby incorporated to be known as ‘The Trustees of the Protestant Episcopal Church in South Carolina,’ which Board shall be constituted of not more than nine nor less than five members to be elected at the annual Council in and for the said church in the said Diocese in accordance with such canon or canons as by such Trustees may from time to time be adopted.

1902 Act.

Therefore, the Court should enforce the declaratory judgment contained in the August 2, 2017 Opinion of the South Carolina Supreme Court by ordering that members elected by the Associated Diocese be installed as the Board of the Trustees to hold the diocesan property in trust for the Associated Diocese.

We anticipate that this will effectuate a full and complete transfer of possession and control of the diocesan property, consistent with the August 2, 2017 judgment of the South

Carolina Supreme Court. However, we request that the Court grant any further proper or necessary relief to accomplish that imperative, including but not limited to, and in the alternative, relief provided under the South Carolina Trust Code, pursuant to S.C. Code Ann. §§62-7-706 & 1001, which allows the Court to compel/remove/replace/enjoin trustees, or appoint a special fiduciary to take possession of the property, or S.C. Code Ann. §62-7-412, which allows the Court to terminate the trust for ineffective and/or impractical administration and to distribute the property.

2. *The Parish Property*

With respect to the real and personal property of twenty-eight parishes, this Court should enforce and provide further relief based upon the August 2, 2017 Opinion of the South Carolina Supreme Court by transferring title to the parish property from the individual parish corporations to The Episcopal Church and the Associated Diocese, by requiring the appropriate Plaintiffs to execute all necessary deeds or instruments of title, or by transferring the title by Court order, as further explained below.

All of the property of the twenty-eight parishes is held in trust by the parish corporations, according to the Dennis Canon, adopted by The Episcopal Church in 1979, which provides as follows:

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.

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 221 (reciting the Dennis Canon).

According to the August 2, 2017 Opinion of the South Carolina Supreme Court, accession to the Dennis Canon by the twenty-eight parish corporations imposed trusts on the parish property under state law, and upon their disaffiliation, “title” to their property belonged to The Episcopal Church and the Associated Diocese:

[W]ith 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;

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting and summarizing the majority’s decision on parish property).

Therefore, the Court should enforce the August 2, 2017 Opinion of the South Carolina Supreme Court, by transferring title to the parish property from the parish corporations to The Episcopal Church and the Associated Diocese, by requiring Plaintiffs to execute any necessary deeds or instruments of title, or issuing the same by Court order. See Judge Gergel’s April 16, 2018 Order and Opinion at 8, 9, and 10, vonRosenberg et al. v. Lawrence et al., 2:13-cv-00587-RMG (D.S.C. Filed March 5, 2013) (“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 . . . 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 of the property . . . 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 form 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.”).

Upon receiving the deeds or other instruments of title, The Episcopal Church and the Associated Diocese may form new parish corporations and transfer the deeds or instruments of title to real and personal property to them thereby allowing them hold and use the property operating as Episcopal parishes in accordance with the hierarchical governance of The Episcopal Church and the Associated Diocese contained in the Constitution and Canons of each.

Ordering such relief will enable The Episcopal Church and the Associated Diocese to take legal possession and control of the property without the Court having to supervise or manage Plaintiffs’ vestries. Plaintiffs could be permitted to retain their parish corporations, without the trust property. Plaintiffs could use those corporations to continue to operate their religious organizations, if they so choose.²

It is anticipated that this will effectuate a full and complete transfer of possession and control of the parish property, consistent with the August 2, 2017 Opinion of the South Carolina Supreme Court. However, we request that the Court grant any further proper or necessary relief to accomplish that objective, including but not limited to, and in the alternative, relief provided under the South Carolina Trust Code, pursuant to S.C. Code Ann. §§62-7-706 & 1001, which allows the Court to compel/remove/replace/enjoin trustees, or appoint a special fiduciary to take possession of the property, or S.C. Code Ann. §62-7-412, which allows the Court to terminate the trust for ineffective and/or impractical administration and to distribute the property.

² Plaintiffs will have to amend the names of their parish corporations if The Episcopal Church and the Associated Diocese prevail in the federal trademark case.

IV.

APPOINTMENT OF A SPECIAL MASTER

The relief requested herein involves the transfer of a substantial amount of real and personal property, involving many parties. Petitioners believe that the orderly transfer of the property and the resolution of any disputes and controversies that might arise in the execution of such matters will be greatly enhanced by the appointment of a Special Master who will be able and authorized to enhance an orderly and expeditious resolution of all such issues. Accordingly, the appointment of a Special Master, with experience in complex property matters and with the capacity to dedicate the necessary time and attention to this matter, is appropriate.

We respectfully request that the parties be given the opportunity to propose available, qualified, and impartial candidates for the Court to consider as it selects and appoints a Special Master for these purposes.

(Signature page to follow)

May 8, 2018

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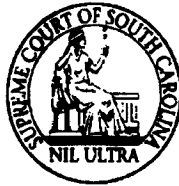
Counsel for The Episcopal Church

EXHIBIT A

FILED-RECORDED

2018 MAY -8 PM 2:11

**CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY**



FILED-RECORDED

2018 MAY -8 PM 2:11

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
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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

FILED-RECORDED
2017 NOV 20 PM 3:08
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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

ROA_ 0682

cc:

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Jason S. Smith, Esquire
Allan R. Holmes, Sr., Esquire
David Booth Beers, Esquire
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C. Mitchell Brown, Esquire
Henry Pickett Wall, Esquire
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Charles J. Cooper, Esquire
Matthew Terry Richardson, Esquire
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 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,
of Charleston, David Booth Beers and Mary E. Kostel, both of
Goodwin Procter, LLP, of Washington, DC, Blake A. Hewitt and John
S. Nichols, both of Bluestein Nichols Thompson & Delgado, of
Columbia, Thomas S. Tisdale and Jason S. Smith, both of Hellman
Yates & Tisdale, of Charleston and R. Walker Humphrey, II, of Waters
& Kraus, of Dallas, Texas, for Appellants.

C. Alan Runyan and Andrew S. Platte, both of Speights & Runyan, of Beaufort, Henrietta U. Golding and Amanda Bailey, both of McNair Law Firm, of Myrtle Beach, C. Mitchell Brown, of Nelson, Mullins, Riley & Scarborough, of Columbia, Charles H. Williams, of Williams & Williams, of Orangeburg, David Cox, of Barnwell Whaley Patterson & Helms, of Charleston, Thomas C. Davis, of Harvey & Battey, of Beaufort, Harry Easterling, Jr., of Bennettsville, G. Mark Phillips, of Nelson, Mullins, Riley & Scarborough, of Charleston, W. Foster Gaillard and Henry Grimball, both of Womble, Carlyle, Sandridge & Rice, of Charleston, Keith McCarty, of McCarty Law Firm, of Charleston, William A. Scott, of Pedersen & Scott, of Charleston, Mark Evans, of Charleston, David B. Marvel and David L. DeVane, both of Prenner Marvel, of Charleston, John Furman Wall, III, of Mt. Pleasant, Allan P. Sloan, III and Joseph C. Wilson, IV, both of Pierce, Hens, Sloan & Wilson, of Charleston, C. Pierce Campbell, of Turner, Padget, Graham & Laney, of Florence, Robert R. Horger, of Horger, Barnwell & Reid, of Orangeburg, Saunders M. Bridges, of Aiken Bridges Elliott Tyler & Saleeby, of Florence, Lawrence B. Orr, of Orr Elmore & Ervin, of Florence, Francis M. Mack, of St. Matthews, Robert S. Shelton, of The Bellamy Law Firm, of Myrtle Beach, William A. Bryan, of Bryan & Haar, of Surfside Beach, Harry Oxner, of Oxner & Stacy, of Georgetown, Susan MacDonald and Jim Lehman, both of Nelson, Mullins, Riley & Scarborough, of Myrtle Beach, Brandt Shelbourne, of Shelbourne Law Firm, of Summerville, Stephen S. McKenzie, of Coffey, Chandler & Kent, of Manning, John B. Williams, of Williams & Hulst, of Moncks Corner, George J. Kefalos and Oana D. Johnson, both of George J. Kefalos, P.A., of Charleston, Stephen Spitz, of Charleston and Thornwell F. Sowell, III and Bess J. Durant, both of Sowell Gray Stepp & Lafitte, LLC, of Columbia, for Respondents.

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 Jefforts 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 vonRosenberg 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. Milivojevic*, 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 *AH 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. Milivojeovich*, 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 *Milivojeovich* 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 Jefferts 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. 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.

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. Milivojevich*, 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.

EXHIBIT B

FILED-RECORDED
2018 MAY -8 PM 2:13
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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

The Right Reverend Charles G.
vonRosenberg, et al.,

Plaintiffs,

v.

The Right Reverend Mark J. Lawrence,
et al.,

Defendants.

Civil Action No. 2:13-587-RMG

ORDER AND OPINION

FILED-RECORDED
2018 MAY -8 PM 2:13
KERRI GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

This matter is before the Court on Bishops vonRosenberg and Adams's motion to amend their complaint, to join parties, and to add claims; The Episcopal Church of the United States' ("TEC") motion to amend its complaint-in-intervention, to join parties, and to add claims; and The Episcopal Church in South Carolina's ("ECSC") motion to intervene; and Bishop Lawrence's motion to amend his answer to TEC's complaint-in-intervention. For the reasons set forth below, the Court grants in part and denies in part Bishops vonRosenberg and Adams's motion to amend, TEC's motion to amend, and ECSC's motion to intervene. The Court grants Bishop Lawrence's motion to amend his answer to TEC's complaint-in-intervention.

I. Background

Bishop vonRosenberg alleges that The Episcopal Church removed Bishop Lawrence as the Bishop of the Diocese of South Carolina and installed Bishop vonRosenberg in his place. Bishop Lawrence denies that he was removed, instead contending the Diocese of South Carolina (hereinafter, the "Lawrence Diocese") withdrew from TEC. On January 4, 2013, the Lawrence Diocese and certain associated churches and parishes sued TEC in the Dorchester County Court of Common Pleas, arguing the Lawrence Diocese had dissociated from TEC and seeking

“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 Spong, 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.



Richard Mark Gergel
United States District Court Judge

April 16, 2018
Charleston, South Carolina

EXHIBIT C

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2018 MAY -8 PM 2:15
CHEM. GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

ACTS
AND
JOINT RESOLUTIONS
OF THE
GENERAL ASSEMBLY
OF THE
STATE OF SOUTH CAROLINA,
==
PASSED AT THE
REGULAR SESSION OF 1879 AND EXTRA SESSION OF 1880.

PRINTED BY ORDER OF THE GENERAL ASSEMBLY, AND DESIGNED TO
FORM A PART OF THE SEVENTEENTH VOLUME OF THE STATUTES
AT LARGE, COMMENCING WITH THE ACTS OF 1879.

COLUMBIA, S. C.
CALVO & PATTON, STATE PRINTERS.
1880.

FILED-RECORDED
2018 MAY -8 PM 2:15
CLERK OF COURT
DORCHESTER COUNTY

SEC. 2. That the County Commissioners of Clarendon County be, and are hereby, required and authorized to open and clear as a public highway a road in Clarendon County commencing at the Telegraph road, at or near Martin Minus's, to the Raccoon road, at or near the Norris plantation, and that said County Commissioners, within the present year, A. D. 1880, do proceed to open and work said road in conformity with the road laws of this State.

A. D. 1880.

County Commissioners to open road in Clarendon.

Approved February 20, 1880.

AN ACT TO AMEND SECTION 8 OF AN ACT ENTITLED "AN ACT TO AMEND CHAPTER XLV OF TITLE XI, PART I, OF THE GENERAL STATUTES, RELATING TO THE REPAIRS OF HIGHWAYS AND BRIDGES," SO FAR AS THE SAME RELATES TO THE COUNTY OF NEWBERRY. No. 221.

Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That Section 8 of an Act entitled "An Act to amend Chapter XLV of Title XI, Part I, of the General Statutes, relating to the repairs of highways and bridges," be, and the same is hereby, amended, so far as the same relates to the County of Newberry, by striking out the word "eighteen," on the first and second lines thereof, and inserting the word "sixteen" in place of the same; and by striking out the words "forty-five," on the second line thereof, and inserting the words "fifty-five" in place of the same.

Ages liable to work roads.

Approved February 20, 1880.

AN ACT TO GRANT CERTAIN POWERS TO THE BISHOP AND STANDING COMMITTEE OF THE PROTESTANT EPISCOPAL CHURCH FOR THE DIOCESE OF SOUTH CAROLINA. No. 222.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the Bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina, and their successors in office or a majority of them, are hereby appointed trustees for the purpose of holding in trust any property heretofore given or acquired, or hereafter to be given or acquired,

Trustees.

STATUTES AT LARGE

A. D. 1880. for objects connected with said Church, in said Diocese, other than that now held by other corporations, and also for all property belonging to any of the corporations or churches or dormant parishes formerly connected with said Church, but which have now ceased to have active operation, and also of any property now or hereafter belonging to other churches or corporations in the said Diocese which may desire to surrender or convey the same to the said trustees, or whose charters of incorporation may have expired.

Trustees incorporated.

SEC. 2. The said trustees are hereby incorporated as a body politic and corporate by the name of the Trustees of the Protestant Episcopal Church in South Carolina, with all the powers of a corporate body, and may from time to time make such rules and by-laws for their government and for the management of the property under their charge as shall be approved by a majority of said trustees.

Property to come vested in Trustees.

SEC. 3. The title to the real and personal property described in the first Section shall become vested in the said trustees by operation of law without further deed or conveyance other than that which is therein specified, and the said trustees shall report annually to the Convention of the Diocese of the said Church.

Approved February 20, 1880.

No. 223. AN ACT TO MAKE APPROPRIATIONS FOR THE PAYMENT OF THE PER DIEM AND MILEAGE OF THE MEMBERS OF THE GENERAL ASSEMBLY, AND THE SALARIES OF THE SUBORDINATE OFFICERS AND EMPLOYEES THEREOF, FOR THE EXTRA SESSION COMMENCING FEBRUARY 10TH, 1880, AND OTHER OFFICERS AND MATTERS THEREIN NAMED.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the sum of twenty thousand dollars, if so much be necessary, be, and the same is hereby, appropriated to meet the expenses of the General Assembly at the extra session beginning February 10th, 1880, to be paid out of any money in the Treasury in preference to all other appropriations whatever, said sum to be paid out as follows :

Expenses of General Assembly.

Per diem.

For the payment of the per diem and mileage of the members of the General Assembly, eleven thousand one hundred dollars, or so much thereof as may be necessary.

Clerks.

For the pay of T. Stobo Farrow, Clerk of the Senate, and John T. Sloan, Clerk of the House of Representatives, each two hundred and fifty dollars during the session.

ACTS
AND
JOINT RESOLUTIONS
OF THE
GENERAL ASSEMBLY
OF THE
State of South Carolina,
PASSED AT THE
REGULAR SESSION OF 1902.

PRINTED BY ORDER OF THE GENERAL ASSEMBLY AND DESIGNED TO COM-
PLETE THE TWENTY-THIRD VOLUME OF THE STATUTES AT LARGE,
COMMENCING WITH THE ACTS OF THE REGULAR SESSION OF 1899.

COLUMBIA, S. C.
THE STATE COMPANY, STATE PRINTERS.
1902.

A. D. 1902.

meeting of the next General Assembly, to which he shall report the condition of the records and amount of work accomplished. "And there is hereby appropriated the sum of one thousand dollars for the purpose of providing suitable cases and receptacles for the preservation of the said documents and papers."

Approved the 27th day of February, A. D. 1902.

No. 612.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO GRANT CERTAIN POWERS TO THE BISHOP AND STANDING COMMITTEE OF THE PROTESTANT EPISCOPAL CHURCH FOR THE DIOCESE OF SOUTH CAROLINA," APPROVED FEBRUARY 20TH, 1880, AND TO SUBSTITUTE IN THEIR PLACE ANOTHER BOARD OF TRUSTEES.

Powers bishop and standing committee of Protestant Episcopal Church amended.

Whereas, in and by an Act entitled "An Act to grant certain powers to the Bishop and Standing Committee of the Diocese of South Carolina," approved February 20th, 1880, the Bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina and their successors in office and were appointed Trustees for the purpose of holding in trust any property heretofore given or acquired for objects connected with said church in said Diocese, other than that held by other corporations, and also for all property belonging to any of the corporations or churches or dormant parishes formerly connected with said church, but which may have ceased to have active operations and also of any property then or thereafter belonging to other churches or corporations which might desire to surrender or convey the same same to the said Trustees, or whose charter of incorporation might have expired.

And whereas, the said Bishop and members of the Standing Committee of the Diocese of the said church, at the request of the Council or Convention thereof, have memorialized the General Assembly to be relieved of the trust aforesaid and to substitute other Trustees in their place and stead.

Board of Trustees.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That the Bishop and members of the

Standing Committee of the said Diocese of the said church constituting under the Act aforesaid Trustees as aforesaid shall upon the election and organization of the Board of Trustees hereafter provided be relieved of and from the said trusts, and upon their accounting for the properties in their hands and transferring and turning over the same to the Trustees hereinafter provided, be discharged and exonerated therefrom.

A. D. 1872.

Sec. 2. That a Board of Trustees is hereby incorporated to be known as "The Trustees of the Protestant Episcopal Church in South Carolina," which Board shall be constituted of not more than nine nor less than five members to be elected at the annual Council in and for the said church in the said Diocese in accordance with such canon or canons as by such Trustees may from time to time be adopted.

Corporate name

Sec. 3. That the Trustees herein provided for and incorporated and their successors in office are hereby constituted such Trustees for the purpose of holding any and all property heretofore given to or acquired by the Bishop and members of the Standing Committee as Trustees under the Act aforesaid, of which this Act is amendatory, which may be transferred and turned over to them by said Trustees under this Act; and also for the purpose of receiving and holding any property heretofore or now held by any other corporation which may desire to surrender the same and shall voluntarily do so, and for the purpose also of receiving and holding any other property which may be given to them by will, donation, surrender or otherwise: *Provided, however,* And it is expressly declared to be the intention of this Act that the said Trustees shall 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 devised.

Powers of Trustees, succession.

Sec. 4. That the said Trustees constituted under this Act are hereby incorporated as a body politic by the name aforesaid, with all the powers of a corporate body, and may from time to time make such rules and by-laws for their government and for the management of the property under their charge as shall be approved by a majority of said Trustees.

By-laws, &c.

A. D. 1902.

Reports by.

Sec. 5. The Trustees hereinbefore provided for and incorporated shall report annually to the Council or Convention of the Episcopal Church in the Diocese of South Carolina a full and accurate statement of the funds and properties in their hands and of their investments thereof, also of their actings and doings as such Trustees.

Approved the 20th day of February, A. D. 1902.

No. 613.

AN ACT TO ALLOW THE COUNTY TREASURER OF ABBEVILLE COUNTY TO BORROW MONEY FOR SCHOOL PURPOSES, AND TO ALLOW THE COMMISSIONERS OF THE SINKING FUND TO LEND THE SAME.

Loan authorized for school purposes.

Section 1. Be it enacted by the General Assembly of the State of South Carolina: That the County Treasurer of Abbeville County, be, and hereby is, authorized and directed to borrow, from time to time as may be necessary, on his official note or notes or other similar official evidences of indebtedness, a sum or sums of money not exceeding ten thousand dollars in all, on the lowest rate of interest offered, not exceeding seven per cent. per annum, for the purpose of paying salaries of the teachers in the free public schools in said County, not including the School District of the town of Abbeville, and the said Treasurer is authorized to pledge for security such borrowed moneys the taxes levied for such purpose; and the Commissioners of the Sinking Fund, in their discretion, shall be allowed to lend to the County Treasurer said sum of ten thousand dollars herein authorized to be borrowed for school purposes, at a rate of five per cent. per annum interest, should they be so advised.

Approved the 25th day of February, A. D. 1902.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
The Protestant Episcopal Church In The	)	Case No. 2013-CP-1800013
Diocese Of South Carolina, <i>et al.</i>	)	
	)	
v.	)	DEFENDANTS' AMENDED
	)	PETITION FOR EXECUTION
	)	AND FURTHER RELIEF ON
The Episcopal Church, <i>et al.</i>	)	DECLARATORY JUDGMENTS
	)	OF THE SOUTH CAROLINA
	)	SUPREME COURT AND FOR
	)	THE APPOINTMENT OF A
	)	SPECIAL MASTER

Defendants, The Episcopal Church (TEC) and The Episcopal Church in South Carolina (TECSC or the Associated Diocese), submit this amended petition under the authority of the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-120, Rules 69 and 70, SCRC, S.C. Code Ann. §§ 15-39-10, et seq., and any other applicable authorities under South Carolina law, seeking the execution of and further relief required by the Opinion and declaratory judgments rendered by the Supreme Court of South Carolina in this matter on August 2, 2017, and for the appointment of a Special Master who will be able and authorized to enhance an orderly and expeditious resolution of all such issues.

I.

PROCEDURAL BACKGROUND

On August 2, 2017, the South Carolina Supreme Court issued a final judgment in this case. Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church, 412 S.C. 211, 806 S.E.2d 82 (2017). On November 17, 2017, a petition for a rehearing was denied and the remittitur issued. On February 9, 2018, some of the Plaintiffs filed a petition for

writ of certiorari to the United States Supreme Court, which is pending.¹ The filing of that petition did not stay the decision of the South Carolina Supreme Court, and the final judgment of the South Carolina Supreme Court should not be held in abeyance and should be enforced. A copy of remittitur together with the August 2, 2017 Opinion containing its declaratory judgments is attached hereto as Exhibit A.

There is a related case pending in the United States District Court, vonRosenberg et al. v. Lawrence et al., 2:13-cv-00587-RMG (D.S.C. Filed March 5, 2013). The South Carolina Supreme Court expressly deferred, in its August 2, 2017 Opinion, to the federal court to resolve the trademark and related claims between the parties to this case.

For the purpose of attempting to fully and completely resolve all of the issues between the parties in a single action, The Episcopal Church and the Associated Diocese recently asked the federal court to exercise supplemental jurisdiction over trust claims between the parties and provide appropriate relief required by the August 2, 2017 Opinion of the South Carolina Supreme Court. Judge Gergel, in an Order and Opinion dated April 16, 2018, declined to exercise such supplemental jurisdiction for property ownership distribution issues mandated by the South Carolina Supreme Court and opined that The Episcopal Church and the Associated Diocese should return to this Court to initiate a proceeding to enforce the August 2, 2017 declaratory judgments issued by the South Carolina Supreme Court to take “legal possession” of the property. A copy of Judge Gergel’s Order and Opinion is attached hereto as Exhibit B.

¹ Notably, the petition did not raise and therefore did not preserve any issue regarding the non-parish diocesan property that is not related to the parish property issues. The petition raised issues only as to parish property.

There is another action pending in this Court generally referred to as a Betterment Action, which was instituted under the authority of S.C. Code Ann. § 27-27-10. It is not related to or affected by the relief sought in this Petition. A motion to dismiss it is pending.

II.

FACTUAL BACKGROUND

Plaintiffs announced their disaffiliation from The Episcopal Church and the Associated Diocese in late 2012. Since then, the diocesan and parish property has been in Plaintiffs' possession and control. That property includes land and buildings, along with considerable funds and other personal property such as books, silver, and historical archives. It also includes trademarks, names, seals, logos, and other indicia, as personal property.

Plaintiffs continue to possess and control that property in complete disregard of the August 2, 2017 Opinion of the South Carolina Supreme Court, which recognized The Episcopal Church's and the Associated Diocese's interests in the diocesan property and the property of twenty-eight of the parishes.

The Episcopal Church and the Associated Diocese seek the intervention of this Court to effect an orderly transition of possession and control of the property to which they are entitled by the judgment of the South Carolina Supreme Court.

The relief required to effect the judgment of the Supreme Court is therefore requested, as detailed below.

III.

RELIEF REQUESTED

This petition to enforce and provide further relief required by the declaratory judgments of the August 2, 2017 Opinion of the South Carolina Supreme Court is made pursuant to the

Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-120, Rules 69 and 70, SCRCP, S.C. Code Ann. §§ 15-39-10 et seq., and any other applicable authorities under South Carolina law.

The Uniform Declaratory Judgments Act, S.C. Code Ann. §15-53-120 provides as follows:

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

S.C. Code Ann. §15-53-120; see also S.C. Code Ann. § 15-53-130 (“This chapter . . . is to be liberally construed and administered.”). This Court has jurisdiction to enforce and provide further relief under this statute.

It is clear, however, that this Court does not have jurisdiction to consider Plaintiffs’ pending motion to “clarify” the August 2, 2017 Opinion of the South Carolina Supreme Court. “The judgment of the South Carolina Supreme Court is a final judgment and is the law of the case.” Judge Gergel’s April 16, 2018 Order and Opinion at 6, vonRosenberg, 2:13-cv-00587-RMG. See also Hampton Building Supply, Inc. v. Wilson, 328 S.E.2d 635, 637, 285 S.C. 135, 138 (1985) (“Once jurisdiction vested in the Supreme Court it would not re-vest in the Circuit Court except by order of the Supreme Court, such as for example, by granting a new trial.”); Mueller v. Myrtle Beach Golf and Yacht Club, 438 S.E.2d 248, 250, 313 S.C. 412, 415 (1993) (distinguishing Hampton and holding that the lower court could award statutory attorney’s fees after remittitur under the limited jurisdiction the lower court has to “enforce the judgment and take any action consistent with the Supreme Court ruling”).

1. The Diocesan Property

With respect to the real and personal diocesan property, which includes the trademarks, names, seals, and other indicia, this Court should enforce and provide further relief based upon the August 2, 2017 Opinion of the South Carolina Supreme Court by ordering that the members of the Board of Trustees elected by the Associated Diocese be installed as the Board of the Trustees of the Protestant Episcopal Church in the Diocese of South Carolina (the “Trustees”) to hold the diocesan property in trust for Associated Diocese, in accordance with the Trustees’ legislative charter, as further explained below.

All diocesan property is held in trust by the Trustees for the benefit of “the Protestant Episcopal Church for the Diocese of South Carolina,” also referred to as “said Diocese” in “said Church,” according to the legislative charter of the Trustees, the 1880 Act of the General Assembly of South Carolina (the “Act”), as amended by the 1902 Act:

. . . Section 1 . . . That the Bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina . . . are hereby appointed trustees for the purpose of holding in trust any property heretofore given or acquired, or hereafter to be given or acquired, for objects connected with said Church, in said Diocese . . .

. . . Sec. 3 The title to the real and personal property described in the first Section shall become vested in the said trustees by operation of law without further deed or conveyance other than that which is therein specified, and the trustees shall report annually to the Convention of the Diocese of the said Church.

1880 Act.

. . . Sec. 3. That the Trustees herein provided for and incorporated and their successors in office are hereby constituted such Trustees for the purpose of holding any and all property . . .

1902 Act.

A copy of that legislative charter, the 1880 Act, as amended by the 1902 Act, is attached as Exhibit C.

The August 2, 2017 Opinion of the South Carolina Supreme Court recognizes that the beneficiary of the Trustees, referred to in the legislative charter as “the Protestant Episcopal Church for the Diocese of South Carolina,” as well as “said Diocese” in “said Church,” is the Associated Diocese; and is not the dissociated diocese led by Bishop Lawrence named in this case as a Plaintiff:

. . . title is in the trustee corporation for the benefit of the associated diocese . . .

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting and summarizing the majority decision on diocesan property); id. at 251, n.29 (Beatty, J., “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.”); id. at 231 (Pleicones, J., “...the Associated Diocese as the true Lower Diocese of South Carolina...”); id. at 248 (Hearn, J., “...the Appellants represent the true Lower Diocese of the Protestant Episcopal Church in South Carolina and are therefore entitled to all property...”).

The legislative charter of the Trustees, the 1880 Act, as amended by the 1902 Act, gives the beneficiary of the Trustees, the Associated Diocese, the right to elect its Board:

Sec. 2. That a Board of Trustees is hereby incorporated to be known as ‘The Trustees of the Protestant Episcopal Church in South Carolina,’ which Board shall be constituted of not more than nine nor less than five members to be elected at the annual Council in and for the said church in the said Diocese in accordance with such canon or canons as by such Trustees may from time to time be adopted.

1902 Act.

Therefore, the Court should enforce the declaratory judgment contained in the August 2, 2017 Opinion of the South Carolina Supreme Court by ordering that members elected by the Associated Diocese be installed as the Board of the Trustees to hold the diocesan property in trust for the Associated Diocese.

To the extent that any of the real or personal diocesan property is held, owned, titled, or registered in the name of the corporation formed in 1973 and known as “The Protestant Episcopal Church in the Diocese of South Carolina,” the Court should enforce the August 2, 2017 declaratory judgment of the South Carolina Supreme Court by ordering that members selected by the Associated Diocese be installed as Directors of that corporation, or that any such property be transferred to the Trustees, as elected by the Associated Diocese.

We anticipate that this will effectuate a full and complete transfer of possession and control of the diocesan property, consistent with the August 2, 2017 judgment of the South Carolina Supreme Court. However, we request that the Court grant any further proper or necessary relief to accomplish that imperative, including but not limited to, and in the alternative, relief provided under the South Carolina Trust Code, pursuant to S.C. Code Ann. §§62-7-706 & 1001, which allows the Court to compel/remove/replace/enjoin trustees, or appoint a special fiduciary to take possession of the property, or S.C. Code Ann. §62-7-412, which allows the Court to terminate the trust for ineffective and/or impractical administration and to distribute the property.

2. *The Parish Property*

With respect to the real and personal property of twenty-eight parishes, which includes the trademarks, names, seals, logos, and other indicia, this Court should enforce and provide further relief based upon the August 2, 2017 Opinion of the South Carolina Supreme Court by

transferring title to the parish property from the individual parish corporations to The Episcopal Church and the Associated Diocese, by requiring the appropriate Plaintiffs to execute all necessary deeds or instruments of title, or by transferring the title by Court order, as further explained below.

All of the property of the twenty-eight parishes is held in trust by the parish corporations, according to the Dennis Canon, adopted by The Episcopal Church in 1979, which provides as follows:

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.

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 221 (reciting the Dennis Canon).

According to the August 2, 2017 Opinion of the South Carolina Supreme Court, accession to the Dennis Canon by the twenty-eight parish corporations imposed trusts on the parish property under state law, and upon their disaffiliation, “title” to their property belonged to The Episcopal Church and the Associated Diocese:

[W]ith 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;

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting and summarizing the majority’s decision on parish property).

Therefore, the Court should enforce the August 2, 2017 Opinion of the South Carolina Supreme Court, by transferring title to the parish property from the parish corporations to The Episcopal Church and the Associated Diocese, by requiring Plaintiffs to execute any necessary deeds or instruments of title, or issuing the same by Court order. See Judge Gergel's April 16, 2018 Order and Opinion at 8, 9, and 10, vonRosenberg et al. v. Lawrence et al., 2:13-cv-00587-RMG (D.S.C. Filed March 5, 2013) ("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 . . . 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 of the property . . . 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 form 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.").

Upon receiving the deeds or other instruments of title, The Episcopal Church and the Associated Diocese may form new parish corporations and transfer the deeds or instruments of title to real and personal property to them thereby allowing them hold and use the property operating as Episcopal parishes in accordance with the hierarchical governance of The Episcopal Church and the Associated Diocese contained in the Constitution and Canons of each.

Ordering such relief will enable The Episcopal Church and the Associated Diocese to take legal possession and control of the property without the Court having to supervise or manage Plaintiffs' vestries. Plaintiffs could be permitted to retain their parish corporations,

without the trust property. Plaintiffs could use those corporations to continue to operate their religious organizations, if they so choose.²

It is anticipated that this will effectuate a full and complete transfer of possession and control of the parish property, consistent with the August 2, 2017 Opinion of the South Carolina Supreme Court. However, we request that the Court grant any further proper or necessary relief to accomplish that objective, including but not limited to, and in the alternative, relief provided under the South Carolina Trust Code, pursuant to S.C. Code Ann. §§62-7-706 & 1001, which allows the Court to compel/remove/replace/enjoin trustees, or appoint a special fiduciary to take possession of the property, or S.C. Code Ann. §62-7-412, which allows the Court to terminate the trust for ineffective and/or impractical administration and to distribute the property.

IV.

APPOINTMENT OF A SPECIAL MASTER

The relief requested herein involves the transfer of a substantial amount of real and personal property, involving many parties. Petitioners believe that the orderly transfer of the property and the resolution of any disputes and controversies that might arise in the execution of such matters will be greatly enhanced by the appointment of a Special Master who will be able and authorized to enhance an orderly and expeditious resolution of all such issues. Accordingly, the appointment of a Special Master, with experience in complex property matters and with the capacity to dedicate the necessary time and attention to this matter, is appropriate.

² Plaintiffs will have to amend the names of their parish corporations. Those corporate names, which are also used as trademarks, are part of the personal property held by the parishes subject to the trust interest of The Episcopal Church and the Associated Diocese. Furthermore, Plaintiffs' ongoing use of those names constitutes trademark infringement, dilution, and false advertising, as alleged in the federal case.

We respectfully request that the parties be given the opportunity to propose available, qualified, and impartial candidates for the Court to consider as it selects and appoints a Special Master for these purposes.

(Signature page to follow)

May 15, 2018

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Counsel for The Episcopal Church

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
	)	
THE PROTESTANT EPISCOPAL	)	Case No.: 2013-CP-18-00013
CHURCH IN THE DIOCESE OF	)	
SOUTH CAROLINA, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	PETITION FOR AN ACCOUNTING
v.	)	
	)	
THE EPISCOPAL CHURCH, ET AL.,	)	
	)	
Defendants.	)	
	)	

Defendants in this action have been declared beneficiaries of trusts comprising both real and personal property that have been established by law and have been heretofore unlawfully claimed by the Plaintiffs since about 2012.

The South Carolina Supreme Court made such declarations of ownership in Defendants' favor in its Opinion of August 2, 2017. A motion for a Rehearing by the Plaintiffs in the matter was subsequently filed and denied by the Court on November 17, 2017. Thereafter, Plaintiffs filed a Petition for a Writ of Certiorari in the United States Supreme Court which was denied on June 11, 2018. Thus, the Opinion and decisions therein, and declarations of the South Carolina Supreme Court are final in every respect. Defendants have heretofore filed in this Court a Petition for Execution of the final Supreme Court Orders.

First, this Petition seeks an Accounting to determine the identity and value of assets currently held by the Plaintiffs that must be turned over to the Defendants in accordance with the Supreme Court Order.

Second, this Petition seeks an Accounting to determine the identity and value of all assets held by the Plaintiffs as of October 2008, and what has been their disposition since that time. This is necessary in order to determine what compensation Defendants are entitled to as a result of Plaintiffs' wrongful possession and control of the assets since October 2012, and any wrongful disposition of the assets leading up to their departure.

This Court clearly has authority based upon equitable principles to order the foregoing Accounting in this matter.

For the foregoing reasons, Defendants respectfully request that this Court appoint the firm of Dixon, Hughes and Goodman, LLP, an eminent, competent, and highly regarded firm with offices located in Charleston, South Carolina to conduct an Accounting for the reasons set forth herein, and based on the criteria described hereinbelow, and to provide a report of its findings to this Court and to the Parties herein to allow this Court to equitably proceed in this matter to restore Defendants' property to them in accordance with the August 2, 2017 ruling of the Supreme Court, and compensate Defendants for any loss in value of the property since October 2012.

In order to ensure a complete and thorough Accounting, Defendants request that the Court order Plaintiffs to provide to the Court-appointed experts the information set out below, as it pertains to the following entities:

1. The Trustees of the Protestant Episcopal Church in South Carolina;
2. The Protestant Episcopal Church in the Diocese of South Carolina (1973 Corporation) a/k/a The Diocese of South Carolina;
3. Camp St. Christopher, which is owned and operated by the above organizations.

4. Each of the 29 parishes that the South Carolina Supreme Court has declared are to be returned to The Episcopal Church and The Episcopal Church in South Carolina (the Diocese associated with The Episcopal Church, sometimes referred to as The Associated Diocese.);
5. Any other entities or institutions heretofore claimed to be owned or controlled by the Plaintiffs herein which the South Carolina Supreme Court has declared is the property of The Episcopal Church and its Associated Diocese as trust beneficiaries.

Information to be supplied:

- a. All audit reports, both formal and informal, resulting from audits of all of the above-named entities and institutions from January 1, 2008 to date. This request includes specifically audits conducted by the firm of McCay Kiddy, LLC, Certified Public Accountants and Advisors; audits conducted by any other firm; and any less formal audits conducted or reported by Norman McNair of the parishes to be returned to the Defendants;
- b. Copies of all audited financial statements and audited managed investment accounts of all the institutions and entities listed hereinabove (diocesan and parish investment accounts), from January 1, 2008 to date;
- c. Copies of all bank account statements of all the institutions and entities listed hereinabove from January 1, 2008 to date;
- d. Any and all financial reports and data that reveal the amount of legal fees and related expenses incurred by all the Plaintiff parties to this litigation and the related litigation currently pending in the United States District Court;

- e. Copies of all annual operation budgets prepared and adopted by all of the entities defined hereinabove from January 1, 2008 to the present;
- f. Any other financial material available to Plaintiffs that provides information to establish income, expenses and the value of assets of all the institutions and entities described hereinabove;
- g. Any and all reports received from investment advisors to any institution or entity listed hereinabove from January 1, 2008 to present;
- h. Any and all evidence that reveals the transfer of any financial account from one financial institution to another and/or from one institution or individual to another institution or individual from January 1, 2008 to present by the Protestant Episcopal Church in the Diocese of South Carolina, or by the Trustee corporation, or any other diocese entity, or by any of the 29 parishes that are the subject of this Accounting procedure;
- i. Any and all documents including governing documents (corporate charters, Bylaws, etc.) and other legal documents that establish restrictions on the use of any funds owned or held by the audited institutions or entities described herein.

Dated: July 10, 2018

Respectfully submitted,

s/ Thomas S. Tisdale

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
	)	
THE PROTESTANT EPISCOPAL	)	Case No.: 2013-CP-18-00013
CHURCH IN THE DIOCESE OF	)	
SOUTH CAROLINA, ET AL.,	)	
	)	DEFENDANTS' MEMORANDUM
Plaintiffs,	)	OF LAW IN SUPPORT OF THEIR
	)	PETITION FOR AN ACCOUNTING
v.	)	
	)	
THE EPISCOPAL CHURCH, ET AL.,	)	
	)	
Defendants.	)	
	)	

Defendants, The Episcopal Church (TEC) and The Episcopal Church in South Carolina (TECSC or the Associated Diocese), submit this Memorandum of Law in Support of their Petition For An Accounting.

I.

BACKGROUND

Defendants in this action have been declared beneficiaries of trusts comprising both real and personal property that have been established by law, and have been heretofore unlawfully claimed by the Plaintiffs since about 2012.

The South Carolina Supreme Court made such declarations of ownership in Defendants' favor in its Opinion of August 2, 2017. A motion for a Rehearing by the Plaintiffs in the matter was subsequently filed and denied by the Court on November 17, 2017. Thereafter, Plaintiffs filed a Petition for a Writ of Certiorari in the United States Supreme Court which was denied on June 11, 2018. Thus, the Opinion and decisions therein, and declarations of the South Carolina

Supreme Court are final in every respect. Defendants have heretofore filed in this Court a Petition for Execution of the final Supreme Court Orders.

II.

LEGAL STANDARD

“An accounting is essentially an equitable remedy.” Rogers v. Salisbury Brick Corp., 299 S.C. 141, 145, 382 S.E.2d 915, 917 (1988) (citing Cox v. Lunsford, 272 S.C. 527, 252 S.E.2d 918 (1979); Evatt v. Campbell, 234 S.C. 1, 106 S.E.2d 447 (1959); Smith v. Union Central Life Ins. Co., 112 S.C. 356, 99 S.E. 830 (1919)).

The equitable remedy of an accounting is one of the remedies provided by the South Carolina Trust Code. Pursuant to S.C. Code Ann. §62-7-1001(b): “To remedy a breach of trust that has occurred or may occur, the court may: . . . (4) order a trustee to account.”

III.

ACCOUNTING REQUESTED BY THIS PETITION

First, this Petition seeks an Accounting to determine the identity and value of assets currently held by the Plaintiffs that must be turned over to the Defendants in accordance with the Supreme Court Order.

Second, this Petition seeks an Accounting to determine the identity and value of all assets held by the Plaintiffs as of October 2008, and what has been their disposition since that time. This is necessary in order to determine what compensation Defendants are entitled to as a result of Plaintiffs’ wrongful possession and control of the assets since October 2012, and any wrongful disposition of the assets leading up to their departure.

This Court clearly has authority based upon equitable principles to order the foregoing Accounting in this matter.

For the foregoing reasons, Defendants respectfully request that this Court appoint a qualified accounting firm to conduct an Accounting for the reasons set forth herein, and based on the criteria described hereinbelow, and to provide a report of its findings to this Court and to the Parties herein to allow this Court to equitably proceed in this matter to restore Defendants' property to them in accordance with the August 2, 2017 ruling of the Supreme Court, and compensate Defendants for any loss in value of the property since October 2012.

In order to ensure a complete and thorough Accounting, Defendants request that the Court order Plaintiffs to provide to the Court-appointed experts the information set out below, as it pertains to the following entities:

1. The Trustees of the Protestant Episcopal Church in South Carolina;
2. The Protestant Episcopal Church in the Diocese of South Carolina (1973 Corporation) aka The Diocese of South Carolina;
3. Camp St. Christopher, which is owned and operated by the above organizations.
4. Each of the 29 parishes that the South Carolina Supreme Court has declared are to be returned to The Episcopal Church and The Episcopal Church in South Carolina (the Diocese associated with The Episcopal Church, sometimes referred to as The Associated Diocese.);
5. Any other entities or institutions heretofore claimed to be owned or controlled by the Plaintiffs herein which the South Carolina Supreme Court has declared is the property of The Episcopal Church and its Associated Diocese as trust beneficiaries.

Information to be supplied:

- a. All audit reports, both formal and informal, resulting from audits of all of the above-named entities and institutions from January 1, 2008 to date. This request includes specifically audits conducted by the firm of M^cCay Kiddy, LLC, Certified Public Accountants and Advisors; audits conducted by any other firm; and any less formal audits conducted or reported by Norman M^cNair of the parishes to be returned to the Defendants;
- b. Copies of all audited financial statements and audited managed investment accounts of all the institutions and entities listed hereinabove (diocesan and parish investment accounts), from January 1, 2008 to date;
- c. Copies of all bank account statements of all the institutions and entities listed hereinabove from January 1, 2008 to date;
- d. Any and all financial reports and data that reveal the amount of legal fees and related expenses incurred by all the Plaintiff parties to this litigation and the related litigation currently pending in the United States District Court;
- e. Copies of all annual operation budgets prepared and adopted by all of the entities defined hereinabove from January 1, 2008 to the present;
- f. Any other financial material available to Plaintiffs that provides information to establish income, expenses and the value of assets of all the institutions and entities described hereinabove;
- g. Any and all reports received from investment advisors to any institution or entity listed hereinabove from January 1, 2008 to present;
- h. Any and all evidence that reveals the transfer of any financial account from one financial institution to another and/or from one institution or individual to another

institution or individual from January 1, 2008 to present by the Protestant Episcopal Church in the Diocese of South Carolina, or by the Trustee corporation, or any other diocese entity, or by any of the 29 parishes that are the subject of this Accounting procedure;

- i. Any and all documents including governing documents (corporate charters, Bylaws, etc.) and other legal documents that establish restrictions on the use of any funds owned or held by the audited institutions or entities described herein.

(Signature page to follow)

Dated: September 24, 2018

Respectfully submitted

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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; St. Luke's)
Church, Hilton Head Island;)
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Of The Parish Of Saint Philip, In Charleston,)
In The State Of South Carolina; The)
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Saint Michael, In Charleston, In The State)
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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)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-18-00013

**SUPPLEMENT TO MOTION FOR
CLARIFICATION OF JURISDICTION
AND FOR OTHER RELIEF**

FILED-RECORDED
9-24-2018
Cheryl Graham
Clerk of Court
Dorchester County

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	)
DEFENDANTS.	)
	)

This supplements the motion filed on March 22, 2018 conforming to changed facts since its filing and to the list of issues filed with the Court on August 2, 2018. Two factual assertions made in the March motion have changed: The United States Supreme Court denied Plaintiffs' Petition for Certiorari and the South Carolina District Court refused to allow Defendants to add most of the state law issues, already present here, to that federal action.

The grounds for the motion arise out of the same predicate: "This Court must exercise jurisdiction to clarify [and decide] issues that remain" regarding *The Protestant Episcopal Church in South Carolina, et al.*, 421 S.C. 211, 800 S.E. 2d 82 (2017) ("Collective Opinions"). Because of the changed factual circumstances, the grounds may now be articulated with greater clarity. They are these:

- This Court has jurisdiction to take whatever action is necessary to resolve issues which are necessary to this Court's ability factually, legally and constitutionally to implement the Collective Opinions.
- Two of the four Justices who considered whether to hear the issues raised by the

Petition for Rehearing recognized that the Collective Opinions left “great uncertainty”, provided “little to no coherent guidance” and would require “more litigation involving these issues.” Order, Supreme Court of South Carolina, November 17, 2017.

- Enforcement of the judgment “according to law” or taking action consistent with the Collective Opinions requires the determination of what the Collective Opinions held and what action would be consistent with those holdings.
- As stated in the Plaintiffs Unresolved Issues List, the Collective Opinions did not decide, as to each parish church, the factual issue of the existence of express trusts; there is a dispute as to the Court’s ruling on the appropriate beneficiary of the Trustee’s assets and; the Plaintiffs/Counterclaim Defendant’ defenses have not been heard.

September 24, 2018

Respectfully submitted,

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COUNTY OF DORCHESTER)
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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; St. Luke's)
Church, Hilton Head Island;)
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James Island, S.C.; St. Paul's Episcopal)
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The Church Of St. Luke and St.)
Paul, Radcliffeboro; The Church Of Our)
Saviour Of The Diocese of South Carolina;)
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The Church Of The Good Shepherd,)
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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)
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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)
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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)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-18-00013

**MEMORANDUM IN SUPPORT OF
MOTION FOR CLARIFICATION
AND FOR OTHER RELIEF**

FILED-RECORDED

9-24-2018
Cheryl Graham
Clerk of Court
Dorchester County *RS*

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)
 DEFENDANTS.)
 _____)

I. Introduction

Before this Court are competing motions. One, filed by 31 plaintiffs/counterclaim defendants, asks this Court to determine issues not yet determined arising out of the unprecedented 5 separate opinions of the South Carolina Supreme Court. *The Protestant Episcopal Church in South Carolina, et al.*, 421 S.C. 211, 800 S.E.2d 82 (2017) (“Collective Opinions”). The other, filed by the two defendants/counterclaim plaintiffs, asks this Court to enforce the ruling they contend is expressed by the Collective Opinions. Defendants argue no interpretation is allowed or needed of the Collective Opinions. Plaintiffs argue enforcement is impossible without interpretation. Plaintiffs argue the remittal implicitly requires interpretation if this Court is to act “consistent with” the Collective Opinions. The backdrop to these points and counterpoints are the following undisputed facts:

- “Title to all the real property of the plaintiff Parishes, Trustees and Diocese is held in the name of those entities.” “[A]ll the real and personal property at issue was purchased, constructed, maintained and possessed exclusively by the Plaintiffs.” Final

Order at 20, 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.
- There has never been a decision of the Supreme Court of South Carolina where each Justice filed a separate opinion.
- The four Justices who considered the Petition for Rehearing were evenly divided because a fifth Justice was not appointed to allow the Court to consider the issues created by these 5 separate opinions.
- Half of the rehearing Court (Justice Kittredge and Acting Justice Toal) stated the obvious: the Collective Opinions left “great uncertainty”, provided “little to no coherent guidance” and would require “more litigation involving these issues.”
- The same half stated the refusal to appoint a fifth justice so that the Court could resolve the uncertainty created by the Collective Opinions was “shocking”, “deeply troubling” and “raises constitutional implications as the Court has blocked a fair and meaningful review.”
- In 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).

- The Defendants told 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].”)

II. The Legal Framework of the Competing Motions

a. Jurisdiction

The jurisdiction of this Court to hear and determine matters after a case is remitted is “well established. For instance, ... the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court’s ruling.” *Pee Dee Health Care, P.A. v. Estate of Thompson*, ___ S.E.2d ___, 2018 WL 4101089 (2018) (citing *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351-52 (Ct. App. 2001) and *Mullen v. Myrtle Beach Yacht and Golf Club*, 313 S.C. 412, 415, 436 S.E.2d 248, 250 (1993)).

The “enforcement of a judgment” or taking “any action consistent with an appellate court’s ruling”, requires this Court to determine what the Supreme Court ruled. Any ambiguity must be resolved by this Court which not only has the jurisdiction to do so, but also the obligation to determine the intention of the Supreme Court, even if ambiguous and even if there is no remand. *Hamm v. S. Bell Tel. & Tel. Co.*, 305 S.C. 1, 406 S.E.2d 157 (1991) (“*Hamm II*”).

In *Hamm I*¹, 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. The circuit court held it was

¹ *Hamm v. Southern Bell Telephone and Telegraph, Co.*, 302 S.C. 132, 394 S.E.2d 311 (1990), *cert. denied* 498 U.S. 1109, 111 S.Ct. 1018, 112 L. Ed.2d 1099 (1991) (“*Hamm I*”).

without jurisdiction to do so because the Supreme Court had not remanded the case with such instructions. Rather, the circuit court held that only the Supreme Court could “clarify its own opinion”. *Hamm II*, 406 S.E.2d 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.*

Here, there are an unprecedented 5 individual opinions which collectively are models of legal and factual ambiguity. Justice Kittredge and Acting Justice Toal say they create “great uncertainty” and provide “little to no guidance”. The Defendants say they are “fractured not only in rationale but also on facts”. Yet this Court must discern what is “action consistent” with the Collective Opinions. It has the jurisdiction to take whatever steps are necessary to determine and act on what is “consistent” whether explicit or implicit.

As noted in Plaintiffs’ Unresolved Issues List, Attachment 1, Defendants take the position that the Collective Opinions are themselves a declaratory judgment. That is not the case for at least three reasons. First, the case was not brought in the Supreme Court’s original jurisdiction, so the Collective Opinions were those of a court reviewing the declaratory judgment issued by the circuit court and thus subject to the limitations of a reviewing court. Second, one of the Court’s rules is that it does not *sua sponte* raise and decide issues not properly before it. A South Carolina appellate court only decides an issue that is both presented to, and decided by, the trial court and then preserved for appellate review. *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 *sua sponte* by an appellate court as the basis of its decision). Third, the Defendants recognize that the Collective Opinions are not

presently enforceable because they have not been recorded as judgments and because Defendants have invoked this court's jurisdiction to secure an enforceable order of judgment. However, if the Collective Opinions were a judgment, they are too uncertain for present enforcement.

A court cannot enforce that which is uncertain, whether a contract or a court order. The judgment of a court is construed like any other written instrument to determine the intent of the court. That intent is determined from all its parts, not from an isolated part. *City of North Myrtle Beach v. East Cherry Grove Realty Co., Inc.*, 397 S.C. 497, 503, 725 S.E.2d 676, 679 (2012). If the judgment is "plain and unambiguous" then the effect of the judgment "must be declared in light of the literal meaning of the language used." *Id.* (quoting *Weil v. Weil*, 299 S.C. 84, 90, 383 S.E.2d 471, 474 (Ct.App. 1989)). If the judgment is ambiguous, the intent of the court is still the determinative factor, *Eddins v. Eddins*, 304 S.C. 133, 135, 403 S.E.2d 164 (Ct.App. 1991), construing 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).

While the Collective Opinions do not create an executable judgment, this Court should take actions consistent with them if constitutionally appropriate. However, as Justice Kittridge and Acting Justice Toal stated, the Collective Opinions are greatly uncertain. Therefore, this Court must determine what actions would be consistent with them before it can take them. This too will require a determination of the Court's intent gathered from the Collective Opinions as a whole, not their isolated parts.

b. The Law of the Case

Defendants have stated the Collective Opinions are the "law of the case". Amended Petition for Relief at 4.

The law of the case posits that 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); *Flexor v. PHC-Jasper, Inc.*, 413 S.C. 561, 571-75, 776 S.E.2d 397, 403-05 (Ct. App. 2015) (“a decision on an issue of law made at one stage of the case becomes binding precedent to be followed in subsequent stages of the same litigation”). There must be an actual decision of the legal issue for it to become the law of the case. *Howe v. City of Akron*, 801 F.3d 718, 739-40 (6th Cir. 2015); *Accord, Flexon*, 413 S.C. at 571, 776 S.E.2d at 403. Implicitly decided issues fall within the doctrine, *Entek GRB, LLC v. Stull Ranches, LLC*, 840 F.3d 1239, 1241 (10th Cir. 2016), but ambiguous ones do not. *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. If in the court’s discretion its prior decision “is clearly erroneous and would work a manifest injustice”, the doctrine does not limit the court’s 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. If a legal ruling is the law of the case under these standards, whether it is to be applied to subsequent proceedings in the case is a product of the discretionary balancing between the need for finality and (1) substantially different evidence than that considered by the appellate court or (2) when the ruling was clearly erroneous and would work a manifest injustice.

III. Unresolved Issues in the Collective Opinions

As set forth in detail in both the Unresolved Issues List, Attachment 1, and Plaintiffs’ Petition for Rehearing, Attachment 2, the Collective Opinions are uncertain and ambiguous. They do not review the record as to each parish determining if Defendants proved the existence of an express trust in a signed writing. They do not resolve the issue regarding which entity is the beneficiary of the Trustee’s assets. They raise dispositive issues (revocability and minimal burden) not considered by, or ruled upon by the trial court, and then decide them adverse to

plaintiffs depriving plaintiffs of the right to be heard. Finally, having arrived at a differing result than the trial court on an incomplete record, they do not consider plaintiffs defenses to the TEC counterclaims that would have been considered had the trial court decided trusts existed.

A. The Collective Opinions do not decide whether each Parish church created an express trust based on the record before the Court

The trial court held that no express trust was created relying on *All Saints Parish, Waccamaw v. Protestant Episcopal Church*, 385 S.C. 428, 685 S.E.2d 163 (2009). Final Order at 36. Defendants argued on appeal that “29 of the 36 parishes made express promises in their governing documents to comply with the National Church’s rules” which allegedly created express trusts. Brief of Appellants at 38. The only record in support of this assertion were five pages from a post-trial submission to the trial court in which Defendant’s counsel summarized documents. Attachment 3. Statements of counsel regarding the contents of documents are not evidence and cannot be considered. *Am. Motorists Ins. Co. v. Murphy*, 253 S.C. 346, 349, 170 S.E.2d 663, 665 (1969); *Hobbs v. Beard*, 43 S.C. 370, 21 S.E. 305, 308 (1895). The documents summarized, some inaccurately, by the Defendants’ counsel were not in the record on appeal and therefore could not have been considered by the Supreme Court. Rule 210(h), SCACR. (“the appellate court will not consider any fact which does not appear in the Record on Appeal.”). 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”) and given what Justice Hearn, joined by Acting Justice Pleicones, stated.

Justice Hearn, joined by Acting Justice Pleicones, 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. 211, 243, 806 S.E.2d 82, 99. Nonetheless Chief Justice Beatty, Justice Kittredge and Acting Justice

Toal, found a lack of accession by the 7 or 8 churches, not based on the record but based on Defendants' admission. The five-page argument of counsel omitted seven parishes from its list of those that "expressly accepted the national church's governance." The Court's finding for the 7 or 8 parish churches was because of this admission. The Court could not have made a finding based on the records relating to the other parishes because there was no record before the Court.

B. To create an express trust under *All Saints*, it is the law of the case that there must be an express agreement in a signed writing by each parish church to the Dennis Canon.

The majority of the court (Chief Justice Beatty, Justice Kittredge & Acting Justice Toal) held that neutral principles of state law, as applied in *All Saints*, is the proper legal standard to be used when resolving disputes between religious organizations over property and corporate control. Chief Justice Beatty repeatedly stated what was required under neutral principles to create an express trust. There must be evidence of an express agreement to the Dennis Canon in a writing signed by the individual church:

These parishes that did not expressly accede to the Dennis Canon should retain ownership of the disputed real and personal property.

421 S.C. at 249, 806 S.E.2d at 102.

TEC argues that the parishes' 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. (emphasis added)

In my view, the Dennis Canon had no effect until acceded to in writing by the individual parishes.

Id. at 250, 806 S.E.2d at 103.

...the parishes that did not accede to the Dennis Canon cannot be divested of their property.

Id.

Chief Justice Beatty did not apply this legal requirement to any specific parish nor did he review any of the parish specific documents because none were in the record on appeal. Moreover, the post-trial argument of counsel about express trusts which was in the record, (which could not be relied upon by the Court) does not state that any parish expressly agreed in a signed writing to the Dennis Canon. It states that some parishes “expressly accepted” either the “National Church’s governance” or the “Diocese’s governance.” Justice Beatty however stated that “merely promised allegiance ...without more... cannot deprive [parishes] of their ownership rights in their property.” *Id.* Three examples from Defendants’ summary demonstrate the latent uncertainty surrounding Defendants’ assertions.

1. St. Philips Church

There is nothing in either the five-page argument of Defendants’ counsel nor in the record that remotely approaches an express agreement in a signed writing to the Dennis Canon by St. Philips Church. First, Defendants’ argument references 1987 Articles of Restatement as “describing the purpose of the parish corporation as being ‘in accord with the Articles of Religion of the Protestant Episcopal Church in the United States of America...’.” The 1987 Articles of Restatement were not part of the record on appeal. There was no evidence which could be considered under Rule 210(h) and there was none considered by the trial court because it did no parish by parish review. Finally, not only were the referenced “Articles of Religion” not part of the record on appeal, they were never introduced into evidence at trial and were therefore not part of the trial record. The Articles of Religion contain no mention of the Dennis Canon or any other Canon of The Episcopal Church—they represent nothing more than a summary of theological and doctrinal beliefs. Defendants’ counsels five-page summary does not contend that there is an express agreement to the Dennis Canon on the part of St. Philip’s Church since none exists. There

is a complete lack of evidence of an express agreement by St. Philips Church in a signed writing to the Dennis Canon.

2. St. Michael's Church

According to Defendants' counsel, in 1989 Bylaws St. Michael's Church, "acknowledges the authority of ... The Diocese of South Carolina ...and of the National Church." These Bylaws were not in the record on appeal and therefore there was no evidence on this issue before the Supreme Court.² Defendants five-page argument does not contend there is an express agreement to the Dennis Canon in a signed writing by St. Michael's Church. And, Chief Justice Beatty stated promises of allegiance do not create a trust. 421 S.C. at 251, 806 S.E.2d at 103.

3. Church of the Good Shepherd

According to Defendants' counsel, Good Shepherd amended its corporate articles in 2001 "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 there was no evidence on this issue before the Court. Defendants' argument in its five-page summary is that Good Shepherd is organized pursuant to the Canons of the Diocese, not TEC. However, the Court 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 it 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 law of this case is that in order to have an express trust under South Carolina neutral principles of law, a court must find, as to each parish church, the existence of a signed writing in

² The parishes urged the court on Rehearing to consider such documents and the Court was empowered to order them up from the trial court record into the record but of the Supreme Court, but the Court failed to act on this request due to a 2 to 2 vote.

which the church expressly agrees to the Dennis Canon. The trial court did not make any findings as to each parish church on this issue. The Defendants did not include in the record on appeal any of the documents they argued in their five-page summary created express trusts. Examples of some of those summarized documents show that they do not create an express trust. In order for this Court to enforce the legal ruling on the creation of express trusts, it must consider, as to each parish, whether such a trust was created.

a. Due Process and Property Deprivation

Article I, Section 3 of South Carolina's Constitution provides that "no person ... shall be deprived of ... property without due process of law ...". The 5th Amendment to the United States Constitution contains a similar guarantee.

"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, 105 S.Ct. 1487, 1493 (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, 105 S.Ct. at 1493.

b. The South Carolina Supreme Court's Procedural Due Process Rules

Some of the Supreme Court's procedural rules are rules of due process. It will not consider issues that have not been presented to, and ruled upon by a lower court and which have not been preserved for review. It will not consider facts which are not included in the record on appeal.

These rules are intended to make sure that only those issues on which a party has had

meaningful notice and a meaningful opportunity to be heard, and on which the trial court has ruled, are matters which the Supreme Court will consider. *Sua sponte* decisions on matters not presented to and ruled on by the trial court deprive a party of the “root requirement” which must occur before a decision is made – the opportunity to be heard. Similarly, basing a decision on matters not in the record deprives a party of that same opportunity for it is a decision based on facts that are not before it.

Both sides to this dispute agree that the Supreme Court did not consider the issues raised in the Petition for Rehearing, yet many of these issues are based on facts not in the record (accession issues) or were the product of *sua sponte* decisions because they were not presented to or ruled upon by the trial court (revocability, minimal burden).

Justice Kittredge and Acting Justice Toal expressly recognized that the Supreme Court’s decision by a 2-2 vote not to consider those issues “raises constitutional implications as the Court has blocked a fair and meaningful review.” The United States Supreme Court has also held that such action is a denial of procedural due process.

Justice Brandeis, writing for a unanimous Supreme Court, considered the issue of the procedural due process due a litigant when an appellate court deprives it of its property. *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 50 S.Ct. 451 (1930). There the Supreme Court of Missouri overruled a previous decision construing a state statute on which the plaintiff had relied and in so doing, deprived the plaintiff of the remedy the previous construction had afforded. The plaintiff petitioned for a rehearing which was denied without opinion. Justice Brandeis stated the Court’s concern was not the plaintiffs’ rights on the merits, but “whether the plaintiff has been accorded due process in the primary sense – whether it has had an opportunity to present its case and be heard in its support.” *Id.* at 680, 50 S.Ct. at 454. Reversing the Missouri

Supreme Court, the Court held that “whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.” *Id.* at 682, 50 S.Ct. at 454-455. *Accord, Bouie v. City of Columbia*, 378 U.S. 347, 354, 84 S. Ct. 1697, 1703 (1964) (Due process includes a “standard of state decisional consistency”).

To continue that “blocking” by refusing to consider the new issues raised by the Collective Opinions as Defendants would have the Court do, would be a continuation of the denial of procedural due process.³

C. The Beneficiary of the Trustee’s Diocesan Assets

The Collective Opinions are ambiguous on whether the Plaintiff Protestant Episcopal Church in the Diocese of South Carolina (the “Diocese”) or the Defendant, Episcopal Church in South Carolina is the proper beneficiary of the Trustee’s assets. This is discussed on pages 12-14 of Attachment 1, the Unresolved Issues List. Chief Justice Beatty only speaks to this issue in footnote 29. This 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 rejected their analysis and reaffirmed *All Saints*. *All Saints* rejected the idea that TEC could determine the “true parish” looking instead to neutral principles of corporate law to determine corporate control.

If Chief Justice Beatty’s opinion is not limited to Camp St. Christopher, then he fails to state a legal reason which is both a violation of Rule 220 (b), SCACR and the requirements of due process. Due process requires that a court state the reason for its decision. *Compare Goldberg v.*

³ Justice Brandeis noted that if a remedy were still available after the petition for rehearing was denied, there would be no denial of due process. *Id.* n. 9

Kelly, 397 US. 254, 271 (1970) (“The decision maker should state the reason for his determination and indicate the evidence he relied on...”) *with* Rule 220(b) SCACR (“in every decision rendered by an Appellate Court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court, **must be stated in writing and must, with the reason for the court’s decision, be processed in the record of the case.**”) (emphasis added) *and* S.C. Code §18-9-210 (“when a judgment or decree is reversed or affirmed by the Supreme Court every point made and distinctly stated in the cause and fairly arising upon the record of the case shall be considered and decided and **the reason thereof shall be concisely and briefly stated in writing** and preserved in the record of the case ...”) (emphasis added).

CONCLUSION

The Collective Opinions, read as a whole to determine their intent, are more factually than legally ambiguous. The legal majority reaffirms *All Saints* as the law of this state on these issues. Chief Justice Beatty and Acting Justice Toal assert that these neutral principles of state law should be strictly applied. Using a different legal standard, Justice Hearn and Acting Justice Pleicones would have awarded everything belonging to any parish, the Diocese and the Trustees to TEC. As noted in the Unresolved Issues List, Attachment 1 at 11-14, the intersection of these two diametrically opposed legal standards is in Chief Justice Beatty’s opinion. His statement of the law applicable to create an express trust under these facts was not equivocal: there must be a signed writing by each individual parish church expressly agreeing to the Dennis Canon. Without that, no trust was created despite any pledges of allegiance to TEC.

The record which the Supreme Court’s rules permit it to rely upon is silent on this issue. One could stop there but Chief Justice Beatty did not. He believed the assertions of TEC’s counsel as adopted by Justice Hearn, that the “reaffirmation to the National Church” included the legal

principles he required. The law of the case only compels adherence by this Court to the law found to exist by an appellate court, not to factual issues particularly where they are at odds with the trial record. The application of that law to a nonexistent record based solely on the arguments of counsel is clearly erroneous and a manifest injustice.

September 24, 2018

Respectfully submitted,

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
The Protestant Episcopal Church In The	)	Case No. 2013-CP-1800013
Diocese Of South Carolina, <i>et al.</i>	)	
	)	DEFENDANTS' MEMORANDUM
	)	OF LAW IN SUPPORT OF THEIR
	)	AMENDED PETITION FOR
v.	)	EXECUTION AND FURTHER
	)	RELIEF ON DECLARATORY
The Episcopal Church, <i>et al.</i>	)	JUDGMENTS OF THE
	)	SOUTH CAROLINA SUPREME
	)	COURT AND FOR THE
	)	APPOINTMENT OF A
	)	SPECIAL MASTER
	)	

Defendants, The Episcopal Church (TEC) and The Episcopal Church in South Carolina (TECSC or the Associated Diocese), submit this memorandum of law in support of their amended petition under the authority of the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-120, Rules 69 and 70, SCRCF, S.C. Code Ann. §§ 15-39-10, et seq., and any other applicable authorities under South Carolina law, seeking the execution of and further relief required by the Opinion and declaratory judgments rendered by the Supreme Court of South Carolina in this matter on August 2, 2017, and for the appointment of a Special Master who will be able and authorized to enhance an orderly and expeditious resolution of all such issues.

I.

INTRODUCTION

This petition asks this Court, pursuant to its jurisdiction upon remittitur, to enforce the final judgment of the South Carolina Supreme Court in this matter. The South Carolina Supreme Court held that twenty-nine of the parishes hold their property in trust for the benefit of TEC and its Associated Diocese, TECSC. The South Carolina Supreme Court further held that a trustee

corporation holds the diocesan property in trust for the benefit of the Associated Diocese, TECSC. This Court, respectfully, should enforce these trust interests and effect an orderly transition of possession and control of the property to which TEC and its Associated Diocese, TECSC, are entitled by the final judgment of the South Carolina Supreme Court.

II.

PROCEDURAL BACKGROUND

On August 2, 2017, the South Carolina Supreme Court issued a final judgment in this case. Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church, 421 S.C. 211, 806 S.E.2d 82 (2017).

On September 1, 2017, the non-prevailing Plaintiffs petitioned for a rehearing and made a motion to recuse Justice Hearn.

On November 17, 2017, the South Carolina Supreme Court denied their petition for rehearing and their motion to recuse Justice Hearn and remitted the case. The South Carolina Supreme Court's order specifically provided as follows: ***"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."*** This order was signed by four of the five Justices: J. Beatty, J. Pleicones, J. Kittredge, and J. Toal (with J. Hearn not participating).

On February 9, 2018, the non-prevailing Plaintiffs filed a petition for writ of certiorari to the United States Supreme Court.

On June 11, 2018, the United States Supreme Court denied that petition for writ of certiorari.

Accordingly, the August 2, 2017 opinion of the South Carolina Supreme Court is not subject to any further appeals in any court in this State or this Country.

There is a related case pending in the United States District Court, vonRosenberg et al. v. Lawrence et al., 2:13-cv-00587-RMG (D.S.C. Filed March 5, 2013). The South Carolina Supreme Court expressly deferred, in its August 2, 2017 Opinion, to the federal court to resolve the trademark claims between the parties to this case.¹

There is another action pending in this Court generally referred to as a Betterment Action, which was instituted under the authority of S.C. Code Ann. § 27-27-10. It is not related to or affected by the relief sought in this Petition. A motion to dismiss it is pending.

III.

FACTUAL BACKGROUND

Plaintiffs announced their disaffiliation from TEC in late 2012. Since then, the diocesan and parish property has been in Plaintiffs' possession and control. That property includes land and buildings, along with considerable funds and other personal property such as books, silver, and historical archives. It also includes names, trademarks, service marks, and seals, as personal property.

Plaintiffs continue to possess and control that property in complete disregard of the August 2, 2017 Opinion of the South Carolina Supreme Court, which recognized TEC's and TECSC's trust interests in the diocesan property and the property of twenty-nine of the parishes.

¹ For the purpose of attempting to resolve all of the issues between the parties in a single action, TEC and its Associated Diocese, TECSC, recently asked the federal court to exercise supplemental jurisdiction over the trusts and provide appropriate relief required by the August 2, 2017 Opinion of the South Carolina Supreme Court. Judge Gergel, in an Order and Opinion dated April 16, 2018, declined to exercise such supplemental jurisdiction over the trusts for property ownership distribution issues mandated by the South Carolina Supreme Court and opined that TEC and its Associated Diocese, TECSC, should return to this Court to initiate a proceeding to enforce the August 2, 2017 declaratory judgments issued by the South Carolina Supreme Court to take "legal possession" of the property. vonRosenberg, 2:13-cv-00587-RMG (Order and Opinion dated April 16, 2018, at 6).

TEC and its Associated Diocese, TECSC, seek the intervention of this Court to effect an orderly transition of possession and control of the property to which they are entitled by the judgment of the South Carolina Supreme Court.

The relief required to effect the judgment of the Supreme Court is therefore requested, as detailed below.

IV.

RELIEF REQUESTED AND LEGAL AUTHORITIES

This petition to enforce and provide further relief required by the declaratory judgments of the August 2, 2017 Opinion of the South Carolina Supreme Court is made pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-120, Rules 69 and 70, SCRCP, S.C. Code Ann. §§ 15-39-10 et seq., and any other applicable authorities under South Carolina law.

The Uniform Declaratory Judgments Act, S.C. Code Ann. §15-53-120 provides as follows:

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

S.C. Code Ann. §15-53-120; see also S.C. Code Ann. § 15-53-130 (“This chapter . . . is to be liberally construed and administered.”). This Court has jurisdiction to enforce and provide further relief under this statute, following the remittitur issued by the South Carolina Supreme Court.

This Court does not have jurisdiction, however, to consider Plaintiffs' pending motion to "clarify" the August 2, 2017 Opinion of the South Carolina Supreme Court. This action was remitted to this Court, not remanded for a new trial. See Hampton Building Supply, Inc. v. Wilson, 328 S.E.2d 635, 637, 285 S.C. 135, 138 (1985) ("Once jurisdiction vested in the Supreme Court it would not re-vest in the Circuit Court except by order of the Supreme Court, such as for example, by granting a new trial."); Mueller v. Myrtle Beach Golf and Yacht Club, 438 S.E.2d 248, 250, 313 S.C. 412, 415 (1993) (distinguishing Hampton and holding that the lower court could award statutory attorney's fees after remittitur under the limited jurisdiction the lower court has to "enforce the judgment and take any action consistent with the Supreme Court ruling").

The Opinion of the South Carolina Supreme Court is final and cannot be clarified or otherwise revised by this Court. The South Carolina Supreme Court's order denying the non-prevailing Plaintiffs' petition for a rehearing specifically provides as follows: ***"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."*** The United States District has likewise recognized the finality of the South Carolina Supreme Court's Opinion, stating as follows: "The judgment of the South Carolina Supreme Court is a final judgment and is the law of the case." Judge Gergel's April 16, 2018 Order and Opinion at 6, vonRosenberg, 2:13-cv-00587-RMG.

1. The Diocesan Property

With respect to the diocesan property, this Court should enforce and provide further relief based upon the August 2, 2017 Opinion of the South Carolina Supreme Court by ordering that the members of the Board of Trustees elected by the Associated Diocese, TECSC, be installed as

the Board of the Trustees of the Protestant Episcopal Church in the Diocese of South Carolina (the “Trustees”) to hold the diocesan property in trust for the Associated Diocese, TECSC, in accordance with the Trustees’ legislative charter, as further explained below.

All real and personal diocesan property (which includes but is not limited to Camp St. Christopher,² the diocesan offices, the Bishop’s residence, diocesan funds and accounts, and diocesan names, trademarks, service marks, and seals³) is held in trust by the Trustees for the benefit of “the Protestant Episcopal Church for the Diocese of South Carolina,” also referred to as “said Diocese” in “said Church,” according to the legislative charter of the Trustees, the 1880 Act of the General Assembly of South Carolina (the “Act”), as amended by the 1902 Act:

. . . Section 1 . . . That the Bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina . . . are hereby appointed trustees for the purpose of holding in trust any property heretofore given or acquired, or hereafter to be given or acquired, for objects connected with said Church, in said Diocese . . .

. . . Sec. 3 The title to the real and personal property described in the first Section shall become vested in the said trustees by operation of law without further deed or conveyance other than that which is therein specified, and the trustees shall report annually to the Convention of the Diocese of the said Church.

² Camp St. Christopher is the most valuable piece of diocesan property and accordingly has been prominently featured in this dispute. Like all of the other diocesan property, Camp St. Christopher is held in trust by the Trustees for the benefit of the Associated Diocese, TECSC. Plaintiffs’ contention that the Trustees could somehow hold Camp St. Christopher in trust for the Associated Diocese, TECSC, while at the same time holding the other diocesan property in trust for the disassociated diocese, defies the South Carolina Supreme Court’s Opinion, the legislative charter of the Trustees, and logic altogether.

³ Although the trademark claims between the parties were deferred to the related federal action, the enforcement of Defendants’ trust interests, including trust interests in any names, trademarks, service marks, and seals, is properly before this Court. To be clear, this Court need not and should not consider any issues of trademark infringement, public confusion, or violations of the Lanham Act, which are before the federal court. This Court need only consider the names, trademarks, service marks, and seals as items of personal property, subject to TEC’s and TECSC’s trust interests, along with all of the other personal property.

1880 Act.

. . . Sec. 3. That the Trustees herein provided for and incorporated and their successors in office are hereby constituted such Trustees for the purpose of holding any and all property . . .

1902 Act.

A copy of that legislative charter, the 1880 Act, as amended by the 1902 Act, is attached as Exhibit A.

The August 2, 2017 Opinion of the South Carolina Supreme Court recognizes that the beneficiary of the Trustees, referred to in the legislative charter as “the Protestant Episcopal Church for the Diocese of South Carolina,” as well as “said Diocese” in “said Church,” is the Associated Diocese, TECSC; and is not the dissociated diocese led by Bishop Lawrence named in this case as a Plaintiff. Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting and summarizing the majority decision on diocesan property) (“ . . . title is in the trustee corporation for the benefit of the associated diocese . . .”); id. at 251, n.29 (Beatty, J., “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.”); id. at 231 (Pleicones, J., “...the Associated Diocese as the true Lower Diocese of South Carolina...”); id. at 248 (Hearn, J., “...the Appellants represent the true Lower Diocese of the Protestant Episcopal Church in South Carolina and are therefore entitled to all property...”).

The legislative charter of the Trustees, the 1880 Act, as amended by the 1902 Act, gives the beneficiary of the Trustees, the Associated Diocese, TECSC, the right to elect its Board:

Sec. 2. That a Board of Trustees is hereby incorporated to be known as ‘The Trustees of the Protestant Episcopal Church in South Carolina,’ which Board shall be constituted of not more than nine nor less than five members to be elected at the annual Council in and for the said church in the said Diocese in accordance with

such canon or canons as by such Trustees may from time to time be adopted.

1902 Act.

Therefore, the Court should enforce the declaratory judgment contained in the August 2, 2017 Opinion of the South Carolina Supreme Court by ordering that members elected by the Associated Diocese, TECSC, be installed as the Board of the Trustees to hold the diocesan property in trust for the Associated Diocese, TECSC.

To the extent that any of the real or personal diocesan property is held, owned, titled, or registered in the name of the corporation formed in 1973 and known as “The Protestant Episcopal Church in the Diocese of South Carolina,” the Court should enforce the August 2, 2017 declaratory judgment of the South Carolina Supreme Court by ordering that members selected by the Associated Diocese, TECSC, be installed as Directors of that corporation, or that any such property be transferred to the Trustees, as elected by the Associated Diocese, TECSC.

We anticipate that this will effectuate a full and complete transfer of possession and control of the diocesan property, consistent with the August 2, 2017 judgment of the South Carolina Supreme Court. However, we request that the Court grant any further proper or necessary relief to accomplish that imperative, including but not limited to, and in the alternative, relief provided under the South Carolina Trust Code, pursuant to S.C. Code Ann. §§62-7-706 & 1001, which allows the Court to compel/remove/replace/enjoin trustees, or appoint a special fiduciary to take possession of the property, or S.C. Code Ann. §62-7-412, which allows the Court to terminate the trust for ineffective and/or impractical administration and to distribute the property.

2. *The Parish Property*

With respect to the property of twenty-nine parishes, this Court should enforce and provide further relief based upon the August 2, 2017 Opinion of the South Carolina Supreme Court by transferring title to the parish property from the individual parish corporations to TEC and its Associated Diocese, TECSC, by requiring the appropriate Plaintiffs to execute all necessary deeds or instruments of title, or by transferring the title by Court order, as further explained below.

All of the real and personal property of the twenty-nine parishes (which includes parish land and buildings, parish funds and accounts, and other parish property such as books, silver, historical archives, parish names, trademarks, service marks, and seals⁴) is held in trust by the parish corporations, according to the Dennis Canon, adopted by TEC in 1979, which provides as follows:

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.

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 221, 806 S.E.2d at 87 (reciting the Dennis Canon).

According to the August 2, 2017 Opinion of the South Carolina Supreme Court, accession to the Dennis Canon by the twenty-nine parish corporations imposed trusts on the parish property under state law, and upon their disaffiliation, title to their property belonged to TEC and its Associated Diocese, TECSC. Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 230-31, 806 S.E.2d at 92-3 (Pleicones, A.J.); id. at 248 & n. 27, 806 S.E.2d

⁴ See supra Footnote 3.

at 101-02 & n. 27 (Hearn, J., concurring); id. at 250-51, 806 S.E.2d at 103 (Beatty, C.J., concurring in part and dissenting in part); id. at 291, n.72, 806 S.E.2d at 125, n.72 (Toal, J., dissenting and summarizing the majority's decision on parish property) (“[W]ith regard to the twenty-eight⁵ 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...”).

Therefore, the Court should enforce the August 2, 2017 Opinion of the South Carolina Supreme Court, by transferring title to the parish property from the parish corporations to TEC and its Associated Diocese, TECSC, by requiring Plaintiffs to execute any necessary deeds or instruments of title, or issuing the same by Court order. See Judge Gergel's April 16, 2018 Order and Opinion at 8, 9, and 10, vonRosenberg et al. v. Lawrence et al., 2:13-cv-00587-RMG (D.S.C. Filed March 5, 2013) (“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 .

⁵ The twenty-ninth parish is Old St. Andrews, which was not identified among the list of seven parishes that retained their property in the South Carolina Supreme Court's August 2, 2017 Order, which included: Christ the King Waccamaw; St. Matthews Church, Darlington; St. Paul's Episcopal Church, Conway; The Episcopal Church of Parish of Prince George Winyah, Georgetown; St. John's, Florence; and St. Matthias Episcopal Church, Summerton. Id. at 265 n. 49, 806 S.E.2d at 111 n. 49. The seventh is St. Andrew's, Mount Pleasant, which operates using two corporate entities that were both named as parties to the action and both identified in the Supreme Court's order, namely St. Andrews Church-Mt. Pleasant Land Trust and the Parish of St. Andrew, Mt. Pleasant. Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 242 & n. 21, 806 S.E.2d 98 & n. 21 (Hearn, J., concurring); id. at 421 S.C. at 248 n. 27, 806 S.E.2 102 n. 27 (Hearn, J., concurring) (“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.”). Plaintiffs expressly raised this issue regarding Old St. Andrews in their petition for rehearing, which was denied. Defendants erroneously referred to “twenty-eight” parishes in our Amended Petition for Execution, instead of “twenty-nine,” and hereby correct that misstatement.

. . 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 of the property . . . 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 form 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.”).

Upon receiving the deeds or other instruments of title, TEC and its Associated Diocese, TECSC, may form new parish corporations and transfer the deeds or instruments of title to real and personal property to them thereby allowing them hold and use the property operating as Episcopal parishes in accordance with the hierarchical governance of TEC and its Associated Diocese, TECSC, contained in the Constitution and Canons of each.

Ordering such relief will enable TEC and its Associated Diocese, TECSC, to take legal possession and control of the property without the Court having to supervise or manage Plaintiffs' vestries. Plaintiffs could be permitted to retain their parish corporations, without the trust property. Plaintiffs could use those corporations to continue to operate their religious organizations, if they so choose.⁶

It is anticipated that this will effectuate a full and complete transfer of possession and control of the parish property, consistent with the August 2, 2017 Opinion of the South Carolina

⁶ Plaintiffs would have to amend the names of their parish corporations to continue operating and providing religious services to the public. Their corporate names, which are also used as trademarks, are part of the personal property held by the parishes subject to the trust interest of TEC and its Associated Diocese, TECSC. Plaintiffs' continued use of those names would constitute trademark infringement, dilution, and false advertising.

Supreme Court. However, we request that the Court grant any further proper or necessary relief to accomplish that objective, including but not limited to, and in the alternative, relief provided under the South Carolina Trust Code, pursuant to S.C. Code Ann. §§62-7-706 & 1001, which allows the Court to compel/remove/replace/enjoin trustees, or appoint a special fiduciary to take possession of the property, or S.C. Code Ann. §62-7-412, which allows the Court to terminate the trust for ineffective and/or impractical administration and to distribute the property.

V.

APPOINTMENT OF A SPECIAL MASTER

The relief requested herein involves the transfer of a substantial amount of real and personal property, involving many parties. Petitioners believe that the orderly transfer of the property and the resolution of any disputes and controversies that might arise in the execution of such matters will be greatly enhanced by the appointment of a Special Master who will be able and authorized to enhance an orderly and expeditious resolution of all such issues. Accordingly, the appointment of a Special Master, with experience in complex property matters and with the capacity to dedicate the necessary time and attention to this matter, is appropriate.

We respectfully request that the parties be given the opportunity to propose available, qualified, and impartial candidates for the Court to consider as it selects and appoints a Special Master for these purposes.

(Signature page to follow)

Dated: September 24, 2018

Respectfully submitted

/s/Thomas S. Tisdale, Jr.

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Exhibit A to Petition To Petition for Execution

(Copy of the 1880 Act, as amended by the 1902 Act of the General Assembly of South Carolina, which is the legislative charter of the diocesan Trustee Corporation)

ACTS
AND
JOINT RESOLUTIONS
OF THE
GENERAL ASSEMBLY
OF THE
STATE OF SOUTH CAROLINA,
==
PASSED AT THE
REGULAR SESSION OF 1879 AND EXTRA SESSION OF 1880.

PRINTED BY ORDER OF THE GENERAL ASSEMBLY, AND DESIGNED TO
FORM A PART OF THE SEVENTEENTH VOLUME OF THE STATUTES
AT LARGE, COMMENCING WITH THE ACTS OF 1879.

COLUMBIA, S. C.
CALVO & PATTON, STATE PRINTERS.
1880.

OF SOUTH CAROLINA.

257

SEC. 2. That the County Commissioners of Clarendon County be, and are hereby, required and authorized to open and clear as a public highway a road in Clarendon County commencing at the Telegraph road, at or near Martin Minus's, to the Raccoon road, at or near the Norris plantation, and that said County Commissioners, within the present year, A. D. 1880, do proceed to open and work said road in conformity with the road laws of this State.

A. D. 1880.

County Commissioners to open road in Clarendon.

Approved February 20, 1880.

AN ACT TO AMEND SECTION 8 OF AN ACT ENTITLED "AN ACT TO AMEND CHAPTER XLV OF TITLE XI, PART I, OF THE GENERAL STATUTES, RELATING TO THE REPAIRS OF HIGHWAYS AND BRIDGES," SO FAR AS THE SAME RELATES TO THE COUNTY OF NEWBERRY. No. 221.

Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That Section 8 of an Act entitled "An Act to amend Chapter XLV of Title XI, Part I, of the General Statutes, relating to the repairs of highways and bridges," be, and the same is hereby, amended, so far as the same relates to the County of Newberry, by striking out the word "eighteen," on the first and second lines thereof, and inserting the word "sixteen" in place of the same; and by striking out the words "forty-five," on the second line thereof, and inserting the words "fifty-five" in place of the same.

Ages liable to work roads.

Approved February 20, 1880.

AN ACT TO GRANT CERTAIN POWERS TO THE BISHOP AND STANDING COMMITTEE OF THE PROTESTANT EPISCOPAL CHURCH FOR THE DIOCESE OF SOUTH CAROLINA. No. 222.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the Bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina, and their successors in office or a majority of them, are hereby appointed trustees for the purpose of holding in trust any property heretofore given or acquired, or hereafter to be given or acquired,

Trustees.

A. D. 1880.

for objects connected with said Church, in said Diocese, other than that now held by other corporations, and also for all property belonging to any of the corporations or churches or dormant parishes formerly connected with said Church, but which have now ceased to have active operation, and also of any property now or hereafter belonging to other churches or corporations in the said Diocese which may desire to surrender or convey the same to the said trustees, or whose charters of incorporation may have expired.

Trustees incorporated.

SEC. 2. The said trustees are hereby incorporated as a body politic and corporate by the name of the Trustees of the Protestant Episcopal Church in South Carolina, with all the powers of a corporate body, and may from time to time make such rules and by-laws for their government and for the management of the property under their charge as shall be approved by a majority of said trustees.

Property to come vested in Trustees.

SEC. 3. The title to the real and personal property described in the first Section shall become vested in the said trustees by operation of law without further deed or conveyance other than that which is therein specified, and the said trustees shall report annually to the Convention of the Diocese of the said Church.

Approved February 20, 1880.

No. 223. AN ACT TO MAKE APPROPRIATIONS FOR THE PAYMENT OF THE PER DIEM AND MILEAGE OF THE MEMBERS OF THE GENERAL ASSEMBLY, AND THE SALARIES OF THE SUBORDINATE OFFICERS AND EMPLOYEES THEREOF, FOR THE EXTRA SESSION COMMENCING FEBRUARY 10TH, 1880, AND OTHER OFFICERS AND MATTERS THEREIN NAMED.

Expenses of General Assembly.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the sum of twenty thousand dollars, if so much be necessary, be, and the same is hereby, appropriated to meet the expenses of the General Assembly at the extra session beginning February 10th, 1880, to be paid out of any money in the Treasury in preference to all other appropriations whatever, said sum to be paid out as follows :

Per diem.

For the payment of the per diem and mileage of the members of the General Assembly, eleven thousand one hundred dollars, or so much thereof as may be necessary.

Clerks.

For the pay of T. Stobo Farrow, Clerk of the Senate, and John T. Sloan, Clerk of the House of Representatives, each two hundred and fifty dollars during the session.

ACTS
AND
JOINT RESOLUTIONS
OF THE
GENERAL ASSEMBLY
OF THE
State of South Carolina,
PASSED AT THE
REGULAR SESSION OF 1902.

PRINTED BY ORDER OF THE GENERAL ASSEMBLY AND DESIGNED TO COM-
PLETE THE TWENTY-THIRD VOLUME OF THE STATUTES AT LARGE,
COMMENCING WITH THE ACTS OF THE REGULAR SESSION OF 1899.

COLUMBIA, S. C.
THE STATE COMPANY, STATE PRINTERS.
1902.

A. D. 1902.

meeting of the next General Assembly, to which he shall report the condition of the records and amount of work accomplished. "And there is hereby appropriated the sum of one thousand dollars for the purpose of providing suitable cases and receptacles for the preservation of the said documents and papers."

Approved the 27th day of February, A. D. 1902.

No. 612.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO GRANT CERTAIN POWERS TO THE BISHOP AND STANDING COMMITTEE OF THE PROTESTANT EPISCOPAL CHURCH FOR THE DIOCESE OF SOUTH CAROLINA," APPROVED FEBRUARY 20TH, 1880, AND TO SUBSTITUTE IN THEIR PLACE ANOTHER BOARD OF TRUSTEES.

Powers bish-
op and stand-
ing committee
of Protestant
Episcopal
Church amend-
ed.

Whereas, in and by an Act entitled "An Act to grant certain powers to the Bishop and Standing Committee of the Diocese of South Carolina," approved February 20th, 1880, the Bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina and their successors in office and were appointed Trustees for the purpose of holding in trust any property heretofore given or acquired for objects connected with said church in said Diocese, other than that held by other corporations, and also for all property belonging to any of the corporations or churches or dormant parishes formerly connected with said church, but which may have ceased to have active operations and also of any property then or thereafter belonging to other churches or corporations which might desire to surrender or convey the same same to the said Trustees, or whose charter of incorporation might have expired.

And whereas, the said Bishop and members of the Standing Committee of the Diocese of the said church, at the request of the Council or Convention thereof, have memorialized the General Assembly to be relieved of the trust aforesaid and to substitute other Trustees in their place and stead.

Board of
Trustees.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That the Bishop and members of the

OF SOUTH CAROLINA.

1157

Standing Committee of the said Diocese of the said church constituting under the Act aforesaid Trustees as aforesaid shall upon the election and organization of the Board of Trustees hereafter provided be relieved of and from the said trusts, and upon their accounting for the properties in their hands and transferring and turning over the same to the Trustees hereinafter provided, be discharged and exonerated therefrom.

A. D. 1972.

Sec. 2. That a Board of Trustees is hereby incorporated to be known as "The Trustees of the Protestant Episcopal Church in South Carolina," which Board shall be constituted of not more than nine nor less than five members to be elected at the annual Council in and for the said church in the said Diocese in accordance with such canon or canons as by such Trustees may from time to time be adopted.

Corporate
name

Sec. 3. That the Trustees herein provided for and incorporated and their successors in office are hereby constituted such Trustees for the purpose of holding any and all property heretofore given to or acquired by the Bishop and members of the Standing Committee as Trustees under the Act aforesaid, of which this Act is amendatory, which may be transferred and turned over to them by said Trustees under this Act; and also for the purpose of receiving and holding any property heretofore or now held by any other corporation which may desire to surrender the same and shall voluntarily do so, and for the purpose also of receiving and holding any other property which may be given to them by will, donation, surrender or otherwise: *Provided, however,* And it is expressly declared to be the intention of this Act that the said Trustees shall 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 devised.

Powers of
Trustees, suc-
cession.

Sec. 4. That the said Trustees constituted under this Act are hereby incorporated as a body politic by the name aforesaid, with all the powers of a corporate body, and may from time to time make such rules and by-laws for their government and for the management of the property under their charge as shall be approved by a majority of said Trustees.

By-laws, &c.

A. D. 1902.

Reports by.

Sec. 5. The Trustees hereinbefore provided for and incorporated shall report annually to the Council or Convention of the Episcopal Church in the Diocese of South Carolina a full and accurate statement of the funds and properties in their hands and of their investments thereof, also of their actings and doings as such Trustees.

Approved the 20th day of February, A. D. 1902.

No. 613.

AN ACT TO ALLOW THE COUNTY TREASURER OF ABBEVILLE COUNTY TO BORROW MONEY FOR SCHOOL PURPOSES, AND TO ALLOW THE COMMISSIONERS OF THE SINKING FUND TO LEND THE SAME.

Loan authorized for school purposes.

Section 1. *Be it enacted* by the General Assembly of the State of South Carolina: That the County Treasurer of Abbeville County, be, and hereby is, authorized and directed to borrow, from time to time as may be necessary, on his official note or notes or other similar official evidences of indebtedness, a sum or sums of money not exceeding ten thousand dollars in all, on the lowest rate of interest offered, not exceeding seven per cent. per annum, for the purpose of paying salaries of the teachers in the free public schools in said County, not including the School District of the town of Abbeville, and the said Treasurer is authorized to pledge for security such borrowed moneys the taxes levied for such purpose; and the Commissioners of the Sinking Fund, in their discretion, shall be allowed to lend to the County Treasurer said sum of ten thousand dollars herein authorized to be borrowed for school purposes, at a rate of five per cent. per annum interest, should they be so advised.

Approved the 25th day of February, A. D. 1902.

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; St. Luke's)
Church, Hilton Head Island;)
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)

Case No. 2013-CP-18-00013

**SUPPLEMENT TO MOTION FOR
CLARIFICATION OF JURISDICTION
AND FOR OTHER RELIEF**

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	)
DEFENDANTS.	)
_____	)

This supplements the motion filed on March 22, 2018 conforming to changed facts since its filing and to the list of issues filed with the Court on August 2, 2018. Two factual assertions made in the March motion have changed: The United States Supreme Court denied Plaintiffs' Petition for Certiorari and the South Carolina District Court refused to allow Defendants to add most of the state law issues, already present here, to that federal action.

The grounds for the motion arise out of the same predicate: "This Court must exercise jurisdiction to clarify [and decide] issues that remain" regarding *The Protestant Episcopal Church in South Carolina, et al.*, 421 S.C. 211, 800 S.E. 2d 82 (2017) ("Collective Opinions"). Because of the changed factual circumstances, the grounds may now be articulated with greater clarity. They are these:

- This Court has jurisdiction to take whatever action is necessary to resolve issues which are necessary to this Court's ability factually, legally and constitutionally to implement the Collective Opinions.
- Two of the four Justices who considered whether to hear the issues raised by the

Petition for Rehearing recognized that the Collective Opinions left “great uncertainty”, provided “little to no coherent guidance” and would require “more litigation involving these issues.” Order, Supreme Court of South Carolina, November 17, 2017.

- Enforcement of the judgment “according to law” or taking action consistent with the Collective Opinions requires the determination of what the Collective Opinions held and what action would be consistent with those holdings.
- As stated in the Plaintiffs Unresolved Issues List, the Collective Opinions did not decide, as to each parish church, the factual issue of the existence of express trusts; there is a dispute as to the Court’s ruling on the appropriate beneficiary of the Trustee’s assets and; the Plaintiffs/Counterclaim Defendant’ defenses have not been heard.

September 24, 2018

Respectfully submitted,

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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;)
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; St. Luke's)
Church, Hilton Head Island;)
St. Bartholomews Episcopal Church;)
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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)
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Church of St. Helena Trust; The Vestry and)
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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)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-18-00013

**MEMORANDUM IN SUPPORT OF
MOTION FOR CLARIFICATION
AND FOR OTHER RELIEF**

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	)
DEFENDANTS.	)
	)

I. Introduction

Before this Court are competing motions. One, filed by 31 plaintiffs/counterclaim defendants, asks this Court to determine issues not yet determined arising out of the unprecedented 5 separate opinions of the South Carolina Supreme Court. *The Protestant Episcopal Church in South Carolina, et al.*, 421 S.C. 211, 800 S.E.2d 82 (2017) (“Collective Opinions”). The other, filed by the two defendants/counterclaim plaintiffs, asks this Court to enforce the ruling they contend is expressed by the Collective Opinions. Defendants argue no interpretation is allowed or needed of the Collective Opinions. Plaintiffs argue enforcement is impossible without interpretation. Plaintiffs argue the remittal implicitly requires interpretation if this Court is to act “consistent with” the Collective Opinions. The backdrop to these points and counterpoints are the following undisputed facts:

- “Title to all the real property of the plaintiff Parishes, Trustees and Diocese is held in the name of those entities.” “[A]ll the real and personal property at issue was purchased, constructed, maintained and possessed exclusively by the Plaintiffs.” Final

Order at 20, 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.
- There has never been a decision of the Supreme Court of South Carolina where each Justice filed a separate opinion.
- The four Justices who considered the Petition for Rehearing were evenly divided because a fifth Justice was not appointed to allow the Court to consider the issues created by these 5 separate opinions.
- Half of the rehearing Court (Justice Kittredge and Acting Justice Toal) stated the obvious: the Collective Opinions left “great uncertainty”, provided “little to no coherent guidance” and would require “more litigation involving these issues.”
- The same half stated the refusal to appoint a fifth justice so that the Court could resolve the uncertainty created by the Collective Opinions was “shocking”, “deeply troubling” and “raises constitutional implications as the Court has blocked a fair and meaningful review.”
- In 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).

- The Defendants told 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].”)

II. The Legal Framework of the Competing Motions

a. Jurisdiction

The jurisdiction of this Court to hear and determine matters after a case is remitted is “well established. For instance, ... the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court’s ruling.” *Pee Dee Health Care, P.A. v. Estate of Thompson*, ___ S.E.2d ___, 2018 WL 4101089 (2018) (citing *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351-52 (Ct. App. 2001) and *Mullen v. Myrtle Beach Yacht and Golf Club*, 313 S.C. 412, 415, 436 S.E.2d 248, 250 (1993)).

The “enforcement of a judgment” or taking “any action consistent with an appellate court’s ruling”, requires this Court to determine what the Supreme Court ruled. Any ambiguity must be resolved by this Court which not only has the jurisdiction to do so, but also the obligation to determine the intention of the Supreme Court, even if ambiguous and even if there is no remand. *Hamm v. S. Bell Tel. & Tel. Co.*, 305 S.C. 1, 406 S.E.2d 157 (1991) (“*Hamm I*”).

In *Hamm I*¹, 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. The circuit court held it was

¹ *Hamm v. Southern Bell Telephone and Telegraph, Co.*, 302 S.C. 132, 394 S.E.2d 311 (1990), *cert. denied* 498 U.S. 1109, 111 S.Ct. 1018, 112 L. Ed.2d 1099 (1991) (“*Hamm I*”).

without jurisdiction to do so because the Supreme Court had not remanded the case with such instructions. Rather, the circuit court held that only the Supreme Court could “clarify its own opinion”. *Hamm II*, 406 S.E.2d 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.*

Here, there are an unprecedented 5 individual opinions which collectively are models of legal and factual ambiguity. Justice Kittredge and Acting Justice Toal say they create “great uncertainty” and provide “little to no guidance”. The Defendants say they are “fractured not only in rationale but also on facts”. Yet this Court must discern what is “action consistent” with the Collective Opinions. It has the jurisdiction to take whatever steps are necessary to determine and act on what is “consistent” whether explicit or implicit.

As noted in Plaintiffs’ Unresolved Issues List, Attachment 1, Defendants take the position that the Collective Opinions are themselves a declaratory judgment. That is not the case for at least three reasons. First, the case was not brought in the Supreme Court’s original jurisdiction, so the Collective Opinions were those of a court reviewing the declaratory judgment issued by the circuit court and thus subject to the limitations of a reviewing court. Second, one of the Court’s rules is that it does not *sua sponte* raise and decide issues not properly before it. A South Carolina appellate court only decides an issue that is both presented to, and decided by, the trial court and then preserved for appellate review. *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 *sua sponte* by an appellate court as the basis of its decision). Third, the Defendants recognize that the Collective Opinions are not

presently enforceable because they have not been recorded as judgments and because Defendants have invoked this court's jurisdiction to secure an enforceable order of judgment. However, if the Collective Opinions were a judgment, they are too uncertain for present enforcement.

A court cannot enforce that which is uncertain, whether a contract or a court order. The judgment of a court is construed like any other written instrument to determine the intent of the court. That intent is determined from all its parts, not from an isolated part. *City of North Myrtle Beach v. East Cherry Grove Realty Co., Inc.*, 397 S.C. 497, 503, 725 S.E.2d 676, 679 (2012). If the judgment is "plain and unambiguous" then the effect of the judgment "must be declared in light of the literal meaning of the language used." *Id.* (quoting *Weil v. Weil*, 299 S.C. 84, 90, 383 S.E.2d 471, 474 (Ct.App. 1989)). If the judgment is ambiguous, the intent of the court is still the determinative factor, *Eddins v. Eddins*, 304 S.C. 133, 135, 403 S.E.2d 164 (Ct.App. 1991), construing 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).

While the Collective Opinions do not create an executable judgment, this Court should take actions consistent with them if constitutionally appropriate. However, as Justice Kittridge and Acting Justice Toal stated, the Collective Opinions are greatly uncertain. Therefore, this Court must determine what actions would be consistent with them before it can take them. This too will require a determination of the Court's intent gathered from the Collective Opinions as a whole, not their isolated parts.

b. The Law of the Case

Defendants have stated the Collective Opinions are the "law of the case". Amended Petition for Relief at 4.

The law of the case posits that 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); *Flexor v. PHC-Jasper, Inc.*, 413 S.C. 561, 571-75, 776 S.E.2d 397, 403-05 (Ct. App. 2015) (“a decision on an issue of law made at one stage of the case becomes binding precedent to be followed in subsequent stages of the same litigation”). There must be an actual decision of the legal issue for it to become the law of the case. *Howe v. City of Akron*, 801 F.3d 718, 739-40 (6th Cir. 2015); *Accord, Flexon*, 413 S.C. at 571, 776 S.E.2d at 403. Implicitly decided issues fall within the doctrine, *Entek GRB, LLC v. Stull Ranches, LLC*, 840 F.3d 1239, 1241 (10th Cir. 2016), but ambiguous ones do not. *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. If in the court’s discretion its prior decision “is clearly erroneous and would work a manifest injustice”, the doctrine does not limit the court’s 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. If a legal ruling is the law of the case under these standards, whether it is to be applied to subsequent proceedings in the case is a product of the discretionary balancing between the need for finality and (1) substantially different evidence than that considered by the appellate court or (2) when the ruling was clearly erroneous and would work a manifest injustice.

III. Unresolved Issues in the Collective Opinions

As set forth in detail in both the Unresolved Issues List, Attachment 1, and Plaintiffs’ Petition for Rehearing, Attachment 2, the Collective Opinions are uncertain and ambiguous. They do not review the record as to each parish determining if Defendants proved the existence of an express trust in a signed writing. They do not resolve the issue regarding which entity is the beneficiary of the Trustee’s assets. They raise dispositive issues (revocability and minimal burden) not considered by, or ruled upon by the trial court, and then decide them adverse to

plaintiffs depriving plaintiffs of the right to be heard. Finally, having arrived at a differing result than the trial court on an incomplete record, they do not consider plaintiffs defenses to the TEC counterclaims that would have been considered had the trial court decided trusts existed.

A. The Collective Opinions do not decide whether each Parish church created an express trust based on the record before the Court

The trial court held that no express trust was created relying on *All Saints Parish, Waccamaw v. Protestant Episcopal Church*, 385 S.C. 428, 685 S.E.2d 163 (2009). Final Order at 36. Defendants argued on appeal that “29 of the 36 parishes made express promises in their governing documents to comply with the National Church’s rules” which allegedly created express trusts. Brief of Appellants at 38. The only record in support of this assertion were five pages from a post-trial submission to the trial court in which Defendant’s counsel summarized documents. Attachment 3. Statements of counsel regarding the contents of documents are not evidence and cannot be considered. *Am. Motorists Ins. Co. v. Murphy*, 253 S.C. 346, 349, 170 S.E.2d 663, 665 (1969); *Hobbs v. Beard*, 43 S.C. 370, 21 S.E. 305, 308 (1895). The documents summarized, some inaccurately, by the Defendants’ counsel were not in the record on appeal and therefore could not have been considered by the Supreme Court. Rule 210(h), SCACR. (“the appellate court will not consider any fact which does not appear in the Record on Appeal.”). 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”) and given what Justice Hearn, joined by Acting Justice Pleicones, stated.

Justice Hearn, joined by Acting Justice Pleicones, 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. 211, 243, 806 S.E.2d 82, 99. Nonetheless Chief Justice Beatty, Justice Kittredge and Acting Justice

Toal, found a lack of accession by the 7 or 8 churches, not based on the record but based on Defendants' admission. The five-page argument of counsel omitted seven parishes from its list of those that "expressly accepted the national church's governance." The Court's finding for the 7 or 8 parish churches was because of this admission. The Court could not have made a finding based on the records relating to the other parishes because there was no record before the Court.

B. To create an express trust under *All Saints*, it is the law of the case that there must be an express agreement in a signed writing by each parish church to the Dennis Canon.

The majority of the court (Chief Justice Beatty, Justice Kittredge & Acting Justice Toal) held that neutral principles of state law, as applied in *All Saints*, is the proper legal standard to be used when resolving disputes between religious organizations over property and corporate control. Chief Justice Beatty repeatedly stated what was required under neutral principles to create an express trust. There must be evidence of an express agreement to the Dennis Canon in a writing signed by the individual church:

These parishes that did not expressly accede to the Dennis Canon should retain ownership of the disputed real and personal property.

421 S.C. at 249, 806 S.E.2d at 102.

TEC argues that the parishes' 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. (emphasis added)

In my view, the Dennis Canon had no effect until acceded to in writing by the individual parishes.

Id. at 250, 806 S.E.2d at 103.

...the parishes that did not accede to the Dennis Canon cannot be divested of their property.

Id.

Chief Justice Beatty did not apply this legal requirement to any specific parish nor did he review any of the parish specific documents because none were in the record on appeal. Moreover, the post-trial argument of counsel about express trusts which was in the record, (which could not be relied upon by the Court) does not state that any parish expressly agreed in a signed writing to the Dennis Canon. It states that some parishes “expressly accepted” either the “National Church’s governance” or the “Diocese’s governance.” Justice Beatty however stated that “merely promised allegiance ...without more... cannot deprive [parishes] of their ownership rights in their property.” *Id.* Three examples from Defendants’ summary demonstrate the latent uncertainty surrounding Defendants’ assertions.

1. St. Philips Church

There is nothing in either the five-page argument of Defendants’ counsel nor in the record that remotely approaches an express agreement in a signed writing to the Dennis Canon by St. Philips Church. First, Defendants’ argument references 1987 Articles of Restatement as “describing the purpose of the parish corporation as being ‘in accord with the Articles of Religion of the Protestant Episcopal Church in the United States of America...’.” The 1987 Articles of Restatement were not part of the record on appeal. There was no evidence which could be considered under Rule 210(h) and there was none considered by the trial court because it did no parish by parish review. Finally, not only were the referenced “Articles of Religion” not part of the record on appeal, they were never introduced into evidence at trial and were therefore not part of the trial record. The Articles of Religion contain no mention of the Dennis Canon or any other Canon of The Episcopal Church—they represent nothing more than a summary of theological and doctrinal beliefs. Defendants’ counsels five-page summary does not contend that there is an express agreement to the Dennis Canon on the part of St. Philip’s Church since none exists. There

is a complete lack of evidence of an express agreement by St. Philips Church in a signed writing to the Dennis Canon.

2. St. Michael's Church

According to Defendants' counsel, in 1989 Bylaws St. Michael's Church, "acknowledges the authority of ... The Diocese of South Carolina ...and of the National Church." These Bylaws were not in the record on appeal and therefore there was no evidence on this issue before the Supreme Court.² Defendants five-page argument does not contend there is an express agreement to the Dennis Canon in a signed writing by St. Michael's Church. And, Chief Justice Beatty stated promises of allegiance do not create a trust. 421 S.C. at 251, 806 S.E.2d at 103.

3. Church of the Good Shepherd

According to Defendants' counsel, Good Shepherd amended its corporate articles in 2001 "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 there was no evidence on this issue before the Court. Defendants' argument in its five-page summary is that Good Shepherd is organized pursuant to the Canons of the Diocese, not TEC. However, the Court 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 it 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 law of this case is that in order to have an express trust under South Carolina neutral principles of law, a court must find, as to each parish church, the existence of a signed writing in

² The parishes urged the court on Rehearing to consider such documents and the Court was empowered to order them up from the trial court record into the record but of the Supreme Court, but the Court failed to act on this request due to a 2 to 2 vote.

which the church expressly agrees to the Dennis Canon. The trial court did not make any findings as to each parish church on this issue. The Defendants did not include in the record on appeal any of the documents they argued in their five-page summary created express trusts. Examples of some of those summarized documents show that they do not create an express trust. In order for this Court to enforce the legal ruling on the creation of express trusts, it must consider, as to each parish, whether such a trust was created.

a. Due Process and Property Deprivation

Article I, Section 3 of South Carolina's Constitution provides that "no person ... shall be deprived of ... property without due process of law ..." The 5th Amendment to the United States Constitution contains a similar guarantee.

"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, 105 S.Ct. 1487, 1493 (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, 105 S.Ct. at 1493.

b. The South Carolina Supreme Court's Procedural Due Process Rules

Some of the Supreme Court's procedural rules are rules of due process. It will not consider issues that have not been presented to, and ruled upon by a lower court and which have not been preserved for review. It will not consider facts which are not included in the record on appeal.

These rules are intended to make sure that only those issues on which a party has had

meaningful notice and a meaningful opportunity to be heard, and on which the trial court has ruled, are matters which the Supreme Court will consider. *Sua sponte* decisions on matters not presented to and ruled on by the trial court deprive a party of the “root requirement” which must occur before a decision is made – the opportunity to be heard. Similarly, basing a decision on matters not in the record deprives a party of that same opportunity for it is a decision based on facts that are not before it.

Both sides to this dispute agree that the Supreme Court did not consider the issues raised in the Petition for Rehearing, yet many of these issues are based on facts not in the record (accession issues) or were the product of *sua sponte* decisions because they were not presented to or ruled upon by the trial court (revocability, minimal burden).

Justice Kittredge and Acting Justice Toal expressly recognized that the Supreme Court’s decision by a 2-2 vote not to consider those issues “raises constitutional implications as the Court has blocked a fair and meaningful review.” The United States Supreme Court has also held that such action is a denial of procedural due process.

Justice Brandeis, writing for a unanimous Supreme Court, considered the issue of the procedural due process due a litigant when an appellate court deprives it of its property. *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 50 S.Ct. 451 (1930). There the Supreme Court of Missouri overruled a previous decision construing a state statute on which the plaintiff had relied and in so doing, deprived the plaintiff of the remedy the previous construction had afforded. The plaintiff petitioned for a rehearing which was denied without opinion. Justice Brandeis stated the Court’s concern was not the plaintiffs’ rights on the merits, but “whether the plaintiff has been accorded due process in the primary sense – whether it has had an opportunity to present its case and be heard in its support.” *Id.* at 680, 50 S.Ct. at 454. Reversing the Missouri

Supreme Court, the Court held that “whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.” *Id.* at 682, 50 S.Ct. at 454-455. *Accord, Bouie v. City of Columbia*, 378 U.S. 347, 354, 84 S. Ct. 1697, 1703 (1964) (Due process includes a “standard of state decisional consistency”).

To continue that “blocking” by refusing to consider the new issues raised by the Collective Opinions as Defendants would have the Court do, would be a continuation of the denial of procedural due process.³

C. The Beneficiary of the Trustee’s Diocesan Assets

The Collective Opinions are ambiguous on whether the Plaintiff Protestant Episcopal Church in the Diocese of South Carolina (the “Diocese”) or the Defendant, Episcopal Church in South Carolina is the proper beneficiary of the Trustee’s assets. This is discussed on pages 12-14 of Attachment 1, the Unresolved Issues List. Chief Justice Beatty only speaks to this issue in footnote 29. This 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 rejected their analysis and reaffirmed *All Saints*. *All Saints* rejected the idea that TEC could determine the “true parish” looking instead to neutral principles of corporate law to determine corporate control.

If Chief Justice Beatty’s opinion is not limited to Camp St. Christopher, then he fails to state a legal reason which is both a violation of Rule 220 (b), SCACR and the requirements of due process. Due process requires that a court state the reason for its decision. *Compare Goldberg v.*

³ Justice Brandeis noted that if a remedy were still available after the petition for rehearing was denied, there would be no denial of due process. *Id.* n. 9

Kelly, 397 US. 254, 271 (1970) (“The decision maker should state the reason for his determination and indicate the evidence he relied on...”) *with* Rule 220(b) SCACR (“in every decision rendered by an Appellate Court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court, **must be stated in writing and must, with the reason for the court’s decision, be processed in the record of the case.**”) (emphasis added) *and* S.C. Code §18-9-210 (“when a judgment or decree is reversed or affirmed by the Supreme Court every point made and distinctly stated in the cause and fairly arising upon the record of the case shall be considered and decided and **the reason thereof shall be concisely and briefly stated in writing** and preserved in the record of the case ...”) (emphasis added).

CONCLUSION

The Collective Opinions, read as a whole to determine their intent, are more factually than legally ambiguous. The legal majority reaffirms *All Saints* as the law of this state on these issues. Chief Justice Beatty and Acting Justice Toal assert that these neutral principles of state law should be strictly applied. Using a different legal standard, Justice Hearn and Acting Justice Pleicones would have awarded everything belonging to any parish, the Diocese and the Trustees to TEC. As noted in the Unresolved Issues List, Attachment 1 at 11-14, the intersection of these two diametrically opposed legal standards is in Chief Justice Beatty’s opinion. His statement of the law applicable to create an express trust under these facts was not equivocal: there must be a signed writing by each individual parish church expressly agreeing to the Dennis Canon. Without that, no trust was created despite any pledges of allegiance to TEC.

The record which the Supreme Court’s rules permit it to rely upon is silent on this issue. One could stop there but Chief Justice Beatty did not. He believed the assertions of TEC’s counsel as adopted by Justice Hearn, that the “reaffirmation to the National Church” included the legal

principles he required. The law of the case only compels adherence by this Court to the law found to exist by an appellate court, not to factual issues particularly where they are at odds with the trial record. The application of that law to a nonexistent record based solely on the arguments of counsel is clearly erroneous and a manifest injustice.

September 24, 2018

Respectfully submitted,

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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,	)	
et al.	)	
	)	Case No. 2013-CP-18-00013
PLAINTIFFS,	)	
	)	
v.	)	UNRESOLVED ISSUES FOR
	)	FOR ACTION CONSISTENT WITH THE
	)	FIVE OPINIONS OF THE SOUTH
	)	CAROLINA SUPREME COURT
	)	DECISION
	)	
The Episcopal Church (a/k/a, The	)	
Protestant Episcopal Church in the	)	
United States of America); The Episcopal	)	
Church in South Carolina	)	
DEFENDANTS.	)	
	)	

I. Preliminary Statement

A. “Great uncertainty” in “matters of great importance”

On August 2, 2017, the South Carolina Supreme Court (the “Court”) issued a decision consisting of 5 separate opinions on an appeal from a decision by Judge Diane Goodstein in this action. *The Protestant Episcopal Church in the Diocese of South Carolina, et al. v. The Episcopal Church, et al.*, 421 S.C. 201, 806 S.E. 2d 802 (2017) (“Collective Opinions”). Certain plaintiffs petitioned for rehearing. The issues raised and arguments made in the Petition for Rehearing, by a 2-2 vote, were not passed upon by the Court. On November 17, 2017 Justice Kittredge, joined by Acting Justice Toal, stated the refusal to appoint a fifth justice to allow full court consideration of these “matters of great importance” was “shocking”, “deeply troubling” and “raises constitutional implications as the Court has blocked a fair and meaningful merit review of the rehearing petition.” Order, November 17, 2017, Attachment 1. Because of the Court’s failure to pass upon the merits

of the rehearing petition, Acting Justice Toal concluded the “Courts’ collective opinions in this matter give rise to great uncertainty in that we have given little to no coherent guidance in this case. Given our lack of agreement, I have no doubt that the court will see more litigation involving these issues...” *Id.*

Earlier today, TEC cited basic law in its letter to the Court on the enforcement of the Collective Opinions as if these 5 separate opinions in a single case are typical and lend themselves to simple enforcement. The five separate opinions of the Court in a single case are not typical. Indeed, there is only one case – this one – of its kind. In contrast, less than 3 months ago, on May 7, 2018, the defendants told the United States Supreme Court it should not grant Plaintiffs’ Petition for Certiorari because the Collective Opinions were “a poor vehicle for review.” Attachment 2, Brief of Respondents in Opposition to Petition for Writ of Certiorari at 23-26. This was because the Collective Opinions are based on an “incomplete record”, which “contains significant ambiguities”. The Collective Opinions are “fractured not only in rationale but even on facts.”. *Id.* at 2, 23. The absence “of a majority opinion on the standard of review” creates “ambiguities” making it “difficult to discern which of the trial court findings stand.” *Id.* at 23-24. Finally, they stated that the constitutional issue raised in the rehearing petition had not been decided by the Court which means none of those issues have been decided. *See* Attachment 3.¹

B. The Law of the Case

¹ Plaintiffs’ Petition for a Writ of Certiorari was denied by the United States Supreme Court on June 4, 2018. A denial of a petition for cert has no precedential effect. *Teague v. Lane*, 489 U.S. 288, 296 (1989). *See also Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 94 n. 11 (1983) (“denials of certiorari have no precedential force”); *Stebbing v. Maryland*, 469 U.S. 900, 907 (1984) (Marshall, J., dissenting from the denial of certiorari) (noting that “it is axiomatic that denials of writs of certiorari have no precedential value”); *Walker v. Georgia*, 555 U.S. 979 (2008) (Stevens, J., respecting the denial of the petition for writ of certiorari) (noting that “Court’s denial [of certiorari] has no precedential effect”).

Defendants state the Collective Opinions are the “law of the case”. Amended Petition for Relief at 4. 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); *Flexor v. PHC-Jasper, Inc.*, 413 S.C. 561, 571-75, 776 S.E.2d 397, 403-05 (S.C. App. 2015). The doctrine encompasses legal issues not raised on appeal but which should have been or legal issues raised on appeal but expressly rejected (including legal issues necessary to a decision of the expressly decided legal issues). If a legal ruling is the law of the case under these standards, whether it is to be applied to subsequent proceedings in the case is a product of the discretionary balancing between the need for finality and (1) substantially different evidence than that considered by the appellate court or (2) when the ruling was clearly erroneous and would work a manifest injustice. *Id.*

C. Defendants’ Jurisdictional Premise

Defendants premise their Amended Petition arguments on their view that the Court issued the declaratory judgment at issue here. However, the Court’s jurisdiction was not original, it was as the court reviewing the declaratory judgment decision of the circuit court. South Carolina appellate courts cannot raise issues *sua sponte* and then decide them. They do so after the issue is presented to, and decided by, the trial court and then preserved for appellate review. *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 *sua sponte* by an appellate court as a basis of its decision).

The Plaintiffs have never been heard by a trial court or the Court on any of the following issues.

1. The issue of whether, on a parish by parish basis, there was an express written and signed agreement to the Dennis canon was not considered by Judge

Goodstein.

2. The issue of whether any trusts created were irrevocable.
 - a. Judge Goodstein never considered this issue because she ruled there were no trusts created.
 - b. The Court decided the issue *sue sponte* not allowing Plaintiffs to be heard because it did not consider the issues raised in the Petition for Rehearing.
3. The issue of whether there is a “minimal burden” requirement imposed by *Jones v. Wolf* when a religious entity creates a trust.
 - a. The defendants never raised the argument and Judge Goodstein did not consider it.
 - b. The Court decided the issue *sua sponte* and did not pass upon the rehearing petition arguments.
4. Because of 2, Judge Goodstein was not asked by plaintiffs to consider whether a finding of a “minimal burden” requirement would violate the U.S. and South Carolina Supreme Court constitutional protections guaranteed by the 1st Amendment. That issue was first raised in the petition for rehearing because it was decided *sua sponte* in the Collective Opinions.
5. None of the defenses raised by the plaintiffs to the defendants’ counterclaims were considered by Judge Goodstein or the Court.

It is in this context that the Plaintiffs submit the following list of issues which are necessary to this Court’s ability, factually, legally, and constitutionally, to implement the Collective Opinions.

II. There are Unresolved Issues Necessary Before Any Enforcement of the Collective Opinions

A. Summary of Primary Issues

1. As to each parish church, was an express trust created because it expressly agreed to the Dennis canon in a signed writing, and if so was that trust irrevocable? If not, was it revoked?
2. Is the beneficiary of the Trustees' diocesan assets the Diocese except as to Camp St. Christopher?
3. The defenses plaintiffs raised to the counterclaims of TEC and the ECSC must be heard and decided.

B. Express Trusts by Parish Churches: The narrowest grounds upon which there was agreement among the Collective Opinions *in result* did not decide which parish plaintiffs agreed to the creation of an express trust with the beneficiary being, The Episcopal Church ("TEC"). In other words, this Court must determine which Parish Plaintiffs agreed, in writing, to the Dennis Canon. Only an evidentiary hearing in which the parties present their evidence as to the creation of an express trust can determine this issue. The following are the reasons this issue must be decided by this Court.

- a. There was no majority on the standard of review. Two justices (Pleicones and Hearn) use a *de novo* standard of review (contrary to *All Saints*) based on their opinion that the primary purpose of the action was equitable. Two justices (Toal and Kittridge) used the same standard of review as *All Saints*, based on their opinion that the primary purpose of the action was legal. Justice Beatty did not state his opinion on the standard of review.

- b. There was no agreement among the 5 opinions on the rationale and there was no agreement on the results among four opinions: Acting Justice Pleicones, Justice Hearn, Justice Kittridge and Acting Justice Toal.

1. Justice Hearn and Acting Justice Pleicones joined in each other's opinions.

Both Justices used a *de novo* standard of review and made their own findings of fact. Both used the legal standard of deference to the decision of the highest body in a hierarchical church on corporate control and the existence of a trust. Justice Hearn also found a constructive trust was created by operation of law based on parish agreement to the "rules" of TEC by the plaintiffs in which Acting Justice Pleicones joined.

2. A majority (Beatty, Kittridge and Toal) agreed that the legal standard to be applied when resolving disputes between religious organizations over property and corporate control is neutral principles of state property and trust law. These three opinions did not agree on the result when this legal standard was applied to the facts.

1. Justice Beatty and Justice Toal found that neutral principles were to be strictly applied as they would be to any non-religious organization as decided by *All Saints* which was decided consistently with the constitutional principles of *Jones v. Wolf*. Justice Toal found no express or constructive trusts were created by any parish. Justice Beatty's opinion on the result is discussed below.

2. Justice Kittridge read *Jones v. Wolf* to constitutionally require

that a state's neutral principles of law, when applied to the creation of an express trust by a religious organization, must require no more than a "minimal burden" in its creation. If applied strictly, without a minimal burden, the idea that any express trust would be created on the facts was "laughable." Applying neutral principles minimally, express trusts were created by some parishes but they were revocable and they were revoked.

3. Justice Toal expressly rejected the concept of minimal burden and Justice Beatty impliedly rejected it because he required that neutral principles of state law be "strictly" applied.
 4. The minimal burden issue was not presented to nor decided by the trial court. It was raised for the first time by defendants in Appellants' Brief. Any decision arising out of it was *sua sponte*.
- c. There was apparent, partial agreement in a result between the opinions of Acting Justice Pleicones, Justice Hearn and Chief Justice Beatty. Necessarily the narrowest ground must be found in CJ Beatty's opinion.

1. Chief Justice Beatty's opinion states:

1. He does not agree with any of the analysis of the Pleicones and Hearn opinions and he did not agree with "much of the result."
2. *All Saints* and *Jones v. Wolf* control this dispute.
3. The Dennis Canon is not a legally cognizable form of trust required by *Jones*. Unequivocal intent expressed by the action

of *each settlor* (each parish church) is required to create a trust, *not* the intent of TEC, the beneficiary.

4. If a parish church agreed in a signed writing to the Dennis Canon then it would create a trust with TEC as its beneficiary.
 5. Certain parishes, unnamed by Justice Beatty, did not do that and no trust was created.
 6. Certain parishes, unnamed by Justice Beatty, “assuming they acceded in writing”, created a trust.
2. An express trust is the only type of trust that could be created that would produce the narrowest agreement *in result* between the opinions of Beatty, Pleicones and Hearn.
1. Judge Goodstein found that the only types of trust that could exist on these facts were an express trust and a constructive trust. Final Order at 34. That ruling was not appealed and no other types of trusts were discussed by the Collective Opinions.
 2. Justice Hearn (joined by Acting Justice Pleicones) found that a “constructive trust” was created by operation of law based on 36 parishes agreement to the “rules” of TEC. (However, a constructive trust is not based on intent but arises when “circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title.” *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E. 2d 559, 561 (1987).

3. CJ Beatty did not agree on the use of deference to determine the outcome of a dispute between religious organizations over property and corporate control, as did Pleicones and Hearn.
 4. CJ Beatty required the following to create a trust: each parish, individually, had to agree in a signed writing to the Dennis Canon evidencing an unequivocal intent to create a trust. That is an express trust under neutral principles of South Carolina trust law. It is not a constructive trust because neither intent nor a specific writing are required to create a constructive trust.
 5. CJ Beatty did not agree that any parish agreement to “rules” created an express trust.
 - i. Promises of allegiance to TEC were not sufficient.
 - ii. He disagreed with the analysis of Pleicones and Hearn.
 - iii. He never mentioned agreement to “rules” but repeatedly required agreement to a specific document created by TEC, the Dennis Canon.
3. The record on appeal does not contain facts that establish as to each parish church an express agreement to the Dennis Canon in a signed writing.
1. The defendants did not include the documents claimed to exist in their counsels’ partial summary of the record which was included in the record on appeal. They included 5 pages from

their reconsideration memorandum to Judge Goodstein in the record on appeal.

2. Facts argued in the statements of counsel are not record facts which can be considered by an appellate court.
3. The defendant-appellants had the burden of presenting the appellate court with an adequate record on appeal. *Harkins v. Greenville County*, 340 S.C. 606, 616, 533 S.E. 2d 886, 891 (2000).
4. Justice Hearn (joined by Acting Justice Pleicones) found that... “this issue (of accession by the parish churches) is not properly before the Court...”
5. The 5-page summary of the parishes who allegedly created an express trust is factually inaccurate.²
 - i. As an example only, with respect to St. Philip’s Church, the only statement which is used to allege an express trust was created in favor of TEC is a portion of a sentence from 1987 corporate Articles of Restatement stating the parish purpose is to operate in accordance with “Articles of Religion.” These religious precepts are not in any record and have nothing

² Justice Toal’s Opinion states that the “...defendants contend that twenty-eight of the plaintiff parishes ‘acceded’ in some form or another...” and later refers to “alleged express promise” of the twenty-eight plaintiff parishes (emphasis added).

whatsoever to do with the Dennis canon or any other canon.

- ii. TEC also does not believe it is accurate. The summary does not list “Old St. Andrews” as a parish that created an express trust in favor of TEC, yet TEC contends that Old St. Andrews created an express trust.

- 4. The statement by CJ Beatty that the “remaining parishes” expressly agreed to the Dennis Canon is not based on anything in the record and he did not identify which did and which did not. The interpretation of his opinion as advocated by the defendants would be clearly erroneous and a manifest injustice and could not be the law of the case.

- 1. TEC admitted that 7 or 8 parishes did not expressly agree to the Dennis Canon. These parish churches are not before the court.
- 2. No justice, including CJ Beatty, decided whether an express trust was created based on any record facts on a parish by parish basis as to any “remaining Parishes”.
- 3. CJ Beatty’s opinion cannot be presumed to have violated the Supreme Court’s rule by relying on the summary of counsel as record facts.
- 4. If such an assumption were made, his opinion would be internally inconsistent.
 - i. The summary of documents not in the record

does not reference facts that each parish expressly agreed in a signed writing to the Dennis Canon.

ii. To the extent that CJ Beatty's is interpreted to mean he relied on the factual findings of Hearn and Pleicones that would be inconsistent with the other parts of his opinion.

1. He disagreed with all their analysis and much of their result.
2. Hearn and Pleicones found a constructive trust was created by all 36 parishes by facts found *de novo*. Though not stating a standard of review, CJ Beatty could not be interpreted to agree with theirs because he expressly disagreed with their analysis.
3. Express trusts, though legally narrower than constructive trusts, are not a factual subset of constructive trusts.

d. If this Court finds that an express trust was created by any parish church, then next part of the first primary issue is whether that parish church irrevocably agreed to that express trust and if not, whether it was revoked.

C. Diocesan Beneficiary of Trustees Assets: The second primary issue is with respect to

the uncertainty about what decision was made with respect to who is the beneficiary of the assets of plaintiff, Trustees of the Protestant Episcopal Church in South Carolina (the “Trustees”) held for the benefit of plaintiff, The Protestant Episcopal Church in the Diocese of South Carolina (the “Diocese”). A decision is required.

- a. Acting Justice Toal and Justice Kittredge found the Trustees “diocesan” assets were held for the Diocese as the beneficiary.
- b. Acting Justice Pleicones and Justice Hearn found the Trustees “diocesan” assets were held for the ECSC as the beneficiary.
- c. Chief Justice Beatty found, according to Acting Justice Toal’s summary in note 72, that only Camp St. Christopher was held by the Trustees for the benefit of the ECSC.
- d. The defendants maintain that CJ Beatty’s ruling is not limited just to the Camp.
- e. Justice Beatty made only one reference to this issue in footnote 29. In that footnote, he states (1) title to the Camp should remain with the Trustees, (2) it was held for the welfare of the “Protestant Episcopal Diocese of South Carolina” and (3) the “disassociated diocese could not claim to be the successor to the “Protestant Episcopal Church in the Diocese of South Carolina.” He stated no legal reason for that decision other than what he had just been discussing.
 1. To the extent that the decision is broader than Camp St. Christopher, as the defendants maintain, CJ Beatty did not give the reason and that would be a violation of a court rule which he should not be presumed to have done.
 1. All the justices agreed that the Diocese disassociated from TEC

in 2012. CJ Beatty disagreed with the analysis of Pleicones and Hearn which used the legal standard of deference to find that the ECSC was the proper beneficiary. There is no stated strictly applied neutral principle of law by CJ Beatty that would result in the Diocese not being who it is after its successful disassociation from TEC and that would be contrary to the factual findings of Judge Goodstein.

2. CJ Beatty cannot be presumed to be implicitly using a *de novo* review standard for making findings of fact using neutral principles of law because he would have violated Rule 220(b)(1), SCACR. *Dearybury v. Dearybury*, 351 S.C. 278, 283, 569 S.E. 2d 367, 369 (2002) (“when an appellate court chooses to find facts in accordance with its own view of the evidence, the court must state distinctly its findings of fact and the reason for its decision.”)

D. The last primary issue relates to the defenses raised by all the plaintiffs to TEC’s and ECSC’s counterclaims. These were not decided by the trial court, were not an issue on appeal and were not decided by the Collective Opinions. They remain to be heard and decided.

Respectfully submitted,

August 2, 2018

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2015-000622

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

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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.

PETITION FOR REHEARING

Pursuant to the provision of Rule 221(a), Respondents, with the exception of those parishes who prevailed with respect to their property rights (hereinafter "Petitioners"), through their undersigned counsel, respectfully petition this Court for a rehearing based on facts, points, and arguments overlooked or misapprehended as set forth herein.

This Court's decision relies upon a misapplication of the First Amendment and the Supreme Court's decision in *Jones v. Wolf*, 443 U.S. 596 (1979). The decision to strip Petitioners of their property rights depended upon a misreading and misapplication of *Jones*, and an erroneous conclusion that the First Amendment requires courts to enforce an alleged "trust" claimed by one side of an internecine dispute between religious institutions, even though such a trust would not be legally cognizable under generally applicable rules of state property and trust law. Simply put, the First Amendment does not require courts to establish specialized property and trust law that favor one religious institution over another. To the contrary, the Constitution affirmatively prohibits this Court from fashioning specialized rules that favor one religious institution over another. If two secular institutions had entered into the transactions at issue here, there is no question that an irrevocable trust would not have been created under South Carolina law. Applying the same neutral principles of South Carolina law, an irrevocable trust was not created between

the institutions in this case. The outcome of this property dispute cannot change simply because this case involves religious rather than secular institutions.

Additionally, the opinions variously overlook and misapprehend the law and facts involving the standard of review, the inadequacy of the record for findings made and legal conclusions reached, the consideration of issues that were not preserved for review by the Appellants, and the failure to apply and the misapplication of United States Supreme Court precedent. The disruptive effect of this decision on religious organization transactions with the business world will be significant. Mortgage lenders will now find that the real property which secured their loans to the parish churches, with whom they have contracts, is now owned by an entity with whom they have no contract. Lenders will be deprived of the security for their loans to the disassociated parishes' churches.

Similarly, the possibility of title insurance for religious organizations seems unlikely for any South Carolina religious organization's real property because of the unknown potential for trusts which might have been created by a means not possible with secular organizations. The ambiguity for the business world in its dealings with religious organizations will negatively affect the business risk calculus. This uncertainty will change business markets involving South Carolina religious organizations and their real property. Rehearing should thus be granted in this important dispute based on the arguments and points set forth herein.

I. The Opinions of the Majority of the Court are Erroneous on the Merits.

Four Justices either state their opinion on the standard of review or join in opinions that do, but there is no stated majority. Acting Justice Pleicones states the standard of review is for an action whose main purpose is equitable, a position in which Justice Hearn joins. Acting Justice Toal states the standard of review is for an action whose main purpose is legal, in which Justice

Kittredge joins. Chief Justice Beatty does not state his opinion on the appropriate standard of review, but it appears he believes this dispute should be decided based on neutral principles of law.

A determination that the main purpose of Plaintiffs' action is equitable rather than legal would mean this Court has created a new standard of review for identical claims involving the same essential facts. *All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina* also involved cross-declaratory judgment claims over title to real property including the defendants' assertion of an express trust and issues of corporate control. 385 S.C. 428, 685 S.E.2d 163 (2009). There was also a claim for injunctive relief. Yet in *All Saints*, the standard of review was for a legal action, not an equitable one. Acting Justice Pleicones' view that *All Saints* should not control the standard of review is understandable, since his opinion depends upon an overruling of *All Saints*. However, Chief Justice Beatty, Justice Kittredge, and Acting Justice Toal do not agree and did not overrule *All Saints*.¹ As will be set forth more fully below, when the proper standard of review is applied, rehearing must be granted. Moreover, this Court has previously held the standard of review is legal when a defendant asserts paramount title to land, even if the primary action is equitable. *See Estate of Tenney v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 100, 105, 712 S.E.2d 395, 397 (2011) ("When the defendant's answer raises an issue of paramount title to land, such as would, if established, defeat the plaintiff's action, the issue of title is legal.").

¹ Had *All Saints* been overruled, which it was not, Petitioners would have argued that such could not operate to retroactively deprive them of their property. Nevertheless, the effect of the majority of the opinions is to deprive them of their property retroactively. *See infra*. Further, because Acting Justice Pleicones' opinion is expressly dependent upon the overruling of *All Saints*, which did not occur and was rejected, his opinion is not efficacious to render any adverse result to the Petitioners, and thus, for this additional reason, rehearing is required.

The opinions of the Court depended on the conclusion that *Jones v. Wolf* mandated a minimal burdensomeness requirement for trusts created by religious organizations. 443 U.S. 595 (1979). However, as noted previously, that argument was not made until Appellant's Brief. Resp. Br. at 52. "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. *Wilder Corp. v. Wilke*, 370 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). "Constitutional arguments are no exception to the issue preservation rules, and if not raised to the trial court, the issues are deemed waived on appeal." *Id.* (citations omitted). Under this Court's preservation rules, this issue cannot be considered.²

In ruling that under *Jones v. Wolf*, South Carolina trust law does not apply as it would to other South Carolina non-religious charitable organizations, this Court's decision has sanctioned an establishment of religion, an abridgment of the Petitioners' constitutional rights to freedom of worship, assembly and association, a denial of their rights to equal protection of the laws, a denial of their rights to the free exercise of their religion and a deprivation of their property without due process of law, all in violation of Article 1, Sections 2 and 3 of the South Carolina Constitution and the 1st, 5th and 14th Amendments to the United States Constitution.

Jones imposes no constitutional requirement modifying South Carolina's express trust law requirements for a religious organization since that would violate the First Amendment's Establishment Clause. The "Disassociated Diocese" and its associated parishes were constitutionally entitled, both before and after withdrawal from TEC, to those rights accorded all "voluntary associations for benevolent charitable purposes . . . the principles on which are those applicable alike to all of its class, ..." *Watson v. Jones*, 80 U.S. (13 Wall) 679, 714 (1871).

² Additional preservation of error arguments are made *infra* at p. 22.

Just as the right to freedom of association is a right enjoyed by religious and secular organizations alike (not simply individuals)³ expressed in this case by the Disassociated Diocese/Parishes' withdrawal from TEC, so too both sides of this religious dispute are entitled to similar neutrality by a court in the application of the First Amendment Free Exercise and Establishment Clauses. "A proper respect for both the Free Exercise Clause and the Establishment Clauses compels the State to pursue a course of "neutrality" toward religion, and favoring neither one religion over others nor religious adherents collectively over non-adherents." *Board of Education of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687, 696 (1994). "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). "The First Amendment

³Acting Justice Pleicones' suggestion that somehow the Constitution only protects individuals in their rights of association (and disassociation) with religious organizations as an expression of their free exercise of religion but does not protect non-profit religious organizations, whether incorporated or not, ignores the well understood concept that constitutional rights flow to entities because "when rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of the [people associated with a corporation]." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2768 (2014). A religious organization "exist[s] to foster the interests of persons subscribing to the same religious faith." While *Hobby Lobby* recently extended First Amendment free exercise protection to for-profit, secular corporations to protect "the religious liberty of the humans who own and control those companies," it has long been available to non-profit religious organizations. *Id.* at 2768. "Religious organizations exist to foster the interests of persons subscribing to the same religious faith." *Id.* at 2795 (Justices Ginsberg, joined by Justices Sotomayor, Breyer and Kagan, dissenting). Therefore, constitutional protection in "furtherance of the autonomy of religious organizations often furthers individual religious freedom as well." *Id.* at 2794 (citation omitted). Limiting the Diocese and the associated parishes rights of free exercise of religion and association because they are non-profit religious corporation would be just as unconstitutional as limiting the same rights of those individuals who associate with them. *Disabato v. South Carolina Ass'n. of School Administrators*, 404 S.C. 433, 445, 746 S.E. 2d 329, 335 (2013) (relying on *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984)). The freedom of association (and the correlative right to disassociate) unquestionably includes associations, incorporated or unincorporated, not simply individuals. See *Roberts*, 468 U.S. at 612 ("The United States Jaycees . . . a non-profit membership corporation"); *NAACP v. Button*, 371 U.S. 415, 418 (1963) ("The NAACP . . . a non-profit membership corporation . . ."). South Carolina's non-profit act equally makes clear that a member may resign at any time, S.C. Code Ann. § 33-31-620, and that this right applies to members who are entities. S.C. Code Ann. § 33-31-140(23)(a), (27).

mandates government neutrality between religion and religion . . . This prohibition is absolute.” *Epperson v. Arkansas*, 393 U.S. 97, 104, 106 (1968). The free exercise arguments advanced by TEC and entertained by Justice Hearn and Acting Justice Pleicones in favor of TEC’s free exercise rights apply equally to those of the Disassociated Diocese and its associated parishes. This Court cannot act against the free exercise rights of the Disassociated Diocese/Parishes’ non-profit corporations and those associated with them any more than it can act against those of TEC and those associated with it.

TEC’s free exercise rights do not supersede the Establishment Clause. “The principle that government may accommodate the free exercise of religion does not supersede the fundamental limitation imposed by the Establishment Clause.” *Lee v. Weisman*, 505 U.S. 577, 587 (1992). The creation of a “church-only” principle in South Carolina trust law that benefits TEC in this dispute between religious organizations unconstitutionally favors one religious institution over another. Neutral principles, properly applied, avoids establishment clause problems.

Justice Kittredge correctly acknowledged that it “would be laughable” to suggest that any of the parishes created an express trust under these facts if the Court applied “the law of express trusts as we ordinarily would.” Op. at 55. That should be the end of this dispute. *Jones* did not create a new constitutional requirement for treating religious charitable organizations differently from secular charitable organizations. That would clearly violate the Establishment Clause. This was made clear by Justice Rehnquist, who was in the *Jones* majority, that same term when he was asked to stay the action of California’s Attorney General who was intervening in a religious organization’s charitable trust because it was “not being administered in accordance with the trust instrument or with State law.” *Syannon Foundation, Inc. v. California*, 100 S. Ct 496 (1979). In response to the church’s claim that a religious charitable trust was constitutionally “somehow

entitled to different treatment than that accorded to other charitable trusts,” Justice Rehnquist disagreed, referencing *Jones*’ constitutionally permitted “neutral principles of State law.” *Id.* at 497. Treating a religious organization differently than a similar secular organization would violate the Establishment Clause, as his citation to page 449 of *Presbyterian Church v. Hull* makes clear: “And 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.” 393 U.S. 440, 449 (1969) (emphasis added). According religious organizations acts different treatment than “similar acts of secular voluntary associations would, in avoiding the free exercise problems petitioners envision, itself create far more serious problems under the Establishment Clause.” *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 734 (1976) (Rehnquist, J., dissenting).

The Supreme Court of Texas recently rejected identical arguments made by TEC in separate cases: one involving a parish that withdrew from TEC, *Masterson v. Diocese of Northwest Texas*, 422 S.W. 3d 594 (Tex. 2013), and the other involving a Diocese that withdrew from TEC. *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422, S.W. 3d 646 (Tex. 2013).

As we said in *Masterson*, *Jones* did not purport to establish a federal common law of neutral principles to be applied in this type of case. 422 S.W. 3d at 651. Rather, the elements listed in *Jones* are illustrative. If it were otherwise and courts were limited to applying some, but not all, of a state’s neutral principles of law in resolving non-ecclesiastical questions, religious entities would not receive equal treatment with secular entities. We do not believe the Supreme Court intended to say or imply that should be the case.

Episcopal Diocese of Ft. Worth, 422 S.W. 3d at 652.

Properly exercising jurisdiction requires courts to apply neutral principles of law to non-ecclesiastical issues involving religious entities in the same manner as they apply those principles to other entities and issues. Thus, courts are to apply neutral principles of law to issues such as land titles, trusts, and corporate formation,

governance and dissolution, even when religious entities are involved.

Masterson, 422 S.W.3d at 606.

This is also recognized by most of the cases that have considered this issue, from the courts of Oregon, Indiana, Missouri, Texas, Louisiana and Ohio. *Jones* did not create a “legally cognizable form” for religious organizations different than the existing trust laws of the States because of a “minimal burden” requirement. See *Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A)*, 291 P.3d 711, 722 (Or. 2012) (“PCUSA relies on the Supreme Court’s statement that ‘[t]he burden involved in taking such steps will be minimal.’ . . . Whatever the exact contours of the phrase ‘legally cognizable’ because there is no federal law governing the creation of trusts, that phrase must include at least the trust laws of the 50 states. . . . Thus, under the neutral principles approach, the denominational church may ensure that property remains with the loyal faction in the event of a schism by reciting an express trust in favor, *provided* that the recitation is embodied in a legally cognizable form in **the state where the controversy arose.**” (emphasis added)); *Presbytery of Ohio Valley v. OPC*, 973 N.E. 2d 1099, 1106 n. 7 (Ind. 2012); *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W. 3d 575, 589 (Mo. Ct. App. 2012) (“We will not read the quoted passage as itself establishing the substantive property and trust law to be applied to church-property disputes, particularly where the very same passage contemplates (in its reference to ‘other neutral principles of state law’) that the applicable law—like American property and trust law in general—would be state, rather than federal, law. Further, the statement that ‘the civil courts will be bound to give effect to’ the parties’ expressed intentions was explicitly conditioned on those intentions being ‘embodied in some legally cognizable form’—precisely the issue we address in this opinion.”); *Carrollton Presbyterian Church v. Presbytery of S. Louisiana of Presbyterian Church (USA)*, 77 So. 3d 975 (La. App. Cir. 2011);

Ohio Dist. Council, Inc. of the Assemblies of God v. Speelman, 47 N.E.3d 954, 965 (Ohio Ct. App. 2016) (“[I]t left the matter of what constitutes a ‘legally cognizable form’ for determination under state law”); *Eastminster Presbytery v. Stark & Knoll*, Op. No. 25623, 2012 WL 723331 (Ohio Ct. App. 2012) (“[W]hile *Jones* firmly established the neutral principles doctrine and provided guidance with respect to the extent to which courts may look to church documents in resolving property disputes, it neither set a uniform standard for how such cases should be analyzed nor required deference to ecclesiastical documents. Instead, it left the matter of what constitutes a ‘legal cognizable form’ for trusts to determination under state law”).

The use of minimalized South Carolina trust law favoring one faction in disputes between religious organizations—when a similar non-religious charitable organization would not be subject to the same trust law—is nothing less than the establishment of one religious group at the expense of the free exercise rights of another religious group. *Jones* made that clear. Neutral principles is “completely secular in operation;” therefore, it does not create a church-only form but one that “relies exclusively on objective, well established concepts of trust and property law familiar to lawyers and judges.” 443 U.S. at 606. Neutral principles would not be “completely secular in operation” if in the dispute in *Jones* or here required a different burden for TEC than that for similar secular organizations to create an express trust under South Carolina law.⁴ Yet that is precisely what this Court required.

⁴ It was undisputed within the Episcopal Church that the constitution is the most important document, amendable only after the action of two successive general conventions, whereas a canon can be amended at a single general convention. R 892, 894. TEC did not raise as an error on appeal the trial court’s finding that the Dennis Canon was not placed in its Constitution, which “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 would have been amended. Rather, TEC chose to pass it as a canon, which required one vote at one Convention.” R77. If *Jones* (the “blueprint laid out by the United States Supreme Court,” Op. at 42, Hearn, J.) is to be read that a national church as beneficiary can create an “express trust in

Acting Justice Pleicones and Justice Hearn misapprehended or overlooked facts by finding that Respondents sought the resolution of who was the “true diocese” when that is unsupported by the record, and then they misapprehended United States Supreme Court precedent by finding that the issue of who is the “true diocese” and whether the dispute was triggered by doctrinal issues required the application of a deference standard.

Despite the statements that Petitioners placed at issue which entity is the “true Diocese,” this was not in their Complaint and only appears one time in the record as a statement by TEC’s then-counsel, Thomas Tisdale, in a meeting held in anticipation of the dispute. R. 208. Even if the “true diocese” were an issue in this case, that would not turn an action otherwise resolvable under neutral principles into one requiring deference. *All Saints* is not distinguishable on this issue since who was the “true vestry” was expressly made an issue there, but deference was not required. Furthermore, the doctrinal dispute in *Jones* was both permitted to be resolved using neutral principles and was resolved using neutral principles when the issue of who was the “true congregation” had been raised. 443 U.S. at 598. The Georgia Supreme Court on remand found this issue irrelevant, despite a ruling by the Presbyterian Church’s highest judicial body that the minority congregation was the “true congregation.”⁵

To the extent that doctrinal issues were the underlying reasons for this dispute, (Op. at 29 (“doctrinal issues were the trigger”), 32 (“arose out of doctrinal issues”)), this does not

favor of a denominational church” simply by including it in a national document, then *Jones* must be followed on where that trust must be placed.

⁵ On remand, the Georgia Supreme Court ruled the issue of who was the “true church” was not relevant to a determination of the property issues. *Jones v. Wolf*, 260 S.E. 2d 84, 85 (Ga. 1979) (“...this court is not concerned with the procedure by which factions within the local church and the national church decide which persons are “true believers” or “adherents to the true faith”. Rather, church documents will be considered only insofar as they determine or assist in the determination of the persons who are “entitled to possess and enjoy the property located at 2193 Vineville Avenue in Macon, Ga.”).

constitutionally require deference. *Presbyterian Church v. Hull* stated the obvious: church property disputes “involve underlying controversies over religious doctrine.” 393 U.S. 440, 449 (1969). *All Saints* stated the obvious as well. 385 S.C. 428, 442, 685 S.E.2d 163, 170 (2009) (“Church disputes are very often prompted by disagreements over religious doctrine and beliefs.”). The other United States Supreme Court neutral principles decisions all involved underlying controversies over religious doctrine or church government. *See Hull*, 393 U.S. at 449 (women’s ordination, Bible reading and prayers in public schools, etc.); *Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 369 (1970) (church government); *Jones v. Wolf*, 443 U.S. 595, 605 (1979) (adherence to the Bible as the infallible word of God and to the Westminster Confession of Faith); Resp. Br. 25-26. Yet each decision found that a deference standard was not constitutionally required.⁶ *Serbian* and *All Saints* are not inconsistent with this.⁷

Acting Justice Pleicones and Justice Hearn’s finding that deference is required to TEC because it is hierarchical overlooks and misapprehends both the record and United States Supreme Court precedent. It does so either by failing to consider, or by improperly determining, which

⁶ Acting Justice Pleicones’ (joined by Justice Hearn) concept that a false dichotomy is created when a court separates ecclesiastical from secular issues within the same organization completely misapprehends the very idea of applying neutral principles to disputes involving religious organizations. It is the fact of their separability that makes the use of neutral principles possible. Without it there would always be compulsory deference over any issue. Not only does the very existence of the *Jones* decision recognize this dichotomy, so do quite old and more recent decisions. *See, e.g., Episcopal Diocese of Ft. Worth v. Episcopal Church*, 422 S.W.3d 646, 650 (Tex. 2013) (Courts defer on ecclesiastical issues, “while they decide non-ecclesiastical issues such as property ownership and whether trusts exist based on neutral principles of secular law that apply to other entities.”); *Bridges v. Wilson*, 58 Tenn. 458, 470 (1872) (Ecclesiastical issues belong to ecclesiastical courts. “However, the personal and property rights of churches and their members are civil, and of them the Courts of this state have exclusive jurisdiction.”).

⁷ In *Serbian*, the Bishop had complete control of the real property, so determining that religious issue determined property ownership. Resp. Brief at 29-31.

body within TEC must be deferred to because the deference standard cannot be used to resolve a dispute involving religious organizations where there is a substantial controversy as to the identity of the governing body that is the locus of control within the religious organization.

TEC admitted that the Parish churches were not members of TEC. R.630.⁸ Much of the evidence concerned whether TEC had the right to control the Diocese. This is reflected in the trial court's findings.⁹ As the Record on Appeal reflects, there was a substantial dispute over whether the locus of control was with the Diocese or with TEC's General Convention. Resp. Br. at 13-15, 20-21.

The cases relied upon by Acting Justice Pleicones and Justice Hearn, Op. at 17, 28, were cases in which TEC was not a party and the issue of control between the Diocese and a parish was uncontested, with one exception.¹⁰ Resp. Br. at 40 and n. 66. These cases were not about a dispute between a Diocese and TEC and did not present the constitutional issue presented here and in *Quincy* (Resp. Br. at 35-38): the absence of an unambiguous locus of control as between the General Convention and the Diocese.¹¹ Acting Justice Pleicones and Justice Hearn misapplied

⁸ These Requests for Admission were also added to the Record on Appeal at the request of the Clerk in April 2016.

⁹ The trial court found that the Diocese preexisted TEC and was one of its founders. The Diocese had previously disaffiliated from TEC. TEC has no supervisory authority over a Diocese: it has no delegates at Diocesan Convention, does not reserve a right to approve amendments to its articles of incorporation, its Bylaws or its Constitution and Canons. TEC's governing documents do not state a Diocese cannot withdraw. TEC cannot discipline a Diocese. TEC's provincial synod expressly cannot interfere in the internal affairs of a Diocese. A Diocese cannot be compelled to contribute funds to TEC and there is no supremacy clause giving any body within TEC authority superior to the Diocese's Bishop. TEC has no ultimate judicatory power and TEC has repeatedly noted in its historical records the autonomy of a Diocese. R. 48, 49, 62-65.

¹⁰ The issue of hierarchy was contested in one case between a Diocese and a parish. *In re Church of St. James The Less*, 888 A.2d 795, 806 (Pa. 2005). TEC was not a party.

¹¹ For the court to defer within a hierarchy, proof of four elements is required. The party holding the property must be "a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization."

constitutional precedent because there was a substantial factual controversy over which church governing body exercises the requisite control. The Diocese contended that the locus of control was with the Diocese, not TEC's legislative body, the general convention. R. 822. TEC contended otherwise. A deference standard could not be applied without deciding the locus of control which the substantial factual dispute constitutionally prohibited. The result of the majority of the opinions is that the Court is granting deference to TEC's legislative body, in spite of this controversy over the locus of control between the Diocese and TEC. This deference violates the United States Supreme Court precedent of *Maryland and Virginia Eldership*, 396 U.S. at 369-370 & n. 4 (stating that deference is not constitutionally permissible where there is a substantial controversy over the identity of the body or bodies that exercise general authority within a church); and *Jones v. Wolf*, 443 U.S. at 605 (stating that the rule of compulsory deference advocated by the dissent could not be used to defer, when a "searching and therefore impermissible inquiry" was necessary to determine which unit of government had authority). In fact, as recognized by Acting Justice Toal, the substantial nature of this factual dispute is established by the differing factual views between the trial court and members of the majority, which is itself sufficient for the court to be prohibited

Then, "whenever the question of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." *Watson v. Jones*, 80 US (Wall) 679, 722-23, 727 (1871). This Court recognized this standard in its opinion making neutral principles the standard rather than deference. *Pearson*, 325 SC 45, 49, 478 SE 2d 849, 851. Appellants did not establish that the Diocese was subordinate to TEC, did not establish that there were any ecclesiastical tribunals nor that there was a supreme judicatory with "ultimate power or control, more or less complete". The overwhelming record is that Dioceses are the fundamental unit and are not subordinate to any other body in TEC. R. 878, 879, 895-97, 2033, 2031-38, 2050-52, 2066-67.

constitutionally from choosing the appropriate governing body to which it would defer under a deference standard.¹² Op. at 77 n. 61.

Justice Pleicones states the resolution of the property issues should be driven by the relationship between a national church and a local congregation upon disassociation, which he contends is an ecclesiastical matter. Op. at 27 n.6. He attributes that view to the United States Supreme Court. In doing so, he misapprehends a matter of law by mistakenly attributing the following as a quotation from the United States Supreme Court decision in *Serbian*, rather than from the majority opinion in *Masterson v. Diocese of Northwest Texas*, 422 S.W. 3d 594, 607 (Tex. 2014), and by leaving out *Masterson's* qualification of that sentence which immediately follows and which is set out in bold below.

Here is the full relevant quote from *Masterson* (not *Serbian*):

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 the civil courts generally do not have jurisdiction. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 697 (1976). **But what happens to the property is not, unless the congregations' affairs have been ordered so that ecclesiastical decisions effectively determine the property issue.**

Id. *Masterson* went on to rule, reversing the court of appeals, that even if the determination of the true representative of the Episcopal Church was an ecclesiastical decision, the question of “who owns the property” is not inextricably linked to that decision under neutral principles of law. *Id.* at 608.

¹² Ironically, a case relied upon by Acting Justice Pleicones and Justice Hearn found the locus of control in the Episcopal Church is the Diocese, not TEC's general convention. In *Dixon v. Edwards*, 290 F.3d 699 (4th Cir. 2002), the affidavit submitted by TEC's expert on its “hierarchical structure” stated “The Diocese is the jurisdictional unit of the Episcopal Church,” R. 2288, and the Diocesan Bishop is “at the apex of that hierarchy.” R. 2287.

For all of the above reasons, the Court erred on the merits in many particulars, and rehearing is warranted. Moreover, they are supported by various rulings which reverse the trial court when this Court has made plain that it will not reverse the trial court based on arguments and points not properly preserved or made.

II. The retroactive application of a different standard for *this* case violates Respondents' rights to the free exercise of their religious beliefs, and the Court's action constitutes a deprivation and a taking of the private property of respondents without due process of law in violation of the 5th and 14th Amendments to the United States Constitution.

It is undisputed that Petitioners are the owners in fee simple absolute of their real and personal property. As found by the trial court and not contested on appeal, "the undisputed evidence is that all the real and personal property at issue was purchased, constructed, maintained and possessed exclusively by the Plaintiffs." R. 79. Moreover, seventeen parishes predate not only the creation of TEC, but that of the Diocese as well. R. 2329. Fourteen predate the creation of the United States of America. *Id.* It is also undisputed that eight legislatively chartered parishes were vested with rights to their real property by the South Carolina legislature with the legislative statement that their properties "shall remain and be secured to them forever." R. 78. Despite the reliance by two justices on Section 33-32-180 of the Non-Profit Act (Acting Justice Pleicones and Justice Hearn), thirteen legislatively-created Petitioners were not subject to the Non-Profit Act because there is no irrevocable election to be bound by that Act filed with the South Carolina Secretary of State. R. 59-60. None of these facts have been contested on appeal. Moreover, none of the majority contend that there has been a transfer of property by any means recognized under neutral principles of South Carolina trust, property, contract or other law as would be required for any similar South Carolina secular charitable non-profit corporation. In short, as stated by Acting Associate Justice Toal, "three hundred years of settled trust and property law" are disregarded driven by "a desired result in *this* case," who "with a stroke of a pen vitiates South Carolina's

charitable corporation law and invalidates all of the plaintiffs' duly adopted corporate documents.” Op. at 63, 92-93.

The standard applied in resolving religious disputes in this state has been neutral principles of law since *Pearson v. Church of God*, 325 S.C. 45, 478 S.E. 2d 849 (1996). The result of the majority of the opinions of the Court is completely inconsistent with the neutral principles application in *All Saints*, which involved the same basic issues of corporate control, real property, the Dennis Canon and substantially the same parties. *Jones* recognized in a footnote, qualifying its neutral principles analysis, that the retroactive application of a different standard for the resolution of church disputes could infringe upon the free exercise rights of the party to which the different standard is applied. *Jones*, 443 U.S. at 606, n. 4.

It is not disputed that the Respondent religious non-profit corporations structured their “relationships, involving church property” consistent with *Jones*, *Maryland & Virginia Eldership*, *Presbyterian Church* and *All Saints*, “so as not to require the civil courts to resolve ecclesiastical questions.” Acting Justice Pleicones did not find that the trial court misread *All Saints*; rather he found that “her rulings were governed, in large part, by her understanding of *All Saints*.” Op. at 20. Therefore, he would overrule *All Saints*. Justice Hearn “concur[red] fully in Acting Justice Pleicones’” opinion. Op. at 35.

The record demonstrates that the Petitioners followed to the letter the requirements of *All Saints* to structure their relationships under South Carolina civil law involving corporate control and real property. Yet to no avail, according to the majority. The majority’s retroactive application of a severely distorted neutral principles of law analysis violates Respondents’ free exercise of religion under the First and Fourteenth Amendments to the United States Constitution and Article I, Section 2 of the South Carolina Constitution.

III. The “Accession” Ruling Is Erroneous.

The ruling regarding the effectuation of an irrevocable trust under neutral principles of law via the accession of parishes to the Dennis Canon is, respectfully, incorrect, for several reasons. Rehearing is required as a result.

A. The Dennis Canon Does not Create a Trust.

A trust under South Carolina statutory law must be created by the settlor. S.C. Code Ann. §§ 62-7-401(a) and 402(a). TEC is the beneficiary, not the settlor. TEC cannot create the trust for itself by adopting the Dennis Canon. Chief Justice Beatty correctly recognized that the Dennis Canon was legally insufficient to create a trust in favor of TEC. Hence, it was invalid and legally meaningless at the time of its creation. Chief Justice Beatty’s opinion, however, applies a minimal burdensomeness standard in result, despite claiming to apply neutral principles. When neutral principles are applied to these facts, the “accession” documents do not result in the creation of an irrevocable trust under South Carolina law.

The Dennis Canon does not get converted into a trust by an “accession” to “the Canons” of TEC by parishes. In fact what has occurred with a few parishes is an “accession” (such as that is) to “Constitution and Canons,” one of which is the legally meaningless Dennis Canon. The key inquiry to any trust is the intent of the settlor, not the beneficiary, to both create a trust and to set forth its terms. S.C. Code Ann. § 62-7-402(a)(2); *State v. Parris*, 363 S.C. 477, 482, 611 S.E.2d 501, 503 (2005). Even having “accession” documents to “Canons,” one of which is the legally invalid purported trust created by the Dennis Canon, is a far cry from proof of intent that any parish sought to actually create a legally enforceable trust in favor of TEC over all of 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 worth millions of dollars) in trust without signing the writing purporting to create the trust, identifying property to be conveyed, and expressing a definite intention to create a trust.

Colonial Presbyterian Church v. Heartland Presbytery, 375 S.W. 3d 190, 197-97 (Mo. Ct. App. 2012); *see also* Resp. Brief 45-48.

Further, the fact that the Dennis Canon can be changed by TEC, the purported beneficiary, renders it invalid as a trust under neutral principles of law. It is the settlor who would alter a trust, not the beneficiary. S.C. Code Ann. § 62-7-602.

B. The “Accession” Documents Are Non-Specific and Limited.

When some parishes acceded to “the Constitution and Canons,” they could only have acceded to the canons as they existed, collectively, at the time of such accession. The word “canons” is used—the plural word. Therefore, it follows that when any of the canons were ever changed by alternation, amendment, deletion or addition after the accession occurred, it would take a new accession to the collective new “canons.” After every accession occurred, there indeed occurred changes, deletions, or additions to “the canons.” Thus, there is no “accession” to the changed canons. One might argue that until a particular canon is changed, the accession necessarily remains to the unchanged canons. But that would not be the case. There is no basis to say the accession remains to one canon but not to another. The accession was to “canons” plural, and no differentiation is made as to this or that canon. There is not a single document acceding specifically to the Dennis Canon by any parish. Thus, if TEC changes “the canons” after an accession, then there is no longer any applicable accession.

C. There is no Signed Writing by the Settlor.

South Carolina law is clear that the settlor must sign the documents 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)); *Williams v. Wilson*, 341 S.C. 136, 533 S.E. 2d 593 (Ct. App. 2001), *aff. in part, rev. in part*, 349 S.C. 336, 563 S.E. 2d 320 (2002). As is set forth below, the alleged documents to create an “accession” are in many cases unsigned. No trust can thus be created thereby.

D. The Trust Cannot be Irrevocable.

Chief Justice Beatty concluded that the trust created by the combination of the accession documents and the Dennis Canon was also irrevocable. As noted by Justice Kittredge, irrevocability is also a question of intent. Op. at 57. The presumption of irrevocability is not un rebuttable. On this record, it cannot be in any event. The Dennis Canon is subject to change by the beneficiary, TEC, at any time. The Dennis Canon is part of TEC’s Canons (R. 1563) which can be “amended or repealed” by TEC’s General Convention. R. 1703. The Dennis Canon is not excepted from this power to amend. A trust subject to change (especially by the beneficiary!) cannot be an irrevocable trust. *See* S.C. Code Ann. § 62-7-103 (13) (“revocable,” as applied to trusts, is defined as a trust that is revocable by the settlor without the consent of the trustee or a person holding an adverse interest); *Macauley v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 294, 569 S.E.2d 371, 375 (Ct. App. 2002) (an irrevocable trust is deemed a completed gift and, therefore, a higher degree of capacity is required—the settlor must understand the nature of the trust and its probable consequences).

Moreover, all the parish churches retained an interest in the property, as the express terms of the Dennis Canon make clear. The presumption is that the trust is revocable, not irrevocable:

Presumptions regarding revocability. Where the settlor has failed expressly to provide whether a trust is subject to revocation or amendment, if the settlor has retained no interest in the trust (other than by resulting trust, § 8), it is rebuttably presumed that the settlor has no power to revoke or amend the trust. **If, however, the settlor has failed expressly to provide whether the trust is revocable or amendable but has retained an interest in the trust (other than by resulting trust), the presumption is that the trust is revocable and amendable by the settlor.**

Restatement (Third) of Trusts, Section 63, comment c (2003) (emphasis added). Chief Justice Beatty should at minimum on this issue thus vacate his opinion.

E. At Minimum, the Fact Question of the Parishes' Intent to Create a Trust in Favor of TEC via Accession Documents Should be Remanded for Fact Findings by the Trial Judge.

The primary inquiry with respect to the creation of a trust is the intent of the settlor. Whether any of the Parishes actually intended to create a trust regarding all of their property via the accession documents, assuming arguendo that such is possible legally to do, is a fact question. *See, e.g., Friedman v. Gomez*, 159 A.3d 703, 710 (Conn. App. 2017) (“The presumption of the existence of such a trust, however, is one of fact rather than law and may be rebutted by proof of contrary intent”); *Drewes v. Schonteich*, 31 F.3d 674, 677 (8th Cir. 1994) (finding that determination of settlor’s intent to create trust constituted question of fact); *Carl H. Christensen Family Tr. v. Christensen*, 993 P.2d 1197, 1205 (Idaho 1999) (holding that issue of settlor’s intent, as a question of fact, could not be resolved on summary judgment); *see generally* S.C. Code Ann. § 62-7-103(17) (“Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding); *Williams v. Government Employees Ins. Co. (GEICO)*, 409 S.C. 586, 762 S.E.2d 705 (2014) (if the court decides the language of a written agreement is ambiguous, evidence may be admitted to show the intent of the parties, and the

determination of the parties' intent becomes a question of fact for the fact-finder). As a result, this Court should at absolute minimum remand to the trial court so that she can take evidence and consider this issue properly.

IV. The Trial Court is Being Improperly Reversed Based on Arguments and Points that were not Preserved, are Procedurally Barred, or which are Unsupported by the Record on Appeal, and thus Rehearing is Required.

A. The Trial Judge is Being Reversed on Issues on Which She Did Not Rule.

In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal. *Lucas v. Rawl Family Ltd. Partnership*, 359 S.C. 505, 598 S.E.2d 712 (2004). The following points, relied upon to reverse the trial court, were not ruled on by the trial court.

- TEC wins because of the Minimum Burden Issue: no ruling by the trial court.
- TEC wins because the Trust in its Favor is Irrevocable: no ruling by the trial court.
- TEC wins because it is Hierarchical: ruling by the trial court limited to TEC is not organized in a fashion that its governance controls the Dioceses or parishes. Authority flows from the bottom (parishes) up.
- TEC wins because Accession is Sufficient to Create a Trust: ruling of the trial court was limited to no express or constructive trust (plaintiffs purchased, constructed, maintained, and possessed property and there was no clear, definite or unequivocal evidence of constructive trust and the Dennis Canon did not create an express trust.
- TEC wins due to the Deference Required for TEC: ruling by the trial court was that corporate control and property issues were not ecclesiastical issues, so deference was not addressed.
- TEC wins because Lawrence Acted in Derogation of Fiduciary Duties: no ruling by the trial court.

B. TEC's Rule 41(C) Motion for Nonsuit was Insufficient.

While TEC made this motion, it was not made on any specific basis. As a result, the motion preserved nothing for appellate review. A general, non-specific argument does not necessarily encompass the multitude of specific grounds which may support such a broad argument; rather a party must actually raise the specific grounds below in order to preserve the issue for review. *See*

Collins Entm't Corp. v. Coats & Coats Rental Amusement, 368 S.C. 410, 418, 629 S.E.2d 635, 639 (2006) (“Initially, although American argued there was insufficient evidence of excess capacity [of machines] below, it made no argument with respect to the specific types of machines at issue. Accordingly, as this specific argument was not raised below, it is not preserved.”). The entirety of the Rule 41 motion is set forth below.

Tisdale: I think we should perhaps just put a motion for dismissal on the record, directed verdict, nonsuit, whatever, Rule 41, at the end of everything, shouldn't take but just a minute for the record. (Trial Transcript p. 2306.)

Holmes: I have been asked to make the Rule 41(b) motion for dismissal of the plaintiffs' case *on the grounds the facts and law plaintiff has presented show no right to relief* and a directed verdict in favor of our clients, and if Your Honor wants to hear argument on it, I will die.

Tisdale: TECSC joins in that motion in all respects.

Court: In toto. With great admiration and respect I would respectfully deny the motions. (Trial Transcript p. 2312.)

C. The Trial Court Should Not be Reversed Based on an Issue Not Included in the Statement of Issues on Appeal.

No point will be considered which is not set forth in the statement of issues on appeal. Rule 208(b)(1)(B), SCACR; *State v. Crocker*, 366 S.C. 394 (Ct. App. 2005). The Statement of Issues on Appeal, as set forth in their entirety from Appellant's brief are:

- I. Whether the trial court erred in holding that the questions of (1) whether this dispute is ecclesiastical at its core, and (2) whether The Episcopal Church is a hierarchical church were irrelevant under South Carolina law, and, as a result, in excluding relevant evidence and failing to enforce that Church's internal governance.
- II. Whether the trial court erred in its application of civil law by (1) concluding that state trademarks trump earlier-registered federal trademarks with which they conflict and cause confusion; (2) incorrectly interpreting the language of a statutory trust that describes the beneficiary as being affiliated with The Episcopal Church; and (3) concluding that South Carolina law permits a corporation to amend its Corporate articles in direct contravention of those articles.

Missing from these two issues is an argument that accession by parishes can form the basis for the creation of a trust as to certain of the parishes, when combined with the Dennis Canon. This issue,

relied upon by Chief Justice Beatty in his opinion, and relied upon by Acting Justice Pleicones and Justice Hearn, simply does not appear in the Statement of Issues on Appeal. Rehearing is thus required, and the opinions should be vacated.

D. In Order to Support Reversal of the Trial Court, an Issue Must have Been Argued in the Appellant's Initial Appeal Brief.

All issues must be argued in the initial briefs in order to permit appellate review. Rule 208(b)(1)(D), SCACR; *see also First State Sav. and Loan v. Phelps*, 299 S.C. 441, 385 S.E.2d 821 (1989). An issue which is not argued in the appeal brief is deemed abandoned and precludes consideration on appeal. Rule 208(b)(1)(D), SCACR; *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281 (2003). An issue is also deemed abandoned if the argument in the brief is not supported by authority or is only conclusory. *In the Matter of the Care and Treatment of McCracken*, 346 S.C. 87, 551 S.E.2d 235 (2001). The following issues were not argued in the Appellant's Initial Brief:

- Minimum Burden and Legally Cognizable: The Brief only addresses minimal burden (which was first raised on appeal) and implies the Dennis Canon is legally cognizable. The Brief does not contain an argument regarding accession to the Dennis Canon through the accession documents.
- Lawrence Derogation of Fiduciary Duties: The Brief merely states the court rejected the testimony of McWilliams, the defendants' expert on corporate governance and fiduciary duties.

E. The Trial Judge is Being Improperly Reversed Based on Matters Not Appearing in the Record.

The appellate court will not consider any fact which does not appear in the record on appeal ("ROA"). Rule 210(h), SCACR; *see also Sheppard v. State*, 357 S.C. 646, 594 S.E.2d 462 (2004) (Court refused to consider State's failure to produce witness's prior statements because petitioner failed to include statements in the record). As for various parishes, there are many disparities and differences with respect to asserted accession documents, as set forth below.

1. All Saints, Florence

The ROA contains Articles of Association for All Saints, Florence that purport to have been adopted at the Annual Congregational Meeting on January 27, 1960. However they are not signed and the Dennis Canon was not adopted until 1979. R. 2958. Hence, there is no basis for finding that unsigned documents predating the Dennis Canon amount to an accession to the Canon.

2. Church of the Holy Comforter, Sumter

The ROA contains testimony regarding the amendment of the Constitution of the Church of the Holy Comforter, Sumter, but it is insufficient to evidence any specific accession to the Dennis Canon. The testimony confirms amendments to delete references to the Episcopal Church and any canons not accepted by the Diocese of South Carolina to “free us from any requirement to be part” and “to exempt us from . . . accede to the doctrine, discipline, and worship of the Episcopal Church.” R. 402-403. There is no signed accession in the ROA, and this testimony does not confirm a signed express accession to the Dennis Canon or other actions sufficient to create a trust.

3. Christ Church, Mount Pleasant

The ROA contains the signed July 14, 1980 Bylaws for Christ Church, Mount Pleasant, which do not reference any accession to the Dennis Canon, although the Church acknowledges and accedes to the doctrine, discipline, and worship, the Constitutions and Canons of the Protestant Episcopal Church in the United States of America. R. 1968-1979. Nonetheless, Christ Church’s property rights should be preserved as described in Section V.

4. The Asserted Accession Documents Relating to the Remaining Parishes are not in the Record on Appeal.

Aside from the three parishes listed above, the ROA contains no accession documents for any of the parishes. It appears the Court is basing its understanding of which parish had acceded to the Dennis Canon based on argument of counsel in TEC's Motion to Reconsider filed with the Trial Court. The motion of course is not evidence, but argument. Statements regarding the contents of a document made by counsel are not evidence and cannot be considered. *See Hobbs v. Beard*, 43 S.C. 370 (1895); *American Motors Insurance Co. v. Murphy*, 253 S.C. 346 (1969).

Further raising the accession documents in the Motion to Reconsider was too late. As an example, when asked in interrogatories by St. Philip's Church to identify all the documents that constitute the written agreement between them and TEC creating any alleged trust, for which TEC is the beneficiary, TEC identified several documents, none of which included the parish's bylaws or other governing documents. TEC's interrogatory answer pointed to four documents: (1) 1886 Diocesan Journal showing funds received and distributed for disaster relief, (2) parochial reports filed by St. Philip's for 1979, 1985-1993, and 1995-2000; (3) historical and current versions of the Church's [TEC] Constitution and canons and Book of Common Prayer; and (4) the Diocese's Constitution and canons. *See* TEC's Response to The Protestant Episcopal Church, of the Parish of Saint Philip, in Charleston, in the State of South Carolina Second Interrogatories, Interrogatory #8 (Nov. 8, 2013)¹³. These interrogatory answers were not supplemented to add any additional documents. It was not until after the conclusion of trial that TEC advanced the argument that additional parish documents were included in the written agreement allegedly creating a trust with TEC as a beneficiary.

¹³ This interrogatory and response are not in the ROA.

In the Motion to Reconsider, Appellants' counsel asserted that an express trust was created "as a result of having executed one or more writings before January 1, 2006" that "expressly accepted the National Church's governance" after TEC adopted the Dennis Canon in 1979 or expressly accepted the Diocese's governance after 1996 or both ("Counsel's Argument"). R. 98-106. The records cited in support of Counsel's Argument were not included in the ROA. The appellate court will not consider any fact which does not appear in the record on appeal. Rule 210(h), SCACR. Reversal is not available for an argument based on facts not appearing in the record. *See Ravan v. Greenville County*, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993). As a result, Rehearing should be granted.

F. The Actual Proof at Trial Regarding Accession Does not Support the Opinions of the Court and Rehearing Must be Granted.

Even assuming the ROA contained the documents of the various churches relating to possible accession, those documents do not support "accession" to the Dennis Canon. As an initial matter, there is no evidence of an express accession to the Dennis Canon specifically by any of the parishes. As stated by Chief Justice Beatty, unless the parishes "expressly accede to the Dennis Canon", they "cannot be divested of their property." Op. at 52. Further, as is pointed out below, various groups of churches have differing documents. At a minimum, these issues require Rehearing and a remand to the trial court for fact finding with regard to intent to accede to the Dennis Canon.

1. **Christ The King, Waccamaw; Prince George Winyah, Georgetown; St. Andrews Church-Mt. Pleasant Land Trust; St. John's, Florence; Saint Matthews Church, Darlington; St. Paul's, Conway and St. Matthias, Summerton, Old Saint Andrews.**¹⁴

For these parishes, there is not even a "reference" to any documentation of accession to TEC's Canons, much less documents showing accession, in the ROA. These parishes retained their property rights.

2. **Holy Comforter, Sumter¹⁵; St. Bartholomew's, Hartsville; St. James' Church, James Island; Saint Luke's, Hilton Head; All Saints, Florence; Church Of The Holy Cross, Stateburg; St. David's Church, Cheraw; St. Jude's, Walterboro; Trinity Church of Myrtle Beach; Church of the Redeemer, Orangeburg; St. Paul's, Summerville; Trinity Episcopal Church, Edisto Island; Church Of The Cross, Bluffton; Church Of The Epiphany, Eutawville; St. Helena, Beaufort; St. Michael's, Charleston; Trinity Episcopal Church, Pinopolis; Christ St. Paul's, Yorges Island; and St. Paul's, Bennettsville.**

For these churches, there are no signed documents in the record acceding to any canons, even if one were to look at documents cited in Counsel's Argument which were not included in the ROA.¹⁶ As to Church Of The Cross, Bluffton, the 2003 Bylaws are not signed, but attached to that exhibit is the last two pages for the 2001 Bylaws that are signed but do not contain accession to

¹⁴ The members of the Court and the public disagree about whether there are 7 or 8 parishes. The disagreement stems from the name "Parish of St. Andrews, Mount Pleasant" in footnote 49. The Vestries and Churchwardens of the Parish of St. Andrews (commonly known as Old St. Andrews) is a different party than St Andrews Church-Mt. Pleasant Land Trust. Old St. Andrews is located in West Ashley, and is the 8th parish in the original opinion to retain property rights. To the extent necessary, Justice Toal should reissue her opinion clarifying that Old St. Andrews was the 8th parish to retain property rights under the original Opinion.

¹⁵ In addition to being unsigned, the document cited for Holy Comforter (D-HC-6) also predates the adoption of the Dennis Canon.

¹⁶ By referencing these documents not in the ROA, Petitioners do not consent to their being considered to prove accession. Petitioners prevailed at trial. It was incumbent upon TEC to include matters into the ROA in this regard. Further, it would be improper, after briefing and argument, for the Court to make more documents part of the ROA without granting rehearing and the opportunity for the Petitioners to argue fully the meaning and relevance of the documents.

the TEC canons. Additionally, St. Paul's, Bennettsville Bylaws referencing the canons of TEC are not signed, but Articles referencing canons of the Protestant Episcopal Church in the *Diocese of SC* are signed. The documents cited for Trinity, Pinopolis were not even prepared by the parish, much less signed. Instead, the documents Appellants depend on for Trinity, Pinopolis were prepared by the Diocese of South Carolina. Because there are no signed accession documents as to these parishes, rehearing should be granted. The law of South Carolina requires a signed writing in order to create a legally enforceable trust. S.C. Code Ann. § 62-7-401(a)(2).

3. **Church Of The Cross, Bluffton (*doctrine and practices*); Church Of The Epiphany, Eutawville (*doctrine and practices*); St. Michael's, Charleston (*authority*); St. Philip's, Charleston (*Articles of Religion*); Church Of The Good Shepherd, Charleston (*Canons of the Protestant Episcopal Church in the Diocese of SC*); St. Paul's, Bennettsville's (*Bylaws referencing the Canons of The Episcopal Church are not signed, and its signed Articles reference only the Canons of the Protestant Episcopal Church in the Diocese of SC*).**

For the above six parishes, even were one to review documents from the trial record not in the ROA, there is no language of accession to TEC's canons. Rather, the language employed relates to doctrine and practices, Articles of Religion, or otherwise, as noted above for each church in italics. Failure to even mention TEC's canons cannot result in accession. As such, rehearing is required as to these parishes.

4. **Many Parishes have no Documents showing "accession."**

Were one to review underlying documents not in the ROA, it would also be revealed that the Parishes did not use words of "accession" in many instances. *See* All Saints, Florence (*bound*); St. John's, Johns Island (*subject to*); Church of Our Savior (*conform and recognized authority in accordance with*); Church of the Redeemer, Orangeburg (*conform*); Church Of The Resurrection, Surfside (*organized for the purpose of operating an Episcopal church pursuant to*); Church of St. Luke and St. Paul, Radcliffeboro (*organized for the purpose of operating an Episcopal church*

pursuant to); St. Paul's, Summerville (*organized pursuant to*); Trinity Episcopal Church, Edisto Island (*organized for the purpose of operating an Episcopal church pursuant to*); Church Of The Cross, Bluffton (*for the public worship of Almighty God in accordance with the doctrine and practices of*); Church Of The Epiphany, Eutawville (*object and purpose of the corporation is for the support and maintenance of a Church in the general area of Eutawville, SC in the Protestant Episcopal Diocese of SC for the public worship of Almighty God in accordance with the doctrine and practices of*); St. Helena, Beaufort (*pledges to adhere to the doctrine, discipline, and worship of" and any article or section of these By-Laws which may be in conflict with the canons of the Diocese of South Carolina and the Protestant Episcopal Church of the United States of America, shall be considered null and void*); St. Paul's, Bennettsville (*purpose is to operate a parish organized under and subject to the Canons of the Protestant Episcopal Church in the Diocese of SC*); St. Michael's, Charleston (*acknowledges the authority of*); St. Philip's, Charleston (*purposes of said corporation include the preaching and teaching of the Gospel of our Lord and Savior, Jesus Christ, in accord with the Articles of Religion of*); Trinity Episcopal Church, Pinopolis (*to be seated as parish in union with this Diocese of SC Convention*); Christ St. Paul's, Yonges Island (Q: is it true that before they [the bylaws] were amended, with the documents that you looked at today, they stated that this *parish is organized for the purpose of operating an Episcopal Church pursuant to the constitution and canons of the Episcopal Church in the Diocese of South Carolina and of the Episcopal Church in the United States now in force or as hereafter may be adopted. A. Yes, ma'am*); Church Of The Good Shepherd, Charleston (*operating a Parish or Mission, organized pursuant and subject to the Canons of the Protestant Episcopal Church in the Diocese of SC*); and St. Matthias, Summerton (*operating a Mission (church) organized pursuant and subject to the Canons of the Protestant Episcopal Church in the Diocese of SC*). Moreover, St.

Matthias is granted its property rights by virtue of the current opinions of the Justices. The language cited by the Appellants for Good Shepherd, Trinity-Pinopolis, and St. Paul's-Bennettsville is very similar to the language this Court already found protected St. Matthias' property rights. As such, Rehearing should be granted to consider these parishes.

5. Additionally, Appellant's Counsel's Arguments in the Motion to Reconsider are at times inconsistent with the cited documents.

In addition, there are inconsistencies between Appellant's counsel's stated conclusions regarding accession in the Motion to Reconsider filed with the trial court and the underlying documents of the parishes. *See* documents cited in Counsel's Argument for Christ Church Mt. Pleasant (D-CC-6 refers to "General Convention" not "National Church"); Holy Comforter, Sumter (D-HC-6 was adopted in 1967 and ratified in 1968 and is not dated 1985); Church Of The Holy Cross, Stateburg (HCS-11 is dated 2011, not 1980 and 1981); Holy Trinity, Charleston (refers to documents dated 1985, 1988, 1993 and 2001, but they are dated 1974/1975, 1988, 1993 and 2001)¹⁷; Church of Our Savior (D-OS-51 refers to "General Convention" not "National Church"); Church of the Redeemer, Orangeburg (R-24 51 refers to "General Convention," not "National Church"); Trinity Episcopal Church, Pinopolis (DTP-31 and D401A were not prepared by the parish); Christ St. Paul's, Yonges Island (refers to 1980 bylaws which were not admitted at trial). As a result, Rehearing must be granted.

V. Rehearing Must Be Granted to Eight Churches Based on Vested Rights.

Eight¹⁸ parish churches were incorporated by the legislature as a result of the 1778 Constitution. R. 61-Finding 62 of Trial Order. Article 38 of the 1778 Constitution of South

¹⁷ The only signed document for Holy Trinity is the set of Bylaws dated 1974, before the adoption of the Dennis Canon. This requires Rehearing as to accession by Holy Trinity.

¹⁸ St. Helena, Prince George Winyah, St. John's Charleston County, St. Michael's, St. Philip's, Christ Church Mount Pleasant, Church of the Holy Cross-Stateburg, and Old St. Andrews.

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). When a “creditor . . . has obtained vested rights thereby which no court can divest, except in the exercise of legislative functions, which no court in this state is authorized to do.” *Magovern v. Richard*, 27 S.C. 272, 3 S.E. 340, 342 (1887).

“The validity and effect of rights are usually tested by the state of things existing at the time they become operative. Conflicting claims in the nature of rights of property, general or special, take priority, as among themselves, according to the time when they commenced to act upon the subject property.” *Pender v. Lancaster*, 14 S.C. 25, 26-27 (1880). These vested rights cannot be defeated by subsequent occurrences, even when the holder of vested rights does not take actions to enforce their vested rights. *In re: Worley’s Estate*, 49 S.C. 41, 26 S.E. 949 (1897) (court

protecting widow's homestead exemption vested rights even though she never objected to an attempted sale of the property and never asserted her claim to vested rights until after the sale).

Nor would some notion of accession to the Dennis Canon waive this principle. While this principle relates to governmental action in many cases, the courts have explained how to consider the issue. "[T]he general rule is that no statute . . . is to be construed as designed to interfere with...especially vested rights, unless the intention that it shall so apply is expressly declared, . . . unless there is something in the very nature of the case or in the language of the new provision which shows that they were intended to have a retrospective operation." *Bouknight v. Epting*, 11 S.C. 71, 73 (1878). The question of such intent is one for the fact finder, and once vested, only divested according to law. *Parkins v. Dunham*, 34 S.C.L. 224 (1848); *see also City of Myrtle Beach v. Juel P. Corp.*, 344 S.C. 43, 543 S.E.2d 538 (2001) (finding that intent to abandon vested rights under a sign ordinance were not supported by the record).

The eight parish churches with vested property rights could only divest themselves of those rights with the parish's complete consent, a signed writing, and the parish's unmistakable intent to accomplish that result. The trial court considered this issue TEC has not raised on appeal. R 78, n. 16. The Record on Appeal is devoid of these issues. None of the parish documents acknowledge the Dennis Canon specifically nor show any understanding by the parish of the intent to create a trust. The ROA only includes a reference in a St. Helena document that it adheres to the doctrine, discipline and worship of TEC, with no accession and no reference to canons at all. St. Michael's bylaws referenced by Appellants simply state that the parish acknowledges the authority of TEC, with no mention of canons and no accession. St. Philip's only agreed to act in accord with the Articles of Religion, which is a purely religious historical document. Prince George and Old St. Andrews were already found not to be subject to the Dennis Canon. The other 3 parishes merely

have a document that mentions TEC's canons,¹⁹ but that is surely not enough to rise to the heightened level required to invalidate vested rights granted by the South Carolina Constitution.

This Court should reconsider its findings to determine that these eight²⁰ parishes have vested rights in their property and those vested rights were never abandoned, waived, or released based on any viewing of the evidence in the record. As such, these eight should be entitled to retain all rights in their property.²¹

VI. The Ruling as to Camp St. Christopher is Erroneous.

Chief Justice Beatty's statement in footnote 29 concerning Camp St. Christopher, that "the disassociated Diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina," is not consistent with South Carolina neutral principles of law. All the opinions, Justice Hearn perhaps excepted,²² recognize that the Plaintiff Diocese withdrew its association with TEC ("the Disassociated Diocese").²³ The Dennis Canon does not apply to the

¹⁹ However, those documents are insufficient to show accession in a signed writing as outlined herein.

²⁰ No rehearing is requested as to Prince George and Old St. Andrews to the extent they retain their property rights under the Court's current Opinion.

²¹ Prince George has already been determined to retain all rights in its property by the original opinion in this case, and as argued above, Petitioners believe Old St. Andrews has also retained its property.

²² Justice Hearn states that the Diocese did not disassociate because its amendment of its corporate documents is subject to TEC's "rules concerning" corporate governance, including changes to the bylaws" and therefore those "rules trump" the Diocese's amendments. Op. at 48. However, TEC has no governance provisions in its constitution and canons which speak to the amendment of Diocese governance documents or require the Diocese to secure approval for such amendments. The only argument made by TEC on appeal was that TEC's constitution and canons provide the method for amending TEC's governance documents, not the Diocese's governing documents. R. 1532 (constitution) 1703 (canons). It is undisputed that the Diocese had no requirement, as did the Diocese in *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 715 n.9 (1976), to submit its governance documents, either originally or when amended, to any other body for approval.

²³ Acting Justice Pleicones, Op. at 16, Chief Justice Beatty, Op. at 53 n. 29, Acting Justice Toal, Op. at 88-89, and Justice Kittredge, Op. at 54 n.31, by joining Acting Justice Toal on every issue but one.

Diocese's property, which TEC admits. App. Br. 33. TEC's contentions with respect to the Diocese were based on its claim of control and the asserted inability of a Diocese to withdraw. *Id.* at 32. However, this Court has found that the Diocese withdrew and there is no neutral principles basis for it not being the same South Carolina non-profit religious corporation it was before its withdrawal with the same validly adopted corporate name, owning the same property and any other result would be a deprivation of property without due process of law for no other basis was raised to or considered by the trial court nor presented to this Court. As a result, the ruling as to Camp St. Christopher is in error, and rehearing should be granted.

VII. Rehearing Must be Granted Based on Statute of Limitations Defenses.

The Court erred when it held that the Respondent St. Luke's Church, Hilton Head, and Trinity Church of Myrtle Beach and their properties were subject to a trust imposed by the Dennis Canon, for the Appellants did not timely assert their claims.

The Respondent St. Luke's Church, Hilton Head amended its Bylaws and its Charter on December 1, 2009 when its members held a Special Meeting and overwhelming voted to remove all references to the Protestant Episcopal Church of the United States, the Diocese of South Carolina, and any Canons associated therewith. Resp.'s Exs. SL-10 and -11. The Articles of Amendment were sent to the South Carolina Secretary of State by letter dated January 1, 2010. Resp.'s Ex. SL-12.

The Respondent Trinity Church of Myrtle Beach amended its Bylaws and its Articles of Incorporation on November 22, 2009, when its members held a Special Meeting and overwhelmingly voted to remove all references to the Protestant Episcopal Church and the Diocese of South Carolina and any of their canons. Resp.'s Exs. TMB-4, 14, 16, 17, & 18. The Articles of Amendment were recorded by the Secretary of State on November 30, 2009.

No claims were asserted against this St. Luke's and Trinity Church of Myrtle Beach until March 27, 2013 when the Appellants filed their respective Answer and Counterclaims; clearly more than 3 years had passed since these Respondents amended their governing documents. These parishes, in their Replies to the Appellants' counterclaims, asserted the Statute of Limitations as an affirmative defense. The trial court did not rule upon this defense in that it was not necessary based on its findings that the parishes had properly disassociated and amended their governing documents. Now that this Court, in its divided decision, has reversed the trial court's findings in this regard, it is now appropriate that the applicable statute of limitations be considered. According to Section 15-3-530 (1) and (2) of the Code of Laws of the State of South Carolina, three years is the applicable statute of limitations, and therefore, the claims of the Appellants were untimely as to St. Luke's and Trinity Church of Myrtle Beach.

Conclusion

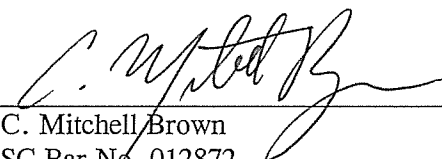
The majority has fashioned a neutral principles standard for religious organizations under South Carolina property, trust and corporate law that admittedly would not be applied to secular organizations. It then applied it to religious organizations today in a fashion it did not do 8 years ago involving the same issues between the Plaintiff Diocese, The Episcopal Church and a parish church. It does so when no appellant asked the trial court, either during trial or post trial, to apply such a standard. As a result, the majority would transfer the real and personal property of South Carolina religious organizations, many of which preexisted The Episcopal Church and the United States, to a New York religious organization. This establishment of one religion over another impacts the choices these South Carolina religious organizations (and those associated with them) made in the free exercise of their religion. They chose to disassociate, exercising their right of association under the United States and South Carolina Constitutions which this Court has

recognized. Yet, according to the majority, that constitutionally protected decision requires a massive transfer of centuries old real and personal property when it would not be required for a secular South Carolina organization.

These are serious issues for all religious organizations in South Carolina. This Court should grant rehearing.

Signature Page(s) Attached

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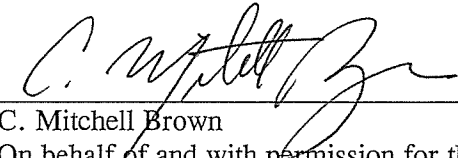
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2015-000622

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.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins
 Riley & Scarborough LLP, attorneys for Respondents, do hereby certify that I have served all
 counsel in this action with a copy of the pleading(s) hereinbelow specified by U.S. mail to the
 following address(es):

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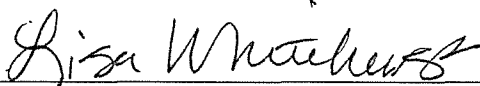
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