

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 VIII

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1 what his profession is.

2 Q. But he was the parliamentarian?

3 A. He was the parliamentarian.

4 Q. What, if any, objection was raised by any member there
5 or any member who wasn't there as to whether or not there was
6 a quorum present?

7 A. I'm not aware of any questions regarding a quorum either
8 at the time or subsequently.

9 Q. Was there a vote?

10 A. There was a vote, yes.

11 Q. And what was the vote?

12 A. The vote was to adopt the proposed changes to the
13 bylaws. It was a voice vote and it was overwhelmingly in
14 favor.

15 Q. And what did those bylaws -- how did they change?

16 A. There were two sections of the bylaws that were revised,
17 one was in the introductory section.

18 Q. Is that Article 2?

19 A. Let me refer to the bylaws. Article 2, "Purpose and
20 Vision," there was a revision there.

21 Q. What did that do? What was added or amended?

22 A. The text previously said that St. Paul's would follow
23 the doctrine, discipline, and practices of both -- of three
24 bodies, the Anglican communion, the Episcopal Church, and the
25 Diocese of South Carolina.

1 Q. All right.

2 A. And the revision was to remove the national church from
3 that. Given differences in doctrine, discipline, and
4 practices, we could no longer conform with both sets of those
5 practices. We could not conform with the diocese and with
6 the national, as they were not the same.

7 Q. Okay. What else was amended?

8 A. Article 7 regarding the rector, there was language --
9 there had previously been language indicating that the
10 pastoral relationship would be in accordance with the
11 diocesan and with the national candidates. And, again, those
12 were no longer in conformance with each other and reference
13 to the national canons were removed.

14 Q. And that vote, was it a voice vote or how was the vote
15 taken?

16 A. It was a voice vote.

17 Q. And how clear was it as to whether it passed or not
18 passed?

19 A. I would say it was overwhelmingly clear. There were
20 some objections, but they were a small minority of those
21 present.

22 Q. Did anybody raise an issue as to whether -- or a
23 question as to whether the vote was properly taken?

24 A. I was not aware of any questions regarding the
25 legitimacy of the vote.

1 Q. Did the vestry also pass some resolutions?

2 A. The vestry has passed a number of resolutions over the
3 years.

4 Q. Are they marked as exhibits into the binder you have in
5 front of you to the best of your knowledge?

6 A. Yes, to the best of my knowledge, they are contained
7 within these exhibits.

8 Q. Does St. Paul's Summerville have any ongoing
9 relationship with the national church?

10 A. No.

11 Q. Does it have any relationship with the Episcopal Church
12 in South Carolina?

13 A. No.

14 Q. What, if any, permission has St. Paul's Summerville
15 given the Episcopal Church in South Carolina to use its name?

16 A. None.

17 MR. SHELBOURNE: I have no further questions, Your
18 Honor, at this time.

19 THE COURT: Cross-examination.

20 MR. TISDALE: Mr. Smith's going to handle this one, Your
21 Honor.

22 THE COURT: All right.

23 CROSS-EXAMINATION BY MR. SMITH:

24 Q. The recent amendments you were just discussing to the
25 bylaws, did you review the Episcopal Church's, the national

1 church's constitution and canons when you made those
2 amendments?

3 A. I did not personally review them. I was acting on
4 advice of counsel regarding interpretation of the canons.

5 Q. Okay. And when those amendments were made, was there
6 any -- were there people that were opposed to -- I'm trying
7 to phrase this in a way that won't be objected to -- were
8 there people that were opposed to the amendments?

9 A. Yes. There were parishioners that did not vote to pass
10 the revised bylaws.

11 Q. Do you know, can you tell me what's happened to those
12 parishioners?

13 A. I do not know for certain who all of those objecting
14 were so I don't know for certain what may have happened to
15 them.

16 Q. Can you tell me a little bit more about the vote itself?
17 Was it a vote of just the vestry or the church in general?

18 A. There were two votes held. The first was a vote of the
19 vestry. And subsequently there was a vote of the parish as a
20 whole through our -- through a meeting. And it was indicated
21 at that time that the vestry had approved it, but it was
22 being put before the parish for approval.

23 Q. So of the individuals that -- of the vote, of the
24 minority vote of the parish as a whole, do you know what
25 happened to those individuals? Are they still involved with

1 your church?

2 A. I do not believe so. But, again, I am not certain of
3 every person that may have objected in the voice vote -- not
4 objected, did not affirm at the voice vote.

5 Q. Are you aware of a new mission called the Church of the
6 Good Shepherd?

7 A. I have heard of it. I have not attended any of its
8 meetings or met with parishioners of that mission.

9 Q. Are you aware that many individuals that used to be
10 members at your church now are part of this other mission?

11 MR. SHELBOURNE: Objection, Your Honor; calls for
12 speculation. He said he doesn't know about it.

13 THE COURT: Let me hear the question again because it
14 sounds very close to speculation. You may ask.

15 MR. SMITH: I'm asking about his personal awareness of
16 individuals that used to be parish members at his church that
17 now have left and have become part of a different mission
18 known as the Good Shepherd.

19 MR. SHELBOURNE: Same objection, Your Honor.

20 THE COURT: I'll sustain it.

21 Q. Is your church the beneficiary of any trusts?

22 A. We are no longer the beneficiary of any trusts. There
23 was one in place. It went bankrupt and was unable to have
24 any proceeds.

25 Q. Has your church been involved with the Church Pension

1 Fund?

2 A. We did have contributions to the Church Pension Fund on
3 behalf of the clergy. We haven't had that in the past two
4 years.

5 Q. How about the Church Insurance Company?

6 A. We did purchase our property and casualty through the
7 Church Insurance Company. Again, we no longer do that.

8 Q. Can you describe what the sign or signs look like at
9 your parish?

10 A. So we have a number of signs on our parish. Some of
11 them are a stylized logo consisting of the initials S and P
12 with a cross in the center. Some say St. Paul's Summerville
13 in a cursive script. There's a plaque on the church that
14 says St. Paul's.

15 Q. Do any of these signs have the word "Episcopal" in them?

16 A. I'm not aware of any that have Episcopal in them.

17 Q. Have any of the signs been changed recently?

18 A. We changed some signage in 2006. We changed some
19 signage when we adopted our new block initial logos. I'm not
20 aware of any other sign changes that we've had.

21 Q. Did you ever use the sign "The Episcopal Church Welcomes
22 You"?

23 A. I did not see that in my 13 years as a member. It may
24 have been used prior to that. I've seen it on other parishes
25 but not at St. Paul's.

1 MR. SMITH: That's all. Thank you.

2 THE COURT: Yes, Mr. Beers.

3 CROSS-EXAMINATION BY MR. BEERS:

4 Q. Good morning, sir. My name is David Beers and I
5 represent the Episcopal Church.

6 A. Good day, sir.

7 Q. Refresh my recollection, what were the changes that you
8 made in the signs in 2006?

9 A. I'm trying to think exactly what those changes consisted
10 of. I know that we made a change in typeface. We went to
11 sort of an oval-shaped design. I'm not aware of any precise
12 wording changes that may have occurred.

13 Q. Were any of the changes related to the national
14 Episcopal Church?

15 A. They may have incidentally touched on them. Again,
16 without knowing exactly what the prior wording was, I can't
17 say for certain that that's --

18 Q. I'm looking for more of an overall answer. It was an
19 overall question. Did it delete reference to the Episcopal
20 Church?

21 A. We may have. There was a movement in general across
22 multiple denominations to remove specific denominational
23 affiliations. It was felt that that was an impediment to
24 bringing in new members. Many other churches at the time did
25 similar things, Baptist churches removing Baptist from their

1 titles, things like that. So that was a -- that was a
2 thought going on that we could become more accessible to new
3 church members by not immediately presenting a denominational
4 affiliation.

5 Q. Now, you testified that there was an edition of the
6 bylaws in 1992 or at least it was --

7 A. The bylaws were in effect in 1992.

8 Q. I'm sorry?

9 A. There were bylaws in effect in 1992.

10 Q. And do you recall that they, in whatever verbiage was
11 used, did recognize the authority of the national Episcopal
12 Church at that time?

13 MR. SHELBOURNE: Objection, Your Honor. The bylaws
14 speak for themselves.

15 MR. BEERS: Just asking him if he recalls in general
16 what the nature of those bylaws were.

17 MR. SHELBOURNE: Well, that's a different question.

18 THE COURT: So you don't object to generally what are
19 the nature of the bylaws?

20 MR. SHELBOURNE: I don't object to him asking what the
21 nature of our bylaws are.

22 THE COURT: All right.

23 Q. What I mean to say, were there provisions in the bylaws
24 relating to the national Episcopal Church?

25 A. National Episcopal Church --

1 MR. SHELBOURNE: I do object to that, Your Honor. They
2 speak for themselves.

3 MR. BEERS: I need this introduction, Your Honor, to
4 where I'm trying to get at.

5 THE COURT: If he has any knowledge, he certainly can
6 answer that if he has knowledge. Overruled.

7 THE WITNESS: So the national church was referenced in
8 the bylaws. I wouldn't go so far as to say that it conferred
9 authority upon them.

10 Q. Would you go so far as to say that the Parish was
11 charged with obeying the rules of the national church?

12 A. I would have to refer to the bylaws with a closer
13 reading.

14 Q. Weren't there amendments in 2005?

15 A. There were changes in 2005.

16 Q. And do any of those changes relate to the national
17 Episcopal Church?

18 A. I was not directly involved in the changes at that time.
19 I was a simple parishioner and probably didn't pay much
20 attention to it.

21 Q. As you sit there, could you give us a very rough idea of
22 the value of the real estate that the parish owns, either for
23 insurance purposes or from appraisals or from informal
24 discussions with real estate agents, whatever -- whatever.

25 A. I'm trying it to recall the balance sheet value.

1 Q. Roughly.

2 A. A few million dollars.

3 Q. And how about personal property; I don't mean the
4 silver, but I mean bank accounts and endowments and
5 portfolios and so forth?

6 A. We do have some monetary assets. They're probably
7 \$100,000 or so.

8 Q. In 2012, when the vestry met to talk about the change in
9 the bylaws, not everyone was in favor of the move that you
10 were making?

11 A. To my knowledge we had one abstention on vestry to the
12 proposed changes.

13 Q. Was there anyone, do you remember, a member of the
14 vestry who complained that what you were doing was weakening
15 your relationship with the national Episcopal Church?

16 A. I don't recall that specific conversation.

17 Q. Do you recall anything like that?

18 A. Not along those specific lines, no.

19 Q. What does that mean?

20 A. There were a number of -- we had debate amongst the
21 vestry as to how these changes might be perceived either by
22 parishioners or by a larger public forum. There was concern
23 that this might appear to be an aggressive move on our part.
24 A number of different considerations were brought up and
25 discussed.

1 Q. Did anyone express a concern that the parish might be
2 moving away from its historic roots in the Episcopal Church?

3 A. Given that our historical roots in the Episcopal Church
4 went back to the 1700s, we felt that was our heritage and we
5 certainly were not moving away from that.

6 Q. Away from your historic roots in the Episcopal Church?

7 A. Well, there are a number of Episcopal churches so the
8 term is kind of loose. We saw and continued to see ourselves
9 principally as a parish under the authority of a bishop and
10 that there is a line of succession of bishops that go back
11 prior to the founding of the United States. That's the
12 heritage that we recognize.

13 Q. You just said a few moments ago that your historic roots
14 go way back, but they were historic roots in the Episcopal
15 Church, weren't they?

16 MR. SHELBOURNE: Objection. This has been asked and
17 answered already, Your Honor.

18 MR. BEERS: Well, this is cross-examination and there's
19 some leeway.

20 THE COURT: You can't ask him exactly the same question,
21 but I'll allow it, it's cross-examination.

22 Q. I just want to be clear, I thought I heard you say that
23 the church's historic roots go way back into the 18th
24 century. You did say that, didn't you?

25 A. Yes, I did.

1 Q. Someone on the vestry did make maybe a complaint or
2 maybe a note of sadness that what you were doing at the time
3 seemed to be moving the parish away from its historic roots
4 in the Episcopal Church?

5 MR. SHELBOURNE: Your Honor, objection; calls for
6 speculation, the sadness, things like that, Your Honor.

7 MR. BEERS: No.

8 THE COURT: Sustained.

9 Q. Did anyone voice that opinion?

10 A. Not in those words.

11 Q. Do you remember what words it was?

12 A. I do not recall the specifics of any conversation like
13 that.

14 MR. BEERS: Thank you. That's all I have.

15 THE COURT: Okay. Any redirect?

16 MR. SHELBOURNE: No, Your Honor.

17 THE COURT: All right. You may come down.

18 Call your next witness, please.

19 (Plaintiff's Exhibits SPC-1 through SPC-10 premarked for
20 identification.)

21 MR. SHELTON: Good afternoon. May it please the Court,
22 Your Honor, Robert Shelton for St. Paul's of Conway.

23 JULIAN THOMAS JEFFORDS, III,
24 being first duly sworn, testified as follows:

25 THE COURT: State your name and spell your last name for

1 the record, please, sir.

2 THE WITNESS: Julian Thomas Jeffords, J-E-F-F-O-R-D-S,
3 III.

4 THE COURT: Your witness.

5 MR. SHELTON: Good afternoon. Thank you, Your Honor.

6 DIRECT EXAMINATION BY MR. SHELTON:

7 Q. Are you also commonly known as Father Jeffords?

8 A. Yes.

9 Q. Do you mind if I call you that today?

10 A. That would be fine.

11 Q. Where do you live, Father Jeffords?

12 A. Conway, South Carolina.

13 Q. How old are you?

14 A. 47.

15 Q. Would you briefly give me a nutshell of your educational
16 background?

17 A. Received a Bachelor degree in 1990 from the University
18 of South Carolina in religion, a Master's degree in divinity
19 from Duke University in '93, and an Anglican studies diploma
20 from Virginia Theological School in '94.

21 Q. Where are you currently employed?

22 A. St. Paul's in Conway, South Carolina.

23 Q. And what is your position there?

24 A. I am the rector.

25 Q. And as the rector of St. Paul's, are you familiar with

1 the day-to-day operations of St. Paul's?

2 A. Fairly, yes.

3 Q. Okay. And the governance of St. Paul's?

4 A. Yes.

5 Q. Okay. Has St. Paul's ever been affiliated in any way
6 with the Episcopal Church in South Carolina, the defendant
7 Episcopal Church in South Carolina?

8 A. No.

9 Q. Has St. Paul's ever asked permission from the national
10 Episcopal Church or the Episcopal Church in South Carolina
11 for any of St. Paul's actions?

12 A. No.

13 Q. Are you familiar with the stipulations that we're about
14 to enter into the record here?

15 A. I've read over them, yes.

16 Q. Are you in agreement with them?

17 A. I am in agreement, yes.

18 MR. SHELTON: Your Honor, if I may approach?

19 THE COURT: You may.

20 MR. SHELTON: These are the stipulations.

21 THE COURT: Thank you.

22 MR. SHELTON: And, Your Honor, St. Paul also has nine
23 trial exhibits already agreed to be admitted without
24 objection. But the tenth one, which I'm entering now, is the
25 stipulations themselves.

1 THE COURT: Yes. Any objection?

2 MR. TISDALE: None.

3 MS. KOSTEL: No objection.

4 THE COURT: Very well. Exhibits 1 through 10 in
5 evidence without objection.

6 (Plaintiff's Exhibits SPC-1 through SPC-10 admitted into
7 evidence.)

8 MR. SHELTON: Father Jeffords, would you please answer
9 any questions the defendants may have of you?

10 THE WITNESS: Certainly.

11 THE COURT: Very well. Cross-examination.

12 CROSS-EXAMINATION BY MR. TISDALE:

13 Q. Is St. Paul's, Conway an Episcopal Church?

14 A. In that we have a bishop duly elected by the convention
15 of the Diocese of South Carolina, yes.

16 Q. Doesn't have any connection at this point with the
17 Episcopal Church in the United States, does it?

18 A. Not with the defendants, no.

19 Q. Sir?

20 A. No, sir.

21 Q. And Father Jeffords, do you run ads in the newspaper
22 saying that St. Paul's is an Episcopal Church?

23 A. I cannot remember having an ad in the newspaper.

24 Q. You can't?

25 A. I can't.

1 Q. Now, let me ask you this: How long have you been at St.
2 Paul's?

3 A. 16 years.

4 Q. What clergy staff do you have there at your parish?

5 A. At this moment it's just me as the parish priest and I
6 have got two deacons.

7 Q. What are their names?

8 A. Ann Boucher and Dawn Rider, R-I-D-E-R.

9 Q. First name?

10 A. Dawn, D-A-W-N.

11 Q. Now, have some people in Conway left St. Paul's as a
12 result of the, whatever you want to call it, division with
13 the Episcopal Church and formed a new church body to worship
14 in?

15 A. Yes, they have.

16 Q. And what is the name of that new mission, if you know?

17 A. St. Ann's.

18 Q. And where does it meet?

19 A. Currently I believe it's still meeting in Lackey Chapel
20 on Coastal Carolina University's campus.

21 Q. Is Coastal Carolina basically in Conway?

22 A. It is in Conway, yes.

23 Q. Now, did the people at St. Ann's, now at St. Ann's, when
24 this we'll call it division, for lack of a better word,
25 occurred ask you whether it would be possible for them to use

1 a building on the St. Paul's property to engage in worship
2 services?

3 A. Yes, they did.

4 Q. And were they allowed to do that?

5 A. We gave them -- yes, we allowed permission for that.

6 Q. Did they do that?

7 A. They did. They worshiped there one Sunday, and then
8 they found the Lackey Chapel available and decided that that
9 would better meet their needs.

10 Q. All right. Does St. Paul's have any trusts that have
11 been bestowed upon it for beneficiary purposes?

12 A. No.

13 Q. Does St. Paul's have any mortgages on any of its
14 property?

15 A. Yes.

16 Q. And just generally describe the property. Not with the
17 mortgages but generally. You have a church, of course?

18 A. We have a historic chapel that has had reconstruction
19 done on it, I believe, in about '70. We have an old parish
20 hall that is now the administrative offices. We have a newer
21 parish hall built in the middle '80s. And then we have the
22 church proper with an east wing that has a choir practice
23 facility and also a nursery.

24 Q. What sort of mortgage debt does the parish have now?

25 A. Right now it's about \$822,000.

1 Q. And what property is encumbered by that mortgage?

2 A. The church building, the new church that we built, I
3 think it was consecrated in about 2001.

4 Q. 2001. On that occasion to incur this debt of
5 800-something thousand dollars, was it all incurred at one
6 time or was it different loans for different purposes?

7 A. There was a construction loan originally and it was, I
8 believe, much more than 822, maybe around 950.

9 Q. Yes.

10 A. And subsequently we have refinanced I think twice on
11 that same loan.

12 Q. All right. And on those occasions beginning in 2001
13 have you obtained approval of the standing committee of the
14 Diocese of South Carolina for the purpose of incurring that
15 debt and encumbering the property?

16 A. I hate to say this as rector, but I do not think we
17 officially wrote a letter to the standing committee.

18 Q. And you are aware that the constitution and canons of
19 the diocese require such approval, don't you, especially on a
20 church building?

21 A. I know that that's the expectation. I don't think I've
22 read it in the constitution and the canons.

23 Q. You have not?

24 A. No.

25 Q. But in any case it hadn't been conformed with even if it

1 is required?

2 A. I do not remember writing that official letter when we
3 refinanced the church.

4 Q. Bishop Salmon was the bishop, wasn't he, in 2001 when
5 you incurred the major part of the debt?

6 A. Yes, he was.

7 Q. He knew about it, didn't he?

8 A. He knew about the debt, he knew about our financial
9 position, and we also met with the architectural review board
10 of the Diocese of South Carolina.

11 Q. Okay. Now, about what size is your congregation at this
12 point?

13 A. At this point I would say between 310 and 330 baptized
14 members.

15 Q. What's the roughly average Sunday attendance?

16 A. At this point I would estimate that to be 190.

17 Q. 190?

18 A. Yes.

19 Q. Have you all participated -- you can probably anticipate
20 these questions because we're asking most of the witnesses
21 some of the same. Have you all participated in before the
22 division, we'll call it, the Church Pension Fund for your
23 pension and other clergy members?

24 A. Yes, we did.

25 Q. Sponsored by the Episcopal Church up until when you made

1 the change? You're not doing it now, are you?

2 A. No, we're not now.

3 Q. But you did?

4 A. We did.

5 Q. And would the same be true for insurance on your

6 property, using the Church Insurance Corporation?

7 A. We've not used the Church Insurance Corporation for at

8 least three to four years, I believe.

9 Q. Correct. So that would put it back to about 2010 or so
10 or 2011?

11 A. 2010 probably or before, yes.

12 Q. But it's your testimony before that you did?

13 A. Before that we did.

14 Q. Church Insurance Corporation was sponsored by the
15 Episcopal Church?

16 A. Yes.

17 Q. Where were you serving as a priest prior to going to St.
18 Paul's?

19 A. I spent three years as the associate to the rector at
20 St. Helena's in Beaufort.

21 Q. And was that your first responsibility as a priest?

22 A. Yes, it was.

23 Q. And you were ordained by Bishop Salmon?

24 A. I was, yes.

25 Q. When was that, as a priest?

1 A. December 3rd, 1995.

2 Q. With the same ordination a little bit before that for a
3 deacon?

4 A. Yes; in June of that same year.

5 Q. Now, when did St. Paul's decide to sever any
6 relationship with the Episcopal Church Diocese or national
7 churchwise?

8 A. We never felt like we needed to decide to leave the
9 national church so there was no juncture where we left
10 because we were never members of it.

11 Q. You had no direct membership connection like you did
12 with the diocese?

13 A. Correct.

14 Q. But it is true, as others have testified, would you
15 agree, that you have attended diocesan conventions every year
16 you've been a priest? Haven't you?

17 A. I have.

18 Q. And you've participated in elections of deputies to the
19 general convention of the Episcopal Church, haven't you?

20 A. I have cast a vote, yes.

21 Q. And as you've already testified, you've used the pension
22 plan of the Episcopal Church, the national church, and also
23 the insurance facilities of the national church?

24 A. Correct.

25 Q. All right. On both my last two questions?

1 A. Yes.

2 Q. You agree with me?

3 A. I agree.

4 Q. Okay. Well, we're getting back to my question before
5 you said you had no direct connection because you weren't a
6 member in the sense that you described it. When did you no
7 longer have any affiliation with the -- when did you not have
8 any further affiliation with the Episcopal Church-sponsored
9 diocese?

10 A. We never had an affiliation with the Episcopal
11 defendant-sponsored diocese.

12 Q. Well, I understand that. But you know what I'm getting
13 at.

14 A. When did we stop paying into the Pension Fund?

15 Q. There was a division we've talked about when you no
16 longer had any connection to the Episcopal Church, indirectly
17 or directly. I'm trying to get an answer as to when that
18 occurred, when the division occurred or separation or
19 whatever you want to call it?

20 A. The moment in our minds that disassociation occurred was
21 the moment that our bishop's ministry was inhibited.

22 Q. All right. That would have been in the fall of 2012,
23 wouldn't it?

24 A. I'm not sure on the correct timeline of that, but that's
25 close.

1 Q. Okay. And why did you support that separation,
2 division, or whatever we want to call it, departure?

3 A. We're constituent members of the Diocese of South
4 Carolina, and the standing committee had a resolution that
5 had already been passed that the moment the national church
6 inhibited our bishop's ministry, then we would automatically
7 be disassociated; and because of that direct resolution, we
8 were automatically disassociated from them.

9 Q. And St. Paul's Conway agreed to that disassociation?

10 A. We did agree to that. In fact, the vestry passed a
11 resolution in support of its continued affiliation with the
12 Diocese of South Carolina in full support of the bishop of
13 South Carolina.

14 Q. And can you tell me any more about why you were in
15 agreement with that move?

16 A. I believe that that's the way the church is structured.
17 Ecclesiologically the bishop is our primary overseer of St.
18 Paul's and I operate as his second man in charge of the local
19 parish.

20 Q. Okay. I just want to ask you a couple questions about
21 Exhibit SRC 5, which is a quitclaim deed. Are you familiar
22 with the quitclaim deed?

23 A. Yes, I am.

24 Q. And it would appear that this exhibit, SRC -- I think
25 it's supposed to SPC, for St. Paul's, 5?

1 A. Yes, sir.

2 Q. I think mine is just blurred a little bit on the R -- I
3 mean, on the P. Yes, it's supposed to be SPC --

4 A. Yes.

5 Q. -- 5.

6 Did you or someone else at the parish receive this deed,
7 indeed if it was received?

8 A. Someone in the parish received this quitclaim deed. I
9 did not receive it personally.

10 Q. All right. But you got to know about it, didn't you?

11 A. Yes. I knew it was coming and I knew from a phone call
12 that it had been received. I think our chancellor, Rob
13 Shelton, called me and made me aware of that. I'm not sure
14 on the details.

15 Q. How did you know it was coming?

16 A. The first recollection I got of it was that I had heard
17 from the standing committee that they would be disseminated
18 and that the parishes would have an opportunity to file them
19 if they feel so called.

20 Q. Who on the standing committee notified you with that
21 information?

22 A. I think I was at the standing committee.

23 Q. Were you on the standing committee?

24 A. I was at the time, yes.

25 Q. Tell me generally when you served on the standing

1 committee.

2 A. 2012, '13, and I'm finishing up my stint on standing
3 committee in '14.

4 Q. Excuse me. I wasn't paying close enough attention.

5 A. I'm in my third year of a three-year stint.

6 Q. So the first time you began was around 2011?

7 A. Yes, thereabouts, yes.

8 Q. All right. Now, were you on the standing committee at a
9 meeting when you discovered this issuance of these quitclaim
10 deeds?

11 A. That's, I believe, the first that I had heard that they
12 were going to be disseminated to the parish.

13 Q. And since one of the grantors on this quitclaim deed is
14 the standing committee of the Episcopal Diocese of South
15 Carolina, Exhibit SP 5, you were certainly aware that you
16 were on a committee granting this deed, weren't you? Didn't
17 you know that?

18 A. Yes, that's what I'm saying.

19 Q. Well, why were the deeds granted? What did the standing
20 committee decide? Why did they want to issue these deeds?

21 A. In my recollection it was to create a strengthened
22 position of the local churches against any outside entities
23 who may believe that they have an interest in the local
24 church's property so that we can go on and do the ministry of
25 the church without fear of outside encumbrance.

1 Q. Did anyone, to your knowledge, have a claim against the
2 property except the bank?

3 A. You never know who might assume that they have a claim
4 against your property. We wanted to be protected if someone
5 did have that assumption.

6 Q. All right. So then you wanted to be protected then.
7 And perhaps now somebody has a claim that you don't know
8 about; right?

9 A. I can't speculate on that.

10 Q. Did you all at St. Paul's just get one quitclaim deed?

11 A. To my knowledge we did, yes.

12 Q. Do you know why, as a member of the standing committee,
13 some other people got more than one?

14 A. I have no idea on that.

15 Q. Okay. Did this deed convey any property to St. Paul's?

16 MR. SHELTON: Your Honor, that calls for a legal
17 conclusion.

18 MR. TISDALE: All right. I withdraw it.

19 Q. Did St. Paul's record this quitclaim deed?

20 A. Yes, we did.

21 Q. Father Jeffords, going in just very briefly to your
22 position on the standing committee, I gather that you
23 participated in votes and that sort of thing of the standing
24 committee on various topics, did you not?

25 A. Yes, I have.

1 Q. And does the standing committee have the responsibility
2 of either consenting or not consenting to the election of any
3 bishop of the Episcopal Church in the United States?

4 A. That is part of the duties, yes.

5 Q. And did you participate in such votes to consent or not
6 consent to various bishops' elections?

7 A. I cannot remember 100 percent if a bishop has had to get
8 standing committee approval since I've been serving. To the
9 best of my recollection, I believe I have had to sign at
10 least one, yes.

11 Q. Okay. And, of course, I'm referring to before the fall
12 of 2012 --

13 A. Sure.

14 Q. -- when the separation resolution occurred.

15 Were you on the committee when that separation
16 resolution was adopted?

17 A. Yes.

18 Q. And, Father Jeffords, in fact, the standing committees
19 of the various dioceses even have to consent or not consent
20 when another diocese in the United States wants to elect a
21 new bishop, isn't that correct, proposes to elect?

22 A. They give their consent approval after the election, I
23 believe. Is that right?

24 Q. You're not familiar with having to do it beforehand?

25 A. No, I'm not.

1 MR. TISDALE: All right. Bear with me just one second.

2 THE COURT: All right.

3 Q. Does the standing committee approve the ordination of
4 any priests in the diocese in which the committee is
5 responsible?

6 A. Yes.

7 Q. Same for a deacon; right?

8 A. Yes.

9 Q. And I'm referring to the constitution and canons of the
10 Episcopal Church 2012 edition to ask you these questions.
11 Does the --

12 MR. SHELTON: Your Honor, if he's going to ask him
13 questions about this document, I'd like him to be provided a
14 copy.

15 MR. TISDALE: I'm not asking about the document. I just
16 wanted him to know what I was looking at to ask the
17 questions. I'm not asking him about the document.

18 THE COURT: Let me hear the question.

19 Q. I've forgotten what the last one was, but I can say
20 this: Is one of the standing committee's responsibilities to
21 act as counsel in advice to the bishop?

22 A. Yes.

23 Q. All right. Is one of the responsibilities of the
24 standing committee to act as the ecclesiastical authority in
25 the diocese in the absence of the bishop?

1 A. Yes.

2 Q. All right. And is it the standing committee's
3 responsibility to approve the formation of new parishes in
4 the diocese?

5 A. Yes.

6 Q. And is it the standing committee's responsibility to
7 issue and agree to testimonials and certificates for bishops
8 elect in the diocese in which you serve?

9 MR. RUNYAN: Your Honor, I'm going to object.

10 Mr. Tisdale's paraphrasing some information from the national
11 canons inaccurately and because of that the witness is
12 confused, or he doesn't know he's confused but I know he's
13 confused, so I object to the mischaracterization.

14 MR. TISDALE: Your Honor, just so I don't get the burden
15 of this, I was not paraphrasing anything. I was reading from
16 the index from the canons of the constitution and canons of
17 the Episcopal Church under the heading of "Standing
18 Committees." That's all I was doing.

19 THE COURT: I'm with you.

20 MR. TISDALE: I wasn't paraphrasing. I was reading the
21 index. I just wanted to ask him was what I read part of the
22 responsibility of his committee, and he has said yes to my
23 questions.

24 THE COURT: Let me tell you what my concern is. He has
25 not responded to the last question because there was an

1 objection. If you want him to respond to the last question,
2 you have to show him the document.

3 MR. TISDALE: I understand that.

4 THE COURT: Because when we first went down this road on
5 behalf of his client, counsel asked for the document. And
6 you said I'm not really using the document, but you were
7 using the document. So he needs to be shown the document you
8 want him to answer.

9 So don't answer unless you get the document --

10 THE WITNESS: Yes.

11 THE COURT: -- because your lawyer wants you to have it.

12 MR. TISDALE: Your Honor, thank you very much and I
13 appreciate the concern. And I was really -- it was just like
14 I had notes in my hand; but since you've asked about it, I
15 will show it to him just to show my accuracy is not impaired
16 here.

17 MR. SHELTON: Your Honor, I'd appreciate being provided
18 a copy as well.

19 THE COURT: It's not about the accuracy; it's about the
20 rules.

21 MR. TISDALE: Well, I don't have a copy. This is out of
22 a book. We're going to put this in evidence pretty soon, not
23 right now. But I just wanted to make him aware of what I was
24 reading from if there's any question about it.

25 THE COURT: That would be great. He's delighted to have

1 it.

2 MR. SHELTON: Your Honor, can a copy be made for his
3 counsel?

4 MR. TISDALE: We'd be glad to give you one. We just
5 don't have one right now. This is a book. But I'd be glad
6 to make a copy for you.

7 THE COURT: Would you like to see it before it goes to
8 your client?

9 MR. TISDALE: Mr. Beers is bringing another copy. I
10 don't want to belabor this. I'm really not trying to waste
11 time on this.

12 MR. SHELTON: Mr. Tisdale, what page are you on?

13 MR. TISDALE: Page 266.

14 MS. GOLDING: Would you hand it to the witness?

15 MR. TISDALE: I'm getting ready to. I'm getting him to
16 identify what I'm handing him first.

17 Q. Do you see what I'm handing you?

18 A. I do.

19 Q. Constitution and Canons of the Episcopal Church, 2012?

20 A. Mm-hmm.

21 Q. Do you agree?

22 A. I see that that's what that document is.

23 Q. Exactly. That's all I wanted to know. And I'm turning
24 to Page 266. And I don't want to belabor this, but I've just
25 read you a series of things. And would you take the book

1 from me and read this heading right here and confirm for
2 everybody who needs to know that some of the contents of that
3 index are what I asked you about in my previous question?

4 What is the heading?

5 A. "Standing Committees of the Dioceses."

6 Q. Okay. And just so there's no potential for my
7 misleading you on this, do you see some of the issues that I
8 asked you about and asked you whether or not when you were on
9 the standing committee, these are some of the things that you
10 all considered and were performing?

11 A. The subject headings seem to have been read according to
12 this book.

13 MR. TISDALE: Thank you very much.

14 Thank you, Your Honor.

15 THE COURT: Yes. Thank you.

16 MR. TISDALE: I don't have any questions, but I see Mr.
17 Beers coming around.

18 THE COURT: All right.

19 Q. Oh, yes. One other quick question: Do you all have any
20 signs that call yourself the Episcopal Church in Conway,
21 signs that say St. Paul's Conway Episcopal or anything like
22 that?

23 A. No.

24 Q. You do not?

25 A. No.

1 Q. Church flags?

2 A. No.

3 Q. Shields?

4 A. No.

5 CROSS-EXAMINATION BY MR. BEERS:

6 Q. Father, I want to ask you about the procedure for giving
7 consents to the sale or alienation of parish property. What
8 is the procedure in the Diocese of South Carolina, at least
9 during your tenure on the standing committee, if a parish
10 wants to sell or alienate a portion of its property? How
11 does it begin the process?

12 A. I can't speak to that. I know that we have to -- we've
13 had documents and requests come through the standing
14 committee and we, as members, have been asked to sign them.
15 That's all I can say. I don't know what the process is.

16 Q. Who gives you the documents, Canon Lewis or the bishop's
17 office?

18 A. Canon Lewis administrates things in the background. I
19 don't know who draws them up.

20 Q. Do you know whether -- when they come to you, do you
21 know whether or not the bishop has already consented?

22 A. I have no idea.

23 MR. BEERS: Okay. Thank you. That's all I have.

24 THE COURT: All right. Redirect?

25 MR. SHELTON: I just have a couple questions on one

1 matter, Your Honor.

2 REDIRECT EXAMINATION BY MR. SHELTON:

3 Q. Father Jeffords, Mr. Tisdale asked you about the
4 parishioners who formed another church using the chapel on
5 the St. Paul's property?

6 A. Yes.

7 Q. Has that Chapel been used for other congregations of
8 other religions as well?

9 A. Yes. We have an African-American congregation that is
10 using it currently. Prior to that we had a Hispanic
11 congregation that had used it. Prior to that for four years
12 we had another African-American congregation that has used it
13 freely each time.

14 Q. And are any of those congregations related to the
15 Episcopal Church?

16 A. Not at all.

17 Q. Or the Diocese of South Carolina?

18 A. Not at all.

19 MR. SHELTON: Thank you.

20 MR. TISDALE: No questions, Your Honor.

21 THE COURT: All right. We have more from the
22 plaintiffs' side.

23 MS. GOLDING: I've got a question.

24 THE COURT: All right.

25 REDIRECT EXAMINATION BY MS. GOLDING:

1 Q. This book that has not been provided to the defendants
2 as an exhibit, the canons and the constitution, constitution
3 and canons of the national Episcopal Church, under the same
4 page that Mr. Tisdale was referring to, "Standing Committees
5 of the Diocese," is there any header in there that states
6 that no diocese can ever leave the national church?

7 A. No.

8 MS. GOLDING: Thank you. No further questions.

9 MR. TISDALE: Your Honor, I don't have any questions,
10 further questions.

11 THE COURT: Very well. Any further questions on behalf
12 of the national church?

13 All right. Very well.

14 You may come down, sir.

15 Call your next witness, please.

16 (Plaintiff's Exhibits TC-1 through TC-15 premarked for
17 identification.)

18 CHARLES EDWARD OWENS, III,
19 being first duly sworn, testified as follows:

20 THE COURT: Would you state your full name for the
21 record and spell your last name, please?

22 THE WITNESS: Charles Edward Owens, III, O-W-E-N-S.

23 THE COURT: Your witness, Mr. Platte.

24 MR. PLATTE: Thank you, Your Honor.

25 DIRECT EXAMINATION BY MR. PLATTE:

1 Q. Father Owens, how old are you?

2 A. 70.

3 Q. And how are you currently employed?

4 A. I'm the rector of the Church of the Cross in Bluffton.

5 Q. And where exactly in Bluffton is that located?

6 A. It's on Calhoun Street, at the corner of Calhoun and
7 Water Streets.

8 Q. How long have you been at that parish?

9 A. I'm just concluding my 18th year.

10 Q. How long has Church of the Cross existed?

11 A. We're the successors to churches in that area that were
12 first there in 1767.

13 Q. When was the current iteration of Church of the Cross
14 incorporated?

15 A. There were two buildings before the present building was
16 built, and that building was begun in 1854, concluded in
17 1857.

18 Q. When was the parish incorporated?

19 A. 1979.

20 Q. And as your time as rector of the parish have you
21 learned about the history and the corporate structure of the
22 parish?

23 A. Yes, sir.

24 Q. As part of the exhibits there's an Exhibit TC 13, it's a
25 set of stipulations. Are you familiar with those

1 stipulations?

2 A. Yes, sir.

3 Q. And those stipulations are representative, if you would
4 testify today those would be, what's included in those
5 stipulations would be included in your testimony?

6 A. That's correct.

7 MR. PLATTE: Now, there are two additional -- by
8 agreement of counsel there was Exhibits TC 1 through 13. TC
9 13 were the stipulations. And we recently gave counsel,
10 defense counsel, TC 14 and TC 15. It's an order of judgment
11 dated December 7, 1989, and a deed from November 17, 1969.
12 And those -- we would move those into evidence unless there's
13 an objection.

14 MR. TISDALE: No objection.

15 MS. KOSTEL: No objection.

16 THE COURT: Very well.

17 (Plaintiff's Exhibits TC-1 through TC-15 admitted into
18 evidence.)

19 Q. Could you briefly describe all the real property Church
20 of the Cross parish owns?

21 A. We own an L-shaped piece of property that's in two
22 portions. The first is approximately a half a block, and
23 that is on 9 Water Street. That would be the building that
24 was built as a rectory. Across the street from there is the
25 parcel of land that has the church and the parish hall and

1 mechanical building.

2 Q. And at some point the deed for a portion of that land
3 was burned by the soldiers from the north as they came
4 through Columbia?

5 A. That's correct. The early records of the church were
6 all kept at the State House in Columbia for Beaufort County
7 and our records were burned during that time.

8 Q. And that order of judgment in Exhibit TC 14, that was a
9 quiet title action to declare that you had ownership rights
10 in this property and there was no one else?

11 A. That's correct.

12 Q. And then the second deed, TC 15, is that other portion
13 of property that you were talking about?

14 A. Yes, sir.

15 Q. Now, there's a couple more pieces of property included
16 in the quitclaim deed, the Buckwalter tract and 17 Water
17 Street. Does Church of the Cross currently own those?

18 A. No, we do not.

19 Q. Was all the notice that was given for meetings done
20 according to the bylaws?

21 A. Yes, sir.

22 Q. And for all the meetings where bylaws or articles
23 changed was there a quorum present?

24 A. Yes, sir.

25 Q. Did the vote pass by the required majority according to

1 the bylaws in those meetings?

2 A. Yes, sir.

3 Q. Now, there were some bylaws that were -- some changes
4 that were suggested in a September 22nd, 2010, meeting, and
5 they were voted on by the vestry at that point. When were
6 those bylaws first discussed?

7 A. Late 2008, early 2009.

8 Q. Was there a meeting on September 20th, 2010, where the
9 vestry discussed that they had gone through a process of
10 doing some new bylaws and decided that was not what they
11 wanted to do and scrapped them and started over?

12 A. I don't remember the vestry scrapping those, no, sir.
13 This is in 2010?

14 Q. That's 2010, September 2010.

15 A. No. I believe that's when we had the meeting in 2010 to
16 adopt the new bylaws.

17 Q. If I hand you a document, would that refresh your
18 recollection?

19 A. Yes, sir, it would.

20 Q. I'm going to hand you what has been marked as TC 4. If
21 you would take a look at No. 3.

22 A. Yes, sir.

23 Q. Does that refresh your recollection if there was a set
24 of bylaws that were proposed on September 20th, 2010?

25 A. I thought your question was was there a set that was

1 proposed to be scrapped.

2 Q. That may have been. I may have misworded it.

3 A. Yes, this is where we proposed the new bylaws.

4 Q. And then the September 22nd, 2010, meeting was a special
5 meeting, and at that meeting you voted on those proposals?

6 A. That's correct.

7 Q. Does Church of the Cross have a relationship, currently
8 have a relationship, with TEC or TECSC?

9 A. No, sir.

10 Q. Does Church of the Cross send delegates to the TEC to
11 any TECSC meetings?

12 A. No, sir.

13 Q. Is Church of the Cross parish in TECSC?

14 A. No, sir.

15 Q. Has Church of the Cross authorized TECSC to use its name
16 or likeness?

17 A. No, sir.

18 MR. PLATTE: That's all.

19 THE COURT: Very well.

20 Cross-examination, Mr. Tisdale.

21 MR. TISDALE: Just a few questions, Your Honor.

22 THE COURT: Yes.

23 CROSS-EXAMINATION BY MR. TISDALE:

24 Q. Father Owens, did you say you had been at the Church of
25 the Cross for 17 years?

1 A. 18, I'm just completing my 18th year.

2 Q. Where did you serve as a priest before that?

3 A. I was an assistant at the Church of the Redeemer in
4 Orangeburg, South Carolina.

5 Q. Who were you serving under there?

6 A. Reverend Dow Sanderson.

7 Q. When did you enter the priesthood?

8 A. 1994 January.

9 Q. Before that what had your career been?

10 A. I was an independent school headmaster for 28 years.

11 Q. Was that all the time at Thomas Sumter Academy or
12 different places?

13 A. Yes, sir, Thomas Sumter was where I headmastered.

14 Q. 28 years?

15 A. Yes, sir.

16 Q. Wow. Now, are you any longer a priest in the Episcopal
17 Church?

18 A. No, sir. I'm a priest of the Anglican Communion.

19 Q. Sir?

20 A. I'm a priest of the Anglican Communion.

21 Q. Are you currently a priest of the Episcopal Church?

22 A. No, sir.

23 Q. Okay. What size is the parish of the Church of the
24 Cross Bluffton?

25 A. As of the end of June we had 1,649 active members.

1 Q. And the average Sunday attendance is about what?

2 A. For June was 1,003.

3 Q. Per Sunday?

4 A. We have a Saturday afternoon service, and that's
5 included in that as well.

6 Q. I see. What size clergy staff do you have?

7 A. I have an assistant.

8 Q. What is that person's name?

9 A. Jonathan Riddle, R-I-D-D-L-E.

10 Q. Thank you. Is the church indebted by way of any
11 mortgage indebtedness on the property?

12 A. Yes, sir.

13 Q. What is the size of the mortgage roughly?

14 A. Approximately 3-1/2 million.

15 Q. \$3-1/2 million?

16 A. Yes, sir.

17 Q. Who holds that mortgage?

18 A. BB&T.

19 Q. When was that debt incurred, if there was one time, or
20 has it been over a period of time?

21 A. It's been over a period of time.

22 Q. Does the church have any trust fund endowment? And by
23 that I mean is it the beneficiary of any trusts that have
24 been bestowed on it?

25 A. No, sir.

1 Q. Does it have an endowment?

2 A. No, sir.

3 Q. Does the parish have an endowment?

4 A. No, sir.

5 Q. Does not. Now, these are my usual questions. Prior to
6 2012, let's say, has the parish contributed to pensions of
7 the clergy to the Church Pension Group of the Episcopal
8 Church?

9 A. We've offered that as an option for our clergy. Some
10 have participated in it; some have not. I have.

11 Q. You have?

12 A. I have.

13 Q. And are you currently an active priest or retired
14 priest?

15 A. A retired priest.

16 Q. Are you drawing right now a pension?

17 A. Yes, sir.

18 Q. From the Church Pension Fund of the Episcopal Church?

19 A. Yes, sir.

20 Q. You are?

21 A. Yes, sir.

22 Q. When did you start doing that?

23 A. Two years ago when I completed 20 years.

24 Q. Of vested --

25 A. Yes.

1 Q. -- it was more or less vested and you were the
2 appropriate age to do that?

3 A. That's correct.

4 Q. Does the church also pay your salary?

5 A. Yes, sir.

6 Q. Is it limited in any way because you're drawing a
7 pension?

8 A. No, sir.

9 Q. It's not. By the same token, has the parish used up
10 until let's say 2012 the insurance programs of the Episcopal
11 Church? I've forgotten exactly the name of the company, but
12 you know what I'm talking about?

13 A. Sometimes we regularly put our insurance coverage out
14 for bids and sometimes we've gone with church concerns and
15 sometimes we've gone with other agencies.

16 Q. All right, sir. And I think you've heard me ask others,
17 and I won't go into it because I don't want to have to take
18 the time to do it, but you did attend an annual convention of
19 the Diocese of South Carolina up until 2012, did you not?

20 A. Yes, sir.

21 Q. And you did participate, did you not, in the election of
22 deputies to the general convention of the Episcopal Church at
23 that meeting from time to time?

24 A. Yes, sir.

25 Q. And have you yourself served on any diocesan boards or

1 commissions or committees?

2 A. I was on the Diocesan Council for a few years back in
3 the 1990s.

4 Q. Ever serve on the standing committee?

5 A. No, sir.

6 Q. Any other significant diocesan posts?

7 A. I'm a dean for the Beaufort deanery.

8 Q. That's a geographical area?

9 A. Yes, sir.

10 Q. That has a certain number of parishes in it and you've
11 been appointed dean of that?

12 A. There are six churches in it.

13 Q. To call meetings and that sort of thing?

14 A. Yes, sir.

15 Q. Now, just let me ask you this: Did the Church of the
16 Cross -- well, I know you did because I'm looking at TC 2,
17 Exhibit TC 2, which is a quitclaim deed. Do you recall the
18 Church of the Cross receiving a quitclaim deed?

19 A. Yes, sir.

20 Q. And the grantor on the one I'm looking at and the only
21 one I'm -- did you ever see more than one quitclaim deed?

22 A. No, sir.

23 Q. And the grantor on this one, that is TC 2, the
24 Protestant Episcopal Diocese of South Carolina signed by
25 Bishop Lawrence and Jeffrey Miller. Was Bishop Lawrence the

1 Bishop of the Protestant Episcopal Diocese of South Carolina
2 when this deed was granted?

3 A. Yes, sir.

4 Q. And was Jeffrey Miller president of the standing
5 committee?

6 A. Yes, sir.

7 Q. So far as you know, did this institution, the Protestant
8 Episcopal Diocese of South Carolina, have any claim or any
9 interest in the Church of the Cross property?

10 A. No, sir.

11 Q. And did you know this deed was coming before you got it?

12 A. Yes, sir.

13 Q. How much in advance? This deed is dated February 1st,
14 2010. When did you know about the deed? And then I'll ask
15 you a question or two about it.

16 A. Perhaps a week or two before.

17 Q. And what's your understanding of why the deeds were
18 granted?

19 A. So that there would not be -- from our perspective, we
20 wanted to have a quitclaim deed because we didn't want to
21 have a cloud over our property.

22 Q. Was there a cloud over your property?

23 A. Well, banks felt like we had to have the approval of the
24 diocese to execute any kind of mortgage papers.

25 Q. Right. Well, the standing committee requires every

1 parish that mortgages property, borrows money or encumbers
2 their property --

3 A. That's correct.

4 Q. -- to get approval from the standing committee of the
5 diocese across the board, don't they?

6 A. Yes, sir, they do.

7 Q. What did that have to do with the quitclaim deed?

8 A. We wanted to get out from under having to have that
9 approval.

10 Q. Approval to mortgage property?

11 A. That's correct.

12 Q. And did you mortgage any property in 2010?

13 A. We refinanced; yes, sir.

14 Q. You did?

15 A. Yes, sir.

16 Q. All right. And you considered this to be, at least in
17 part, approval from the standing committee that you could do
18 that?

19 A. Well, it eliminated the responsibility -- we felt like
20 it would eliminate any requirement that we had to get
21 approval from the standing committee to refinance.

22 Q. Did you apply to the standing committee for approval?

23 A. No, sir.

24 Q. Did not?

25 A. No, no, sir.

1 MR. TISDALE: Okay. Your Honor, bear with me just one
2 second.

3 THE COURT: Okay.

4 Q. I think finally, Father Owens, you all have signage on
5 the church that refers to the Episcopal Church?

6 A. No, sir.

7 Q. Do you use any symbols, emblems, anything else that
8 represent the Episcopal Church?

9 A. No, sir.

10 Q. All right. So you have no Episcopal Church indicia on
11 the property as far as you know?

12 A. No, sir.

13 MR. TISDALE: One second.

14 Q. Did you ever call yourself an Episcopal Church in
15 Bluffton?

16 A. Our name has never had Episcopal in it from the
17 inception and never was it on the sign.

18 Q. It never was on the sign?

19 A. That's right.

20 MR. TISDALE: Mr. Beers may have a question, Your Honor.

21 THE WITNESS: May I clarify that just a little bit, sir?
22 When I say it was never on the sign on our property, at one
23 point we did have out on the highway one of those signs that
24 says "The Episcopal Church Welcomes You."

25 Q. I gather you don't have that anymore?

1 A. No, sir. We haven't had that since 2008 or '09.

2 MR. TISDALE: Thank you very much, Father.

3 THE WITNESS: Yes.

4 THE COURT: Mr. Beers.

5 CROSS-EXAMINATION BY MR. BEERS:

6 Q. Father, I'm David Beers and I represent the Episcopal
7 Church.

8 A. Yes, sir.

9 Q. Let me see if I understand your testimony a few moments
10 ago about the reason for getting the quitclaim deed. Is it
11 your contention or is it the opinion of your parish that
12 having gotten the quitclaim deed, you no longer have to
13 comply with a diocesan canon to get permission from the
14 bishop and the standing committee before alienating or
15 selling real property?

16 A. That's our contention.

17 Q. Now, that canon is still there. Is that canon still
18 there?

19 A. I don't know, sir.

20 MR. BEERS: I see. Thank you.

21 Excuse me. May I have just a moment.

22 THE COURT: Indeed.

23 MR. BEERS: Excuse me. Thank you, Your Honor.

24 THE COURT: No problem at all.

25 All right. Any other questions from the plaintiffs?

1 All right. Redirect.

2 MR. PLATTE: None, Your Honor.

3 THE COURT: Very well, you may come down, sir.

4 All right. We are four minutes until 5:00. We will
5 take one more.

6 (Plaintiff's Exhibits CC-1 through CC-38 premarked for
7 identification.)

8 KENNETH NIXON WILSON,
9 being first duly sworn, testified as follows:

10 THE COURT: All right. Yes, sir. State your full name
11 for the record, please, sir, and spell your last name.

12 THE WITNESS: Kenneth Nixon Wilson, W-I-L-S-O-N.

13 MR. SLOAN: Your Honor, I'm Chip Sloan for the Vestry
14 and Church Wardens of the Episcopal Church of the Parish of
15 Christ Church. We have already marked as trial Exhibits CC 1
16 through 38, which are exhibits, and the stipulations are
17 actually Exhibit 38. If I could pass up our stipulations to
18 you.

19 THE COURT: Wonderful. Thank you. And, of course,
20 that's without objection, is that right, Mr. Tisdale?

21 MR. TISDALE: Is he asking about exhibits?

22 THE COURT: 1 through 38, yes, and the stipulation.

23 MR. TISDALE: The only problem we have is there are
24 several that I can't read, Chip.

25 MR. SLOAN: I've got certified color copies from the RMC

1 office that I can submit.

2 MR. TISDALE: We don't want to object to them. If we
3 could read them I don't think we would.

4 MR. SLOAN: Let me just put these in, Your Honor, as CC
5 1A1 through 23, and if there's any problem, we can talk about
6 them in the morning if you all can't read these. How's that?

7 MR. TISDALE: Those are legible copies of the same ones
8 that we can't read?

9 MR. SLOAN: Yes. I believe -- I can read them.

10 THE COURT: Here's what we are going to do. You just
11 put those in evidence; is that correct?

12 MR. SLOAN: Yes, Your Honor.

13 THE COURT: And those are the certified copies from the
14 RMC?

15 MR. SLOAN: Yes, Your Honor.

16 THE COURT: And you believe that those are the best
17 reproductions?

18 MR. SLOAN: Yes, Your Honor.

19 THE COURT: All right.

20 MR. TISDALE: If they're the same document, we're not
21 going to have a problem.

22 THE COURT: That's not my concern. Here's what we'll
23 do: We'll take direct, we won't take cross until you've had
24 a chance to look at them, and that will be your choice
25 whether it will be this evening or in the morning prior to

1 your cross.

2 MR. TISDALE: Thank you. Very well.

3 THE COURT: You may proceed.

4 DIRECT EXAMINATION BY MR. SLOAN:

5 Q. Mr. Wilson, can you tell us where you live, please?

6 A. Mount Pleasant.

7 Q. What do you do for a living?

8 A. I'm a technology operations manager for a trading firm.

9 Q. Do you attend a church in Mount Pleasant?

10 A. I do.

11 Q. Which church is that?

12 A. Christ Church.

13 Q. How many members does Christ Church have?

14 A. Approximately 1,000 on the rolls and 400 average Sunday
15 attendance.

16 Q. Have you had any leadership positions at Christ Church?

17 A. Yes, sir.

18 Q. What are those?

19 A. I've been a Sunday school teacher and I'm currently
20 finishing my term on vestry and I'm currently the senior
21 warden.

22 Q. You've been on the vestry for three years; is that
23 right?

24 A. Yes, sir.

25 Q. When was Christ Church created?

1 A. In 1706.

2 Q. And did that 1706 Church Act, which is Exhibit 2, create
3 a church southeast of the Wando River?

4 A. Yes, sir.

5 Q. And if we could show the first Google Earth shot, I'm
6 going to ask you if you can identify the church property of
7 Christ Church for the Court, please.

8 A. This is the church property central to the picture.

9 Q. Can you tell us just briefly where each part of it is?

10 A. If I go clockwise from the top left, you would see
11 underneath a large tree there's a historic church building,
12 the original building, and the vestry house next to it, a
13 building called Holt Hall which we currently use for the
14 Meals on Wheels effort. Over toward the top right are the
15 office trailers, to the bottom right is the parish hall,
16 bottom left is the children's ministry building, and in the
17 middle is the newer sanctuary.

18 Q. Next photo. What is that a picture of?

19 A. That's the front of the historic church.

20 Q. Next picture. Can you tell us what that is?

21 A. That is a very old picture of the historic church.

22 Q. What road is that going by?

23 A. That is what is now Highway 17.

24 Q. Next picture. And, again, is that the historic church
25 with a plaque to the right of the door?

1 A. Yes, sir.

2 Q. Next picture. I won't get you to read this plaque, but
3 can you tell us what it says about the foundation of the
4 church that was built in 1707, the foundation and part of the
5 walls?

6 A. It said in the War Between the States the building was
7 burned except for the walls and the foundation and then
8 rebuilt.

9 Q. To the best of your knowledge, the historic church at
10 Christ Church, does it still have the same foundation and
11 walls it had in 1707 on the same exact piece of property?

12 A. That is correct.

13 Q. Next photo. What is that a picture of?

14 A. That is our rector holding service in the historic
15 church.

16 Q. Next photo. What is that?

17 A. The historic vestry house.

18 Q. Next photo. Can you see the plaque there on the
19 historic vestry house?

20 A. I do.

21 Q. Next photo. And when was it built?

22 A. In 1751.

23 Q. Next photo. What is that a picture of?

24 A. That's the historic graveyard or the graveyard.

25 Q. Next photo. What's that, Mr. Wilson?

1 A. An historic marker basically recounting the same thing
2 that's on the plaque on the front of the church.

3 Q. Were there people buried in that cemetery all the way
4 back in the mid-1700's?

5 A. That's right.

6 Q. Next photo. What's that a picture of?

7 A. That's the main sanctuary.

8 Q. Next photo.

9 A. The front of the main sanctuary.

10 Q. Next.

11 A. The inside of the main sanctuary.

12 Q. Next.

13 A. The front of the parish hall.

14 Q. Next photo.

15 A. The inside of the parish hall.

16 Q. Next.

17 A. The children's building.

18 Q. And next.

19 A. Some really nice-looking children, especially the one in
20 the middle there.

21 Q. If we could go to Exhibit 24, please. And is Christ
22 Church incorporated?

23 A. Yes, sir.

24 Q. And when was Christ Church incorporated?

25 A. In 1787.

1 Q. And was it legislatively incorporated?

2 A. Yes, sir.

3 Q. And what name was given by the legislature to Christ
4 Church?

5 A. The Vestry and Church Wardens of the Episcopal Church of
6 the parish of Christ Church.

7 Q. All right, sir. And Christ Church, what is the role of
8 the vestry?

9 A. They act as the board of directors.

10 Q. And how about the senior warden; what role does the
11 senior warden have?

12 A. Essentially he's the president or the chairman of the
13 board.

14 Q. And Exhibits 1 through 23, we have a legibility issue on
15 the first couple of deeds, but what is your understanding
16 that those documents do with regard to the history of the
17 ownership of the Christ Church parish?

18 A. They demonstrate that we own the title to the property.

19 Q. Also in the stipulations there were some bylaw changes,
20 you're aware of that?

21 A. Yes, sir.

22 Q. With regard to those bylaw changes, was proper notice
23 given?

24 A. I believe it was.

25 Q. Was there a quorum at the meetings to change the bylaws?

1 A. Yes, there was.

2 Q. Were the changes to the bylaws approved and voted on at
3 two successive meetings?

4 A. Yes.

5 Q. Likewise, Exhibit 35 is a commitment to continue
6 diocesan relationship, and can you tell me what that document
7 did?

8 A. It affirmed what we believe to be a statement of fact
9 that we continue to be part of the Diocese of South Carolina.

10 Q. And was that adopted by the vestry?

11 A. Yes, sir.

12 Q. And why was it adopted by the vestry?

13 A. Because as the board of directors, the vestry has that
14 authority.

15 Q. And is Christ Church a member of the Episcopal Church in
16 South Carolina, the defendant?

17 A. No, sir.

18 Q. Has Christ Church ever given permission for the
19 Episcopal Church in South Carolina to list Christ Church on
20 any website in any way?

21 A. No, sir.

22 Q. And you've read the stipulations?

23 A. Yes, sir.

24 Q. And you agree with them if you testified to them?

25 A. Yes, sir.

1 MR. SLOAN: Thank you, Mr. Wilson. Please answer any
2 questions the defense may have for you.

3 THE COURT: And that will now be tomorrow. Since you
4 are on the stand, I'm just going to instruct you not to
5 discuss your testimony with anyone over the balance of the
6 evening. You can talk about anything else, but just don't
7 discuss your testimony. You certainly may come down.

8 Now, Mr. Tisdale, I'm going to leave it to you and all
9 counsel whether you wish to review those this evening or in
10 the morning. It's up to you.

11 MR. TISDALE: He's going to show them to us right now.

12 THE COURT: That would be great. It probably won't take
13 that long to take a look at them.

14 MR. TISDALE: Thank you.

15 THE COURT: And then be prepared to proceed in the
16 morning at 9:30 with your cross-examination.

17 --- END OF TRANSCRIPT OF RECORD ---

18

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25

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the First Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 14th of July, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 August 13, 2014

16
17 Ruth L. Mott

18 Official Court Reporter
19
20
21
22
23
24
25

VOLUME VI

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

CASE NO. 2013-CP-18-00013

THE PROTESTANT EPISCOPAL)
 CHURCH IN THE DIOCESE OF)
 SOUTH CAROLINA, THE TRUSTEES)
 OF THE PROTESTANT EPISCOPAL)
 CHURCH IN SOUTH CAROLINA,)
 A SOUTH CAROLINA CORPORATE)
 BODY, ET AL.,)

PLAINTIFFS,)

vs.)

TRANSCRIPT OF RECORD

THE EPISCOPAL CHURCH, (A/K/A)
 THE PROTESTANT EPISCOPAL)
 CHURCH IN THE UNITED STATES)
 OF AMERICA); THE EPISCOPAL)
 CHURCH IN SOUTH CAROLINA,)

DEFENDANTS.)

JULY 15, 2014
 ST. GEORGE, SC

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

Ruth L. Mott, RPR, CRR
 Official Court Reporter

I N D E X

1					
2					
3	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
4	FOR THE PLAINTIFFS:				
5	KENNETH NIXON WILSON				
6	MR. TISDALE		1131		
7	BOYD LEGGETT BAKER				
8	MR. PLATTE	1142			
9	MR. TISDALE		1147		
10	MR. BEERS		1168		
11	MARTIN RAY SCARBROUGH				
12	MR. SOWINSKI	1177			
13	MR. SMITH		1182		
14	STEWART HUEY, JR.				
15	MR. PLATTE	1189			
16	MR. BEERS		1192		
17	MR. TISDALE		1196		
18	MYRON HARRINGTON, JR.				
19	MR. PHILLIPS	1200			
20	JOHN ZIMMERMAN, JR.				
21	MR. PLATTE	1223			
22	MR. BEERS		1227		
23	MR. TISDALE		1230		
24	FOR THE DEFENSE:				
25	ARMAND GEORGES DERFNER				
26	MR. TISDALE	1241			
27	MR. RUNYAN		1267		
28	WARREN WILDER MERSEREAU				
29	MR. TISDALE	1270			
30	MARSHALL DOW SANDERSON				
31	MR. TISDALE	1295			
32	MR. RUNYAN		1317		
33	MS. GOLDING		1321		
34	MS. KOSTEL			1328	
35	CERTIFICATE OF REPORTER	1331			

E X H I B I T S

PLAINTIFF DIOCESE EXHIBITS

NO.	DESCRIPTION	ID	EVD
DSC-41A	TRANSCRIPTION OF CONSTITUTION	1236	1236
DSC-60	CONSTITUTION OF THE STATE OF	1236	1237
	SOUTH CAROLINA - 1778		
DSC-61	CONSTITUTION OF THE STATE OF	1237	1237
	SOUTH CAROLINA - 1790		
DSC-62	PHOTOGRAPHS	1239	1240

PLAINTIFF PARISH EXHIBITS

NO.	DESCRIPTION	ID	EVD
CC-1	HISTORY OF OWNERSHIP OF THE	1111	1131
	LANDS OF CHRIST CHURCH		
CC-2	THE CHURCH ACT OF 1706	1111	1131
CC-3	JULY 28, 1731 DEED	1111	1131
CC-4	JULY 28, 1731 DEED	1111	1131
CC-5	JULY 28, 1731 DEED	1111	1131
CC-6	MAY 4, 1738 DEED	1111	1131
CC-7	FEB. 1, 1753 LEASE	1111	1131
CC-8	SEPT. 17, 1754, JOHN AND ANN	1111	1131
	SAVAGE TO CHARLES PINCKNEY, JR.		
CC-9	MAR. 3, 1817 FORECLOSURE OF	1111	1131
	THREE MORTGAGES		
CC-10	MAY 24, 1828, CHARLES J.	1111	1131
	STEADMAN TO WILLIAM MATTHEWS		
CC-11	FEB. 24, 1853, JAMES TUPPER TO	1111	1131
	WILLIAM MCCANTS		
CC-12	MAR. 10, 1880 SURVEY	1111	1131
CC-13	FEB. 21, 1900 MARY J. MCCANTS	1111	1131
	AND CHILDREN TO FREDERICK		
	WIETERS		
CC-14	FEB. 14, 1908, E. FREDERICK A.	1111	1131
	WIETERS TO E. FREDERICK A.		
	WIETERS, TRUSTEE. DECLARATION		
	OF TRUST		
CC-15	FEB. 7, 1910, E. FREDERICK	1111	1131
	WIETERS, EXEC. TO THOMAS		
	J. HAMLIN		
CC-16	FEB. 15, 1921, T. J. HAMLIN TO	1111	1131
	O.D. HAMLIN		
CC-17	OCT. 11, 1935, JULIA LEHRE	1111	1131
	HAMLIN TO ANNA C. EWING		
CC-18	DEC. 4, 1942, ANNA C. EWING TO	1111	1131
	THE VESTRY AND CHURCH WARDENS		
	OF THE EPISCOPAL CHURCH OF THE		
	PARISH OF CHRIST CHURCH, A		
	CORPORATION		

	NO.	DESCRIPTION	ID	EVD
1	CC-19	NOV. 14, 1966, GEORGE L. BUIST,	1111	1131
2		EXEC. OF ESTATE OF ALEXANDRA		
3	CC-20	EWING STONE TO THOMAS E. NOYES		
		DEC. 2, 1966 SURVEY FOR ABOVE	1111	1131
4	CC-21	BUIST DEED		
		JUNE 7, 1968 (BOOK N-90, P. 93)	1111	1131
5		THOMAS E. NOYES TO THE VESTRY		
6		AND CHURCH WARDENS OF THE		
		EPISCOPAL CHURCH OF THE PARISH		
7	CC-22	OF CHRIST CHURCH, THEIR		
		SUCCESSORS AND ASSIGNS		
8		MAY 4, 1970, GEORGE A. HERRIN	1111	1131
9		TO THE VESTRY AND WARDENS OF		
		THE EPISCOPAL CHURCH OF THE		
10	CC-23	PARISH OF CHRIST CHURCH, THEIR		
		SUCCESSORS IN OFFICE AND		
		ASSIGNS		
11	CC-24	QUIT CLAIM DEED RECORDED NOV.	1111	1131
		23, 2011		
12	CC-25	INCORPORATION	1111	1131
	CC-26	1980 BYLAWS	1111	1131
13	CC-27	OCTOBER 20, 2011 VESTRY MEETING	1111	1131
		MINUTES		
14	CC-28	NOVEMBER 21, 2011 VESTRY	1111	1131
		MEETING MINUTES		
15	CC-29	CHURCH BULLETINS - NOV. 20,	1111	1131
		2011, NOV. 27, 2011, AND DEC.		
		4, 2011		
16	CC-30	DECEMBER 4, 2011 ANNUAL PARISH	1111	1131
		MEETING MINUTES		
17	CC-31	DECEMBER 11, 2011	1111	1131
	CC-32	CONGREGATIONAL MEETING MINUTES		
	CC-33	2011 BYLAWS	1111	1131
18	CC-34	DECEMBER 15, 2011 VESTRY	1111	1131
		MEETING MINUTES		
19	CC-35	NOVEMBER 15, 2012 VESTRY	1111	1131
		MEETING MINUTES WITH RESOLUTION		
20	CC-36	DECEMBER 17, 2012 VESTRY	1111	1131
		MEETING MINUTES		
21	CC-37	COMMITMENT TO CONTINUED	1111	1131
		DIOCESAN RELATIONSHIP AND		
22	CC-38	RESOLUTION OF BOARD OF		
	SJC-1	DIRECTORS		
23	CC-39	STATUTES AT LARGE	1111	1131
	CC-40	CONST. OF STATE OF SC	1111	1131
24	CC-41	STIPULATION	1111	1131
	CC-42	ACT OF THE GENERAL ASSEMBLY	1142	1147
25		DATED APRIL 7, 1734		

	NO.	DESCRIPTION	ID	EVD
1	SJC-2	ACT OF THE GENERAL ASSEMBLY	1142	1147
2		DATED MARCH 22, 17		
3	SJC-3	ACT OF THE GENERAL ASSEMBLY	1142	1147
4		DATED FEBRUARY 18, 1786		
5	SJC-4	QUITCLAIM DEED DATED DECEMBER	1142	1147
6		7, 2012		
7	SJC-5	QUITCLAIM DEED, DATED FEBRUARY	1142	1147
8		1, 2010		
9	SJC-6	QUITCLAIM DEED, DATED NOVEMBER	1142	1147
10		11, 2011		
11	SJC-7	TITLE OF REAL ESTATE DATED	1142	1147
12		FEBRUARY 4, 1997		
13	SJC-8	VESTRY MEETING MINUTES,	1142	1147
14		DECEMBER 21, 2010		
15	SJC-9	ANNUAL CONGREGATIONAL MEETING	1142	1147
16		MINUTES, JANUARY 16, 2011		
17	SJC-10	ANNUAL CONGREGATIONAL MEETING	1142	1147
18		MINUTES, JANUARY 15, 2012		
19	SJC-11	2012 CONSTITUTIONS & CANONS	1142	1147
20	SJC-12	RESOLUTION DATED DECEMBER 18,	1142	1147
21		2011		
22	SJC-13	ARTICLES OF AMENDMENT, MARCH 9,	1142	1147
23		2012		
24	SJC-14	RESOLUTION DATED NOVEMBER 13,	1142	1147
25		2012		
26	SJC-15	VESTRY MEETING MINUTES,	1142	1147
27		NOVEMBER 13, 2012		
28	SJC-16	DECEMBER 21, 2010 SPECIAL	1142	1147
29		VESTRY MEETING MINUTES		
30	SJC-17	2011 PARISH MEETING AGENDA	1142	1147
31	SJC-18	DECEMBER 13, 2011 VESTRY	1142	1147
32		MEETING MINUTES		
33	SJC-19	2012 PARISH MEETING AGENDA	1142	1147
34	SJC-20	STIPULATION	1142	1147
35	HT-1	2/11/1957 CERTIFICATE OF	1176	1179
36		INCORPORATION		
37	HT-2	3/2/1959 AMENDMENT OF CHARTER	1176	1179
38	HT-3	6/10/1964 DEED	1176	1179
39	HT-4	10/4/2011 QUITCLAIM DEED	1176	1179
40	HT-5	10/24/2011 EXECUTIVE MEETING	1176	1179
41		MINUTES		
42	HT-6	11/3/2011 EXECUTIVE MEETING	1176	1179
43		MINUTES		
44	HT-7	12/4/2011 MINUTES OF THE CALLED	1176	1179
45		CONGREGATIONAL MEETING		
46	HT-8	1/23/2012 RESTATED ARTICLES OF	1176	1179
47		INCORPORATION		
48	HT-9	10/13/2011 EXECUTIVE MEETING	1176	1179
49		MINUTES		

	NO.	DESCRIPTION	ID	EVD
1	HT-10	10/27/2011 EXECUTIVE MEETING MINUTES	1176	1179
2	HT-11	11/17/2011 EXECUTIVE MEETING MINUTES	1176	1179
3	HT-12	12/1/2011 EXECUTIVE VESTRY MEETING MINUTES	1176	1179
4	HT-13	12/18/2011 REVISED BYLAWS	1176	1179
5	HT-14	HOLY TRINITY EPISCOPAL CHURCH CORPORATE INFORMATION FROM SOUTH CAROLINA SECRETARY OF STATE	1176	1179
6				
7	HT-15	3/27/57 DEED	1176	1179
	HT-16	BYLAWS REV. 7/24/08	1176	1179
8	HT-17	3/22/57 DEED	1176	1179
	HT-18	3/13/57 DEED	1176	1179
9	HT-19	3/25/57 DEED	1176	1179
	HT-20	3/15/57 DEED	1176	1179
10	HT-21	GIS MAP	1176	1179
	HT-22	STIPULATION	1178	1179
11	OSA-1	ACT OF THE GENERAL ASSEMBLY, DATED NOVEMBER 30, 1706	1188	1192
12	OSA-2	ACT OF THE GENERAL ASSEMBLY, DATED DECEMBER 18, 1708	1188	1192
13	OSA-3	ACT OF THE GENERAL ASSEMBLY, DATED MARCH 24, 1785	1188	1192
14	OSA-4	QUITCLAIM DEED, DATED JANUARY 18, 2013	1188	1192
15	OSA-5	QUITCLAIM DEED, DATED OCTOBER 4, 2011	1188	1192
16	OSA-6	TITLE OF REAL ESTATE DATED DECEMBER 17, 1998	1188	1192
17	OSA-7	PARISH MEETING MINUTES, FEBRUARY 24, 2013	1188	1192
18	OSA-8	2013 CONSTITUTION & CANONS	1188	1192
	OSA-9	JANUARY 17, 2103 - FEBRUARY 21	1188	1192
19		EMAIL NEWSLETTERS		
	OSA-10	JANUARY 2013 THE CAST NET NEWSLETTER	1188	1192
20				
	OSA-11	DECEMBER 16, 2012 - FEBRUARY 24, 2013 THE SUNDAY CAST NET NEWSLETTERS	1188	1192
21				
22	OSA-12	FEBRUARY 24, 2103 VOTE RESULTS	1188	1192
	OSA-13	STIPULATION	1188	1192
23	SPH-1	MARCH 1, 1710 ACT OF THE GENERAL ASSEMBLY OF SOUTH CAROLINA	1199	1201
24				
	SPH-2	DECEMBER 9, 1720 ACT OF THE GENERAL ASSEMBLY OF SOUTH CAROLINA	1199	1201
25				

	NO.	DESCRIPTION	ID	EVD
1	SPH-3	MARCH 24, 1785 ACT OF THE	1199	1201
2		GENERAL ASSEMBLY OF THE STATE		
3	SPH-4	PETITION SUBMITTED TO THE	1199	1201
4		GENERAL ASSEMBLY OF SOUTH		
5	SPH-5	CAROLINA IN NOVEMBER, 1791		
6		ACT OF THE GENERAL ASSEMBLY OF	1199	1201
7	SPH-6	THE STATE OF SOUTH CAROLINA		
8	SPH-7	ADOPTED ON DECEMBER 21, 1791	1199	1201
9	SPH-8	DEED DATED OCTOBER 1, 1730	1199	1201
10	SPH-9	DEED DATED NOVEMBER 5, 1730	1199	1201
11	SPH-10	DEED DATED SEPTEMBER 3, 1731	1199	1201
12	SPH-11	DEED DATED DECEMBER 4, 1752	1199	1201
13	SPH-12	DEED DATED DECEMBER 4, 1752	1199	1201
14	SPH-13	DEED DATED AUGUST 24, 1816	1199	1201
15	SPH-14	DEED DATED DECEMBER 16, 1850	1199	1201
16	SPH-15	DEED DATED JANUARY 9, 1870	1199	1201
17	SPH-16	DEED DATED MARCH 31, 1914	1199	1201
18	SPH-17	DEED DATED DECEMBER 31, 1920	1199	1201
19	SPH-18	DEED DATED JANUARY 18, 1939	1199	1201
20	SPH-19	DEED DATED NOVEMBER 21, 1908	1199	1201
21	SPH-20	DEED DATED NOVEMBER 9, 1966	1199	1201
22	SPH-21	DEED DATED JULY 2, 1996	1199	1201
23	SPH-22	QUITCLAIM DEED DATED FEBRUARY	1199	1201
24	SPH-23	1, 2010		
25	SPH-24	QUITCLAIM DEED DATED JULY 11,	1199	1201
26	SPH-25	2011		
27	SPH-26	LEGAL DESCRIPTION AND TAX MAP	1199	1201
28	SPH-27	PARCEL NUMBERS OF ALL		
29	SPH-28	PROPERTIES OWNED BY ST.		
30	SPH-29	PHILIP'S CHURCH		
31	SPH-30	BYLAWS (PRIOR TO MAY 22, 2011)	1199	1201
32	SPH-31	ST. PHILIP'S INSPIRE DATED MAY	1199	1201
33	SPH-32	8, 2011 WITH NOTICE OF ANNUAL		
34	SPH-33	CONGREGATIONAL MEETING TO BE		
35	SPH-34	HELD ON MAY 15, 2011		
36	SPH-35	ST. PHILIP'S INSPIRES DATED MAY	1199	1201
37	SPH-36	15, 2011 AND MAY 22, 2011 WITH		
38	SPH-37	NOTICE OF SPECIAL		
39	SPH-38	CONGREGATIONAL MEETING TO BE		
40	SPH-39	HELD ON MAY 22, 2011		
41	SPH-40	AMENDED AND RESTATED BYLAWS	1199	1201
42	SPH-41	APPROVED ON MAY 15, 2011 AND ON		
43	SPH-42	MAY 22, 2011		
44	SPH-43	MINUTES OF CONGREGATIONAL	1199	1201
45	SPH-44	MEETING HELD ON MAY 15, 2011		
46	SPH-45	MINUTES OF CONGREGATIONAL	1199	1201
47	SPH-46	MEETING HELD ON MAY 22, 2011		
48	SPH-47	RESOLUTIONS REGARDING DIOCESAN	1199	1201
49	SPH-48	RELATIONSHIP DATED 11/11/2012		

	NO.	DESCRIPTION	ID	EVD
1	SPH-29	MINUTES OF VESTRY MEETING HELD	1199	1201
2		ON NOVEMBER 11, 2012		
3	SPH-30	ARTICLES OF RESTATEMENT FILED	1199	1201
4		WITH THE OFFICE OF THE SOUTH		
5		CAROLINA SECRETARY OF STATE ON		
6		APRIL 16, 1987		
7	SPH-31	AMENDED AND RESTATED ARTICLES	1199	1201
8		OF RESTATEMENT FILED WITH THE		
9		OFFICE OF THE SOUTH CAROLINA		
10		SECRETARY OF STATE ON OCTOBER		
11		29, 2012		
12	SPH-32	MINUTES OF VESTRY MEETING HELD	1199	1201
13		ON OCTOBER 26, 2012		
14	SPH-33	ST. PHILIP'S INSPIRE DATED	1199	1201
15		DECEMBER 23, 30, 2012 & JANUARY		
16		6, 2013 WITH NOTICE OF SPECIAL		
17		MEETING OF THE CONGREGATION		
18		CALLED FOR JANUARY 13, 2013		
19	SPH-34	NOTICE OF JANUARY 13, 2013	1199	1201
20		SPECIAL MEETING OF THE		
21		CONGREGATION		
22	SPH-35	MINUTES OF SPECIAL	1199	1201
23		CONGREGATIONAL MEETING HELD ON		
24		JANUARY 13, 2013		
25	SPH-36	APPLICATION FOR REGISTRATION OF	1199	1201
26		A TRADEMARK OR SERVICE MARK		
27		DATED NOVEMBER 16, 2011, AND		
28		SERVICE MARK REGISTRATION		
29		ISSUED BY THE OFFICE OF THE		
30		SOUTH CAROLINA SECRETARY OF		
31		STATE ON NOVEMBER 22, 2011		
32	SPH-37	4/5/11 MEETING MINUTES	1199	1201
33	SPH-38	CHURCH ACT OF 1706, ACT NO. 256	1199	1201
34		ADOPTED 11/30/1706		
35	SPH-39	ACT NO. 795 ADOPTED 6/14/1751	1199	1201
36	SPH-40	JOINT PETITION FOR	1199	1201
37		INCORPORATION		
38	SPH-41	ACT NO. 1783 ADOPTED 12/18/1802	1199	1201
39	SPH-42	PHOTOGRAPHS	1199	1201
40	SPH-43	STIPULATION	1199	1201
41	TED-1	STATUTES AT LARGE DATED APRIL	1223	1227
42		7, 1770		
43	TED-2	STATUES AT LARGE DATED DECEMBER	1223	1227
44		21, 1793		
45	TED-3	PETITION FOR INCORPORATION	1223	1227
46		DATED NOVEMBER 8, 1793		
47	TED-4	ARTICLES OF INCORPORATION, MAY	1223	1227
48		3, 1995		

NO.	DESCRIPTION	ID	EVD
TED-5	RESTATED ARTICLES OF INCORPORATION, FEBRUARY 19, 2012	1223	1227
TED-6	PROPERTY DESCRIPTION	1223	1227
TED-7	DEED DATED SEPTEMBER 4, 1987	1223	1227
TED-8	GENERAL WARRANTY DEED DATED AUGUST 23, 1995	1223	1227
TED-9	QUITCLAIM DEED DATED JULY 22, 2011	1223	1227
TED-10	PARISH MEETING MINUTES, FEBRUARY 19, 2012	1223	1227
TED-11	BYLAWS	1223	1227
TED-12	RESOLUTION, DECEMBER 30, 2012	1223	1227
TED-13	VESTRY MEETING MINUTES, DECEMBER 30, 2012	1223	1227
TED-14	TRINITY TRUMPET - JANUARY 2012	1223	1227
TED-15	TRINITY TRUMPET - FEBRUARY 2012	1223	1227
TED-16	MINUTES OF THE ANNUAL PARISH MEETING FEBRUARY 19, 2012	1223	1227
TED-17	FEBRUARY 5, 2012 CHURCH BULLETIN	1223	1227
TED-18	1/18/13 LETTER - SERVICE MARK INFRINGEMENT	1223	1227
TED-19	STIPULATION	1223	1227
AS-10	PHOTOGRAPHS	1235	1235
SAMP-30	PHOTOGRAPHS	1235	1235
SLP-18	PHOTOGRAPHS	1235	1235
HC-28	PHOTOGRAPHS	1235	1235
RS-21	PHOTOGRAPHS	1235	1235
PCSH-34	PHOTOGRAPHS	1235	1235
SB-17	PHOTOGRAPHS	1235	1235
TMB-27	PHOTOGRAPHS	1235	1235
SMFM-19	PHOTOGRAPHS	1235	1235
SMI-28	PHOTOGRAPHS	1235	1235

THE COURT'S EXHIBITS
 C-3 A. DERFNER REPORT

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- - -

1 THE COURT: Anything from the plaintiff before we begin
2 this morning?

3 MR. RUNYAN: Nothing, Your Honor.

4 THE COURT: Anything from the defense?

5 MR. TISDALE: No, Your Honor.

6 THE COURT: Now, we need a witness because you need to
7 do your cross-examination. Did you have a chance to look at
8 the documents?

9 MR. TISDALE: Your Honor, the situation with the
10 documents is a lot of these documents are simply illegible,
11 as we discussed yesterday. And, you know, we just are not
12 going to object to them any further. They're for whatever
13 they're worth, they can't be read, and he's going to try to
14 supplement it, I think, with ones that are more readable.

15 MR. SLOAN: I spoke to your team last night. They
16 agreed that the certified copies from the RMC office,
17 particularly the prerevolutionary stuff, it's as good as it's
18 going to get.

19 MR. TISDALE: That's fine. Whatever it is, it is.

20 MR. SLOAN: They're coming in without objection, is my
21 understanding.

22 MR. TISDALE: That is correct.

23 MR. SLOAN: Okay. Christ Church 1A, 1 through 23, which
24 are the certified copies.

25 MR. TISDALE: And we have no objections to that.

1 MR. SLOAN: Thank you, Mr. Tisdale.

2 (Plaintiff's Exhibits CC-1 through CC-38 admitted into
3 evidence.)

4 THE COURT: In other words, they are what they are.

5 MR. TISDALE: They are what they are. We can't read
6 them; doubt if you can.

7 THE COURT: I got it.

8 MR. TISDALE: I mean, I don't want to presume that.

9 MR. SLOAN: I'd ask Mr. Wilson to come back to the
10 stand, Your Honor.

11 THE WITNESS: Yes, yes. And I want to thank you all for
12 doing that too because I know you were tired last evening, so
13 I appreciate it.

14 MR. TISDALE: They're just old documents.

15 THE COURT: Yes.

16 All right. Good morning.

17 THE WITNESS: Good morning, ma'am.

18 THE COURT: Your witness, Mr. Tisdale.

19 MR. TISDALE: Thank you very much, Your Honor.

20 KENNETH NIXON WILSON,
21 being previously duly sworn, testified as follows:

22 CROSS-EXAMINATION BY MR. TISDALE:

23 Q. Mr. Wilson, just to get us back to where we were, you
24 testified you are a representative of Christ Church Mount
25 Pleasant; correct?

1 A. Yes, sir.

2 Q. Just remind me, what is your current leadership role, if
3 any, in that parish?

4 A. I'm currently the senior warden.

5 Q. And how long have you been in that position?

6 A. I've been the senior warden since January this year.

7 Q. 2014?

8 A. Yes, sir.

9 Q. How long have you been a communicant at Christ Church
10 Mount Pleasant?

11 A. Since approximately 2008.

12 Q. All right. Now, since 2008 up until, we'll say, the
13 fall of 2012 have you looked in generally to the history of
14 Christ Church Mount Pleasant that you testified some about
15 yesterday?

16 A. Yes, sir.

17 Q. And you are aware, are you not, that Christ Church has
18 participated in the activities of the diocese? And we're
19 talking about period prior to 2012 forward.

20 A. Yes, sir.

21 Q. Have you ever served on any diocesan committee or board?

22 A. No, sir.

23 Q. Has Christ Church, to your knowledge, based upon your
24 review of the records and so forth, participated in every
25 diocesan convention that the Diocese of South Carolina has

1 held throughout its history?

2 A. In the plaintiff diocese, yes, sir.

3 Q. I'm talking about the one prior to 2012, the Diocese of
4 South Carolina as it existed prior to 2012.

5 A. Prior to 2012? Yes, sir.

6 Q. And you have participated in those conventions, haven't
7 you?

8 A. The parish has, yes, sir.

9 Q. Parish has. Have you ever been a delegate to the
10 convention of the diocese?

11 A. Yes, sir.

12 Q. And as I've asked other witnesses the same thing, you
13 are aware, are you not, that the Diocese of South Carolina
14 and every other diocese, for that matter, in the church
15 elects deputies to attend the general convention of the
16 Episcopal Church? Isn't that right?

17 A. I can't speak for every diocese, but I believe that's
18 true in ours, yes, sir.

19 Q. Well, stick to yours then and this Diocese, South
20 Carolina.

21 A. Yes, sir, I believe that's true.

22 Q. And you're aware, of course, that the general convention
23 of the Episcopal Church is a meeting of all the dioceses in
24 the church that is held every three years, isn't it?

25 A. I'm generally aware of what's publicly available about

1 that. I have not participated, I'm not an expert on it.

2 Q. I understand that. And you are aware, are you not, from
3 what you're publicly aware of and matters in the public press
4 and so forth and church news, that the general convention of
5 the Episcopal Church conducts legislative activities, does it
6 not, on behalf of the church?

7 A. I'm vaguely aware of that. I'm no expert on how that
8 works.

9 Q. And you are aware, of course, as we talked about with
10 Father Jeffords I believe yesterday, there is a constitution
11 and canons of the Episcopal Church, the national church, just
12 as it is of the diocese; isn't that correct?

13 A. I believe that is true.

14 Q. Yes, thank you. Now, just real generally, what sort of
15 property does Christ Church own? I know it owns the place
16 where the church building is; right?

17 A. Yes, sir.

18 Q. What else does it own?

19 A. Approximately 27 acres on Highway 17 at Long Point Road.

20 Q. That's roughly surrounding in the neighborhood of the --

21 A. Contiguous, yes, sir.

22 Q. Contiguous. And, of course, there's a cemetery there
23 too, isn't it?

24 A. Yes, sir.

25 Q. Is that next to the church, the historic church?

1 A. Yes, sir.

2 Q. Mr. Wilson, is any of the property of Christ Church
3 mortgaged because of a secured debt on it?

4 A. Yes, sir, we have a mortgage.

5 Q. And do you know what that mortgage covers, what property
6 it covers?

7 A. Not precisely. The mortgage was taken out when we built
8 several buildings and I'm not sure if it specifically covered
9 one building or the collection.

10 Q. Roughly what is the balance due on that mortgage right
11 now?

12 A. Roughly \$1.5 million.

13 Q. All right. Does the church have any other indebtedness
14 of that sort?

15 A. Not to my knowledge.

16 Q. And are you -- you said you're senior warden now?

17 A. Yes, sir.

18 Q. Are you aware that whenever a parish in the diocese
19 borrows money and to secure it encumbers property, does it
20 not need the approval of the standing committee of the
21 diocese in order to achieve that?

22 A. I was not aware of that.

23 Q. Not aware of it.

24 Were you involved in the financing that led to the
25 million and a half debt that's on it now?

1 A. I was not directly involved in that, no, sir.

2 Q. But whatever the constitution and canons require, you
3 will agree that it requires if there's a provision on that?

4 A. I don't know what the requirement is.

5 Q. Okay. Does Christ Church have an endowment?

6 A. We have several restricted funds on deposit, yes.

7 Q. And like as an example, I don't want you to go through
8 the whole thing but as an example, how are those funds
9 restricted? Just give us an example so we'll generally know.

10 A. There's a significant deposit, which I guess we call an
11 endowment, for the cemetery and there are several smaller
12 funds that communicants have given for specific purposes,
13 such as for the children's building.

14 Q. And just without exact but roughly what is the total
15 amount of the endowments that the parish has?

16 A. Something less than a million dollars.

17 Q. Prior to fall of 2012, did Christ Church handle pensions
18 for its clergy through the church, Episcopal Church, pension
19 fund?

20 A. Prior to that time the church made contributions to the
21 pension fund on behalf of the clergy, yes.

22 Q. Who is the rector of the parish right now?

23 A. Reverend Ted Duvall.

24 Q. Are there any other clergy people on the staff?

25 A. Yes. There is an associate.

1 Q. Who is that?

2 A. Reverend Joe Ananias.

3 Q. Joe Ananias?

4 A. Ananias, yes, sir.

5 Q. Are you able to testify, based upon your knowledge and
6 experience, as to whether or not Christ Church has used the
7 Church Insurance Corporation of the Episcopal Church to
8 insure its property both against liability and for casualty?

9 A. Prior to?

10 Q. 2012.

11 A. Approximately 2012? Yes, sir.

12 Q. Okay. Does Christ Church use the Book of Common Prayer
13 for its worship right now?

14 A. Yes, sir. We use that among other things.

15 Q. Okay. And is the Book of Common Prayer of the Episcopal
16 Church in the pews of the parish?

17 A. Yes, sir.

18 Q. Do you know anything about how -- I know it was a long
19 time ago because we can't read the old documents, but do you
20 know how -- what the origin of the property was that created
21 the parish? Was it given? Was it bought? How did the
22 church acquire it, if you know?

23 A. Yes, sir. I believe that's in our stipulations.

24 Q. Can you just tell us really quickly what it was?

25 A. There was a grant from the British government in 1706.

1 Q. So it was a governmental grant, as far as you know, by
2 which the church acquired the property?

3 A. I'm not sure of the legalese of that statement, but yes,
4 generally.

5 Q. Okay. Let's talk about just real briefly the signs on
6 the parish. What is the official name of the parish right
7 now?

8 A. I'll read it from the trial exhibits if I might.

9 Q. That would be good.

10 A. The Vestry and Church Wardens of the Episcopal Church of
11 the Parish of Christ Church.

12 Q. All right. Now, on your signs to indicate, you know,
13 signage, what do your signs say outside the church?

14 A. Christ Church.

15 Q. Nothing more?

16 A. No, sir.

17 Q. How long has that been the case that it's just said
18 Christ Church, as far as you know?

19 A. Since approximately 2008.

20 Q. What was it before that?

21 A. I'm not entirely sure.

22 Q. Because you weren't there?

23 A. Yes.

24 Q. Okay. Does the parish have any indicia of connection to
25 the Episcopal Church inside the building, such as an

1 Episcopal Church flag?

2 A. No, sir.

3 Q. Did you ever?

4 A. Not that I'm aware of.

5 Q. All right. I just wanted to ask you real briefly about
6 Exhibit CC 23, which is a quitclaim deed. Are you generally
7 familiar with this document, CC 23?

8 A. Yes, sir.

9 Q. And what is it?

10 A. It is a quitclaim deed.

11 Q. All right. Now, I'm looking for a date on this
12 quitclaim deed but I'm having trouble finding it. I only see
13 the date of the probate at various times. Do you see a date
14 that this deed is dated by any chance? I can't find it.

15 A. The only date I see is on the second page. It says 4
16 October 2011.

17 Q. That's when the notary public signed the probate clause,
18 didn't it?

19 A. I'll take your word for that.

20 Q. Yes. And then on the next page two more, which are
21 different dates. Excuse me. No. It's still October 4th,
22 2011; right?

23 A. Yes, sir.

24 Q. This is the notary public. So let's just go with that
25 date on the deed, although I don't see a date on the deed

1 itself but only on the probate. So we really don't know
2 whether the deed has a date, do we?

3 A. I don't know how to answer that.

4 Q. Okay. When did you become aware of this quitclaim deed?

5 A. I don't remember specifically, but I would say sometime
6 contemporaneous with the time we received it.

7 Q. Did the church, Christ Church, request that this deed be
8 issued to it?

9 A. Not that I'm aware of.

10 Q. And what did you do with the deed when you got it?

11 A. It appears that it was filed.

12 Q. Do you know anything about it?

13 A. I don't understand.

14 Q. You said it appears it was filed. Do you know anything
15 else about what was done with it by the parish?

16 A. No, sir.

17 Q. Did the parish ask -- did you know it was coming?

18 A. Personally, I'm not sure that I did.

19 Q. Did the parish know it was coming?

20 A. I suppose our chancellor may have known, he received it.
21 I'm not sure otherwise.

22 Q. And that would be Mr. Sloan?

23 A. The chancellor is Mr. Guerard.

24 Q. Mr. Ted Guerard?

25 A. Yes, sir.

1 Q. All right. So did anyone ask why it was issued or do
2 you know?

3 A. I can't speak to what anyone did know, sir.

4 Q. You do not know?

5 A. I don't know.

6 Q. And do you know anything about what the deed conveyed to
7 the parish, if anything?

8 A. I believe the deed is what it is. It says that the
9 diocese makes no claim on our property.

10 Q. And this, you believe, was an acknowledgment of that,
11 that they were making no claim?

12 A. That is my understanding of what a quitclaim deed does,
13 yes, sir.

14 MR. TISDALE: Mr. Wilson, thank you very much. I don't
15 have any other questions right now.

16 THE WITNESS: You're welcome.

17 THE COURT: All right.

18 MS. KOSTEL: Nothing.

19 THE COURT: No questions.

20 Redirect?

21 MR. SLOAN: None, Your Honor.

22 THE COURT: Thank you, you may come down.

23 THE WITNESS: Thank you.

24 THE COURT: All right. Call your next witness.

25 (Plaintiff's Exhibits SJC-1 through SJC-20 premarked for

1 identification.)

2 BOYD LEGGETT BAKER,

3 being first duly sworn, testified as follows:

4 THE COURT: All right. If you'd state your full name
5 again for our record.

6 THE WITNESS: Boyd Leggett Baker.

7 THE COURT: Thank you.

8 Your witness, Mr. Platte.

9 MR. PLATTE: Andrew Platte on behalf of the Vestry and
10 Church Wardens of the Episcopal Church of the Parish of St.
11 John's, Charleston County.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION BY MR. PLATTE:

14 Q. Mr. Baker, how old are you?

15 A. 59.

16 Q. Are you employed?

17 A. Semi-retired, sometime employed.

18 Q. What do you do when you work?

19 A. A shipbuilder, repairer for 20 years and then a general
20 contractor for another 20 years about.

21 Q. Are you a member of a parish?

22 A. St. John's, Johns Island.

23 Q. And that's the short name for the longer one I just --

24 A. Yes. Our rector is Reverend Greg Snyder.

25 Q. Okay. And where is St. John's located?

1 A. We're on Maybank Highway just before you cross over to
2 Wadmalaw Island.

3 Q. How long have you been a member?

4 A. Since about 1976.

5 Q. What positions, leadership positions, have you held at
6 St. John's?

7 A. Just about anything you can think of. Probably over
8 that period of time I've probably been a senior warden
9 cumulatively maybe -- or been on the vestry cumulatively for
10 probably about 20 years.

11 Q. How long has St. John's been in existence?

12 A. 1734.

13 Q. Was that through an act by the Colonial Assembly?

14 A. Yes, that was through an act of the Colonial Assembly of
15 South Carolina.

16 Q. When was it incorporated?

17 A. It was incorporated in 1786.

18 Q. That was by the state legislature of South Carolina?

19 A. Yes, sir.

20 Q. About how large in terms of members is St. John's?

21 A. It's about 620 members.

22 Q. What is the parish's board of directors?

23 A. The board of directors would be the vestry, 12 members
24 at St. John's, and your CEO of the board would be your
25 rector.

1 Q. Does it have any other officers?

2 A. No.

3 Q. Does it have a senior -- you said senior and junior
4 warden?

5 A. Yes. Within that encompass you have a senior warden and
6 a junior warden, but they're members of that 12.

7 Q. So it's officers of the vestry?

8 A. Yes, sir, mm-hmm.

9 Q. Anybody else besides the junior and senior warden?

10 A. The rest are what would be general board members of any
11 board, any corporate board. And your rector is like your CEO
12 and he has a vote.

13 Q. Okay. How did you learn about the history of St.
14 John's?

15 A. I've read some stuff. I've had to do some discovery
16 because of this trial. And then, of course, I've known a lot
17 of people, older members of the congregation, for a lot of
18 years that will tell you about it.

19 Q. Okay. Are you familiar with the attached stipulations
20 labeled Exhibit 20, SJC-20?

21 A. I need one of those --

22 Q. I hand you what's been labeled as Exhibit SJC-20.

23 A. Okay.

24 Q. Have you seen that document before?

25 A. Let's see. Yes, I have seen this.

1 Q. And would that be your testimony today in lieu of those
2 written stipulations?

3 A. This is -- let's see. Let me look at this.

4 Yes.

5 Q. Okay. Talking about the property, does St. John's have
6 an actual deed for the church building?

7 A. No.

8 Q. And why is that?

9 A. I know it was created -- we were created by a
10 legislative act in 1734. I've never seen a deed.

11 Q. And the land was granted as part of that act?

12 A. As I understand it.

13 Q. What happened at the December 21st, 2010, vestry
14 meeting?

15 A. That would have been the meeting where we were -- our
16 regular scheduled meeting would have been December 14th, and
17 we were almost ready to make some modifications to our
18 constitutions and we weren't quite ready on the 14th, we were
19 almost happy with it, so we decided to wait one more week.
20 So we gave everybody notice and we provided notice again on
21 Sunday that we would meet on that day, and so that's when we
22 passed it to make those changes.

23 Q. And those proposed constitution and canons then went to
24 a parish vote?

25 A. Yes. They went to the annual meeting, which normally

1 would occur on the third Sunday of January of each year.

2 Q. Okay. Were all notices for all meetings given in
3 accordance to the bylaws?

4 A. Yes. We're very particular about that and that's always
5 done.

6 Q. Was there a quorum present at all meetings?

7 A. Yes, there was.

8 Q. And did all matters that were voted upon pass with the
9 required majority according to the constitution and canons?

10 A. Overwhelmingly, yes.

11 Q. Does St. John's have any relationship with defendants
12 TEC or defendant TECSC?

13 A. No, sir.

14 Q. Did St. John's send delegates to defendant TECSC's
15 convention?

16 A. No.

17 Q. Is St. John's a parish in the defendant TECSC?

18 A. No.

19 Q. Is defendant TECSC authorized to use St. John's name or
20 likeness?

21 A. No.

22 MR. PLATTE: Your Honor, at this time we move to admit
23 exhibits SJC-1 through 20 into evidence.

24 THE COURT: Any objection?

25 MS. ST. AMAND: No objection, but for two pages that we

1 can't read.

2 MR. TISDALE: Just two pages that are illegible.

3 THE COURT: Okay.

4 MR. TISDALE: No objection, Your Honor.

5 MS. KOSTEL: No objection.

6 THE COURT: Very well.

7 (Plaintiff's Exhibits SJC-1 through SJC-20 admitted into
8 evidence.)

9 MR. PLATTE: That's all the questions we have, Your
10 Honor.

11 THE COURT: Cross-examination. Mr. Tisdale, you're
12 going to go first?

13 MR. TISDALE: I am. Thank you, Your Honor.

14 CROSS-EXAMINATION BY MR. TISDALE:

15 Q. Mr. Baker, good morning.

16 A. Good morning.

17 Q. You've been involved in the conduct of the business of
18 the parish one way or another since 1976?

19 A. Yes, sir.

20 Q. And have you attended diocesan conventions prior to the
21 fall of 2012 on behalf of the parish?

22 A. Yes.

23 Q. How many of those have you gone to, roughly?

24 A. Two, I think.

25 Q. All right. Are you familiar with the fact that that

1 diocesan convention, the annual convention of the Diocese of
2 South Carolina, in turn elects deputies to attend the general
3 convention of the Episcopal Church?

4 A. No, sir.

5 Q. You're not aware of that?

6 A. No.

7 Q. Okay. You don't recall voting on such?

8 A. No.

9 Q. Now, Mr. Baker, are you familiar within your
10 recollection that sometime around 1994 -- that would have
11 been ten (sic) years ago -- the parish amended its bylaws and
12 charter?

13 A. Yes, sir.

14 Q. All right. And in that -- I don't have a copy of that
15 document to show you, unfortunately, but I want to ask you --
16 was not the purpose, one of the purposes, of that amendment
17 in 1994 to state that the parish was operating as a parish of
18 the Episcopal Church in accordance with the constitution and
19 canons of the Diocese of South Carolina and the Episcopal
20 Church in the United States of America?

21 A. I don't know that.

22 Q. You don't know that?

23 A. No, sir.

24 Q. You don't remember being involved in that amendment or
25 planning for that amendment?

1 A. I vaguely remember.

2 Q. All right. You do now vaguely remember?

3 A. Yes, sir.

4 Q. All right. Do you doubt that that's what the purpose of
5 that, one of the purposes of that, amendment was?

6 MR. PLATTE: Objection, Your Honor. I would ask that he
7 show him the document.

8 MR. TISDALE: I don't have it.

9 MR. PLATTE: If he's asking about specifics about
10 wording on a document that's 20 years old, I think that
11 showing him the document would be most appropriate.

12 MR. TISDALE: Your Honor, I don't have the document.
13 But I'm just asking him what he knows about it. If he
14 remembers, fine; if he doesn't, fine.

15 THE COURT: I understand, Mr. Tisdale. But our rules
16 are very clear that when someone's being questioned with
17 regards to a document and there is a request for the
18 document, the document must be provided to the witness.

19 MR. TISDALE: I understand that, Your Honor. If I had
20 it, I certainly would.

21 THE COURT: Has it not been provided to you?

22 MR. TISDALE: I don't believe that it has. We can't
23 find it anywhere.

24 MS. KOSTEL: What exhibit was it?

25 MR. TISDALE: 1994 amendment. We do have it?

1 THE COURT: Here comes the calvary.

2 MR. TISDALE: Let's see if we have it. It wasn't in the
3 exhibits. It was not in the exhibits.

4 THE COURT: You mean in the stipulated?

5 MR. TISDALE: Yes.

6 THE COURT: I understand.

7 MR. TISDALE: We can come back to that in a minute if we
8 can find it.

9 THE COURT: Give Ms. Kostel a moment to take a look
10 because she probably has it.

11 MR. TISDALE: If we have it, I'd like to put it on the
12 screen. Let's go to something else in the meantime.

13 THE COURT: Very well. Thank you.

14 Q. Mr. Baker, in 2012 did the parish create a land trust?

15 A. I don't understand what exactly you mean. Explain that
16 to me. You mean did we create a trust?

17 Q. Well, I asked you in 2012, based on your knowledge of
18 the parish and your leadership position, did the parish
19 create what I asked to be, if you knew, was a land trust?

20 A. The only -- my problem with answering you is I'm not
21 familiar with the term "land trust". We created a trust at
22 sometime at St. John's, but it was never referred to as a
23 land trust to my knowledge.

24 Q. Let's use what you recall then and say that you created
25 a trust. When was that trust created?

1 A. I don't remember exactly, because it took us quite a
2 while to come to an agreement on that thing. So we did
3 create a trust and we put our property at St. John's in that
4 trust.

5 Q. All right. So do you think that would have been around
6 2012?

7 A. I don't know. That would be a guess. I'm not real good
8 with dates, but that would be a guess. So you're probably
9 not too far.

10 Q. So we're in agreement then that although you don't
11 recall it being called a land trust, a trust was created by
12 St. John's and St. John's put all this property, real estate,
13 in that trust?

14 A. Correct.

15 Q. Okay. Now, what was the purpose of that, doing that?

16 A. We had done an overview of our insurance, our property
17 insurance, which at the time was the Episcopal Church
18 insurance. We found out that an exclusion had been put in
19 there that basically stripped, as we understood it, all our
20 protection under our board of directors, our ability to
21 protect ourselves, and so we said, okay, let's figure out how
22 to create something here that will help us, and we decided to
23 create a trust.

24 Q. That would help you do what?

25 A. Protect our property from lawsuits from anywhere.

1 Q. Okay. Protect your property from lawsuits?

2 A. Yes, sir.

3 Q. Okay.

4 A. Be it anywhere.

5 MR. TISDALE: Excuse me a minute, Your Honor, I want to
6 try to get a document up for him to look at.

7 Q. We're going to try to put on the screen some of your
8 vestry minutes. And it's vestry minutes from January of
9 2012.

10 Were you present at this meeting?

11 A. Let's see. Back up.

12 Q. Don't see your name there.

13 A. I don't see it. I'm looking for it but I don't see it.

14 Q. You would have gotten copies of the minutes, wouldn't
15 you?

16 A. Okay.

17 Q. Wouldn't you have?

18 A. Oh, yes. No, I wouldn't necessarily have copies of the
19 minutes, but I would have known of the meeting.

20 Q. You would have known about the meeting?

21 A. We meet every second Tuesday of the month.

22 Q. Well, let's look at these minutes a minute because I
23 want to see if there's anything in there. Here we go, right
24 there. Do you see where it says "Old Business"?

25 A. Yes, mm-hmm.

1 Q. And what's right under "Old Business"?

2 MR. PLATTE: Your Honor, I object to this line of
3 questioning. He wasn't listed as present at this meeting, he
4 wasn't listed as not present. I believe the document speaks
5 for itself if it's entered in, but right now it's an exhibit
6 where -- it's not an exhibit and he wasn't present and it
7 would be inappropriate to continue the line of questioning.

8 THE COURT: Okay. If he wasn't there and doesn't know
9 anything about it he can testify to that.

10 Very well, you may proceed.

11 MR. TISDALE: Thank you. Excuse me just a minute, Your
12 Honor. I'm trying to save time.

13 Q. Let's look at the next month's meeting, see if you see
14 your name on that just to see if you were present.

15 A. Yes, I was, yes.

16 Q. You were?

17 A. Yes.

18 Q. February 7, 2012. Let's come down, see if we can find
19 anything about this trust. Here we go. Do you see under
20 "Old Business" --

21 A. Yes.

22 Q. -- where it says "Land Assets Trust"?

23 A. Yes.

24 THE COURT: You have to wait until Mr. Tisdale finishes
25 his questions before you respond. Mr. Tisdale has to wait

1 for you to finish your response before he asks you another
2 question. Please do not answer with an uh-huh or an unh-unh
3 because that means that Ms. Mott has to interpret your
4 answer, and I don't want her interpreting anything. I want
5 your answers to be clear.

6 THE WITNESS: Okay.

7 THE COURT: Give us a yes or no or I don't know.

8 THE WITNESS: I understand.

9 THE COURT: Thank you so much.

10 Q. Go back up to the heading on this trust, if you will,
11 Ms. Kostel. Okay. Let's talk about this a minute, Mr.
12 Davis -- I mean Mr. Baker; right?

13 A. Correct, yes.

14 Q. Let's read about this land situation, whatever it's
15 called. Do you see where it says in January a trust
16 subcommittee, and it names the committee, and that's where
17 Mr. Davis is, right there, Charlie Davis?

18 A. Yes.

19 Q. It says: Tom Gopsill distributed a list of an estimate
20 of the net assets of St. John's.

21 Are you following me?

22 A. Yes.

23 Q. Tom stated that attorney Jim Hardin -- who is Mr. Jim
24 Hardin, do you know?

25 A. He is a trust attorney who deals strictly with trusts.

1 His office is up in Charlotte.

2 Q. And was he a lawyer retained by the parish to advise on
3 land matters?

4 A. Yes, sir. Well, to make this trust.

5 Q. To make the trust?

6 A. Yes.

7 Q. All right. And it says: Tom stated that attorney Jim
8 Hardin suggested that if St. John's plans to do a land/assets
9 trust, they should do it, quote, sooner rather than later,
10 period.

11 A. Yes.

12 Q. Tom said: A trust would be filed with the Secretary of
13 State and should be set up with three to five trustees.
14 There will need to be two sets of books, one for the church,
15 one for the trust. The trust will take six to eight weeks
16 minimum to set up and will cost approximately 20 to 30
17 thousand dollars to set up.

18 Did that happen?

19 A. Yes, sir. All that was -- and that's correct, and we
20 did set up a trust.

21 Q. Let's go down just a little bit more. I'm looking for
22 one particular thing I wanted to ask you about. Trying to
23 save time, not have to read the whole thing.

24 Mr. Baker, I want to skip down a little bit. I'm going
25 down to a place where it says: Mr. Hardin would do the work

1 on the trust at \$200 an hour.

2 A. I see that.

3 Q. Then it says this -- this is what I want to read and get
4 you to comment on -- He also commented that he does not want
5 a three-person trust and prefers a five-person trust. Do you
6 see that?

7 A. Yes.

8 Q. Ford Walpole does not feel he can vote to put the assets
9 of St. John's in the hands of the trustees. Steve
10 Brantley -- was Mr. Brantley on the vestry?

11 A. Yes, sir.

12 Q. -- reminded vestry members that the lawyer said the
13 trust is another brick in the wall, hyphen, there is no
14 guarantee of success, but it does add another layer of
15 protection. Boyd Baker made a motion to continue to move
16 forward with developing the trust. And then it says the
17 trust was approved; is that correct?

18 A. We --

19 Q. Look at the last line.

20 A. I made a motion to -- can you move up?

21 Yes, it was approved. The motion was approved 9 to 2.

22 Q. 9 to 2. Did you vote for it?

23 A. Yes, sir.

24 Q. All right. Now, what were you protecting the property
25 from?

1 A. Like I said, we had changes in our insurance program
2 with the church insurance that made us nervous and when we
3 talked to Mr. Hardin, he said this was a good way to protect
4 ourselves.

5 Q. Protect yourself from what?

6 A. Lawsuits that could come from anywhere, sir.

7 Q. Were you expecting any?

8 A. Well, we had watched the trial, the All Saints, you
9 know. So we watched that. And so we're like anybody, we
10 read the newspapers and we knew we had lost our protection in
11 our insurance program. So that's all we knew.

12 Q. Well, let me ask you this: In All Saints, are you
13 familiar with that case?

14 A. A little.

15 Q. And that's a case where -- was the Diocese of South
16 Carolina suing All Saints?

17 A. As I understood it, the national church was suing All
18 Saints.

19 Q. Did you have any fear that the national church might sue
20 St. John's?

21 A. I was more interested and more concerned about just
22 having no protection at all from anybody. I mean, they would
23 certainly be a possibility, but as we understood it, as it
24 was explained to us, anybody could sue us, so our directors
25 insurance was just almost nonexistent.

1 Q. Let me ask you this directly, Mr. Baker: Was there any
2 concern that the national church was going to sue St. John's?

3 A. There could have been.

4 Q. Could have been?

5 A. Mm-hmm.

6 Q. And wasn't this trust set up to put another brick in the
7 wall to protect you from a suit by the national church?

8 A. That could have been one part of it.

9 Q. Okay. And did you have any evidence that the national
10 church had any claim to sue St. John's about?

11 A. What we saw was we saw that Pawleys Island disagreed
12 with the national church on some issues and so they were
13 essentially sued because they disagreed. And we don't
14 disagree with -- we disagree -- we have some disagreements
15 with the national church also, so that would be, that
16 would...

17 Q. So isn't it a fact then that this trust, land trust, you
18 all spent 20 to 30 thousand dollars to set up to keep the
19 parish from being sued or protect the parish from being sued
20 by the national church?

21 A. From anybody.

22 Q. Including the national church?

23 A. From anybody.

24 MR. PLATTE: Objection, Your Honor; asked and answered.

25 THE COURT: It's cross-examination, I'll allow it. You

1 may proceed.

2 Q. Well, Mr. Baker, in fact, St. John's is suing the
3 national church in this very lawsuit we're in right now,
4 aren't they?

5 A. I suppose you could look at it that way.

6 Q. Well, that's what it says, isn't it, St. John's Parish
7 Episcopal Church versus the Episcopal Church?

8 A. I noticed that the document did have that on it.

9 Q. Does have that on it. All right. So this was to
10 prevent you from a suit by them, not them for a suit by you,
11 was it?

12 A. This was to protect us from anybody that would try to
13 sue us.

14 Q. Including the Episcopal Church?

15 THE COURT: Now it's asked and answered.

16 THE WITNESS: Including anybody, sir.

17 MR. PLATTE: Objection, Your Honor.

18 MR. TISDALE: Including the Episcopal Church --

19 THE COURT: Asked and answered. I got it. I got it. I
20 got it.

21 Q. All right. So has the trust been effective so far?

22 A. Well, it hasn't been tested. All right?

23 Q. All right.

24 A. We have it in place, but it has not been tested.

25 Q. It has not been tested?

1 A. No, sir.

2 Q. And you're pleased with the way its operated to hold the
3 land of the parish? I mean, has it been a satisfactory
4 arrangement?

5 A. Yes, sir.

6 Q. Okay. Well, thank you very much for going over that
7 with me. Now, has the parish used the facilities of the
8 Pension Fund of the Episcopal Church to take care of the
9 pensions of the clergy staff prior to the fall of 2012?

10 A. We do not now, but we have in the past.

11 Q. That's what I was asking, in the past.

12 A. Yes, sir.

13 Q. Before 2012?

14 A. Yes.

15 Q. And would the same be true of the Church Insurance
16 Corporation, have you all used it to get insurance coverage
17 for your property for casualty and liability and things like
18 that?

19 A. We don't now but we have in the past.

20 Q. Before 2012; correct?

21 A. Correct.

22 Q. Does St. John's use the Book of Common Prayer?

23 A. Yes.

24 Q. And of the Episcopal Church?

25 A. We just use the Book of Common Prayer, period.

1 Q. Well, it says Episcopal Church on the title page.

2 A. I don't know about that. But we Episcopal -- we use the
3 Book of Common Prayer.

4 Q. You might want to take a look next time you go to see
5 does it say the Episcopal Church on the bottom of the title
6 page. Okay? We won't call you back to check that, but...

7 Now, did St. John's prior to 2012 participate in all the
8 activities, committees and so forth, of the work of the
9 Diocese of South Carolina prior to 2012?

10 A. We to this day participate in the Diocese of South
11 Carolina led by Bishop Lawrence.

12 Q. I understand that. But I was asking you about before
13 2012.

14 A. Okay. Yes, we've been in this Diocese of South
15 Carolina, yes.

16 Q. From the beginning, haven't you?

17 A. Yes, sir.

18 Q. Okay. Finally I just want to ask you a couple questions
19 about the quitclaim deeds you all got. Are you familiar with
20 them?

21 A. Yes.

22 Q. The exhibits, if you want to look at them, SJ-5 and 6.

23 A. I don't have them in front of me, but I'm familiar with
24 the quitclaim deeds. I'm sure my name's on the documents
25 more than likely.

1 Q. Might be better if we talk about them that you have one
2 to look at.

3 A. Okay.

4 Q. It's 5 and 6, SJC-5 and 6.

5 A. Okay. I'm on No. 5 right now.

6 Q. Let's talk about it a minute first then. You said you
7 had familiarity with these deeds. Let me ask you as
8 background, what do you know -- when did you learn about the
9 issuance of this deed, No. 5?

10 A. I don't remember exactly. I know we got it. I know it
11 came to us and we had it, it was given to us.

12 Q. Yes. And what's the date of this deed? You can look at
13 the top of Page 2.

14 A. February 1st, 2010.

15 Q. And when did you learn that this deed had been received
16 by the parish?

17 A. I do not recall.

18 Q. Well, obviously --

19 A. I think I was a junior warden at the time, but I just
20 don't remember when.

21 Q. And how did you learn about it, if you remember?

22 A. I just know it came to us, I know we got it. I suppose
23 it came to us in the mail.

24 Q. Had the parish requested that it receive a deed?

25 A. No.

1 Q. And why was it sent to you, did you ever find that out?

2 Why was it issued?

3 A. It was not given a reason, no.

4 Q. No reason?

5 A. I could make you a -- I could dream up something but --

6 Q. No, I don't want you to dream up anything.

7 A. -- I was not given a reason.

8 Q. I don't want you to dream it up, and I can guarantee you

9 the Judge doesn't want you to dream it up.

10 THE COURT: Thank you for that. That's correct.

11 Q. You said your name might be on here somewhere.

12 A. I'm sure if my name's on almost any document you look

13 for, you'll find it somewhere probably.

14 Q. I don't want you to spend a lot of time, but I'm having

15 trouble finding yours on this.

16 A. I don't see it on this one, but I'm surprised it's not.

17 But I'm familiar with it.

18 Q. Mr. Baker, who did sign this deed on behalf of whoever

19 granted it?

20 A. I see the names that I can read. I can read Bishop Mark

21 Lawrence, I can read Jeffrey Miller, standing committee.

22 Q. And who did they sign for?

23 A. The Episcopal Diocese of South Carolina a/k/a Diocese of

24 South Carolina.

25 Q. And did that organization, a/k/a Diocese of South

1 Carolina, have any claim against St. John's in any way,
2 shape, or form?

3 A. Mark Lawrence is our bishop.

4 Q. I understand that.

5 A. I mean, that's how we're tied to the diocese of
6 Carolina.

7 Q. What were they conveying to you with this deed?

8 A. Oh, okay. I gotcha. They were saying they had no claim
9 to any of our property, as I understand it. I'm not
10 technically real good on these things, but I understand it.
11 That's the best of my understanding.

12 Q. Do you know of any claim they did have to give up?

13 A. No.

14 Q. Did there come a time, Mr. Baker, that you got another
15 deed? Look at No. 6.

16 A. Okay.

17 Q. SJ-6.

18 A. Okay. Right.

19 Q. Is that a quitclaim deed to St. John's, John's Island?

20 A. Yes.

21 Q. And I don't see a signature page on this deed. Maybe
22 you do.

23 A. I'm looking.

24 Q. Oh, I see. It's way back.

25 A. I think I see it now, yes.

1 Q. I see it now too. And who is that deed signed by?

2 A. The names I can read are Jim Lewis.

3 Q. Up above that.

4 A. Paul Fuener.

5 Q. Right. And who did he sign on behalf of?

6 A. The Protestant Episcopal Church in the Diocese of South
7 Carolina.

8 Q. And did the Protestant Episcopal Church in the Diocese
9 of South Carolina, as far as you know, have any claim to give
10 up against St. John's?

11 A. No.

12 Q. Did you all pay anything for these deeds?

13 A. I'm not sure. I think it may have been a couple
14 dollars, but I'm not sure about that.

15 Q. All right. You don't know who paid it, do you?

16 A. Well, it would have been St. John's Church, if that's
17 what we were supposed to pay I'm sure.

18 Q. Supposed to pay?

19 A. I guess. I don't know would be the best answer on that.

20 Q. Okay. Did you ever ask anybody to explain about why
21 these deeds were issued and why they were sent to you, to the
22 parish?

23 A. No, sir. I had watched the Pawleys Island case so I
24 believe I understood their importance, but in any technical
25 sense of how they were important, I would only have the

1 vaguest sense.

2 Q. Okay. And do you know anything about why there were two
3 deeds instead of just one?

4 A. Never have understood that.

5 Q. Never have?

6 A. No, sir.

7 MR. TISDALE: One second, Your Honor.

8 THE COURT: All right.

9 MR. TISDALE: Going to pull up one more document, Your
10 Honor.

11 THE COURT: All right.

12 Q. I asked you earlier in my questions of you about some
13 bylaws.

14 A. Right.

15 Q. You said you might have had a vague recollection of
16 that.

17 A. Oh, I remember -- I mean, I've seen this document.

18 Q. You have?

19 A. It certainly looks familiar from here.

20 Q. Let's look at the top of it first, Mr. Baker.

21 A. Right.

22 Q. Does it say Constitution and Bylaws of St. John's
23 Episcopal Church, Johns Island, South Carolina?

24 A. Yes.

25 Q. Read Article 1.

1 A. St. John's Church, Johns Island, South Carolina accedes
2 to and adopts the constitution and canons of the Diocese of
3 South Carolina and the Protestant Episcopal Church in the
4 United States of America and acknowledges these authorities
5 accordingly.

6 Q. And you said, I think, you had a vague recollection.
7 Does this refresh that they really said that?

8 A. This was -- this was the adopted -- you know, this
9 was -- when you talked about a change in '94, this was --

10 Q. I think I said '94, but let's check the date to be sure.

11 A. I think this was what it was changed to in '94.

12 Q. Let's get a date on it if we can.

13 Doesn't seem to be any date on this, but do you recall
14 it being around '94?

15 A. That's my best guess.

16 Q. And you were involved in the leadership and management
17 of the parish then, weren't you?

18 A. Yes.

19 Q. So in 1994 this was a bylaw in the constitution of St.
20 John's Parish Johns Island?

21 A. It was from then until now, but from 1734 to 1994 this
22 was not the case.

23 Q. I understand. I'm talking about then to now. Okay?

24 A. Right, right.

25 MR. TISDALE: Your Honor, thank you very much. I

1 appreciate the time with the witness.

2 THE COURT: Thank you, Mr. Tisdale.

3 Mr. Beers.

4 CROSS-EXAMINATION BY MR. BEERS:

5 Q. Good morning.

6 A. Good morning.

7 Q. I'm David Beers. I represent the Episcopal Church.

8 A. Okay.

9 Q. Mr. Tisdale wants me to ask you whether or not the
10 parish had signs out on the highway or in the neighborhood in
11 front of the church?

12 A. We do have signs. We have signage only at the church.

13 Q. How about in the past, say, ten years?

14 A. Only at the church.

15 Q. You've never had signs out on the highway?

16 A. There may have been many, many years ago, but since --
17 into the last ten years it's just been at the church.

18 Q. Have you ever had a sign that said "The Episcopal Church
19 Welcomes You" at the top?

20 A. I don't remember.

21 Q. Have you seen those signs someplace?

22 A. I've seen them in places.

23 Q. But you don't remember having them in your parish?

24 A. Correct.

25 Q. What does the sign say out in front of your parish?

1 A. St. John's Church in the tradition of the Anglican
2 tradition. And then we have service names and service times
3 and the rector and that sort of thing.

4 Q. How long has that form been used?

5 A. That form's been used for many years. The sign we
6 presently have is new, just months old.

7 Q. It's the same language?

8 A. Yes, sir. The old sign wore out, we put a new one in.

9 Q. You said that you amended the bylaws in order to provide
10 more protection for the parish, right, protection of your
11 property?

12 A. Yes, that's right.

13 Q. And the thinking was that you adopted -- if you got a
14 quitclaim deed and changed your bylaws, it might be harder
15 for the national Episcopal Church to sue you to get ahold of
16 your property?

17 A. That was not the thinking at the time. We didn't -- you
18 know, we didn't know about a quitclaim deed and at that time
19 we'd just done a -- we'd looked at -- if you look back at
20 some of the same minutes, a fellow named David Bernthall, who
21 knows all about insurance, we asked him to look at our
22 policy, tell us is everything okay, any changes. And when we
23 found exclusions that pulled all our protection out from
24 anybody, that's when we started.

25 Q. Didn't you testify a few moments ago that either you or

1 other leaders of the parish were concerned that the Episcopal
2 Church might sue you to make some claim to your property?

3 A. We were concerned that anybody could sue us. They would
4 be a part of that, but anybody.

5 Q. And you said you based that on what you heard about All
6 Saints Waccamaw?

7 A. That would be part of it, yes. But we knew our bishop
8 was under attack also from the national church, so there are
9 a lot of things going on.

10 Q. Let me ask you, when the lawsuit with All Saints
11 Waccamaw arose, the parish had already left the Episcopal
12 Church and the diocese, hadn't it?

13 A. Run that by me again.

14 Q. When the litigation involving All Saints Pawleys Island
15 or All Saints Waccamaw arose, the parish had already
16 attempted to leave the diocese and the Episcopal Church?

17 MS. GOLDING: Your Honor, I'm going to make an objection
18 because that is factually and legally incorrect. The All
19 Saints parish remained with its diocese from September 2000
20 to the year 2005. At that time it was a national church that
21 disassociated the All Saints parish. The lawsuit was going
22 on for about four years before the disassociation. So I
23 think that when counsel, Mr. Beers, was involved representing
24 the national church in that litigation, he is well aware that
25 factually what he has stated to this witness is not correct.

1 MR. BEERS: I move to strike, Your Honor, it just is
2 testimony not under oath.

3 THE COURT: I understand that. But here's the
4 uniqueness of this particular situation: I have both lawyers
5 that were involved in that litigation, it's critical
6 litigation, it calls for a legal opinion, and this gentleman
7 is not a lawyer.

8 MR. BEERS: I'll withdraw the question.

9 THE COURT: Very well.

10 MR. BEERS: But I move to strike that speech.

11 THE COURT: You move to strike the speech because you're
12 going to withdraw it? Okay. It's stricken.

13 Q. Have you heard of any instance in which the national
14 church sued one of its -- a parish that still had some
15 affiliation with the Episcopal Church?

16 THE COURT: Now, can you ask that again? I'm sorry. I
17 missed it. I'm sorry.

18 THE WITNESS: I'm having trouble with that question too.

19 THE COURT: Are you picking up on agreeing with the
20 Judge?

21 THE WITNESS: I'm having trouble understanding the
22 question, Judge. I'm trying, but --

23 THE COURT: I started that, Mr. Beers. I'm so sorry.

24 Q. In your case I'm not surprised, Mr. Witness.

25 MS. GOLDING: I'm sorry. I think that was an

1 inappropriate comment. It was an insult to the witness, Your
2 Honor, and I believe that that's inappropriate for counsel to
3 do.

4 MR. BEERS: I apologize.

5 MR. RUNYAN: I would join in that too.

6 MR. BEERS: Let's everybody join in, and I'll apologize
7 to the witness.

8 THE WITNESS: Apology accepted.

9 Q. Have you ever heard that the national Episcopal Church
10 sued a parish that was still affiliated with the Episcopal
11 Church over that parish's property?

12 A. I can answer this question this way: I have a friend
13 who is a rector -- see if this fits, because I'm still having
14 a little trouble here. But I have a friend who is a rector
15 at the Episcopal Church in Groton, Connecticut, and he was
16 sued and he lost his church and parish and everything. Does
17 that -- I know you were at that case and you know of it.
18 It's a major Episcopal Church there. That's the only one I
19 know of. I mean, you're asking me -- is that answering your
20 question?

21 THE COURT: Yes, I would find that as a responsive
22 response.

23 THE WITNESS: Okay.

24 Q. Did you have any understanding as to whether that church
25 in Groton, Connecticut, was still affiliated with the

1 Episcopal Church when the Episcopal Church sued it?

2 A. Here's what I understood: I understood that they were
3 in a disagreement with Bishop Schori. She did not like the
4 fact that they did not agree with her on some subject and she
5 said I'm going to take your property because you don't agree
6 with me. That's what I understood.

7 Q. And that's what that rector told you?

8 A. That's what I understood right there. That's how I
9 understood that case. That's what I understood was going on.
10 You're asking me. That's what I understood.

11 Q. And were you in your leadership afraid that the
12 Episcopal Church would sue you even if you stayed in
13 affiliation with the Episcopal Church?

14 A. What I understood was this: That, okay, there's a big
15 question -- there's some really big questions in the country
16 right now. Same sex union would be one of those. Should I
17 disagree with Bishop Schori? It's like this, if I was to
18 disagree with Bishop Lawrence, he would try to teach me and
19 say, okay, you don't understand what you need to know and
20 that would be the end of it. But what I understood is if I
21 disagreed with her on the same subject, she would say, okay,
22 I'm taking your property and your church.

23 Q. And, by the way --

24 A. That's what I understood. You asked me. That's what I
25 understood.

1 Q. By the way, the presiding bishop's name is Jefferts
2 Schori, Bishop Jefferts Schori.

3 A. Okay.

4 Q. Where did you get that understanding?

5 MR. RUNYAN: Your Honor, I think Mr. Beers has made his
6 point. I think we passed the line of relevance at this
7 point. I think he's established that there was some concern
8 about the Episcopal Church suing at some point in time, and
9 beyond that we're just into speculation about what and why
10 and for what reason, and so I object to that.

11 THE COURT: Thank you. Let me hear the question, Mr.
12 Beers.

13 Don't answer it now until I've had a chance to rule on
14 it.

15 Q. I want to know how you came to the understanding that if
16 you disagreed with the presiding bishop on a serious matter,
17 that she would sue the parish to try to take away its
18 property, and here's the key part, even though the parish was
19 still affiliated with the Episcopal Church. That's what I
20 want, that's what I'm after. I'm not talking about what
21 happens when parishes leave their dioceses or leave the
22 Episcopal Church or cut all ties to the Episcopal Church, I
23 want to know if you understood that she would authorize us to
24 bring suit against a parish that was still affiliated with
25 the Episcopal Church?

1 THE COURT: Now, is there an objection to that question?

2 MR. RUNYAN: Not the last part.

3 THE COURT: Say again.

4 MR. RUNYAN: Not to that question, no.

5 THE COURT: There's not an objection to that question.

6 MR. RUNYAN: No. As I understand, the question is would
7 the Episcopal Church bring a suit against a parish still
8 affiliated for whatever reason.

9 THE COURT: Okay. You may answer it. You clearly have
10 answered it, but you may answer it again.

11 THE WITNESS: I understood it, so maybe I incorrectly
12 understood it, But the way I understood it you would get sued
13 even if you were still affiliated with the Episcopal Church.
14 Q. And my question has been for some minutes now where did
15 you get that understanding?

16 MR. RUNYAN: I think he asked and answered that. I
17 think he said Groton, Connecticut.

18 THE COURT: Sustained. He has asked and answered that
19 question.

20 Q. Let me be clear then. I'll ask a clarifying question.
21 Did you get that understanding from the rector of the parish
22 in Groton?

23 A. When you say record, what do you mean?

24 Q. Rector.

25 A. Oh, rector. I know the rector and talked to him at

1 times as just a friendly conversation, but I've watched and
2 listened to -- you know, I knew the proceedings were going on
3 and I sometimes read blogs in the computers and that sort of
4 thing and I knew it was going on.

5 Q. Do you remember what blogs you read?

6 A. There's really -- my favorite one would be Alex Haley.
7 That's really my main one.

8 Q. The Anglican curmudgeon?

9 A. Yes.

10 Q. Wasn't your parish really afraid that you needed
11 protection if the parish decided to leave?

12 A. No.

13 MR. BEERS: That's all I have, Your Honor.

14 THE COURT: Thank you, Mr. Beers.

15 All right. Hold on. All right. Redirect?

16 MR. PLATTE: No.

17 THE COURT: Very well.

18 Thank you, sir. You may come down.

19 THE WITNESS: Thank you, Judge.

20 THE COURT: Call your next witness.

21 (Plaintiff's Exhibits HT-1 through HT-21 premarked for
22 identification.)

23 MARTIN RAY SCARBROUGH,
24 being first duly sworn, testified as follows:

25 MR. SOWINKSI: Good morning, Your Honor.

1 THE COURT: Good morning.

2 MR. SOWINKSI: My name is Dane Sowinski with the Rogers
3 Townsend law firm. We represent the plaintiff Holy Trinity
4 Episcopal Church and I call to the stand Martin Scarbrough.

5 THE COURT: Thank you. Thank you so much for that
6 introduction. Very well.

7 Would you do me a favor, please, sir. I'm going to ask
8 you to state your full name for the record and spell your
9 last name. You know, we use this as a bit of a sound check.

10 THE WITNESS: Yes, ma'am. It's Martin Ray Scarbrough,
11 S-C-A-R-B-R-O-U-G-H.

12 THE COURT: Your witness, sir.

13 MR. SOWINKSI: Thank you, Your Honor.

14 DIRECT EXAMINATION BY MR. SOWINSKI:

15 Q. Mr. Scarbrough, where do you currently reside?

16 A. I live on James Island.

17 Q. What do you do for a living?

18 A. I retired from fire and emergency services with 33 years
19 service to the Department of Defense.

20 Q. And are you married, sir?

21 A. I'm a widower, sir.

22 Q. And are you currently a member of a church?

23 A. I'm currently a member of Holy Trinity Episcopal Church
24 at 95 Folly Road, Charleston, South Carolina.

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

1 A. I've been attending that church since it was my mother's
2 parish since 2004 and gradually became a member.

3 Q. Have you held any leadership roles at that church?

4 A. In 2013 I was the senior warden, 2012 the junior warden,
5 2011 the junior warden.

6 Q. And in these leadership roles have you learned about the
7 history of Holy Trinity?

8 A. Yes, I have.

9 MR. SOWINKSI: Your Honor, at this time I'd like to move
10 to admit into evidence plaintiff Holy Trinity Episcopal
11 Church's Exhibits HT 1 through HT 21, as well as Holy
12 Trinity's stipulations, both of which have been provided to
13 the defendants.

14 THE COURT: And let me ask you this question: Do your
15 stipulations have an exhibit number?

16 MR. SOWINKSI: They do not. But the Court can label as
17 them as Exhibit HT 22.

18 THE COURT: That would probably be of assistance.

19 Any objection?

20 MR. TISDALE: None, Your Honor.

21 THE COURT: Very well. Thank you.

22 If you will show her the stipulations and just give her
23 a moment to mark that, then that will be done.

24 (Plaintiff's Exhibit HT-22 marked for identification.)

25 (Plaintiff's Exhibits HT-1 through HT-22 admitted into

1 evidence.)

2 Q. Now, Mr. Scarbrough, have you had a chance to look over
3 these stipulations?

4 A. Yes, I have.

5 Q. And would they be a correct account of your testimony
6 here today?

7 A. They would be.

8 Q. When was Holy Trinity incorporated?

9 A. That would be February 11th, 1957.

10 Q. And has Holy Trinity existed as a corporation since
11 1957?

12 A. Continually, sir.

13 Q. And has Holy Trinity continuously carried out its
14 religious purposes since that time?

15 A. Yes, it has.

16 Q. Does Holy Trinity have a board of directors?

17 A. Yes, it has. That would be the vestry.

18 Q. Does Holy Trinity have corporate officers?

19 A. That would be the vestry members consisting of the
20 senior warden, junior warden, secretary, treasurer, and the
21 other members of the vestry.

22 Q. Thank you. Does Holy Trinity own any real estate
23 currently?

24 A. They currently do.

25 Q. And I believe you stated the address earlier, but could

1 you repeat the address where that real estate is located?

2 A. Holy Trinity Episcopal Church is located in Charleston
3 County in the City of Charleston, South Carolina, at 95 Folly
4 Road.

5 Q. Now, Mr. Scarbrough, could you please look at Exhibit HT
6 21? It's the second-to-last page in the exhibits. I don't
7 know if we have a copy of that for the screen.

8 A. I have it.

9 Q. It's a map. It's from the County of Charleston. And
10 could you identify on that map where Holy Trinity's real
11 estate is located?

12 A. Our plot number is 063.

13 Q. Thank you. Are you currently aware of any deeds or
14 titles to real estate conveying the property at 95 Folly Road
15 Boulevard, Charleston, to the Episcopal Church, which I'll
16 refer to as TEC, or the Episcopal Church in South Carolina,
17 which I'll refer to as TECSC?

18 A. No.

19 Q. To your knowledge, what interest does TEC or TECSC have
20 in Holy Trinity's property?

21 A. None.

22 Q. Is it your understanding that the interest in church
23 property is the main dispute of this legal proceeding here?

24 A. Yes.

25 Q. Did there come a time when you knew that Holy Trinity

1 and the Diocese of South Carolina had a dispute with TEC and
2 TECSC?

3 A. Yes.

4 Q. Did the leadership of Holy Trinity discuss this dispute?

5 A. Yes.

6 Q. Now, several of the documents in our exhibits are
7 minutes for executive meetings at Holy Trinity. Is the
8 vestry part of those executive meetings?

9 A. The vestry was present in all the executive meetings.

10 Q. And also several of these minutes indicate that an
11 attorney was present, Attorney Forrest Norvell. What is your
12 understanding as to why Mr. Norvell was present at these
13 meetings?

14 A. Our attorney, Mr. Norvell, was present in all of our
15 meetings and any discussions with any actions that we took to
16 make sure that we did everything in a timely manner, a legal
17 manner, and with the interest of the parish, the vestry, and
18 the church.

19 Q. Are you currently aware of any ongoing relationship that
20 Holy Trinity has with TEC or TECSC?

21 A. We have none.

22 Q. Are you aware of any funds that Holy Trinity has
23 received from TEC or TECSC?

24 A. We haven't received any funds.

25 Q. And, to your knowledge, did Holy Trinity seek TEC or

1 TECSC's permission to amend Holy Trinity's bylaws?

2 A. No, we did not.

3 Q. And, to your knowledge, did Holy Trinity seek TEC or
4 TECSC's permission to amend Holy Trinity's articles of
5 incorporation?

6 A. No, we did not.

7 MR. SOWINKSI: Thank you, Mr. Scarbrough. Please answer
8 any questions that the defendants may have.

9 THE WITNESS: Yes, sir.

10 THE COURT: Mr. Smith.

11 CROSS-EXAMINATION BY MR. SMITH:

12 Q. Thank you, Mr. Scarbrough. Were you involved in recent
13 amendments to your charter and bylaws in or around 2012?

14 A. I was a member of the vestry, yes, sir.

15 Q. And did you vote for those changes?

16 A. Yes, I did, sir.

17 Q. And did those changes generally remove all references to
18 the constitution and canons of the national church?

19 A. That is my belief, sir.

20 Q. And at that time did you review the constitution and
21 canons of the national church?

22 A. We had an attorney that reviewed it and told us what it
23 said and we also had the opportunity to look through it also.

24 Q. And did you take that opportunity?

25 A. Yes, I did.

1 Q. Have you ever served as a delegate to the convention of
2 the diocese?

3 A. Numerous times.

4 Q. Have you ever been a delegate to the general convention
5 of the national church?

6 A. No, I haven't.

7 Q. Did you vote for delegates to go to the general
8 convention of the national church?

9 A. I don't recall.

10 Q. Do you recall what happened at the convention of the
11 diocese, what kinds of things you did there?

12 A. I was at the convention where we voted to make Reverend
13 Skilton the suffragan bishop, so that was quite some time
14 ago.

15 Q. And at these conventions at which you were a delegate
16 was there a discussion of the national church?

17 A. At one of the conventions I attended, yes.

18 Q. Is your church the beneficiary of any trusts?

19 A. No, sir.

20 Q. Has the church participated in the Church Pension Fund?

21 A. We have participated in the Church Pension Fund, but we
22 no longer do.

23 Q. Has the church received grants or aid from the diocese
24 prior to 2012?

25 A. From the diocese we lapsed into a mission status but

1 we're still called a parish, so a fund called Builders for
2 Christ helped us with some funding is my recollection.

3 Q. Do you know what the amounts of that funding were?

4 A. I do not recall.

5 Q. Can you tell me about the current sign in front of your
6 parish?

7 A. The signage all says Holy Trinity Church. The bulletins
8 and all paperwork everything is just called Holy Trinity
9 Church.

10 Q. There's no reference to Episcopal in any of your
11 signage?

12 A. Not in any of the signage, publications, or bulletins.

13 Q. Now, are those new signs? Have they been amended
14 anytime recently?

15 A. In the last few years; yes, sir.

16 Q. Okay. And what did they say before?

17 A. Holy Trinity Episcopal Church.

18 Q. And why did you make those changes?

19 A. It was a unanimous vote of the vestry and the
20 parishioners to do so.

21 Q. Was there any reason that they voted to do so? I
22 understand there's a majority --

23 A. It was because of changes in our bylaws and changes in
24 our articles of incorporation where we disassociated
25 ourselves with TEC.

1 Q. So did you want to make clear that you had disassociated
2 from TEC? Is that why you changed the signs?

3 A. The consensus was to let the community know exactly
4 which side of the fence we were on so they knew which church
5 that would be more to their liking.

6 Q. Okay. Now, can you explain again on the name, what does
7 your current website -- does it use the word "Episcopal"?

8 A. The website does not, sir.

9 Q. It does not?

10 A. Does not.

11 Q. Was there a website -- is that a change, a recent
12 change, to remove Episcopal from your website?

13 A. I'm 60 years old, so to be honest with you, I don't surf
14 the web so I have no idea what it said before.

15 Q. I believe you testified that you joined the church in
16 2004; correct?

17 A. It was my mother's parish, she was unable to drive
18 herself, so I was a member of St. Thomas North Charleston and
19 on the vestry there and so I took a leave of absence from St.
20 Thomas and would drive my mother to church, hence attending
21 her church. And over a period of years I was assimilated,
22 you might say, into that church and eventually became a
23 member.

24 Q. Okay. Did you review some of the church's history in
25 anticipation of testifying in this case?

1 A. My mother used to tell me the church history on every
2 trip to and from the church.

3 Q. Would you consider yourself an expert on your church's
4 history?

5 A. I would consider myself a good son who listened to his
6 mother and believes what his mother said, but I wouldn't say
7 I was an expert because my mother's point of view is her
8 point of view.

9 Q. Does the church have archives?

10 A. Not to my knowledge. But we have a pretty good filing
11 system and we still own file cabinets.

12 Q. Okay. And did you review all the documents in those
13 file cabinets?

14 A. Being totally honest, there are some things that I have
15 looked at in the file cabinets, but there's a lot of things
16 there since 1957.

17 Q. So your understanding of the history of the church is
18 based on what your mother told you?

19 A. And what the congregation told me as I was becoming a
20 member.

21 Q. Becoming a member. Okay. Did your mother tell you
22 about the governance of the church?

23 A. She was mostly -- most of her life she was an
24 Episcopalian, that's correct; but when it came to politics,
25 that was not her strong suit.

1 Q. Okay. Would you agree with me that your knowledge of
2 the church's governance is limited to what your mother may
3 have told you and what the congregation told you and your
4 time serving in leadership since 2004?

5 A. I would say it is completed by those three things that
6 you've mentioned.

7 Q. Okay. And would you agree with me that your knowledge
8 of any promises that your church may have made would be
9 limited to those things as well?

10 A. I would be aware of them if they were a part of our
11 business of the vestry between 2011 and 2013.

12 Q. And would you agree that your knowledge of any
13 relationships that your church entered into would be limited
14 in that same way?

15 A. I would be aware of any relationships my church had
16 while I was in the leadership positions of junior and senior
17 warden.

18 Q. Since starting in 2004 or can you give me the date of
19 which you'd be aware of those relationships?

20 A. I would have knowledge of them and I would have greater
21 knowledge and be more aware once I entered leadership
22 positions, that would be correct.

23 Q. And forgive me if you've already testified to this, but
24 remind me exactly when you assumed a leadership role.

25 A. I was a junior warden in 2011, a junior warden in 2012,

1 and a senior warden in 2013.

2 Q. Okay. Would you agree with me that your knowledge of
3 benefits that your church has received would be limited in
4 that same respect to what your mother told you and what
5 you've heard from the congregation and your involvement since
6 2004?

7 A. It would be a little greater than that because it would
8 be at the annual parish meetings since 2004. And we would
9 also discuss any benefits or anything that we would have
10 received, so it would be in the annual reports I have seen
11 since 2004.

12 MR. SMITH: Hold just one second.

13 THE COURT: Yes.

14 MR. SMITH: Thank you very much, sir.

15 THE COURT: All right.

16 MS. KOSTEL: Nothing.

17 THE COURT: Thank you. Is there any redirect?

18 MR. SOWINKSI: No, Your Honor.

19 THE COURT: Thank you.

20 Thank you, sir. You may come down.

21 Next witness, please.

22 (Plaintiff's Exhibits OSA-1 through OSA-13 premarked for
23 identification.)

24 STEWART MARSHALL HUEY, JR.,

25 being first duly sworn, testified as follows:

1 THE COURT: All right. And would you state your name
2 for the record again. This is our sound check.

3 THE WITNESS: Stewart Marshall Huey, Jr.

4 THE COURT: Just to be sure we have it correct, spell
5 your last name.

6 THE WITNESS: H-U-E-Y. And Stewart is S-T-E-W-A-R-T.

7 THE COURT: Mr. Platte, your witness.

8 MR. PLATTE: Thank you, Your Honor. Andrew Platte on
9 behalf of the Vestries and Church Wardens of the Parish of
10 St. Andrew's.

11 DIRECT EXAMINATION BY MR. PLATTE:

12 Q. Father Huey, how old are you?

13 A. I'm 56.

14 Q. And are you currently employed?

15 A. I am.

16 Q. What is your position?

17 A. I'm the rector of St. Andrew's Parish Church.

18 Q. And where is that located?

19 A. It's on Ashley River Road in the West Ashley section of
20 Charleston, otherwise known as Highway 61.

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

22 A. Almost eight years.

23 Q. How long has Old St. Andrew's been in existence?

24 A. St. Andrew's was chartered by the Church Act of 1706,
25 November 30th, 1706, which was St. Andrew's Day.

1 Q. And when was it incorporated?

2 A. St. Andrew's was incorporated as an Episcopal Church by
3 the state legislature in 1785.

4 Q. How many members does Old St. Andrew's have?

5 A. Last count on our books we had 615 voting members.

6 Q. Are you familiar with the history and the governance of
7 the parish?

8 A. I am generally familiar, yes, sir.

9 Q. We've marked Exhibit OSA 13. It's stipulations. Are
10 you familiar with those stipulations?

11 A. Yes, sir, I am.

12 Q. And would that be your testimony today?

13 A. Yes, sir, it is.

14 Q. Were all notices for all meetings given in accordance
15 with the constitution and canons?

16 A. I believe that they were.

17 Q. Was there a quorum at all meetings?

18 A. Yes, sir, there was.

19 Q. Did all matters that were voted upon pass with a
20 required majority?

21 A. Yes, they did.

22 Q. Old St. Andrew's doesn't have an original deed to its
23 property; correct?

24 A. That's correct.

25 Q. What's your understanding of where the land came from or

1 how they acquired the land?

2 A. The land on which the church sits was originally given
3 by someone who became a parishioner by a farmer in that area,
4 and then the Colonial Assembly recognized the land and
5 basically chartered it and gave it to the church.

6 Q. Were the proposed changes to the constitution and canons
7 available before the vote?

8 A. Yes, they were. For more than 30 days.

9 Q. And where would they be located?

10 A. They were made available in the parish hall and to the
11 congregation.

12 Q. Does Old St. Andrew's have any relationship with
13 defendant's TEC or defendant TECSC?

14 A. No, sir.

15 Q. Did Old St. Andrew's send delegates to defendant TECSC's
16 conventions?

17 A. I attended one meeting as an observer in late January of
18 2013 of TECSC at Grace Church; other than that, no, sir.

19 Q. So they did not send delegates to vote at that
20 convention?

21 A. That's correct.

22 Q. Is Old St. Andrew's a parish of defendant TECSC?

23 A. No, sir.

24 Q. At any point did you ask defendant TECSC to remove Old
25 St. Andrew's name from their website?

1 A. My recollection is that I did.

2 Q. And were they listed as a parish at that point?

3 A. Would you clarify that question?

4 Q. On the defendant TECSC's website was Old St. Andrew's
5 listed at any point as a parish prior to you asking them to
6 remove --

7 A. Yes, sir, I believe we were.

8 MR. PLATTE: At this time I would ask to admit Exhibits
9 OSA 1 through 13 into evidence.

10 THE COURT: Any objection?

11 MS. KOSTEL: No objection.

12 MR. TISDALE: No objection.

13 THE COURT: Very well.

14 (Plaintiff's Exhibits OSA-1 through OSA-13 admitted into
15 evidence.)

16 MR. PLATTE: Thank you.

17 THE COURT: Yes.

18 Cross-examination, Mr. Beers.

19 CROSS-EXAMINATION BY MR. BEERS:

20 Q. Good morning, Father.

21 A. Good morning.

22 Q. As you know, my name is David Beers.

23 A. Yes, sir.

24 Q. I represent the Episcopal Church.

25 A. Yes, sir.

1 Q. You knew that?

2 A. Yes, sir.

3 Q. I'm here to ask you some questions that I forgot to ask
4 you on Sunday.

5 A. All right.

6 Q. The parish is incorporated; right?

7 A. The parish is chartered by the General Assembly and was
8 done -- that was done in 1785.

9 Q. And that corporate forum still exists at St. Andrew's?

10 A. As far as I know.

11 Q. And who are the officers of that entity?

12 A. Our senior warden, our junior warden, our officers of
13 the vestry, and I chair the vestry meetings as the rector.

14 Q. So do you and the wardens and the vestry operate both as
15 the, what we might call, ecclesiastical officers and officers
16 of the corporation?

17 A. No, sir.

18 Q. Okay. Straighten me out.

19 A. Ecclesial matters are the purview of the rector.

20 Q. I see. Did you ever use a vestry manual --

21 A. Yes.

22 Q. -- or handbook?

23 A. Yes, sir.

24 Q. And was it one the parish devised or did it come from
25 the diocese?

1 A. Provided by the diocese.

2 Q. And used it as long as you've been there?

3 A. Yes, sir.

4 Q. Could you summarize the real property the parish has?

5 A. Yes, sir.

6 Q. Would you now?

7 A. Yes, sir. All right. We have approximately 7 acres of
8 land contiguous on which the church and the parish hall and
9 Sunday school building rest.

10 Q. Is that the only real estate you have?

11 A. At present, yes, sir.

12 Q. Do you have any idea how much that property's worth,
13 either from appraisals or from informal conversations with
14 real estate people or from insurance brokers?

15 A. My only knowledge of that would come from an appraisal
16 of the property probably two or three years ago from Church
17 Insurance Company, and that was approximately 1.2 million.

18 Q. For the real estate?

19 A. Yes, sir.

20 Q. Now, do you have bank accounts and investment accounts;
21 in other words, other assets? I'm not counting the silver.

22 A. Yes, sir.

23 Q. How much are they worth right at the moment?

24 A. At the moment probably on deposit in various accounts
25 about 125,000.

1 Q. Do you know whether or not the parish has ever received
2 loans or grants from the national church or one of the
3 entities affiliated with the national church?

4 A. My belief is that the answer to that is no.

5 Q. Do you think the parish has received anything else of
6 value from the national church?

7 A. No, sir.

8 MR. BEERS: That's all the questions I have, Your Honor.

9 THE COURT: All right.

10 MR. BEERS: I gather you were pleased at the brevity of
11 that examination.

12 THE COURT: Brief, long, Mr. Beers, it's always
13 exciting.

14 MR. HOLMES: Your Honor, one thing I wanted to pass
15 along, in federal court in Columbia they have little teeny
16 cups like this with water, which I think is intended to
17 reduce the length of time that counsel stays at the podium.
18 I'm just passing that along.

19 THE COURT: We're so excited to have you here in the
20 country, I'm liable to bring in a big old barrel if that is
21 any indication.

22 Mr. Tisdale, please.

23 MR. TISDALE: I've just got some very brief questions, I
24 believe, for you.

25 THE COURT: Mr. Tisdale, take the time that you need.

1 It's not a problem.

2 CROSS-EXAMINATION BY MR. TISDALE:

3 Q. What I'm curious about, more than curious, what I want
4 to ask you about is the quitclaim deeds.

5 A. All right.

6 Q. And you're probably familiar with this whole thing, but
7 Old St. Andrew's did receive some quitclaim deeds, didn't it?

8 A. Yes, sir.

9 Q. And you've heard testimony and everything about the
10 normal quitclaim deeds, including the one you all got which
11 was granted by the Protestant Episcopal Church in South
12 Carolina and maybe another similar entity. And that came
13 unannounced and just kind of bestowed on the parish, wasn't
14 it?

15 A. Yes, sir.

16 Q. Did you know anything about it before you got it?

17 A. I knew that it was coming.

18 Q. And did you know anything about why it was being issued?

19 A. Not other than my general supposition, no, sir. I'm
20 sorry.

21 Q. What was your general supposition?

22 A. My supposition was based on what the document said,
23 which is the diocese was releasing any claim it had on our
24 property.

25 Q. Right. And that's what it says, apparently. But did

1 they have any claim on your property that you knew about?

2 A. No, sir.

3 Q. All right. Now, what I really want to ask you about is
4 what's been marked as OSA 4. And you can look at it if you
5 want to, but you might not need to.

6 A. I'd like to, please.

7 Q. Okay. OSA 4. It's right here. It's another quitclaim
8 deed. And I just wanted to ask you if you knew anything
9 about it.

10 A. All right.

11 MR. TISDALE: Just for the record, that first deed that
12 we talked about, that first deed that we talked about is No.
13 5. Again, it doesn't seem to have a date on it, but the date
14 of the first probate is October 4th, 2011, just for the
15 record.

16 Q. Have you had a chance?

17 A. Yes, sir.

18 Q. OSA 4. This is another quitclaim deed to Old St.
19 Andrew's, is it not?

20 A. Yes, it is.

21 Q. And who is the grantor on this deed?

22 A. Trustees of the Protestant Episcopal Church in South
23 Carolina.

24 Q. And this deed is dated, as I see it, January 18th, 2013;
25 right?

1 A. I believe the date is January 18.

2 Q. 2013?

3 A. Yes, sir.

4 Q. Now, that's just last year; right?

5 A. Yes, sir.

6 Q. Now, why was this deed granted?

7 A. My understanding is that this deed was requested by our
8 financial institution in connection with some refinancing we
9 were doing --

10 Q. Okay.

11 A. -- just to clarify the title of the property.

12 Q. Was there any question about the title to the property
13 as far as you know?

14 A. No. Well, as far as I know, my knowledge came from the
15 bank, which is they're requesting this because of some real
16 estate transactions that took place during a period of
17 dormancy of the parish.

18 Q. A long time ago.

19 A. Yes, sir.

20 Q. I gotcha. So that explains that. But so you all
21 requested this quitclaim deed?

22 A. Yes, sir, we did.

23 Q. And it was given to you?

24 A. Yes.

25 Q. Okay. What does Old St. Andrew's call itself now on the

1 signs it puts out along the road and on the building, if any?

2 A. Either Old St. Andrew's, which is our colloquialism,
3 people know us as Old St. Andrew's, or St. Andrew's Parish
4 Church.

5 MR. TISDALE: I don't think I have any other questions.
6 Thank you very much.

7 THE WITNESS: Thank you.

8 THE COURT: All right.

9 Redirect?

10 MR. PLATTE: No, Your Honor.

11 THE COURT: Very well.

12 You may come down.

13 THE WITNESS: Thank you.

14 THE COURT: Call your next witness, please.

15 (Plaintiff's Exhibits SPH-1 through SPH-43 premarked for
16 identification.)

17 MR. PHILLIPS: Your Honor, I'm Mark Phillips from Nelson
18 Mullins on behalf of St. Philip's Church, and the witness we
19 call is Mr. Myron Harrington.

20 MYRON CHARLES HARRINGTON, JR.,
21 being first duly sworn, testified as follows:

22 THE COURT: I'm going to ask you if you would please
23 just state your full name for the record and spell your last
24 name. We use this as a sound check.

25 THE WITNESS: Myron Charles Harrington, Jr. Harrington

1 is H-A-R-R-I-N-G-T-O-N.

2 THE COURT: Thank you so much.

3 Mr. Phillips, your witness.

4 DIRECT EXAMINATION BY MR. PHILLIPS:

5 Q. Mr. Harrington, you spoke beautifully just now. For the
6 sake of Ms. Mott and Judge Goodstein, please speak into the
7 microphone and a little deliberately. Okay?

8 A. Got it.

9 Q. We will shorten the examination. If you do that, we'll
10 do that, okay.

11 MR. PHILLIPS: Your Honor, housekeeping-wise --

12 THE COURT: Yes.

13 MR. PHILLIPS -- I would like to tender into evidence St.
14 Philip's as SPH Exhibits 1 through 42, which I understand
15 there are no objections to, and also Exhibit SPH 43, which is
16 a binder of stipulations that are tendered by St. Philip's
17 Church.

18 MR. TISDALE: We don't have any objection, except there
19 are two of them that are illegible, 11 and 40, if we can
20 address that in the best way.

21 MR. PHILLIPS: All right, sir.

22 Your Honor, if there are any copies available of 11 and
23 40 -- and the 11 I've got that you're going to have in about
24 a second looks legible to me.

25 MR. TISDALE: Well, in that case, I mean, we'll just

1 agree for whatever they're worth, and if you can get better
2 copies, fine; if you can't, we've just got what we've got.

3 MR. PHILLIPS: Your Honor, if you please, I'll bring you
4 a copy as well.

5 THE COURT: Very well. And for the national church?

6 MS. KOSTEL: Same position.

7 THE COURT: Thank you.

8 MR. TISDALE: We agree that it's worth what it's worth
9 and accept it on that basis.

10 THE COURT: Thank you, Mr. Tisdale.

11 MR. PHILLIPS: Your Honor, again I tender then into
12 evidence as discussed SPH Exhibits 1 through 42, which are in
13 a binder that you have, and SPH Exhibit 43, which is in a
14 separate binder which is the set of stipulations.

15 THE COURT: And they are admitted.

16 MR. PHILLIPS: Thank you.

17 THE COURT: Thank you.

18 (Plaintiff's Exhibits SPH-1 through SPH-43 admitted into
19 evidence.)

20 Q. Mr. Harrington, would you tell Judge Goodstein, please,
21 who you are, where you live, and how you were educated and
22 then we'll get into the rest of it.

23 A. Myron Harrington. I'm a resident of downtown Charleston
24 and I'm a graduate of The Citadel.

25 Q. What year did you finish The Citadel?

1 A. 1960.

2 Q. And do you have family?

3 A. I am married to Ann Hurst Harrington. I have two adult
4 children, Ann Hunley, who resides with us here in Charleston;
5 and our son Mike, who resides in Charlotte with his wife and
6 six grandchildren.

7 Q. Very good. And of the Harrington family that lives in
8 Charleston, where do you all go to church?

9 A. We are members of St. Philip's Church.

10 Q. And have you been going there for quite a while?

11 A. We've been going there for ten years.

12 Q. All right, sir. And tell us briefly, please, the Court,
13 about your two careers, where you've spent your working life.

14 A. I spent 30 years in the United States Marine Corps and
15 15 years as headmaster of a specialized school for children
16 who have learning disabilities, Trident Academy in Mount
17 Pleasant, South Carolina.

18 Q. And just for the Court's interest and for mine, in the
19 Marine Corps did you ever serve in combat?

20 A. I did.

21 Q. Where?

22 A. In Vietnam and Beirut.

23 Q. All right, sir. And did you receive any special
24 commendations from the United States Marine Corps for service
25 in Vietnam?

1 A. I was recognized for what my Marines did.

2 Q. What your Marines did, exactly. And what recognition
3 was that?

4 A. I'm a recipient of the Navy Cross and the Silver Star.

5 Q. All right, sir. Now, at St. Philip's Church are you
6 aware of what body forms that entity's board of directors?

7 A. Yes. It is the vestry.

8 Q. Have you ever served on the board of that entity?

9 A. I have been a member of the vestry.

10 Q. And have you held any vice chairmanship or chairmanship
11 positions on the vestry of St. Philip's Church?

12 A. Junior warden and senior warden.

13 Q. And have you gotten yourself familiar generally with the
14 history of St. Philip's Church?

15 A. Yes, I have.

16 Q. To the extent that you needed to for helping me in this
17 lawsuit?

18 A. Yes, I have.

19 Q. And specifically Exhibits SPH 1 through 42, through SPH
20 42, that are in a binder --

21 A. Yes, sir.

22 Q. -- and SPH 43, are you specifically familiar with those
23 exhibits and those tendered stipulations?

24 A. I am.

25 Q. Do you mind if we cut the exam a little short and not go

1 through every single one of those items?

2 A. I'd be delighted.

3 Q. Mr. Harrington, what I'd like to do is cover less than a
4 handful of dates from the 18th and 17th centuries and then
5 less than a handful of dates for the 21st century.

6 When was St. Philip's Church formed?

7 A. In 1680.

8 Q. And when was its first building for worship constructed?

9 A. 1681-82 timeframe.

10 Q. And when St. Philip's moved from its original location,
11 when was it that it built on its present location?

12 A. Well, in 1723 it moved over to the corner of Meeting
13 Street and Broad Street.

14 Q. Moved from the corner?

15 A. Moved from that corner, excuse me, moved from that
16 corner to its present location at 142 Church Street.

17 Q. All right. Do you know of any parish in the Diocese of
18 South Carolina's churches that are older than St. Philip's
19 which, as you said, was formed in 1680?

20 A. No, I don't.

21 Q. Okay. Has St. Philip's Church continually served the
22 spiritual and religious needs of its parishioners in the
23 Charleston community since that time of 1680?

24 A. It has.

25 Q. Is St. Philip's Church on which you served the board and

1 chaired the board incorporated?

2 A. Yes, it is.

3 Q. When was it incorporated?

4 A. 1785.

5 Q. All right. Who was it or what entity was it that
6 incorporated St. Philip's Church?

7 A. It was the General Assembly of the legislature.

8 Q. Are you familiar with this name, the Protestant
9 Episcopal Church of the Parish of St. Philip in Charleston in
10 the State of South Carolina?

11 A. Yes. That was the name that the General Assembly
12 provided us when we were incorporated.

13 Q. And that was 1785?

14 A. 1785.

15 Q. And normally you and I and our congregation refer to the
16 church how?

17 A. St. Philip's Church.

18 Q. All right. Was the corporation which I think
19 incorporated St. Philip's Church, what we know as St.
20 Philip's Church and St. Michael's Church, was there another
21 incorporation by the General Assembly?

22 A. In 1791 the vestries of St. Michael's and St. Philip's
23 petitioned the General Assembly to split the two parishes so
24 there would be a parish of St. Michael's and St. Philip's.

25 Q. So the incorporation was originally what year?

1 A. 1785.

2 Q. And then the separate corporations were formed --

3 A. 1791.

4 Q. All right. And was the original incorporation of St.
5 Philip's accomplished before what we today refer to as the
6 national church?

7 A. That is correct. St. Philip's predates, of course, the
8 Diocese of South Carolina as well as the national church and
9 had a part in the formulation of the Diocese as well as the
10 national church.

11 Q. Did St. Philip's name, which includes the word
12 "Episcopal," predate either the Diocese that we have talked
13 about today or the national church?

14 A. Yes, it did.

15 Q. And is the official state-recognized name of St.
16 Philip's Church still the longer name, the Protestant
17 Episcopal Church of the Parish of St. Philip in Charleston in
18 the State of South Carolina?

19 A. It is.

20 Q. All right, sir. Tell us how many members of the church
21 there generally are today.

22 A. We have approximately 2,500 members.

23 Q. And over roughly 300 years, I think you said before 1730
24 and through the 20th century, has St. Philip's Church, as
25 we've referred to it, accumulated real property?

1 A. We have accumulated what I would call a city -- square
2 city block in downtown historic Charleston.

3 Q. And specifically do you know about how many deeds the
4 church right now holds?

5 A. I believe we have 13 deeds. We've got the church, we
6 have a chapel, we have a tea garden --

7 Q. I'll tell you what, slow it down on this part just so
8 Judge Goodstein will understand what it is that the church
9 owns downtown. The church is the one with the big steeple
10 that's brown, not white?

11 A. We are the church with the big steeple. We have a
12 historic chapel.

13 Q. Our steeple's the brown one, St. Michael's has the white
14 one; is that right?

15 A. That is correct.

16 Q. What else has St. Philip's got downtown in roughly a
17 square block?

18 A. We have two cemeteries, an east side and a west side, we
19 have a parking lot, we have a parish hall and Sunday school
20 building.

21 Q. Are those separate buildings?

22 A. They are separate buildings.

23 Q. All right, sir. Keep going.

24 A. Then we have a ministries hall, which is also our
25 administrative building. Behind it is what is called the tea

1 garden, which is another building.

2 Q. What's the tea garden, real quickly?

3 A. It is a meeting place where folks have Bible study and
4 you could go there and have meditation if you so desired in
5 the little garden there.

6 Q. Is that an old building, by the way?

7 A. It is an old building as well.

8 Q. Now continue.

9 A. And we also have a property over on State Street that
10 was the old Charleston Day School building which we purchased
11 in 1996.

12 Q. Is there a preschool operated there now?

13 A. Not -- no, sir.

14 Q. All right. And is the Charleston Day School property
15 that belongs now to St. Philip's Church adjacent to its
16 campus?

17 A. It is.

18 Q. What other worship building exists on the campus within
19 that square block besides the big sanctuary?

20 A. I mentioned the chapel.

21 Q. Chapel?

22 A. Yes, sir.

23 Q. That's a separate smaller church; is that right?

24 A. Right.

25 Q. Does it have any townhouse or residential property?

1 A. We have a rectory down on Church Street, I believe it's
2 92 Church Street.

3 Q. And who does the rectory house?

4 A. The rector, Haden McCormick.

5 Q. So Haden McCormick lives at the rectory?

6 A. Correct.

7 Q. Just in anticipation of a question, do you know what, at
8 least for purposes of property and casualty insurance and a
9 conservative balance sheet, the rough value of the real
10 property and what other items exist at St. Philip's is?

11 A. I do not have any idea what the real value of the total
12 of our property is. I do know, however, that we have it
13 insured for \$23.5 million.

14 Q. All right, sir. Let's move to the modern era, if you
15 please. In the last -- in the 21st century has St. Philip's
16 passed legislation and committed acts that bear on this
17 lawsuit and specifically were intended to protect St.
18 Philip's?

19 A. We have.

20 Q. All right. And were all of these things done within the
21 rights of St. Philip's as you understand?

22 A. They were all done in accordance with our bylaws.

23 Q. All right, sir. Now, tell us, tell Judge Goodstein,
24 please, what it was the church did in May of 2011 and how it
25 was that that was accomplished. And I mean by notices, by

1 votes, let's just give her a little bit of an idea of what
2 St. Philip's did in May of 2011.

3 A. In May of 2011 we had two congregational meetings for
4 the reading of a new and revised bylaws. Our previous bylaws
5 had not been updated in a major way in a considerable period
6 of time, about 40 years, and they needed major revision. So
7 we made major revisions to our bylaws. We notified the
8 parish by mail, first-class mail, as well as through
9 electronic means through our Inspire, which is also mailed
10 out, and from the pulpit of the meeting. We had two readings
11 in accordance with the bylaws before they were approved by
12 the congregation unanimously.

13 Q. All right, sir. You and I know what the Inspire is, but
14 Judge Goodstein and the rest of these folks don't what the
15 Inspire is.

16 A. The Inspire is the weekly bulletin that is sent out, a
17 notice to all parishioners of activities that are going on at
18 the church.

19 Q. Who receives the Inspire?

20 A. All members that we have the address for on our records.

21 Q. So at least two sets of written notice besides pulpit
22 notice, announcement notice, electronic notice, and
23 first-class mail notice was sent?

24 A. That is correct.

25 Q. And that was to amend bylaws?

1 A. Yes, sir.

2 Q. Who was it that investigated the changes needed? Did
3 you say 40 or 50 years' worth of old bylaws?

4 A. Well, the vestry initiated the change when they realized
5 how outdated the bylaws were. A committee was formed that
6 consisted of vestry members, the parish administrator, and
7 our chancellor, who reviewed the bylaws, presented them to
8 the vestry for approval. The vestry then, of course,
9 approved them and sent them to the congregation for the two
10 readings prior to their approval.

11 Q. And the congregation approved and you got new bylaws;
12 correct?

13 A. That is correct.

14 Q. So they're modernized, as you said; is that right?

15 A. That is correct.

16 Q. What was the other effect of the new bylaws?

17 A. We removed all reference to the national Episcopal
18 Church.

19 Q. And this was all finalized in May of 2011; correct?

20 A. That is correct.

21 Q. Were there ever any documents, to your knowledge, where
22 St. Philip's Church specifically acceded to the constitution
23 and canons of the national church?

24 A. That was not in the previous bylaws. The only reference
25 to the national church in the previous bylaws were that we

1 would follow the rites and ceremonies of the Episcopal
2 Church.

3 Q. And rite meaning R-I-T-E?

4 A. Right, R-I-T-E.

5 Q. What does that mean?

6 A. That is the liturgy.

7 Q. The form of worship?

8 A. Right. And that was removed from the new bylaws.

9 Q. Now, the second thing that I want to discuss I believe
10 was initiated or formally initiated in October of 2012, about
11 a year and a half later. Do you know what event that was,
12 sir?

13 A. That was a restatement of our articles of incorporation
14 that went back to 1987.

15 Q. And then before that?

16 A. And then 1785 and '91.

17 Q. Excuse me. Let me interrupt you. 1785 and 1791?

18 A. '91.

19 Q. Got it.

20 A. Correct.

21 Q. So they were restated or clarified in what year?

22 A. 1987.

23 Q. And then?

24 A. And we did that to go on record with the Secretary of
25 State's office that we were in fact an incorporated body

1 because, of course, the Secretary of State's office did not
2 exist in 1785 and 1791.

3 Q. All right. And then what was accomplished in October of
4 2012?

5 A. The restatement removed all reference to the national
6 Episcopal Church.

7 Q. All right. Now, as to that act that was filed, and I
8 really would like to call quick attention to it, Exhibit 31,
9 Mr. Harrington, what was it that the church did to make the
10 congregation aware of this restatement and what was it that
11 the church did to get buy in of this restatement?

12 A. We again, as we did with the bylaws, submitted letters
13 to the parish explaining what we were doing. It was
14 announced from the pulpit and I believe it was also in the
15 Inspire as well, the weekly bulletin, to make sure that we
16 were fully transparent to the congregation of what we were
17 doing.

18 Q. Then did the congregation meet, get an explanation, and
19 give a vote after the --

20 A. That is correct. We had a congregational meeting and
21 our chancellor briefed the congregation fully and
22 comprehensively on the document. And the vote was something
23 like 238 for, two against, and four abstained.

24 Q. All right. Very good. By way of backup review, we were
25 talking about May 2011 and it was actually Exhibit SPH 25

1 that I meant to show you just briefly. And is this SPH 25,
2 which is on your screen, Mr. Harrington, the set of amended
3 bylaws that you referred to?

4 A. They are indeed.

5 Q. Okay. And the ritual is the section that specifically
6 refers to the types of worship for the church; is that right?

7 A. That is correct.

8 Q. One other item I think that we've alluded to occurred,
9 Mr. Harrington, in November of 2012; is that correct?

10 A. That is correct.

11 Q. All right. Tell us what the church did in November of
12 2012. And I'll call your attention to Exhibit SPH 28, which
13 is already in evidence.

14 A. At that time the vestry took action to create a
15 resolution regarding the diocesan relationship, which
16 basically declared that we're no longer in a relationship
17 with TEC, nor are we in union with TEC, but that St. Philip's
18 Church remains affiliated with the Protestant Episcopal
19 Church in the Diocese of South Carolina, her locally elected
20 standing committee, and her rightful bishop, the Right
21 Reverend Mark J. Lawrence. By stating this we declare that
22 we fully support the Diocese of South Carolina disaffiliation
23 from TEC and that as God has sent Bishop Lawrence to be our
24 Bishop, only he has the authority to declare otherwise.

25 Q. All right. This Exhibit SPH 28, this was memorialized

1 in an action taken by what entity?

2 A. This was approved in November by the vestry and was
3 taken to the congregation at a special congregational meeting
4 on January 13th, 2013.

5 Q. And is that the same congregational meeting where the
6 restated articles of incorporation were discussed?

7 A. That is correct.

8 Q. What notice was provided about this resolution that the
9 vestry had made before that meeting?

10 A. Again, we sent out first-class mail to the congregation,
11 it was announced from the pulpit, I believe the chancellor
12 was even called on one Sunday to give a brief explanation of
13 it, and, of course, it was in the Inspire, so the word was
14 out.

15 Q. It was in the newsletter as well?

16 A. Absolutely.

17 Q. And who was the chancellor who would have made some --
18 discussed all this with the --

19 A. Mr. Foster Gaillard.

20 Q. Who's here with us; right?

21 A. Yes.

22 Q. Finally, I'm going to show you the last page of what's
23 been marked as SPH Exhibit 36, Mr. Harrington, and ask you
24 whether this colloquial name that you and I have used, St.
25 Philip's Church, versus the longer name that was in existence

1 since 1785 as given by the General Assembly, has ever been
2 registered as a trademark by the church?

3 A. It has been registered and the date of the first use was
4 July 1st, 1680, as St. Philip's Church.

5 Q. And just to go all the way back to the first part of
6 your testimony, what happened on July 1st, 1680?

7 A. That's when we were founded.

8 Q. So what was it that was registered? What name was
9 registered?

10 A. St. Philip's Church.

11 Q. All right, sir. And we've had a lot of questions during
12 this trial about signage. As long as you've been a part of
13 St. Philip's Church and your family for ten years, what has
14 the signage been?

15 A. It has just been St. Philip's Church.

16 Q. Okay. Did we ever have an "Episcopal Church Welcomes
17 You" sign in downtown Charleston?

18 A. Not to my knowledge.

19 Q. All right. Now, besides these four events that St.
20 Philip's Church did on its own initiative from 2011 forward,
21 what else was done by the diocese for the benefit of St.
22 Philip's Church?

23 A. We received a quitclaim from the diocese. We received
24 two of them. I believe the first one was the bishop, signed
25 by the bishop, and the president of the standing committee,

1 Jeffrey Miller, which I would believe they were relinquishing
2 any right they had to the property. And then we got a second
3 quitclaim which was signed by Paul Fuener which recognized
4 the diocese had no claim to any of St. Philip's property.

5 Q. Was the title owner on these 13 deeds that comprised, as
6 you said, almost a square block plus some parking, plus a
7 residence, the same entity that --

8 A. The St. Philip's Church.

9 Q. -- was incorporated in 1785?

10 A. Yes, sir.

11 Q. All right. Since the Episcopal Church in South Carolina
12 or TECSC that's been referred to that's one of our adverse
13 parties in this case has come into existence in October or
14 November of 2012, has St. Philip's Church had any part of it
15 to your knowledge?

16 A. No.

17 Q. All right. And has it ever authorized itself, for
18 instance, to be listed as a parish member of the Episcopal
19 Church in South Carolina or TECSC?

20 A. No.

21 Q. And does St. Philip's Church maintain any relationship
22 and has it since November of 2012 with the national church?

23 A. No.

24 Q. All right, sir. I want to take, finally, a look at just
25 a few photographs just so we all get a little bit better feel

1 for which one's St. Philip's versus St. Michael's and versus
2 these other places. These photographs I think are all marked
3 as Exhibit 42. What is this first picture?

4 A. That is the St. Philip's Church highlighting the
5 steeple.

6 Q. And I'm not going to ask you how many members show up
7 every Sunday, but how many members does it call as members of
8 the church?

9 A. We have approximately 2,500 members.

10 MR. PHILLIPS: All right, sir. Show us the next
11 photograph, please.

12 Q. Here's a little closer shot. Where is this, Mr.
13 Harrington?

14 A. This is at 142 Church Street showing the exterior of the
15 main church building.

16 Q. And that's on Church Street; correct?

17 A. Yes, sir.

18 Q. Do you see the building that's a little bit pinkish to
19 the rear, the right rear, of the church?

20 A. That is the ministries hall, which is our administrative
21 building.

22 Q. That's where the clergy have offices?

23 A. Clergy offices, the choir room, the vestry meeting is
24 there, and the staff is there as well.

25 Q. Let's take a look at the next photograph, also SPH

1 Exhibit 42. What is this?

2 A. This is the interior of our church.

3 Q. And, by the way, do you know about how many folks that
4 the church can hold on a packed-in service?

5 A. We could put in 1,200, but I think the safety level
6 would be about 850.

7 Q. All right, sir. And, if you please, the next photograph
8 in the series is SPH 42. I'm going to just call this
9 photograph by the 1974 date, if you would fill in the blanks
10 for us.

11 A. Well, this is by the Department of the Interior, which
12 has declared that St. Philip's Church has been designated a
13 national historic landmark because the site possesses
14 national significance in commemorating the history of the
15 United States of America.

16 Q. And back in 1974 what name was referred to by the United
17 States Department of Interior?

18 A. St. Philip's Church.

19 Q. All right. I'm going to ask for the next photo in SPH
20 Exhibit 42. Tell us what the Daughters of the Confederacy
21 declared by way of a nice-looking plaque I think in 1969.
22 And it might be the Daughters of the Revolution. I may have
23 misspoken. You'd better tell me.

24 A. No, I believe it is the Confederacy. No. I stand
25 corrected. It's the South Carolina Society Daughters of

1 American Colonists.

2 Q. What did the South Carolina Society of Daughters of
3 American Colonists recognize in a plaque?

4 A. They recognize two of our distinguished former past
5 members, Charles Pinckney, who was a signer of the United
6 States Constitution, and Edward Rutledge, who was a signer of
7 the Declaration of Independence.

8 Q. And to use the John Wayne pronunciation, where are those
9 two buried?

10 A. They're in St. Philip's cemetery.

11 Q. All right, sir. And what other distinguished person, if
12 any other person, that you're aware of that held national
13 significance?

14 A. John C. Calhoun, for example. And there are numerous
15 other citizens who have made great contributions to our
16 state, our nation, and certainly to our community that are
17 buried in St. Philip's.

18 Q. All right. And back in 1969 how was the church
19 addressed by name by this entity?

20 A. St. Philip's Church.

21 Q. All right. Next photograph on SPH 42. The first two
22 signs that we looked at, do those exist on the St. Philip's
23 Church campus?

24 A. They do, yes.

25 Q. All right. And how about this sign?

1 A. This is on the campus as well.

2 Q. Has this sign been there as long as you remember?

3 A. It's been there as long as I can remember.

4 Q. And just very quickly what entities are referred to and
5 what kind of worship is referred to?

6 A. St. Philip's Church, the Holy Communion, the Sunday
7 services, morning prayer using the 1928 prayer book, for
8 example, various other worship services.

9 Q. And, finally, let me see if we've got any photographs
10 left. We're about done.

11 This is another shot of the inside of the sanctuary?

12 A. Interior of the church.

13 Q. All right, sir. This view is from where?

14 A. This is looking north on Church Street at St. Philip's.

15 Q. And the building on the immediate right just before the
16 church?

17 A. Again, that is the ministries hall and the
18 administrative office building of the clergy and staff and
19 choir.

20 Q. And on the far side of the church which building exists?

21 A. That would be the parish hall and the Sunday school
22 building and the preschool.

23 Q. And the second church, the chapel, where does it exist?

24 A. It is on the north side of the main church.

25 Q. All right, sir. One more photograph. And this is --

1 A. Again, this is the steeple -- I'm not sure from what
2 direction it was taken -- again highlighting the cross. And
3 it's a national landmark in Charleston.

4 MR. PHILLIPS: All right, sir. Mr. Harrington, there
5 may be some questions from Mr. Runyan or from Ms. Golding and
6 then otherwise from the lawyers for either TEC or the
7 Episcopal Church South Carolina. Thank you.

8 THE COURT: Any other questions from the plaintiffs?

9 No. All right.

10 MR. TISDALE: Colonel Harrington, I'm glad to say due to
11 the thorough questioning of your counsel, I don't have any
12 questions.

13 THE COURT: Thank you, Mr. Tisdale.

14 Mr. Beers?

15 MR. BEERS: No, Your Honor.

16 THE COURT: No questions.

17 You may come down, sir. All right.

18 MR. GAILLARD: May it please the Court, Your Honor, I'm
19 Foster Gaillard, one of the attorneys for St. Philip's in
20 this matter, and I have got legible copies of St. Philip's
21 Exhibit 11, including this deed from Christopher Gadsden to
22 St. Philip's Church, and legible copies of St. Philip's
23 Exhibit 40 certified by the South Carolina Department of
24 Archives, so I'd like to substitute these.

25 THE COURT: Thank you, Mr. Gaillard. If you'll show it

1 to counsel let him take a look at it and then we will
2 certainly do that. Thank you so much.

3 (Plaintiff's Exhibits TED-1 through TED-19 premarked for
4 identification.)

5 JOHN CONRAD ZIMMERMAN, JR.,
6 being first duly sworn, testified as follows:

7 THE COURT: Please state your name again for our record.

8 THE WITNESS: John Conrad Zimmerman, Jr.

9 THE COURT: Very well. Your witness, Mr. Platte.

10 MR. PLATTE: Thank you, Your Honor. Andrew Platte on
11 behalf of Trinity Episcopal Church.

12 DIRECT EXAMINATION BY MR. PLATTE:

13 Q. Mr. Zimmerman, how old are you?

14 A. 70.

15 Q. Are you currently employed?

16 A. Yes.

17 Q. Where do you work?

18 A. Robert W. Baird & Company.

19 Q. What do they do?

20 A. They're investment advisers and brokers.

21 Q. Are you currently a member of a parish?

22 A. Yes.

23 Q. What parish is that?

24 A. Trinity Episcopal Church on Edisto Island.

25 Q. Where is that located on Edisto?

1 A. It's on Highway 174. I can't remember the number
2 exactly.

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

4 A. Since 1989.

5 Q. What leadership positions have you held with Trinity?

6 A. I've served on the vestry as senior warden.

7 Q. How long has Trinity been in existence?

8 A. Trinity -- the land was given to Trinity by the Colonial
9 Assembly in 1770 and it was chartered or incorporated, as
10 they say, in 1793.

11 Q. Does Trinity currently have a -- did they receive a deed
12 for the land?

13 A. We have an act of the Colonial Assembly.

14 Q. How many members does Trinity have?

15 A. Currently I believe 137.

16 Q. What is the parish's board of directors?

17 A. We use the term "vestry" and it has nine members that
18 are elected to three-year terms. And among those are the
19 officers, which are the senior warden, junior warden,
20 secretary, and treasurer, and the rector is a member of the
21 vestry.

22 Q. Are you familiar with the history and the governance of
23 Trinity?

24 A. Pretty much.

25 Q. And are you familiar with the Exhibit TED 19? It's a

1 set of stipulations. Are you familiar with that document?

2 A. That's the 19 or so stipulations?

3 Q. Let me hand it to you and you can tell me if you've seen
4 this document before.

5 A. Yes, I have.

6 Q. And would that be your testimony today in terms of the
7 facts that are contained in these stipulations?

8 A. Yes, it would.

9 Q. Were all notices for all meetings at Trinity given
10 according to the bylaws?

11 A. Yes.

12 Q. Was there a quorum at all meetings?

13 A. Yes.

14 Q. Did all matters that were voted upon pass with a
15 required majority according to the bylaws?

16 A. Yes.

17 Q. How does Trinity disseminate the issues that they're
18 going to vote on at parish meetings specifically in
19 accordance with the bylaws, if there's any bylaw changes, how
20 is that information passed out to the parishioners?

21 A. Well, we notice the meeting and talk about it in the
22 sanctuary, during services, and in the bulletins, weekly
23 bulletins, but there is a missal called the Trinity Trumpet
24 which has all the activities of the ensuing month and that is
25 distributed to all members and friends of Trinity. Friends

1 are people who are not members but come often and in many
2 times pledge.

3 Q. Do friends have voting rights?

4 A. No.

5 Q. Does Trinity have any relationship with the defendant
6 TEC or the defendant TECSC?

7 A. They do not.

8 Q. Did Trinity send delegates to the defendant TECSC's
9 convention?

10 A. No.

11 Q. Is Trinity a parish of defendant TECSC?

12 A. It is not.

13 Q. Is defendant TECSC authorized to use Trinity's name or
14 likeness?

15 A. They are not.

16 Q. And are you aware of when the Protestant Episcopal
17 Church in the Diocese of South Carolina first decided to cut
18 off funding from the diocese to the Episcopal Church?

19 A. I believe it was 1960. My father was diocesan treasurer
20 under Gray Temple, who was bishop at that time.

21 MR. PLATTE: Your Honor, at this time we move to admit
22 into evidence Exhibit TED 1 through 19.

23 THE COURT: Any objection?

24 MS. KOSTEL: No objection.

25 MR. TISDALE: None, Your Honor, except No. 3 is

1 illegible; but other than that, we don't have any objection.

2 THE COURT: All right. You'll take a look at that, Mr.
3 Platte.

4 MR. PLATTE: We will.

5 THE COURT: Very well. 1 through 19 are admitted into
6 evidence. No. 3 will be attempted to be substituted,
7 certainly will be substituted with the most legible copy. If
8 there remains a problem, counsel will let me know.

9 MR. PLATTE: Thank you, Your Honor.

10 (Plaintiff's Exhibits TED-1 through TED-19 admitted into
11 evidence.)

12 THE COURT: Yes.

13 Cross-examination. Thank you, Mr. Beers.

14 CROSS-EXAMINATION BY MR. BEERS:

15 Q. Good morning, sir.

16 A. Good morning.

17 MR. TISDALE: Afternoon now.

18 THE WITNESS: Right, afternoon.

19 Q. As you may remember, I'm David Beers and I represent the
20 National Episcopal Church.

21 A. Yes, sir.

22 Q. I'm just going to ask you some things I forgot to ask
23 you on Sunday. Who are the officers of the corporation?

24 A. We have never referred to ourselves as a corporation but
25 as a vestry. And the officers are the rector, the senior

1 warden, the junior warden, the treasurer, and the secretary.

2 Q. But is there a corporation to which your parish is
3 attached?

4 A. Yes.

5 Q. And does it have officers?

6 A. It's the same thing.

7 Q. The same officers?

8 A. Same officers, we just refer to it as a vestry.

9 Q. I see. Thank you. Did you all ever use a vestry manual
10 or a vestry handbook?

11 A. I do remember seeing one. I can't recall the details
12 because it's been a number of years.

13 Q. You're not using it currently, you haven't used it in
14 the last five years?

15 A. I can't say that we have or haven't.

16 Q. Do you recall whether that was put out by the parish or
17 the diocese?

18 A. I believe it was by the diocese.

19 Q. Now, could you give us a quick rundown of what real
20 property the parish owns?

21 A. The parish owns 5.89 acres of land on Highway 174 and
22 there is a sanctuary, there is a parish hall and kitchen and
23 rector's office and then there's a separate building that is
24 primarily a classroom building. And then there's a fourth
25 building referred to as Thomas Hall that we lease to the

1 Charleston County Library for \$1 a year and it is used by the
2 Charleston County Library as a library on Edisto Island.

3 Q. Do you have any idea how much all of that property is
4 worth either from insurance documents or appraisals?

5 A. I have never seen an appraisal, sir. I believe we have
6 liability insurance and casualty insurance on the buildings
7 themselves and not the land for approximately \$2.5 million.

8 Q. And do you have any basis for estimating how much the
9 land is worth?

10 A. No.

11 Q. Can you tell us in rough numbers what the value is of
12 any other property, not real property and not silver or
13 contents of the buildings, but investments, bank accounts,
14 portfolios?

15 A. There's a \$7,000 fund called the Camp Children's Fund
16 and it's for the rector's children's education specifically.
17 And we have a cemetery fund where -- for the upkeep and
18 maintenance of the cemetery of about \$30,000.

19 Q. Do you have any investments?

20 A. Those monies are invested.

21 Q. Do you have any endowment?

22 A. None.

23 Q. Do you have any knowledge of any grants, loans, gifts or
24 other financial assistance that's been given to your parish
25 by the national church?

1 A. No.

2 MR. BEERS: Those are all the questions I have, Your
3 Honor.

4 THE COURT: All right. Mr. Tisdale?

5 CROSS-EXAMINATION BY MR. TISDALE:

6 Q. Mr. Zimmerman, good afternoon.

7 A. Good afternoon, sir.

8 Q. How are you?

9 A. Good.

10 Q. Just a couple of questions, few questions.

11 He asked about endowments, but do you have any trusts
12 set up that the parish is the beneficiary of?

13 A. No.

14 Q. And who is the rector of the parish now?

15 A. Weyman Camp.

16 Q. How long has he been there, roughly?

17 A. Since, I believe, 1991.

18 Q. And the signs outside the parish, what do they say to
19 identify it?

20 A. Trinity Episcopal Church.

21 Q. All right. You've decided not to take the word
22 "Episcopal" out of the name?

23 A. Well, we report to the bishop and so that's what
24 Episcopal means.

25 Q. So that's why it's up there?

1 A. Right.

2 Q. You're certainly not an Episcopal Church in the sense of
3 belonging to the Episcopal Church in the United States?

4 A. I believe there are four Episcopal Churches on Edisto
5 Island.

6 Q. I understand that. But I asked you whether you had any
7 connection with the national Episcopal Church.

8 A. No.

9 Q. Now, you all received one quitclaim deed, did you not?

10 A. That's correct.

11 Q. Do you know why you didn't get two like most of the
12 other parishes did?

13 A. We only have one piece of property.

14 Q. All right. And did you ask for that deed or was it just
15 a gratuitous thing?

16 A. We asked for it.

17 Q. You did?

18 A. Yes.

19 Q. When did you ask for it?

20 A. In 2011.

21 Q. And why did you ask for it?

22 A. Because our attorney was going through all of our
23 corporate documents to bring them up to speed and suggested
24 that we -- we knew that the diocese was making them available
25 and so we asked for ours.

1 Q. All right. So along with everybody else in the diocese
2 having them been made available to the other parishes, you
3 asked for yours?

4 A. Yes, sir.

5 Q. And got it?

6 A. Yes, sir.

7 Q. Now, you said you had a cemetery with an endowment of
8 about 30,000 to take care of the cemetery upkeep?

9 A. That's correct.

10 Q. Now, did some people, when whatever we want to call it
11 occurred in 2012, a division occurred, and I think we know
12 what I'm talking about, did some people who had been
13 Episcopalians who are still Episcopalians leave Trinity
14 Edisto to worship elsewhere?

15 A. You're asking me if some people left?

16 Q. To worship elsewhere as Episcopalians.

17 A. Yes.

18 Q. All right. And specifically what I wanted to ask you is
19 with regard to the cemetery situation, if some of those
20 people who left had arrangements to use the cemetery for
21 burial in the future, does the parish plan to honor those
22 agreements?

23 A. I have no specific knowledge of that. It never has come
24 up.

25 Q. All right. So you don't know what the answer is as to

1 whether people who had arranged to be buried in the cemetery
2 at Edisto, Trinity Edisto, but no longer belong to that
3 parish because they're worshiping as Episcopalians, whether
4 their agreement to be buried can be honored there? You don't
5 know?

6 A. That's a legal question I've never heard the answer to.

7 MR. TISDALE: I don't have any further questions. Thank
8 you, Your Honor.

9 Thank you, sir.

10 THE COURT: All right. Any redirect or anyone else on
11 behalf of plaintiffs?

12 MR. PLATTE: No, Your Honor.

13 THE COURT: Very well. Thank you. You may come down.
14 Call your next witness, please.

15 MR. WALL: Good afternoon, Your Honor. John Wall again
16 from Church of the Good Shepherd. I have one more exhibit
17 that I would like to introduce today. I did not have it
18 available yesterday. It's a matter of public record. It is
19 the deed of outconveyance of the property the defendants
20 wanted to admit into evidence yesterday I believe as
21 Defendant's Exhibit No. 8. And I would like to approach the
22 bench and pass it to you and pass it to them as well.

23 THE COURT: All right. Any objection?

24 MR. TISDALE: It just wasn't in the package yesterday?

25 MR. WALL: No, sir. It wasn't in the package and it was

1 not in the documents in the church. I actually went to the
2 Court yesterday to get a copy of that document yesterday
3 afternoon and got it myself and I'd like to admit it into
4 evidence.

5 MR. TISDALE: It was admitted by us for ID purposes
6 yesterday so, of course, we have no objection to this.

7 MS. KOSTEL: Correct.

8 THE COURT: All right. Very well. This document is in
9 evidence as Good Shepherd's Exhibit 19.

10 MR. WALL: Yes, ma'am.

11 THE COURT: Thank you, Mr. Wall. Anything further from
12 you?

13 MR. WALL: No, ma'am.

14 THE COURT: All right.

15 MR. RUNYAN: Your Honor, that concludes the testimony.
16 We have a few housekeeping exhibits that we would like to
17 offer and publish a few requests for admissions.

18 THE COURT: All right.

19 MR. RUNYAN: First of all, we would like to offer into
20 evidence all of the photographs that have been displayed.
21 They are marked with the prefix associated with the parish.
22 They do not have a number because we didn't know the
23 sequential number that would follow. And we'd be happy to
24 get copies.

25 MR. TISDALE: If you're just telling us that's what they

1 are and they were shown, thank you for the copies but we
2 don't object to them.

3 THE COURT: Very well. Photographs are in evidence
4 without objection. Is that true for the national church as
5 well?

6 MS. KOSTEL: Yes.

7 THE COURT: Thank you.

8 (Plaintiff's Exhibits AS-10, SAMP-30, SLP-18, HC-28,
9 RS-21, PCSH-34, SB-17, TMB-27, SMFM-19, SMI-28 marked for
10 identification.)

11 (Plaintiff's Exhibits AS-10, SAMP-30, SLP-18, HC-28,
12 RS-21, PCSH-34, SB-17, TMB-27, SMFM-19, SMI-28 admitted into
13 evidence.)

14 MR. RUNYAN: Secondly, I believe we would like to revisit
15 the issue of the transcription of the Constitution, First
16 Constitution, of the Protestant Episcopal Church in South
17 Carolina. And I believe we have an agreement that this is an
18 accurate rendition of that, so we would offer that as well as
19 the next diocese exhibit.

20 THE COURT: All right. And it is marked as Exhibit --
21 it's being substituted; is that correct?

22 MR. RUNYAN: No. It's being added.

23 THE COURT: It's being added?

24 MR. RUNYAN: Well, we marked the other one for
25 identification, so it would be substituted for that one, I

1 believe.

2 MR. TISDALE: It was a re-type to take out typos, as I
3 recall it.

4 MR. RUNYAN: That's correct.

5 MS. GOLDING: No. 41 is the original constitution.

6 THE COURT: So we'll mark that as 41A, since it is the
7 transcription.

8 (Plaintiff's Exhibit DSC-41A marked for identification.)

9 THE COURT: And, Ms. Kostel, have you had opportunity to
10 look now at the transcription?

11 MS. KOSTEL: We're satisfied with it, Your Honor.

12 THE COURT: Very well. Any objection, Mr. Tisdale?

13 MR. TISDALE: No objection.

14 (Plaintiff's Exhibit DSC-41A admitted into evidence.)

15 MR. RUNYAN: We also would offer into evidence the
16 Constitution of the State of South Carolina for the year
17 1778.

18 THE COURT: All right. And would that have an exhibit
19 number?

20 MR. RUNYAN: It would. That would be Exhibit 60.

21 (Plaintiff's Exhibit DSC-60 marked for identification.)

22 THE COURT: Have you passed a copy of it --

23 MR. RUNYAN: I gave them a copy, Your Honor.

24 THE COURT: Any objection?

25 MR. TISDALE: No objection.

1 MS. KOSTEL: No objection.

2 (Plaintiff's Exhibit DSC-60 admitted into evidence.)

3 MR. RUNYAN: And, finally, a copy of the Constitution of
4 the State of South Carolina from 1790 as Exhibit 61.

5 (Plaintiff's Exhibit DSC-61 marked for identification.)

6 THE COURT: Any objection?

7 MR. TISDALE: No objection.

8 MS. KOSTEL: No objection.

9 (Plaintiff's Exhibit DSC-61 admitted into evidence.)

10 MR. RUNYAN: Your Honor, I have copies of each of these
11 I'd like to pass up to the Court.

12 THE COURT: Hold on one second for me, please.

13 MR. RUNYAN: Your Honor, the particular provision in the
14 Constitution of 1778 would be Article 38 and in the
15 Constitution of 1770 would be Article 8, Section 2.

16 THE COURT: You mean 1790?

17 MR. RUNYAN: 1790, Article 8, Section 2.

18 THE COURT: Okay. Got it.

19 MR. RUNYAN: I'd also hand up photographs St. Philip's
20 that we've just seen, St. Philip's SPH-42.

21 THE COURT: Okay.

22 MR. RUNYAN: I publish from the defendant Episcopal
23 Church in South Carolina's responses to the Protestant
24 Episcopal Church in the Diocese of South Carolina's request
25 for admissions dated October 3, 2013.

1 No. 13: The Protestant Episcopal Church in the Diocese
2 of South Carolina registered the service marks described in
3 Paragraph 19 of the Second Amended Complaint.

4 Answer: Admitted as a mark in the State of South
5 Carolina.

6 No. 17: The ECSC has no signed writing by any plaintiff
7 parish creating a trust in real or personal property for the
8 benefit of the Episcopal Church or the Episcopal Church in
9 South Carolina.

10 Answer: Admitted. However, this defendant states such
11 property is subject to the provisions of the constitution and
12 canons of the Episcopal Church that contain a trust provision
13 and it is in writing.

14 No. 14: The Protestant Episcopal Church in the Diocese
15 of South Carolina is the fee simple owner of all real
16 property titled in its name.

17 Answer: Admitted. However, the real property
18 referenced in this request is subject to a trust interest
19 owned by the Episcopal Church.

20 The next publication is from the Episcopal Church's
21 response to the Church of Our Saviour of the Diocese of South
22 Carolina and nine other parishes listed first request for
23 admissions dated October 8, 2013.

24 MR. TISDALE: Who made the request, if I may ask, and
25 who responded?

1 MR. RUNYAN: The request is as follows: The
2 Episcopal -- the response is as follows: The Episcopal
3 Church's response to Church of Our Saviour of the Diocese of
4 SC, Church of the Cross, Inc., and Church of the Cross
5 Declaration of Trust, the Church of the Epiphany, St. David's
6 Church, the Vestry and Church Wardens of the Episcopal Church
7 of the Parish of St. Helena, and the Parish Church of St.
8 Helena Trust, Vestry and Church Wardens of the Episcopal
9 Church of the Parish of St. John's Charleston County, the
10 Vestry and Church Wardens of St. Jude's Church of Walterboro,
11 the Protestant Episcopal Church, the Parish of St. Michael in
12 Charleston in the State of South Carolina, and St. Michael's
13 Church Declaration of Trust, and Trinity Episcopal Church
14 Edisto Islands First Request for Admission.

15 Request for Admission No. 1: The Episcopal Church did
16 not exist as a civil entity in 1778.

17 Answer: Admitted.

18 Last, Your Honor, we would offer into evidence the
19 pictures that were used in the diocese testimony which would
20 be Diocese Exhibit 62.

21 (Plaintiff's Exhibit DSC-62 marked for identification.)

22 MR. TISDALE: We don't have any objection to these.

23 MS. KOSTEL: No objection.

24 THE COURT: All right. None on behalf of the national
25 church as well. All right.

1 (Plaintiff's Exhibit DSC-62 admitted into evidence.)

2 MR. RUNYAN: Your Honor, the plaintiffs rest.

3 MR. ORR: Larry Orr on behalf of St. John's Florence.

4 THE COURT: Almost.

5 MR. RUNYAN: Almost.

6 MR. ORR: There was an objection to Exhibit SJF-5 due to
7 the clarity. I've provided them with a clear copy yesterday
8 and they had withdrawn their objection. I've provided the
9 court reporter with a new original, provided them a copy, and
10 she also has a copy.

11 THE COURT: Thank you, Mr. Orr.

12 Is that correct, Mr. Tisdale?

13 MR. TISDALE: Correct, Your Honor.

14 THE COURT: All right. Very well. And Ms. Kostel?

15 MS. KOSTEL: Yes.

16 MR. ORR: Thank you, Your Honor.

17 THE COURT: Very well. All right. Now the plaintiffs
18 rest.

19 MR. RUNYAN: Now the plaintiffs rest, Your Honor.

20 THE COURT: Very well. All right. Good time for lunch.
21 We will reconvene at 2:00. And I will just ask, first from
22 the plaintiffs and the defendants, whether you anticipate
23 making motions at this time.

24 MR. RUNYAN: The plaintiffs do not.

25 THE COURT: All right.

1 MR. TISDALE: We won't have any motions now, Your Honor.

2 THE COURT: Very well. And will you be prepared to
3 proceed, defendants, at 2:00?

4 MR. TISDALE: We plan to proceed, yes.

5 THE COURT: Thank you. Thank you very much. All right.
6 See everyone at 2:00. Have a good lunch.

7 (Luncheon recess held.)

8 THE COURT: All right. And are the defendants ready to
9 proceed?

10 MR. TISDALE: Defendants are ready to proceed, Your
11 Honor.

12 THE COURT: Very well. Thank you. And if you'd be so
13 kind as to call your first witness.

14 MR. TISDALE: Your Honor, we would call to the stand
15 Armand Derfner.

16 THE COURT: All right.

17 ARMAND GEORGES DERFNER,
18 being first duly sworn, testified as follows:

19 THE COURT: If you would be so kind as to state your
20 full name for the record and spell your last name.

21 THE WITNESS: Armand Georges, with an S, Derfner,
22 D-E-R-F-N-E-R.

23 THE COURT: Thank you very much. Your witness, sir.

24 DIRECT EXAMINATION BY MR. TISDALE:

25 Q. Mr. Derfner, I first want to ask you some information

1 about your background and qualifications for what we plan to
2 ask you to give an opinion about in this particular matter.

3 First of all, where were you born?

4 A. I was born in Paris, France.

5 Q. And were there any unusual circumstances about that or
6 were your parents French?

7 A. My parents were escaping from the Nazis. They came from
8 Poland to France and then when I was 2 years old we left
9 France the night that Hitler came into Paris and we came to
10 this country.

11 Q. Came to this country?

12 A. Yes.

13 Q. And where in this country did you grow up?

14 A. Partly in New York and partly in Iowa.

15 Q. Partly in New York and partly in Iowa.

16 Now, did you finish a high school in one of those
17 places?

18 A. I finished high school in New York at Forest Hills High
19 School.

20 Q. Forest Hills High School. And did you go from high
21 school to college?

22 A. Yes, I have a Bachelor's degree from Princeton
23 University.

24 Q. And after that?

25 A. Yale Law School.

1 Q. Yale Law School?

2 A. Correct.

3 Q. What year did you finish Yale Law School?

4 A. 1963.

5 Q. Did you have anything to do with the publication of the
6 law journal at Yale?

7 A. I was a note and comment editor of the Yale Law Journal.

8 Q. And did you receive any award at Princeton,
9 fellowship-wise?

10 A. Yes. I had a Woodrow Wilson fellowship and a Koren
11 Prize in history.

12 Q. After law school did you pursue a career in law?

13 A. Yes. I clerked for a year for Judge David Bazelon, the
14 Chief Judge of the US Court of Appeals for the D.C. Circuit,
15 and then I went to work at Covington & Burling, a large firm
16 in Washington, D.C.

17 Q. After that what did you do?

18 A. Then I went to Mississippi as a civil rights lawyer, and
19 I've been something of that ever since. After Mississippi
20 went back to Washington, then came here in the early 1970s.
21 I've been here mostly ever since. And I have focused on
22 litigation, especially constitutional litigation.

23 Q. Can you give the Court a little bit of the background in
24 your experience and knowledge of constitutional law --

25 A. Well --

1 Q. -- United States constitutional law?

2 A. I've been active in Supreme Court cases since the
3 beginning of my career. In my first year of practice before
4 I was a member of the Supreme Court Bar I did the certiorari
5 petition and brief in a case that we won in the Supreme
6 Court, a case involving jury bias. And since that time I've
7 had a number of Supreme Court cases. I guess the case that
8 I've argued and filed briefs in, I've argued four or five
9 cases and I have filed briefs or been involved in filing
10 briefs, party briefs, amicus briefs, and probably 25 or 30
11 others. And I have taught constitutional law as a visiting
12 professor at American University and most recently as an
13 adjunct professor at Charleston School of Law. I've
14 published a number of articles on constitutional law.

15 Q. Throughout your career have you authored papers and
16 articles having to do with the subject of constitutional law?

17 A. Yes, I have.

18 Q. All right. Mr. Derfner, so as not to go into all of the
19 details of your resume but have them in the record, I would
20 like to present to you what's been marked as Defendant's
21 Exhibit 11 and ask you if that is a copy of your current
22 resume?

23 A. Yes, it is.

24 MR. TISDALE: Now, Your Honor, we would present him as
25 an expert witness to render an opinion on constitutional law

1 as it effects the facts of this case.

2 THE COURT: Let me ask you this question: First of all,
3 is there an objection to the -- are you moving to admit --

4 MR. TISDALE: Him as an expert.

5 THE COURT: -- the resume?

6 MR. TISDALE: And presenting him as -- the resume first.

7 THE COURT: Right. You're moving to admit the resume.

8 MR. TISDALE: Yes.

9 THE COURT: Very well. Any objection?

10 MR. RUNYAN: Yes, Your Honor. I don't think the resume
11 is independently admissible. If he can establish a
12 foundation --

13 THE COURT: It's cumulative.

14 MR. RUNYAN: And I think he has. It is cumulative, yes.

15 THE COURT: Very well, I sustain it. It's cumulative.

16 MR. TISDALE: Okay.

17 Q. Well, I'll just ask you a few more questions then about
18 your background, Mr. Derfner.

19 Have you engaged in litigation in major reported cases
20 having to do with constitutional law?

21 A. Yes, I have.

22 Q. Would you name a few of the highlights?

23 A. My -- the Supreme Court case that I mentioned earlier,
24 which was before I was a member of the Supreme Court Bar, was
25 a case called Parker versus Gladden. Then in 1969 I had the

1 case of Allen versus State Board of Elections, which was the
2 first major case involving preclearance provision of the
3 Voting Rights Act. I've had in 1971 a case called Perkins
4 versus Matthews in the Supreme Court, in 1975 City of
5 Richmond versus United States, and in '73 City of Petersburg
6 versus United States, in '78 I think Morris versus Gressette
7 in the Supreme Court, in 1982 --

8 Q. When you say "Supreme Court," are you referring --

9 A. Supreme Court of the United States.

10 Q. Okay.

11 A. In 1982 DuBose versus Blanding in the US Supreme Court,
12 in -- and other cases in the US Supreme Court.

13 Q. All right. Now, have you had an opportunity in your
14 career to study and opine on the matters of disputes that
15 involve First Amendment and religious disputes as opposed to
16 secular neutral principles of law issues?

17 A. Yes. I've been involved in a number of -- well, first
18 of all, I've taught the religion clauses of the First
19 Amendment in my common law classes. I've also been involved
20 in some cases -- most recently I worked on the amicus or an
21 amicus brief in a case called Hosanna-Tabor versus Lutheran
22 School, which was a Supreme Court case decided I think two
23 years ago.

24 And I've also been involved as a counsel or an adviser
25 in a number of other cases involving the religion clause, one

1 of them, for example, being the case in which Charleston, the
2 County Council, posted the Ten Commandments on the County
3 Council wall and that was ordered pulled down by Judge
4 Markley Dennis.

5 Q. Mr. Derfner, at our request have you had an opportunity
6 to examine the factual background involving the facts of this
7 case that we're in Court about today with the view towards
8 giving an opinion on how the law of the United States should
9 be applied where neutral principles of law are at issue with
10 issues of the First Amendment rights of the parties involved?

11 A. Yes, I have.

12 MR. TISDALE: Your Honor, I would submit him as an
13 expert to testify on that issue.

14 THE COURT: Let me hear it again. You're offering Mr.
15 Derfner as an expert --

16 MR. TISDALE: Witness.

17 THE COURT: -- witness.

18 MR. TISDALE: To testify concerning the issues, legal
19 issues, involved in the application of neutral principles of
20 law to the facts of this case as it relates to a proper
21 application of the First Amendment rights of the parties
22 involved.

23 THE COURT: Is there any objection?

24 MR. RUNYAN: Yes, Your Honor. I believe what Mr.
25 Derfner will be asked to opine on goes right to the heart of

1 what the Court does. And in this state, generally speaking,
2 expert testimony on issues of law is inadmissible.

3 THE COURT: And you took that from Vortex Sports and
4 Entertainment versus David Ware.

5 MR. TISDALE: Have it in my hand, Your Honor.

6 MR. RUNYAN: Actually took it from the South Carolina
7 Supreme Court opinion.

8 THE COURT: Dawkins versus Fields.

9 MR. RUNYAN: Yes, I did.

10 THE COURT: Okay.

11 MR. TISDALE: So we are offering him --

12 THE COURT: He's not finished.

13 MR. TISDALE: Excuse me. I'm sorry.

14 MR. RUNYAN: Recognizing that expert testimony might be
15 admissible when it's helpful to the finder of fact, which is
16 Your Honor, I think our objection is that's an issue for Your
17 Honor to decide. And we think that the Court doesn't need to
18 hear from an expert on constitutional law to resolve the
19 issues. The Court is more than able to do that.

20 THE COURT: Thank you. Yes, sir.

21 MR. TISDALE: Well, the Courts of South Carolina Court
22 of Appeals and Vortex has certainly said his testimony's
23 admissible to aid the trier of fact, and that is exactly why
24 he's being presented. And we think it would be helpful not
25 only to Your Honor but to the parties here to present the

1 evidence as we move through this very, very complicated and
2 complex case involving these constitutional issues.

3 THE COURT: Yes, sir. I will not allow Mr. Derfner to
4 testify with regards to what the law is. That's for the
5 Court. And I'll make that determination rightly or wrongly,
6 but that's for the Court, and much like I think you used when
7 we discussed this earlier when we talked about Professor
8 Freeman.

9 MR. TISDALE: Yes.

10 THE COURT: And Professor Freeman often testifies and he
11 will often testify with regards to whether or not certain
12 conduct is a breach of, say, fiduciary duties or whether or
13 not conduct meets a definition perhaps of one of the ethical
14 rules, but he does not tell the Judge, this is the law as it
15 relates to ethics, Judge, and this is how you've got to
16 interpret the law with regards to ethics.

17 Now, having said that, if Mr. Derfner has reviewed
18 certain conduct, certain of the constitutional provisions or
19 the bylaws and has an opinion with regards to those matters
20 and how they may relate in this case, I think that's a
21 different issue. I think he certainly very well may be able
22 to testify with regards to those items.

23 MR. TISDALE: Well, Your Honor, what I would propose to
24 do, with Your Honor's permission, is ask him what he has
25 done --

1 THE COURT: Okay. Sure.

2 MR. TISDALE: -- what he has an opinion to provide. And
3 if Your Honor will listen to it, we appreciate it. And if
4 there's anything that he is going to testify to that you
5 don't want to listen to, obviously you don't have to.

6 THE COURT: Well, why don't you do that, why don't you
7 ask him --

8 MR. TISDALE: What he's done.

9 THE COURT: -- what he's done and what opinions is he
10 prepared to give.

11 MR. TISDALE: Your Honor, that's exactly the way I would
12 proceed.

13 THE COURT: Thank you.

14 MS. GOLDING: Your Honor, if I understand that
15 instruction, he is not to render any opinions until he
16 establishes the foundation.

17 THE COURT: Right. That's what he's going to tell me,
18 in what areas he is prepared to render an opinion and to do
19 that what he's reviewed.

20 MR. TISDALE: Exactly.

21 THE COURT: And we'll take it from there.

22 MR. TISDALE: Exactly. Thank you very much.

23 THE COURT: Thank you, Mr. Tisdale.

24 Q. Mr. Derfner, with respect to your work in this matter,
25 what have you reviewed and what have you done to understand

1 the factual background of this case?

2 A. I have reviewed a number of the pleadings and I did a
3 report in which I listed some of the pleadings that I've
4 looked at. But my recollection is I've looked at the
5 Complaint, most recent Complaint, the Answer at least of the
6 South Carolina defendants, I've looked at some
7 Interrogatories of the South Carolina defendants, I've looked
8 at the motion for a temporary injunction filed by the
9 plaintiffs, I looked at a motion to add parties by the South
10 Carolina defendants and the order of the Court denying that
11 motion. Those are the main things that I've looked at.

12 Q. All right. And have you studied legal principles that
13 relate to the issues raised by the papers that you have
14 reviewed?

15 A. I have. I focused on some of the factual issues that
16 may come up or that either have or are likely to come up and
17 I analyzed how those factual issues would be treated under
18 the applicable legal principles. I have not -- I obviously
19 have not seen everything so I'm not prepared to offer
20 opinions that go to the ultimate determination of whether a
21 particular fact means this or that, but how that fact would
22 be treated under the applicable principles of law.

23 Q. Would you please inform the Court what issues you
24 believe are raised by what you have reviewed in this case and
25 how the applicable United States constitution law and neutral

1 principles of law apply to those issues?

2 A. Okay. The main types of issues that I've looked at --
3 and, as I say, I've gleaned something about the facts of the
4 case from the Complaint, the Answer, the Interrogatories
5 especially, and other pleadings -- I've looked at several
6 factual issues that I believe the defendants either have or
7 are likely -- I guess they haven't because they haven't put
8 on a case yet, but are likely to raise which are either
9 separate from or in addition to what might be called the
10 organic documents.

11 So, for example, I've looked at issues relating to oath,
12 an oath that Bishop Lawrence is supposed to have taken,
13 commitments that Bishop Lawrence is supposed to have made as
14 part of the process of being named bishop of this diocese,
15 issues about the possible intent of the incorporator when the
16 corporation was formed in 1973, issues like that, and what
17 I've done is analyze how those issues should be treated under
18 the doctrine of neutral principles.

19 And in particular the neutral principles say that you go
20 according to traditional state law. And what often comes up
21 as part of the neutral principle discussion is organic
22 documents, such as the constitution of in this case the
23 national church, the organic documents of the local church,
24 state corporation laws, deeds, property deeds, et cetera.
25 But, in addition, as I read the neutral principle doctrine,

1 the Court doesn't stop there, that if it stopped there, it
2 would not be treating a religious body or religious
3 organization the same way it would treat a secular
4 organization, which is what it's supposed to do under neutral
5 principles. And, therefore, what I've done is to look at how
6 these -- the neutral principles would treat the proffered
7 evidence relating to things like an oath or events or minutes
8 of the church and to see that these should be considered as
9 evidence, not simply the organic documents.

10 Q. And could you give the Court the benefit of what you
11 concluded regarding those issues? And you may concentrate on
12 the one about the oath since you brought it up.

13 A. Well, I conclude that an oath --

14 MR. RUNYAN: Excuse me, Mr. Derfner. I'm still not sure
15 that -- I guess I would renew my objection on the grounds
16 that he's offering testimony about what the law is as it
17 applies to the facts of this case constitutionally.

18 MS. GOLDING: And he specifically stated in his
19 testimony just now, Your Honor, that he is going to give you
20 an opinion of how you should apply the law. That's exactly
21 what he said.

22 MR. TISDALE: But not what the conclusion would be.

23 MR. RUNYAN: It's the same thing.

24 MR. TISDALE: What we are really talking about, as Mr.
25 Holmes pointed out to me, is what are the evidentiary

1 considerations to be considered by the Court in deciding
2 these issues.

3 MR. RUNYAN: That's clearly something for the Court to
4 decide only.

5 THE COURT: Well, let me say this: If Mr. Derfner's
6 opinion is, for example, how the Court in utilizing the
7 neutral principles ought to treat an oath or ought to treat
8 the minutes, that's not appropriate. It's just simply not.
9 Let me give you an example. If his testimony was to be that
10 I have reviewed minutes and, based upon my review of those
11 particular minutes, I believe that a particular parish under
12 the law of the State of South Carolina has in fact under
13 those minutes declared a trust -- and you can under South
14 Carolina law create a trust in one of two ways, you can have
15 a declaration of a trust, you can have transfer of
16 property -- I believe, based on my review of the minutes of
17 -- I'm going to pick one that we haven't had yet -- St.
18 Simon, that those minutes, as I have reviewed them for St.
19 Simon, are in fact a declaration of trust under the law of
20 the State of South Carolina.

21 Now, if that is what he would intend to do, I absolutely
22 believe that's appropriate. That is very much like Professor
23 Freeman when he would testify that I believe that
24 unfortunately when a lawyer has sexual intercourse with their
25 client, that that unfortunately is a violation of

1 such-and-such an ethical duty under the appellate rules, and
2 I would see it that way. So, for example, Professor Freeman
3 in the example would not be telling the Court that this rule,
4 Judge, means this; would then be opining whether or not
5 certain conduct is violative of a particular rule. The
6 Court's got to make a determination what in fact the law is.
7 So while it's very tempting, I'm afraid that that is not
8 contemplated under our rules. I think that's why, as they
9 say, I get paid the big bucks.

10 If, however, you would be offering Mr. Derfner to
11 testify, just as I have said, that certain conduct that he's
12 reviewed would have the type of relevance that I've just
13 discussed, but for Mr. Derfner to testify that I should
14 consider an oath under the neutral principles or that anyone,
15 any judicial officer, should consider an oath to operate
16 under the neutral principles in such a way is I think where
17 Courts are not allowed to allow expert testimony. And,
18 again, let me cite the Dawkins versus Fields case as well as
19 the Vortex Sports case. And, again, what it says is
20 generally expert testimony pertaining to issues of law is
21 inadmissible.

22 MR. TISDALE: Your Honor, I don't want to try to ask him
23 to say something that you don't want to hear, but what I
24 think is proposed perhaps is for him to testify that what is
25 his opinion on whether, say, the oaths taken by certain

1 people in a certain circumstance creates a fiduciary duty
2 under the neutral principles of law as applied to the facts
3 of this case.

4 THE COURT: All right. And that then takes us back to
5 the cause of action raised by the Defendants' number what?

6 MR. TISDALE: Well, it could apply to any number of
7 things. It's a breach of a contract really.

8 THE COURT: It would be a breach of contract. What
9 cause of action? It's got to be a breach of fiduciary duty.

10 MR. TISDALE: Breach of fiduciary duty.

11 THE COURT: I know. Have you got that? Is that one of
12 your causes of action? Because I don't think it's one of the
13 plaintiffs' causes of action. It might be a counterclaim.

14 MR. SMITH: Your Honor, it's our 19th defense.

15 THE COURT: Read that to me.

16 MR. SMITH: Plaintiffs are fiduciaries of and for each
17 of the defendants the claims asserted herein by the
18 plaintiffs are in flagrant breach of their fiduciary duties
19 and other duties owed them to defendants and plaintiffs have
20 no entitlement to invoke the aid of this Court in furtherance
21 of such wrongful conduct.

22 And, Your Honor, I would say that our pleading in this
23 case is quite long and given time I can identify other pieces
24 of this pleading that go to that point, but I would need a
25 few minutes.

1 THE COURT: But Bishop Lawrence, of course, is not an
2 individual -- well, I'll ask you to speak to it.

3 MR. RUNYAN: That's the heart of it, Your Honor. The
4 pleading he's referred to is drafted with the idea that they
5 would add individual defendants. And it's replete with those
6 kind of allegations. There are no individual defendants,
7 there are corporate defendants. And there's no allegation of
8 breach of corporate fiduciary duty. And I'm not really sure
9 what that defense is, but it's not a claim, it's a defense.
10 And it reads as if it relates to individual conduct on the
11 part of members of the plaintiff entities. And that
12 individual conduct, at least as to those individuals and
13 whether they breached some duty they owed, is just not
14 relevant.

15 MR. TISDALE: Well, obviously the corporation has to act
16 through the people who are acting for it and certainly they
17 have fiduciary responsibilities.

18 THE COURT: And so what you're telling me is that Mr.
19 Derfner is prepared to testify regarding the fiduciary duties
20 attendant to the plaintiffs, which are corporations, all of
21 them, and fiduciary duties to the defendant.

22 MR. TISDALE: Correct. Responsibilities, duties.

23 THE COURT: No, not responsibilities. Fiduciary duty.

24 MR. TISDALE: Well, yes, duty.

25 THE COURT: Let me see. Becky, I need you to pass me,

1 if you could, the Answer just to take a look at it.

2 MR. PLATTE: Your Honor, if I could be of assistance to
3 the Court.

4 THE COURT: Yes.

5 MR. PLATTE: There's six paragraphs that speak to
6 fiduciary duty.

7 THE COURT: I just found the second one.

8 MR. PLATTE: Paragraphs 523, 578, 588 --

9 THE COURT: All right.

10 MR. PLATTE: -- 606 --

11 THE COURT: Okay.

12 MR. PLATTE: -- and 622 and 623.

13 THE COURT: Okay. So you would offer Mr. Derfner to
14 testify regarding the breach of fiduciary duties of the
15 plaintiffs; yes?

16 MR. TISDALE: Yes.

17 THE COURT: Okay. And what else?

18 MR. TISDALE: Well, he could probably say what it is
19 better than I, but --

20 THE COURT: Okay.

21 MR. TISDALE: -- he will testify about the intent of an
22 incorporator of a corporation formed in 1973.

23 THE COURT: How could he possibly do that?

24 MR. TISDALE: Well, I think if we could hear it, we
25 would know. In other words, what he's going to testify to,

1 Your Honor, is the constitutional requirement that a
2 religious corporation be treated the same as a corporation
3 who's not a religious corporation.

4 THE COURT: Doesn't need to do that. I got that.

5 MR. TISDALE: And that, for example, the oath that we've
6 been talking about in the context that it was made needs to
7 be considered in considering that. We can ask him very
8 quickly the issues that he intends.

9 THE COURT: Yes, ask him that.

10 Understanding that I'm not going to let you tell me what
11 the law is. Are you with me?

12 THE WITNESS: Okay.

13 Q. In addition to the oath issue that we've been talking
14 about and the fiduciary responsibility, what other aspects of
15 this matter would you give an opinion about?

16 THE COURT: We all think maybe you should have been here
17 instead of there, see what I'm saying, but understanding that
18 you're there instead of here.

19 THE WITNESS: And you are here.

20 THE COURT: And I'm here. And while you very well could
21 do it better than I, you're there and I'm here. Now, one day
22 maybe we'll swap, but today we are where we are. So tell me,
23 for example, we just talked about fiduciary duties, you
24 opined with regards to fiduciary duties and those that were
25 owed, and Mr. Tisdale would like to know what other opinions

1 would you offer, understanding that I don't believe that the
2 law allows me to have benefit of sitting in your classroom
3 and hearing no doubt what would be a magnificent and
4 scintillating lecture with regards to constitutional law.
5 But certainly there are things such as fiduciary duties,
6 they've raised breaches of fiduciary duties. Certainly with
7 regards to those I think you absolutely could testify with
8 regards to that. And Mr. Tisdale would want you to tell me
9 what other things such as that would you be prepared to
10 testify.

11 MR. TISDALE: Exactly.

12 THE COURT: See what I'm saying?

13 THE WITNESS: Well, another example -- and maybe I can
14 do it best by starting with fiduciary duty.

15 THE COURT: Sure.

16 THE WITNESS: Because my understanding is that Bishop
17 Lawrence took an oath which was a condition for his -- and
18 part of the process for his becoming the bishop of this
19 diocese. And part of that oath was to abide by the
20 discipline. There was also an oath to, I think, abide by the
21 doctrine and the worship, but part of it was to abide by the
22 discipline. And as I read it, that would be an enforceable
23 oath and that could give rise to a breach of fiduciary duty
24 if he violates that oath.

25 Now I will say I've not read all the exhibits, I've

1 obviously not read all the documents, and there may be other
2 facts there that change the situation. But that is an oath
3 that, as I read it, is enforceable, would give rise to a
4 breach of fiduciary duty. And one of the places I looked for
5 that is in the very case of Jones versus Wolf, where the
6 decisive issue dealt with the United Methodist Church's book
7 of discipline. So the oath to abide by the discipline of the
8 national church is something that I think would be -- would
9 give rise to a breach of fiduciary duty, an enforceable
10 condition, if you will. Now, as I say, I haven't read all
11 the exhibits and I don't know what else happened, so it could
12 be that other facts come into play; but that fact standing
13 alone would be as I see it.

14 THE COURT: Okay. Because you know he's not a party;
15 right?

16 THE WITNESS: Yes, I do.

17 THE COURT: Okay. So I guess --

18 THE WITNESS: So one of the issues that the Court would
19 have to decide -- I'm not opining on this -- is to what
20 extent does a breach of that condition by Bishop Lawrence, to
21 what extent does that affect the rights and liabilities of
22 the plaintiff and defendant here, which are not the bishop at
23 this point.

24 THE COURT: Right.

25 THE WITNESS: So I'm not trying to step into your august

1 position and I understand very well that that's a decision
2 for you to make.

3 Q. Any other issues other than the oath, Mr. Derfner?

4 A. Well, the same thing would apply to the issue of the
5 intent of the incorporator and if the incorporator had --
6 and, again, I don't know -- I don't know what the intent was
7 except insofar as the incorporator was the duly ordained
8 bishop of the diocese of the national -- the diocese of the
9 national church at that point and, therefore, his intent
10 would be admissible to establish what the purpose of the
11 corporation was, which would bear on whether it was competent
12 for a later bishop or later official to seek to change that,
13 to amend the corporation or amend the charter.

14 Q. All right, sir. Any other issues that you considered?

15 A. Let me take a look. This is a report that I wrote,
16 which I think everybody has. I'm going to glance at it.

17 Q. They do.

18 A. Well, yes. The issue of good standing; in other words,
19 to the extent that the officials who took actions, whether
20 those actions were the amendment of the corporate charter or
21 whether they were issuing quitclaim deeds or anything else,
22 to the extent that they may or may not have been in good
23 standing at the time, which is a decision of the national
24 church to have made, that also would bear on whether their
25 changes were effective or not. And good standing, again, was

1 something that was focused on by the South Carolina Supreme
2 Court in the All Saints Church when it said -- it said there
3 was no indication in that case that the people -- that either
4 the directors or the members of All Saints Church were not in
5 good standing at the time they took the action to amend and
6 approve the amendment to the charter of that church. I think
7 those are the ones that I've focused on.

8 THE COURT: Got it. Okay. Yes, sir.

9 MR. RUNYAN: Well, it's different than what his
10 testimony was, summary of his testimony.

11 MR. TISDALE: You mean his report?

12 MR. RUNYAN: His report. I'll just quote -- I believe
13 Mr. Derfner would agree with me -- he says: I address only
14 the question whether the source of the evidence, if it is a
15 religious source, constitutionally disqualifies it from
16 admissibility. So he's not testifying to merits, he's not
17 testifying about whether fiduciary duty was breached, a vow
18 was taken, how it was taken, whether it might be a breach of
19 it. That's not in here. What's in here is if it comes from
20 a religious source, by definition that does not make it
21 constitutionally infirm for evidentiary purposes. That's
22 what's in his summary of testimony.

23 MR. TISDALE: Perhaps he would like to comment on what
24 Mr. --

25 THE COURT: No. That's not fair to put anybody in that

1 position. I have not seen this document.

2 MR. RUNYAN: Would you like a copy of the report?

3 THE COURT: And I gather this is the report that was
4 provided counsel?

5 MR. TISDALE: Well, if he says it is, I don't have any
6 doubt. But we have one that we can give you right now.

7 THE COURT: You want to give me the report?

8 MR. TISDALE: This is it. We've marked it as
9 Defendant's 12.

10 THE COURT: Or we can mark it as a Court's Exhibit,
11 either way.

12 MR. TISDALE: That will be good. I'll give you this
13 one.

14 THE COURT: Thank you. And we'll mark it as that. Let
15 me take a look.

16 Okay. Very well. Your Defendant's 12, I'm just going
17 to mark through that, and this is the Court's 3. And, as I
18 understand it, this is Mr. Derfner's opinion and there are
19 four areas that he would propose to testify. One is the vows
20 or the promises; the capacity to convey property; what, if
21 any, effect good standing may or may not have on the
22 underlying votes; and the intent of the incorporator I'm a
23 little less clear about. But those are certainly not, would
24 not be, lectures with regards to the law, but he could
25 certainly opine as to the effect that those particular

1 matters may have and I would receive the testimony with
2 regards to those areas.

3 (The Court's Exhibit 3 marked for identification.)

4 MR. TISDALE: Your Honor, as reflected in his report.

5 THE COURT: Yes.

6 MR. TISDALE: Okay. I think that pretty well covers it.

7 THE COURT: Yes. So you may proceed in that regard. Of
8 course, I expect plaintiffs, if they believe that he goes
9 beyond that and goes into the effect of the law, that they're
10 going to -- they're not going anywhere.

11 MR. TISDALE: So may I question him then in the areas
12 that Your Honor just noted?

13 THE COURT: Yes.

14 MR. TISDALE: And he may refer to his report if it's
15 helpful to his testimony?

16 THE COURT: Sure.

17 Q. Mr. Derfner, as you have heard, your report has been
18 marked as a Court's Exhibit. So would you, without further
19 ado, render what your opinions would be regarding the matters
20 that the Court has indicated you are allowed to do?

21 A. Okay. Without going into detail, the basis for the
22 conclusions is that these matters, which are circumstances
23 that can affect the facts or the outcome but are not part of
24 the organic documents are -- should be admissible to the same
25 extent in a religious dispute as they would be in a secular

1 dispute. And so based on that, as I said a few minutes ago,
2 the oath that the bishop is supposed to have taken, which
3 included an oath to abide by the discipline of the national
4 church, can be, in the absence of other countervailing
5 factors, the basis for an enforceable promise and can also be
6 the basis for a breach of fiduciary duty, at least on his
7 part. Now, other factors would bear on whether that amounts
8 to a violation by the diocese, but at least in terms of his
9 conduct an oath to abide by the discipline would be
10 enforceable to the same extent as a similar oath or promise
11 in a secular issue.

12 As far as his good standing, the actions which are taken
13 by officials have to be taken with them in good standing.
14 And it would be up to the -- as the -- as the Supreme Court,
15 our Supreme Court, said in the All Saints case, certain
16 actions have to be taken by people who are in good standing.
17 That good standing would depend on in this case what the
18 national church decided about whether they were in good
19 standing or not. And that would be supported also by our
20 Court's case of Pearson versus Church of God, where the
21 minister was defrocked and the Supreme Court said it was up
22 to the higher church to give an authoritative opinion about
23 whether that defrocking was proper, which they had.

24 As far as the intent of the incorporator, there again,
25 if that intent were relevant in a secular corporation

1 situation, it would be equally relevant and probative in the
2 case of a religious organization.

3 Q. Now, how about in a case of the capacity to convey
4 property?

5 A. That too, in the sense that the officers or those who
6 are entitled to act, whether as a director of a corporation,
7 they have to have the capacity to convey property or take
8 certain acts. And that capacity also likely -- well, would
9 be as relevant in the case of a religious organization as it
10 is in a secular organization.

11 Q. All right. Is that the opinion that you came here today
12 to offer in this matter for the benefit of the Court?

13 A. Yes, sir.

14 MR. TISDALE: All right. Thank you very much for
15 listening to this, Your Honor. We appreciate it.

16 Answer any questions other counsel have, Mr. Derfner.

17 THE COURT: All right. Thank you. Yes.

18 CROSS-EXAMINATION BY MR. RUNYAN:

19 Q. Good afternoon, Mr. Derfner.

20 A. Yes, sir.

21 Q. Would you pull that statement out, if you have a copy of
22 it?

23 A. Yes.

24 Q. Turn to Page 3, second paragraph.

25 A. Page 3, second paragraph.

1 Q. Last sentence, second paragraph, would you read that out
2 loud?

3 MR. TISDALE: He has a sight problem so it will take him
4 a minute, as you can tell.

5 THE COURT: He's got his glasses with him. He's good to
6 go.

7 THE WITNESS: "I address only the question," is that the
8 sentence?

9 Q. Yes, sir.

10 A. "I address only the question whether the source of the
11 evidence, if it is religious, if it is a religious source,
12 constitutionally disqualifies it from admissibility."

13 Q. And that is the essence of your testimony here today; is
14 that correct?

15 A. Yes, sir.

16 Q. Nothing more, nothing less?

17 A. I think what I testified to is part of -- is consistent
18 with that statement.

19 Q. Okay. So the issue of whether it's ultimately relevant
20 is for the Court?

21 A. Yes.

22 Q. The issue of how exactly to apply Pearson and All Saints
23 and Jones v. Wolfe is for the Court as well?

24 A. Yes.

25 Q. Would you agree with me that Jones v. Wolfe involved a

1 Presbyterian church, not a United Methodist church?

2 A. Yes. And, in fact, I do want to correct one thing: The
3 reference to the Book of Discipline in Jones versus Wolf had
4 to do with a discussion of another Georgia case, I think it
5 was the Carnes case, where the US Supreme Court in Jones
6 versus Wolf talked about the decision in Carnes being rested
7 on the United Methodist Church's Book of Discipline.

8 MR. RUNYAN: Thank you, sir.

9 THE COURT: Anything further from plaintiffs?

10 MS. GOLDING: Nothing further.

11 THE COURT: Very well.

12 Any redirect or any questions from the national church?

13 MR. BEERS: No, Your Honor.

14 MS. KOSTEL: No, Your Honor.

15 THE COURT: Very well. Thank you so much for being
16 here.

17 THE WITNESS: Thank you, Your Honor. Always a pleasure.

18 THE COURT: All right. Call your next witness, please.

19 MR. TISDALE: Warren Mersereau.

20 WARREN WILDER MERSEREAU,
21 being first duly sworn, testified as follows:

22 THE COURT: And if you would state your full name for
23 the record for us and spell your last name.

24 THE WITNESS: Warren Wilder Mersereau,

25 M-E-R-S-E-R-E-A-U.

1 THE COURT: Thank you.

2 Your witness.

3 DIRECT EXAMINATION BY MR. TISDALE:

4 Q. Mr. Mersereau, tell us a little bit about your
5 background, where you were born and grew up and your
6 educational background.

7 A. I was born in New York City, grew up in New Jersey, went
8 to college and graduate school in Massachusetts, and moved to
9 South Carolina in 1972.

10 Q. Where in South Carolina did you take up residence?

11 A. Originally Greenville, South Carolina.

12 Q. All right. And after that where did you live?

13 A. After that my wife and family and I moved to New Jersey
14 for a couple of years. We then moved back to Greenville,
15 South Carolina. We then moved to Europe for four years. And
16 we moved to Charleston in 2000 and we've lived in the
17 Charleston area ever since.

18 Q. Now, were you a communicant of the Episcopal Church
19 while living in the Charleston area?

20 A. Yes, sir. When we arrived back in the United States in
21 Charleston, we looked for an Episcopal Church to join and we
22 initially joined St. Michael's downtown.

23 Q. And after that did you remain a communicant at St.
24 Michael's until now? What happened in your history?

25 A. When our boys graduated from college and were on their

1 own, my wife and I moved to Kiawah Island, where we had
2 vacationed for 25 years or more, and we became members at
3 Church of Our Saviour on Johns Island.

4 Q. And is that one of the parishes involved in this
5 lawsuit?

6 A. Yes, sir.

7 Q. Mr. Mersereau, beginning at the end and then going back
8 to the beginning, are you still a communicant of the Church
9 of Our Saviour in Seabrook Island or Johns Island?

10 A. No, I'm not. I was removed from their rolls.

11 Q. Why were you removed from their rolls?

12 A. Because the rector, Mike Clarkson, said that I had
13 denounced my membership, which was not true, but he removed
14 me from the rolls.

15 Q. When did that happen?

16 A. That happened in the -- January or February of 2013.

17 Q. '13. Now, what I would like you to do, would you like
18 some -- do you have some water?

19 A. Yes. I'm just getting over the flu.

20 Q. There's some right behind you if you need more. Just
21 let us know and we can get you some more.

22 A. No problem.

23 Q. So what I would like you to do is take us through the
24 process of how you ended up getting removed from the rolls
25 against -- was it against your will?

1 A. Yes, sir.

2 MS. GOLDING: Your Honor, I'm going to make an
3 objection. I don't see the relevancy of this testimony with
4 respect to the rolls of a church, and that's on behalf of the
5 parishes. We're here before this Court on corporate matters
6 with regard to the parishes and not an individual discontent
7 person that may have been a member. That's not raised in any
8 of the defenses or counterclaims.

9 MR. TISDALE: Your Honor --

10 THE COURT: I got it.

11 MR. TISDALE: Excuse me. I'm sorry.

12 MR. RUNYAN: I would just join on behalf of the diocese
13 on the issue of whether corporate control is vested in the
14 entities that presently control the diocese. I don't
15 understand the relevance of this testimony to that issue, so
16 I'd also base it on that grounds as well, irrelevant.

17 MR. TISDALE: Your Honor, first of all, we don't know
18 whether it's relevant until we hear what he's got to say.
19 But these parishes are substantial constituents of the
20 diocese.

21 THE COURT: Substantial what now?

22 MR. TISDALE: Constituents of the diocese, the parishes
23 are. The whole thing here is the manner, whether it was
24 lawful, wrong or not, of how the people who left left the
25 diocese and departed the diocese and how they handled the

1 corporate affairs of the diocese. And what happened in these
2 parishes all across the diocese is relevant to how that
3 happened and it's part of the whole story.

4 MS. GOLDING: Your Honor, I'm sorry, but, Mr. Tisdale,
5 the witness, Your Honor, was never a member of the diocese
6 with respect -- this witness can testify as to the corporate
7 actions that the diocese may have taken to amend its bylaws
8 and things of that nature, but outside of that there is
9 absolutely no relevancy.

10 MR. RUNYAN: In addition to that, Your Honor, if we
11 assume that he was improperly removed from the rolls of
12 Church of Our Saviour, it's got nothing to do with the
13 diocese following the appropriate corporate procedure in
14 South Carolina, removed itself from the Episcopal Church,
15 it's just not relevant to that issue.

16 MR. TISDALE: Your Honor, these people have been
17 deprived of the beneficial use of the property that they
18 helped pay for over many years. And we are certainly
19 entitled to ascertain from the evidence and testimony whether
20 or not that deprivation of this beneficial use of that
21 property was done properly or not done properly, and that's
22 what his testimony goes to.

23 MR. RUNYAN: There's not a claim in the case involving
24 this issue at all.

25 MS. GOLDING: No.

1 MR. TISDALE: Well, the corporate manipulation is
2 certainly at issue in this case by the whole arrangement was
3 a manipulation, and that's what the evidence is going to
4 show, a wrongful manipulation.

5 THE COURT: Let me tell you what my concern is. My
6 concern is that for these types of issues Pearson dictates.
7 And what Pearson says is that when you have ecclesiastic
8 determinations which are made, it is the highest degree of
9 that ecclesiastic determination, whoever made that. I'm
10 hearing at this moment that it was made by the parish. No
11 doubt there is an appellate process ecclesiastically.
12 Whether there is or there isn't is not for me. It is the
13 ecclesiastic determination with regards to this individual
14 that Pearson says that I must accept, that I cannot change,
15 that I am bound by. So if the highest determination
16 ecclesiastically was made of this gentleman, whether I agree
17 or disagree is of no moment. Pearson says I must accept it,
18 I cannot touch it. And that is where the separation of
19 church and state enters into it. Now, the fact of whether I
20 think it was a good thing or a bad thing is not for me to
21 determine. Pearson says that very clearly. And I would
22 presume that he appealed it ecclesiastically. If he chose
23 not to appeal it ecclesiastically, then the determination
24 that was made by this particular parish is the one to which I
25 am bound.

1 MR. TISDALE: So I will not pursue why he was dropped
2 from the rolls of the parish in this interrogation.

3 THE COURT: You understand Pearson says --

4 MR. TISDALE: I understand that.

5 THE COURT: -- that's not for me, that is an
6 ecclesiastic determination, and I am bound to accept it.

7 MR. TISDALE: I accept that. With respectful objection
8 I accept it.

9 THE COURT: I understand.

10 MR. TISDALE: But I will go down another road for his
11 testimony.

12 THE COURT: Okay.

13 (Attorneys confer.)

14 MR. TISDALE: Your Honor, what we are dealing with in
15 this case, and it's been evident from some of the parish
16 testimony, is a pattern of conduct by the people who
17 separated, and that is a pattern throughout. And so setting
18 aside why he was dropped from the roll, although we believe
19 that's part of the pattern, I will pursue another line of
20 testimony with him. And it will be generally what happened
21 at the Church of Our Saviour leading to the disaffiliation
22 from the Episcopal Church and how it happened. That's what I
23 intend to pursue.

24 THE COURT: Okay.

25 MR. TISDALE: Thank you.

1 Q. Mr. Mersereau, when did you first realize that there
2 were any issues at the Church of Our Saviour concerning its
3 relationship with the Episcopal Church?

4 A. Sometime, I believe it would be, in late 2008 or 2009.

5 Q. And would you please describe for the Court how that was
6 exhibited or how it came to your attention?

7 A. Yes. In the vestry minutes and then at the annual
8 parish meeting it was announced that the bylaws of Church of
9 Our Saviour had been suspended.

10 MS. GOLDING: Your Honor, I'm going to make an
11 objection. I think that if you're going to refer to any
12 bylaws or minutes, I think that those need to be brought into
13 evidence because those speak for themselves and not the
14 witness' determination.

15 THE COURT: You're talking about the best evidence rule?

16 MS. GOLDING: Correct, Your Honor.

17 MR. TISDALE: They have already been testified to by the
18 Church of Our Saviour yesterday.

19 THE COURT: I understand that. But there's been an
20 objection with regards to the best evidence rule and --

21 MR. TISDALE: I'm not going to ask him about that except
22 that it happened and I'm not going into it.

23 MS. GOLDING: Your Honor, the witness testified that
24 these were suspended.

25 THE COURT: Yes, ma'am.

1 MS. GOLDING: That's an interpretation that he's made
2 he's not permitted to make.

3 THE COURT: I understand that.

4 MS. GOLDING: Thank you, Your Honor.

5 THE COURT: Best evidence rule.

6 Q. Did someone tell you that the bylaws had been suspended?

7 MS. GOLDING: Your Honor, that's hearsay.

8 THE COURT: Yes, ma'am.

9 Yes, sir. Sustained.

10 MR. TISDALE: The Church of Our Saviour's a party.

11 THE COURT: I know. I understand that. So you have to
12 lay the foundation.

13 Q. As a result of the information about the bylaws, what,
14 if anything, did you do?

15 A. I became greatly concerned as an Episcopalian in an
16 Episcopal Church that we had now suspended our bylaws.

17 MS. GOLDING: Your Honor, I want to move to strike the
18 testimony, his interpretation.

19 THE COURT: Yes, ma'am. Sustained.

20 Q. Did you have any conversations with anyone in the parish
21 about what they were doing regarding its relationship with
22 the Episcopal Church?

23 A. Yes. I had multiple conversations both with members of
24 the congregation and also with the rector.

25 Q. Let's concentrate a minute on conversations you had with

1 the rector, who was a witness in this case I think yesterday.

2 And give us the sequence of those conversations, if you will.

3 A. Well, in 2009 the rector had a couple of informational
4 meetings about the relationship of the church, the diocese,
5 and the national church, and those informational sessions
6 featured -- one session featured Kendall Harmon as the
7 featured speaker and the next session featured Reverend
8 Clarkson.

9 THE COURT: I'm sorry. Reverend?

10 THE WITNESS: Clarkson.

11 MR. TISDALE: Michael Clarkson, who testified yesterday,
12 Your Honor.

13 THE COURT: Now, let me ask you this question, though:
14 I need to know the rector's name, if you'd be so kind.

15 THE WITNESS: I'm sorry. It's Reverend Michael
16 Clarkson, who testified yesterday.

17 THE COURT: The rector that you first mentioned. You
18 said you had a conversation with the rector.

19 THE WITNESS: I'm sorry. I should have said Reverend
20 Clarkson. He is the rector.

21 THE COURT: He was the rector of the church where you
22 were.

23 THE WITNESS: Yes, ma'am.

24 Q. 2009?

25 A. Yes.

1 THE COURT: Thank you.

2 MR. TISDALE: Church of Our Saviour, Johns Island.

3 THE COURT: Got it.

4 THE WITNESS: So in those initial conversations one of
5 the issues that I raised was that of fairness or balanced
6 approach in terms of providing information to the
7 congregation. And I suggested it would be helpful if
8 somebody who was in support of the Episcopal Church was
9 allowed to speak. And Reverend Clarkson denied that request,
10 saying he did not want a debate and that Kendall Harmon would
11 fairly represent the nature of the relationships, which I
12 didn't think was an appropriate response, given that Kendall
13 Harmon was directly associated with the leadership of the
14 diocese that at that point had started to take actions to
15 separate itself from the Episcopal Church.

16 Q. All right. And what did you do in furtherance of your
17 concerns as a result of that meeting?

18 A. Well, we continued -- some members of the congregation
19 who had similar concerns, we continued a dialogue. We asked
20 if we could have an open meeting to discuss the issues
21 related to the church. And we kept trying to be good members
22 of Church of Our Saviour while still being in support of the
23 Episcopal Church.

24 Q. Did you desire that result?

25 A. Yes. It was our intent, my intent, that I stated

1 multiple times, including a letter to the congregation, that
2 although I was not necessarily in agreement with the
3 direction being taken by Reverend Clarkson and the vestry,
4 that I did want to remain a member of Church of Our Saviour.

5 Q. And did you pursue that course of action to remain a
6 member of Church of Our Saviour?

7 A. Yes, I did. I attended the -- attended church services
8 on a regular basis meeting the requirements of the bylaws,
9 contributed annually to the Church of Our Saviour, and tried
10 to be an active participant in church activities.

11 Q. Did you do anything to publish your views concerning the
12 idea of separating from the Episcopal Church, your views, to
13 other members of the congregation?

14 A. Yes. Eventually I expressed my views in writing to
15 members of the congregation. In the beginning of 2010 there
16 was a meeting at the Harbour Club in downtown Charleston
17 sponsored by the Episcopal forum in which Reverend Frank Wade
18 spoke. Eight of us from Church of Our Saviour attended this
19 meeting. Reverend Frank Wade is a distinguished Episcopal
20 minister, graduated from The Citadel, the Virginia
21 Theological Seminary, and for 20 years as a rector of St.
22 Albans on the National Cathedral grounds, and given that this
23 was an activity that a number of us from the congregation
24 participated in, I wrote up a summary of Frank Wade's
25 comments and I submitted it to the Church of Our Saviour

1 newsletter.

2 Q. How was it received?

3 A. Initially I got no response. After multiple
4 communications I was told that it would not be published.
5 And I met with the junior warden, who was the editor of the
6 church newsletter, to have a discussion about why this
7 article that involved members of the congregation would not
8 be published.

9 Q. Mr. Mersereau, were you allowed to use the facilities of
10 the parish, list of members and so forth, to espouse views
11 that you thought needed to be given to members?

12 A. Well, we on a periodic basis were issued a church
13 directory and, as is common these days, emails went back and
14 forth from members of the congregation over a wide variety of
15 matters, from church-related activities to birthdays,
16 inspirational messages, political statements. There was a
17 directory available and it was used by church members to
18 communicate. There were no guidelines or rules associated
19 with the directory, it was there for us to communicate
20 amongst ourselves. And ultimately I used some of those
21 addresses to communicate.

22 Q. Was that received well by the management of the parish?

23 MS. GOLDING: Your Honor, I'm going to make an
24 objection. This witness doesn't know how anything was
25 received by another entity.

1 THE COURT: I'm sorry?

2 MS. GOLDING: This witness is not competent to testify
3 as to how another entity received something.

4 Q. Did the management of the parish react in any way to
5 your sending out your newsletter to members?

6 THE COURT: Okay. Now, is there an objection to that?

7 MS. GOLDING: No, Your Honor, there is not.

8 THE COURT: Okay.

9 MR. TISDALE: Thank you.

10 THE WITNESS: Yes. In my discussion with the junior
11 warden, who was in charge of communications, he said he would
12 not publish the summary of the article, of the activity that
13 eight of us had attended, but I could publish it on my own,
14 which I then did. And I distributed it both via email and
15 regular letter. It was a very simple one page, printed both
16 sides with two articles on it. One article was the summary
17 of Reverend Frank Wade's presentation and the second page,
18 second article, was the description of the Episcopal flag
19 which was in the sanctuary of Church of Our Saviour. After
20 that was disseminated, I received an email from Reverend
21 Michael Clarkson to meet with him and the junior and senior
22 wardens about my position with the church.

23 Q. All right. Did there come a time that you had a meeting
24 with Father Clarkson, the rector of the parish, that you were
25 summoned to by him?

1 A. Yes. A meeting took place, I would have to look it up
2 in my notes, but I believe it was early April 2010. Reverend
3 Clarkson invited the junior and senior wardens. Because I
4 was not sure of the nature of what was going to happen in
5 that meeting, I invited my wife to accompany me and a member
6 in good standing of Church of Our Saviour. When the meeting
7 began, I asked what the purpose of the meeting was and would
8 I be asked to do something or would something be done to me
9 or what was the intent, and the answer was that it was to
10 have a discussion, which ultimately did not prove to be the
11 case.

12 Reverend Clarkson objected to my distribution of
13 materials related to the Episcopal Church. He said the
14 policy of Church of Our Saviour, even though it was an
15 Episcopal Church, was not to promote the Episcopal Church.

16 I said that as an Episcopalian in an Episcopal Church in
17 which the Episcopal flag is still used, I didn't think there
18 was anything objectionable to speaking about things that were
19 Episcopal.

20 He again reiterated that that was not in the -- not the
21 policy of the church. Although I went back ten years in
22 reading vestry minutes, there is no written policy about not
23 promoting the Episcopal Church. That must have been Reverend
24 Clarkson's personal opinion or his opinion with the vestry.
25 At any rate, we reached a point in the discussion in which he

1 told me that the vestry had voted to put me under
2 disciplinary action and he pulled out his Bible and read --

3 MS. GOLDING: Your Honor, the witness is now going into
4 areas in which this Court cannot go into under the Pearson
5 decision by the South Carolina Supreme Court.

6 MR. TISDALE: We're not going to go into that. He just
7 said that he was threatened by it. I'm not going to pursue
8 that.

9 THE COURT: Okay. Ask him another question.

10 Q. You were threatened by disciplinary action. And what
11 else were you told at this meeting?

12 A. I was threatened with ultimately excommunication and I
13 did not --

14 MS. GOLDING: Your Honor, I move to strike that. That's
15 certainly clearly not proper in this proceeding.

16 MR. TISDALE: We're not going into what happened
17 resulting from the threats, just that the threats occurred.

18 THE COURT: I understand that. Again, Pearson does not
19 allow me to enter into those determinations. Whatever the
20 ultimate determination was, it was. And those are
21 ecclesiastic determinations and I'm not allowed to
22 participate in those.

23 MR. TISDALE: Your Honor, we have no intention of going
24 into whether or not that threat was carried out, just simply
25 the fact that it occurred, that's all.

1 MS. GOLDING: That in and of itself goes beyond the
2 boundaries of what can be presented.

3 MR. HOLMES: Your Honor, may I speak to that briefly as
4 well? Nobody's asking you to reverse the decision of
5 excommunication, just simply it happened. It's as if in the
6 Supreme Court cases where the bishop got defrocked by the
7 church, it therefore didn't have the power, the Serbian
8 bishop. It's just a fact. It's an ecclesiastical fact.
9 Nobody's trying to appeal it or ask you to examine it, it
10 just happened.

11 THE COURT: Well, then it becomes irrelevant. And so
12 the fact that it becomes irrelevant is then we need to move
13 on to other issues because it's been --

14 MR. HOLMES: Well, I don't think it's irrelevant in that
15 it demonstrates a motive on the part of the parish, as Your
16 Honor's heard extensive testimony about very similar
17 activities among these parishes, which, frankly, were
18 disputes over religious doctrine with the national church.
19 And these -- the way they resolve these disputes, which
20 were -- could have been resolved by the authority of the
21 Episcopal Church, was to avoid -- well, do the things they
22 did. So we think it goes to motive.

23 MR. TISDALE: But, Your Honor, the point here is, that
24 I've been trying to say, I don't intend to ask him after the
25 threat was he charged, did this happen, did that happen. I

1 just simply want to know what was said to him at the meeting.
2 That's all. And I don't see anything objectionable about
3 that, despite Mr. Holmes thinks that it would be okay to
4 pursue it. But I don't plan to pursue it is what I'm trying
5 to say.

6 MR. HOLMES: We're not on the same page. That's okay.

7 MR. TISDALE: So may I move on?

8 THE COURT: Yes, move on.

9 Q. Okay. Now, at this meeting you've already told us one
10 thing that happened. Did the issue of whether or not you
11 could attend vestry meetings come up?

12 A. Yes, it did. I asked -- per the diocese vestry handbook
13 vestry meetings are supposed to be open. I asked if I could
14 attend vestry meetings, the answer was no.

15 Q. All right. The matter of whether or not Bible study,
16 Episcopal Church-oriented Bible study, could be conducted in
17 the parish, did that come up?

18 A. Yes. The church has a number of small groups that are
19 in Bible study, there's a men's group, a women's group, and
20 many other groups. I asked if it would be possible for those
21 of us who wanted to have a Bible study group with a focus
22 around the liturgy, et cetera, of the Episcopal Church, if we
23 could do that, all people would be welcome, obviously, and
24 the answer was not only no to that but, no, I would not be
25 allowed to have any leadership position in the church

1 whatsoever.

2 Q. All right, sir. Now, Mr. Mersereau, did you become
3 aware at some point that Episcopalians in the diocese --
4 excuse me -- everybody in the diocese at that point was
5 Episcopalian, but did you become aware at some point that
6 some people in the diocese, of course Episcopal, filed a
7 complaint against Bishop Lawrence claiming misconduct?

8 A. Yes, I did.

9 MR. RUNYAN: Irrelevant. It's irrelevant to the case.

10 MS. GOLDING: Completely.

11 MR. RUNYAN: File a complaint, it's irrelevant.

12 THE COURT: Let me ask you this question: There are two
13 issues. Number one, is it fair to go into this testimony,
14 this presentation, when I have heard any number of parishes
15 say that they made the decision to leave because of the
16 treatment of Bishop Lawrence. That's the first issue. And
17 I'll yield, I don't know what relevance it even had or when
18 it came up, to be quite frank with you, but it did. And so
19 in the interest of fairness, ought they be allowed to go into
20 to some extent some of that discussion. That's the first
21 issue. And, again, again hear me, the reason on this basis
22 that I would hear any of it is only because it was raised
23 repeatedly by parish members as the reason why they had
24 chosen to disassociate. Now, that's the first question.

25 The second question is and would go to the capacity --

1 and remember where I am, I'm at the beginning of this part of
2 the process -- whether or not it has any relevance regarding
3 the capacity to have executed quitclaim deeds. Speak to it.
4 Those are the two areas that I see potentiality for this
5 evidence to be relevant.

6 MR. RUNYAN: First of all, there's testimony there was a
7 complaint. I think that's already in the testimony in the
8 record. That's an issue that may or may not be related to
9 good standing, but that's in the record. That doesn't have
10 anything to do -- I mean, once we get into the details of
11 this, we're going to be all the way in. And we're not
12 unpleased to go there, but it's going to occupy a whole lot
13 of time on something that just doesn't have any relevance.
14 There was a complaint, there was action taken by the national
15 church, and the diocese acted as a result of that.

16 What's underneath the surface in all of that is a lot of
17 information. And it doesn't have any bearing on the issues
18 of capacity because that's already joined on the fact that
19 there was a complaint and on the fact that there was action.
20 And I don't -- I don't know what it adds from a relevance
21 point of view. And I think it's going to carry us down a
22 path which, like individual parishioners' dissatisfaction
23 with how their management operated, doesn't have anything to
24 do with the merits of the claims in this case, both ours and
25 theirs.

1 THE COURT: I understand. Ms. Golding?

2 MS. GOLDING: Nothing additional, Your Honor.

3 MS. KOSTEL: Could I speak to that, Your Honor? As Your
4 Honor points out, one of the reasons that we've heard again
5 and again about why the parish has decided to disassociate
6 themselves from the Episcopal Church was because of the way
7 their bishop was treated. Now, if the bishop is treated a
8 particular way by the national church and it's via the
9 church's own disciplinary process, which we can prove or deal
10 with, then the proper way to deal with that is through the
11 church's disciplinary process and through the church's
12 system.

13 But what's happened in this case and what we're trying
14 to elicit further evidence on is that this particular issue
15 is one of the ecclesiastical issues -- disputes that's
16 actually at the heart of this dispute about corporation,
17 corporate control, and control of property, that what's
18 really going on here is a dispute over an issue that is
19 properly resolved by the church. And so if the discomfort
20 with what happened to the bishop were a secular kind of
21 complaint with the way the church treated the bishop, that
22 might be some sort of different issue. But we believe that
23 the evidence will show that the discomfort with the way the
24 bishop was treated was a discomfort about the way the church
25 was undertaking its disciplinary process, which is a purely

1 ecclesiastical matter which is right at the core of this
2 dispute.

3 THE COURT: And doesn't Pearson say that I don't look at
4 the sausage being made, ecclesiastically speaking, but
5 whatever the determination was ultimately by the highest
6 level of the church I accept?

7 MS. KOSTEL: Yes, it does say that.

8 THE COURT: That's another reason why the fact that a
9 complaint was made is really of no moment. What the result
10 was very well may be. Do you see the difference?

11 MS. KOSTEL: I certainly do.

12 THE COURT: And so that's why I'm inclined not to hear
13 the fact that the complaint was made even though I get that
14 some of the parishes chose to leave because they were unhappy
15 about that. That's not for me either, any more than the fact
16 that this gentleman has obviously great concerns about his
17 treatment at this particular parish. I have to accept that.
18 If that was the ultimate deciding entity, if it wasn't
19 appealed ecclesiastically and that was as high as it went, I
20 must accept it under Pearson. The same is true with the
21 bishop. Do you understand what I'm saying?

22 MS. KOSTEL: I certainly understand what Your Honor is
23 saying.

24 THE COURT: And I think that that's what Pearson says.
25 Whatever it was, it was so -- whatever it was, it was. So I

1 don't think that, there was a complaint made and what
2 happened with the complaint and who showed up and, you know,
3 the old who shot Cock Robin, if you will, is really not for
4 me because I think Pearson says assuming there's relevance --
5 I don't know that there's relevance, I really don't at this
6 point -- assuming that there's relevance, it is what it is.
7 That I've got to accept. I don't play there. That's done.
8 I accept whatever that determination is I think. So I don't
9 think I hear the complaint.

10 MR. HOLMES: Special indulgence in that it probably
11 won't take him long, and it can't take much longer than it
12 did for us to see the slides of John C. Calhoun's tomb, so I
13 would ask just special indulgence to let him testify about
14 these facts even if the Court's going to exclude them. It
15 won't take four minutes.

16 THE COURT: Not going to do it.

17 MR. TISDALE: Your Honor, I simply intend -- we're
18 talking about how he was treated at his parish. We've been
19 told repeatedly, as Your Honor pointed out yesterday, that a
20 lot of these parishes left, a lot of them said they did,
21 because the bishop has been attacked. So all I am asking him
22 is whether or not he signed the complaint complaining against
23 Bishop Lawrence's conduct, period. And I'm not going into
24 anything about the nature of the complaint other than that.
25 That's all. I just want to ask him that question, then we'll

1 move on. And that shows perhaps a motive for the treatment
2 he received in his parish. It is certainly relevant to that
3 issue.

4 THE COURT: If you all were asking that question, it
5 could go to bias. That's where my head is: Why are they
6 asking that?

7 MR. RUNYAN: That question I don't have a problem with,
8 if that's the answer.

9 MR. TISDALE: That's all I was going to ask.

10 MR. RUNYAN: I do think the bias of the parish is still
11 irrelevant to the issues of the case.

12 THE COURT: No, not bias as to the parish, bias as to
13 the witness.

14 MR. RUNYAN: Okay.

15 THE COURT: See what I'm saying?

16 MR. RUNYAN: Understand.

17 THE COURT: That's where my head goes. That question I
18 would allow.

19 MR. TISDALE: Thank you.

20 THE COURT: Because it goes to bias of the witness and I
21 need to be clear.

22 MR. TISDALE: I'm sorry it went into this interesting
23 discussion, but that's what I intended to ask.

24 THE COURT: Okay. In other words, everybody just needs
25 to hush up.

1 MR. TISDALE: I will not say that to you, Your Honor,
2 never.

3 THE COURT: It wouldn't do any good anyway.

4 Q. Now, Mr. Mersereau, did there come a time that you
5 became aware that a group of people in the diocese were
6 preparing a Complaint against Bishop Lawrence?

7 A. Yes, sir. And I signed it.

8 Q. You signed it?

9 A. Yes, sir.

10 Q. That's what I was getting ready to ask you.

11 Now, are you still a member of -- I think you said you
12 weren't at the beginning. Are you a member now of Church of
13 Our Saviour?

14 A. No, I am not.

15 Q. Are you still an Episcopalian?

16 A. I am.

17 Q. What parish, if any, are you a communicant of now?

18 A. I recently joined St. Stephen's Episcopal Church in
19 downtown Charleston.

20 Q. Is that a church that -- well, I won't go into that.
21 You're still an Episcopalian?

22 A. I am.

23 MR. TISDALE: Excuse me just one minute, Your Honor.

24 THE COURT: Sure.

25 MR. TISDALE: Your Honor, thank you for your indulgence

1 on this conversation. And I would like to ask him to answer
2 any questions other counsel have.

3 THE COURT: All right.

4 Cross-examination, sir.

5 MR. RUNYAN: And I would like to say, Mr. Mersereau,
6 that I have none.

7 MS. GOLDING: No questions.

8 THE COURT: Very well. Thank you so much.

9 Call your next witness, please.

10 MR. TISDALE: Your Honor, we don't have an afternoon
11 break, I take it?

12 THE COURT: Well, if you need one now. We'll take our
13 afternoon break. We'll take 15 minutes. It's five minutes
14 until 4:00. We'll be back at ten after 4:00.

15 (Recess held.)

16 MS. KOSTEL: Your Honor, before we get started with
17 witnesses or witness, I guess --

18 THE COURT: The next witness, yes.

19 MS. KOSTEL: -- we have a number of exhibits that we're
20 going to move into evidence tomorrow. They're on a hard
21 drive. And I have got two sets to give to the plaintiffs to
22 look at tonight just to keep things moving.

23 THE COURT: Great.

24 MS. KOSTEL: I don't have exhibit numbers on everything
25 yet, but I do have a list. But tomorrow morning we'll

1 provide you all with a list that actually has exhibit
2 numbers, but the descriptions and everything are here.

3 To be clear, this is the bulk of our exhibits, but there
4 are some things that were produced later and are not going to
5 make it onto the hard drive.

6 MS. GOLDING: These are exhibits, my understanding, of
7 just the national church or all the defendants?

8 MS. KOSTEL: Both defendants.

9 MS. GOLDING: Okay. Thank you.

10 THE COURT: All right. Yes, sir.

11 MR. TISDALE: Your Honor, we would call the Reverend Dow
12 Sanderson.

13 MARSHALL DOW SANDERSON,
14 being first duly sworn, testified as follows:

15 THE COURT: Would you please state your full name for
16 the record, and I'm going to ask you to spell all your names.

17 THE WITNESS: Marshall Dow, D-O-W, Sanderson,
18 S-A-N-D-E-R-S-O-N.

19 THE COURT: Thank you. Your witness.

20 DIRECT EXAMINATION BY MR. TISDALE:

21 Q. Father Sanderson, what is your current position in the
22 Episcopal Church?

23 A. I am the rector of the Church of the Holy Communion in
24 Charleston.

25 Q. Now, where were you born and grew up?

1 A. I grew up in Conway, South Carolina. And I went to the
2 College of Charleston and studied theology at Virginia.

3 Q. And subsequent to your theological education, where were
4 you ordained?

5 A. Where was I ordained?

6 Q. First to the diaconate.

7 A. I was ordained a priest at the Cathedral of St. Luke and
8 St. Paul and I was ordained to priest at the Church of the
9 Holy Communion, the parish I currently serve.

10 Q. And what bishop or bishops ordained you?

11 A. Bishop Allison at both ordinations.

12 Q. Father Sanderson, during the course of your career as a
13 priest where have you served?

14 A. I served as the vicar of St. Alban's in Kingstree. I
15 was the assistant to the rector at St. Andrew's Church in
16 Arlington, Virginia. I was the assistant to the rector at
17 Holy Comforter in Sumter. I was the rector of Church of the
18 Redeemer in Orangeburg until coming to Charleston in 2001.

19 Q. Now, have you had any roles in the leadership of the
20 Diocese of South Carolina? Let's take it first prior to
21 departure of Bishop Lawrence but say up to the fall of 2012.

22 A. Sure. I was for more than 20 years on the Examining
23 Chaplains and chairman of that group. I have served on three
24 different occasions on the standing committee and one term as
25 its president. I served on the Commission on Ministry and

1 other things from time to time.

2 Q. Just very briefly what is the role of the examining
3 chaplain?

4 A. The Examining Chaplains certify the academic competence
5 of recently graduated seminarians.

6 Q. Who seek to become --

7 A. Who seek to be ordained.

8 Q. And would the same be true generally of the Commission
9 on the Ministry that you said you were on?

10 A. The Commission on Ministry more or less to discern
11 vocation. One is a front-end process, one is after the
12 academic process.

13 Q. Please let the Court and the rest of us know when you
14 were involved in the standing committee as a member and its
15 president?

16 A. The first time would have been in the late 1980's before
17 I left to go back to the diocese of Virginia. I served again
18 in the early 2000s, 2003, through the election of Bishop
19 Lawrence when my term ended. And then I was re-elected a
20 third term I suppose sometime around 2009, 2010, I'm not
21 exactly clear but in that timeframe.

22 Q. All right. Do you serve in any diocesan role presently
23 in the Episcopal Church in South Carolina?

24 A. Yes. I am, again, on the Commission on Ministry and its
25 chairman in the Episcopal Church in South Carolina.

1 Q. Now, I think you just said that you were serving on the
2 standing committee and its president during the time of
3 Bishop Salmon's retirement, Edward Salmon?

4 A. Correct.

5 Q. And through the installation of Bishop Lawrence?

6 A. Not through the installation. I was only on standing
7 committee through the election process. My term ended before
8 the consent process was completed.

9 Q. The election process. And what I'd like you to do is
10 explain to the Court what with regard to -- what happens when
11 a bishop retires in a diocese. First of all, does the
12 standing committee and you, particularly as president, take
13 on any additional responsibilities?

14 A. Yes. We had a consultant from the Episcopal Church, the
15 Right Reverend Clay Matthews, who came to Charleston and
16 walked through with us as a standing committee the protocols
17 that were usually used and gave us advice and the timeframe.
18 We procured the services of the Reverend Jim Simons as our
19 chaplain, who came and led a retreat for us at Camp St.
20 Christopher. And we appointed, with the help of Bishop
21 Salmon, a nominating committee that would be representative
22 of the various contingencies of the diocese to search for the
23 next bishop and turned the work of the search over to the
24 nominating committee.

25 Q. All right. And was the search committee formed under

1 your tutelage as president of the committee?

2 A. I was president of the committee when the search
3 committee was formed.

4 Q. Right. And was such a search conducted?

5 A. Yes, it was.

6 Q. And were you involved in it?

7 A. I was not involved in the search in any way.

8 Q. During the course of the work of the search committee to
9 find a successor to Bishop Salmon, were you informed of the
10 progress of the committee as it proceeded?

11 A. Just that they were interviewing candidates, but because
12 of the need for confidentiality I myself did not know the
13 names nor identities of those who were being vetted, as it
14 were.

15 Q. Now, when it came time to have an election for bishop,
16 again to succeed Bishop Salmon, were you president of the
17 standing committee?

18 A. I was.

19 Q. Did you have any responsibility in connection with the
20 conduct of the special -- was there a special convention to
21 elect the bishop?

22 A. There was. On two successive Saturdays I presided over
23 what is known as the walkabout, wherein the potential
24 candidates or the candidates tell something about themselves
25 in a prepared statement and then answer questions from the

1 delegates who have been elected for that electing convention.

2 And then subsequent to that I presided over the convention

3 that elected in fact Mark Lawrence as bishop of South

4 Carolina.

5 Q. All right. Now, Father Sanderson, as it turned out, did

6 the search committee report at the appropriate time on the

7 persons who had been nominated to become bishop?

8 A. Yes, they did.

9 Q. To offer for election?

10 A. That is correct.

11 Q. And how many candidates were on the final nomination?

12 A. There were three candidates on the final nomination.

13 Q. And who were they?

14 A. The Reverend Ellis Brust, the Reverend Steve Wood, and

15 then Father Mark Lawrence.

16 Q. The special convention, do you remember when it was?

17 A. It was in September, I suppose, of 2006.

18 Q. Now, let me ask you this: Did the standing committee

19 meet during the course of the process leading up to the

20 special convention from time to time?

21 A. Certainly.

22 Q. And were there any members of the standing committee in

23 your presence, of course, at the meetings who at that period

24 of time, before the election, abdicated that the Diocese of

25 South Carolina depart from the Episcopal Church?

1 A. There were individuals both on and off the standing
2 committee who would voice that as their personal concern, but
3 there was never any standing committee action in that
4 direction.

5 Q. Of course. I was meaning personally in favor of
6 considering a departure from the Episcopal Church.

7 A. Yes, that is the case. That was the case from the time
8 that Bishop Lawrence was elected through his episcopate.

9 Q. That there were such people --

10 A. Sure.

11 Q. -- advocating departure from the Episcopal Church?

12 A. He heard it from them the moment that he landed on the
13 ground, so...

14 Q. All right. And would it be possible, do you recall who
15 some of those people were?

16 A. I recall that some of the priests who were more inclined
17 in that direction would have been perhaps Father Jeff Miller,
18 who became the president of the standing committee two terms
19 later.

20 Q. Okay.

21 A. There was Father Zadig perhaps, the rector of St.
22 Michael's. There were several people who voiced their
23 concern that we leave the Episcopal Church.

24 Q. Now, after -- I mean at the election, what was the
25 result of the election?

1 A. Bishop Lawrence was elected overwhelmingly on the first
2 ballot.

3 Q. And did you inform Bishop Lawrence of his election?

4 A. I was in the sacristy when that call was made. We
5 wanted to call the candidates who were not elected, one of
6 whom was present, one was not. We wanted to make sure they
7 knew that before it started getting out on the blogs and
8 other news. So we called the others first, and then we
9 called Father Lawrence. And Bishop Salmon actually spoke to
10 him directly I think that day.

11 Q. All right. Father Sanderson, explain to the Court,
12 please, what the process is after a candidate who is elected
13 indicates that he or she would accept the position.

14 A. Right.

15 Q. First of all, did Bishop Lawrence agree to accept the
16 election as bishop?

17 A. He did.

18 Q. All right. And what happens after that in the church
19 procedure?

20 A. There are two things that have to take place before a
21 consecration date can be set. There has to be a
22 psychological exam, which I think Father Lawrence actually
23 was subjected to two of them. He did one locally and then it
24 was required that he do another in California, where he was
25 then living. And we were required to receive the consents of

1 all -- a majority of the bishops in the Episcopal Church and
2 a majority of the standing committees. And I prepared the
3 forms to send out to seek those consents. And then my term
4 ended and I didn't oversee the reception of those consents.

5 Q. So you are saying that separate consents must be
6 obtained from a majority of bishops?

7 A. Correct, because it has always been the intention of the
8 Episcopal Church that a bishop is never elected solely for
9 the diocese but for the whole church, therefore consents from
10 the whole church must be given.

11 Q. And in this case would the whole church be the Episcopal
12 Church?

13 A. That is correct.

14 Q. So-called national church?

15 A. Correct.

16 Q. Approximately, if you know, how many dioceses comprise
17 the whole church?

18 A. There are some 112, including missionary districts,
19 something along -- I don't know exactly, but...

20 Q. Excuse me. Mr. Beers was speaking to me. What did you
21 say?

22 A. I think there are over 100 dioceses.

23 Q. Right. And those consents are actually required of
24 bishops with diocesan jurisdiction, are they not?

25 A. That's correct.

1 Q. So other kinds of bishops like --

2 A. Suffragans.

3 Q. -- what came up in the record the other day,

4 S-U-F-F-R-A-G-A-N, I guess.

5 A. Right, suffragan.

6 Q. They sometimes call it suffering, don't they?

7 A. That's right.

8 Q. But, anyway, those kind of bishops, which are below the

9 bishop with jurisdiction, do not vote in this consent

10 process; is that right?

11 A. That is correct.

12 Q. And as far as the standing committees go, would that be

13 the standing committee prescribed for every diocese in the

14 church?

15 A. That is correct. Every diocese in the Episcopal Church

16 is requested to submit vote.

17 Q. And so it must be a consent of a majority of,

18 separately, bishops and standing committees?

19 A. That is correct.

20 Q. And you said you prepared the forms to ask for those

21 consents?

22 A. Correct.

23 Q. Were the sufficient number of consents received?

24 A. No.

25 Q. All right. And just roughly how long did it take to

1 determine after the election that those consents were not
2 sufficient?

3 A. Oh, goodness, I think it must have been up until
4 February, I think.

5 Q. And the election had been when?

6 A. September.

7 Q. September. So a period of about six months?

8 A. Right.

9 Q. So what happened after that? Are you still on the
10 standing committee?

11 A. I was not.

12 Q. You were not. Can you tell us what happened after that,
13 based upon your knowledge and experience as a diocese --

14 A. Just as my memory as a parish priest participating in
15 the process, the standing committee called for a second
16 election at which Father Lawrence was the sole candidate.
17 And he was then re-elected and the consent process was
18 started again.

19 Q. So another special convention was called. Did you
20 attend it?

21 A. I did.

22 Q. And was Bishop Lawrence elected a second time?

23 A. He was.

24 Q. And were all the consents sent out again?

25 A. That is correct. I think Father Haden McCormick would

1 have been in charge of sending them out the second time as
2 the new president of the standing committee.

3 Q. President of the standing committee, rector of St.
4 Philip's?

5 A. Correct.

6 Q. Were sufficient consents obtained on that occasion?

7 A. Yes, they were.

8 Q. And did Bishop Lawrence become the Bishop of South
9 Carolina?

10 A. He did indeed.

11 Q. Do you remember when that occurred?

12 A. That was in March of 2008, I suppose.

13 Q. All right. Now, without going into a lot of detail, did
14 the ordination for bishop occur in South Carolina?

15 A. Yes. The ordination occurred in South Carolina at the
16 Cathedral Church of St. Luke and St. Paul.

17 Q. And so at that time following the ordination did Bishop
18 Lawrence undertake his duties as bishop of the diocese?

19 A. Yes, he did.

20 Q. Now, you mentioned a few minutes ago that there had been
21 people before this process who had advocated a desire to
22 depart from the Episcopal Church.

23 A. That's correct.

24 Q. And you mentioned one of them as Father Jeffrey Miller;
25 is that right?

1 A. That is correct.

2 Q. Did there ever come a time that you received a telephone
3 call from Father Miller respecting -- well, just let me ask
4 you this: Do you recall a telephone call from Bishop Miller
5 about Bishop Lawrence?

6 A. From Father Miller?

7 Q. Father Miller about Bishop Lawrence.

8 A. I do.

9 Q. Would you please give the Court the benefit of that
10 conversation?

11 MR. RUNYAN: Your Honor, before he does that, if the
12 purpose of this is to elicit something on behalf of the
13 diocese, I'd like you to establish a little bit more
14 foundation. If it's not, then we'll deal with that.

15 Q. Did Father Miller call you about matters in the diocese?

16 A. He did.

17 Q. And where were you when he called?

18 A. In the diocesan house parking lot leaving the bishop's
19 office, about to drive away in my car.

20 Q. What was the occasion for your being there then?

21 A. I was at a committee meeting of some sort, I suppose.

22 Q. What did Father Miller call you about?

23 MR. RUNYAN: Objection. This would be hearsay as it
24 presently stands.

25 Q. Was Father Miller president of the standing committee at

1 the time?

2 A. No, he was not.

3 Q. Was he on the standing committee?

4 A. I do not think so at the time.

5 MR. TISDALE: Your Honor, his parish is a party to this
6 litigation, he's been president of the standing committee,
7 Father Miller, and I don't see why he can't testify as to
8 what he told him. He's involved in the affairs of the
9 diocese.

10 THE COURT: The fact that he was the chairman of the
11 standing committee and was not at this point does not make
12 him a managing agent, but you said he is currently --

13 MR. TISDALE: He had been --

14 Q. Had he been president of the standing committee?

15 A. He had not yet. He would subsequently become president
16 of the standing committee, but he was not at the time.

17 THE COURT: So at the time of this communication you're
18 saying he was the rector of one of the plaintiffs?

19 MR. TISDALE: He was.

20 THE COURT: Okay. At the time of this communication.

21 MR. TISDALE: He was.

22 THE COURT: Okay. Well, ask him that.

23 Q. He was rector of St. Helena's Church, was he not?

24 A. That is correct.

25 THE COURT: Okay.

1 Q. What did he say to you in this conversation?

2 MS. GOLDING: Your Honor, I'm going to object.

3 Mr. Tisdale has stated that his communication was with
4 respect to diocesan matters, not with respect to St. Helena's
5 Church.

6 THE COURT: Okay. More foundation. In other words, at
7 this point he's not a managing agent of the diocese, he's a
8 managing agent for a parish.

9 Q. What was the purpose of the call?

10 A. Father Miller called me to express his frustration that
11 Bishop Lawrence was not moving quickly to take the Diocese of
12 South Carolina --

13 MS. GOLDING: Your Honor, I'll make an objection. That
14 clearly is inappropriate and is hearsay.

15 MR. TISDALE: It goes to the core of what this whole
16 thing is about.

17 THE COURT: It doesn't matter. That doesn't make
18 hearsay admissible. It is hearsay.

19 MR. TISDALE: What if I say that we're not offering for
20 the truth of what he said but the fact that he said it,
21 that's an exception to the hearsay rule.

22 MR. HOLMES: Your Honor, if he's speaking on behalf of
23 his parish with regard to its concern about what Bishop
24 Lawrence is not doing --

25 MR. TISDALE: Sounds that way to me.

1 MR. HOLMES: -- that's an admission against the parish.
2 When I say "admission," statements made by a representative
3 or an agent of the parish under Rule 801 I think.

4 MR. TISDALE: Clearly.

5 MR. RUNYAN: He's purporting to quote the bishop or
6 concerns expressed to the bishop.

7 MR. TISDALE: He's not quoting the bishop.

8 MR. HOLMES: Even if he is, the bishop is making a
9 statement on behalf of the diocese, if this gentleman's
10 making it on behalf of the parish, attach the two together.

11 MR. TISDALE: If he answers the question I'm asking,
12 he's not quoting the bishop.

13 MR. RUNYAN: It's still hearsay, Your Honor. He's
14 offering it for the truth of what he said and he's quoting
15 from a person who has no -- at this point no responsibility
16 for the Diocese of South Carolina. And I haven't heard the
17 foundation yet as to St. Helena other than he is the rector.
18 St. Helena's not a member of the Episcopal Church. St.
19 Helena didn't leave, the diocese left, and they left with it.
20 It's all directed to diocesan conduct.

21 MR. HOLMES: Your Honor, if he didn't have an interest
22 in terms of his position as rector of the parish, he wouldn't
23 be speaking. He doesn't have any other interest in this
24 except for the fact that he's a rector of the Episcopal
25 Church. In that parish he's a representative of it,

1 obviously he has some concern about what's going or not going
2 on with regard to the parish. At least that's a reasonable
3 interpretation for purposes of foundation. Maybe it won't --
4 maybe his testimony will be I just called up because I just
5 felt like doing it, the weather was nice for a phone call.
6 But generally in terms of foundation it seems to us that
7 should be sufficient to allow you to decide whether or not
8 whatever he says is admissible or inadmissible. Haven't
9 gotten to what he said yet.

10 MR. TISDALE: You can just put whatever weight on it.
11 Your Honor is the trier of fact in this case.

12 THE COURT: At the time of the conversation this
13 witness' position was what?

14 MR. TISDALE: Rector of St. Helena's Parish.

15 THE COURT: No, no, no. This witness.

16 MR. TISDALE: Oh, this witness.

17 Q. What was your role at the time this call came in from
18 Father Miller?

19 A. I was just a priest in the Diocese of South Carolina.
20 My term on the standing committee had ended. This would have
21 been in 2009.

22 THE COURT: Okay. And we can assume that Reverend
23 Miller is the rector of St. Helena, which is a managing agent
24 in the confines of St. Helena?

25 MR. TISDALE: He's rector of St. Helena's Church, a

1 party to this case, the chief officer of the parish. They
2 would say head of the board of directors.

3 THE COURT: Okay. I will hear it for the purpose of the
4 opinion of the Parish of St. Helena.

5 MR. TISDALE: Thank you.

6 THE COURT: It will be limited to that exception.

7 MR. TISDALE: Thank you.

8 THE COURT: Okay.

9 Q. Father Sanderson, let's go back. Did you get a
10 telephone call from Father Miller?

11 A. I did. May I just proceed and describe the nature of
12 that conversation and what followed?

13 Q. I would like you to tell the Court, please, about the
14 conversation.

15 A. Sure. Jeff was concerned that Bishop Lawrence was not
16 moving quickly to take the Diocese of South Carolina out of
17 the Episcopal Church. The 2009 general convention had just
18 concluded and the sort of impetus to start that conversation
19 anew was very heated. There followed a diocesan clergy day
20 at St. James Church on James Island.

21 Shall I continue?

22 Q. Please.

23 THE COURT: This is not responsive. You asked him about
24 the conversation.

25 Q. Tell us about the phone conversation and then you can

1 give us the background that I think you intended to do that
2 led to the phone call.

3 A. Right, the only point --

4 Q. Can you do that? I think the -- is the clergy day that
5 you mentioned leading up to the phone call?

6 A. The clergy day came after the phone call.

7 Q. Okay. Go ahead with the phone call first.

8 A. All right. The phone call was simply Jeff's concern.

9 He just called to express his displeasure. And it's
10 memorable because I addressed this conversation in a letter
11 with Bishop Lawrence so it stuck in my mind. I just remember
12 it.

13 Q. Do you remember what he said?

14 A. We elected -- don't you remember we elected him to take
15 us out of the Episcopal Church.

16 Q. Bishop Lawrence?

17 A. Correct.

18 Q. All right. Now, you were getting ready to explain what
19 happened at a clergy day at James Island related to this
20 issue.

21 A. The reason that I went directly to the clergy day is
22 that Father Miller's passion was not his alone, it was shared
23 by many at that clergy day. There was a --

24 Q. And that was when?

25 A. That was in late summer of 2009.

1 Q. Okay. Go ahead.

2 A. And I think because the general convention had just
3 happened there was some expectation perhaps that Bishop
4 Lawrence would then --

5 MS. GOLDING: Your Honor, I'm going to -- he's referring
6 to expectations of others, he's referring to Reverend Miller
7 not being alone and all of this. You know, he's making
8 generalizations which are completely contrary to the hearsay
9 rule and I would move to strike those comments.

10 THE COURT: Yes, sir, let me hear from you.

11 MR. TISDALE: Well, we're asking him what happened at a
12 meeting of the clergy of the diocese.

13 THE COURT: Yes, sir. I understand that you may have
14 asked him that, but he is talking about other people's
15 expectations, which are unknown people, that's their state of
16 mind and to others which are statements that could be
17 hearsay.

18 MR. TISDALE: Can he say what was expressed at the
19 meeting?

20 THE COURT: No, not unless they're by managing agents.

21 MR. TISDALE: Okay. Well, in that case we'll move on.

22 Q. Now, Father Sanderson, there's been testimony in this
23 case that the standing committee also serves as a board of
24 directors of a corporation called the Protestant Episcopal
25 Church in the Diocese of South Carolina, I believe.

1 A. Right.

2 Q. In your experience in the Episcopal Church, your
3 knowledge of the constitution and canons of the diocese and
4 the national church, do you know of any situation that
5 authorizes a standing committee that prescribes as its duties
6 to be board of directors of a corporation?

7 MS. GOLDING: Your Honor, I'm going to make an
8 objection. He's seeking an opinion, number one, he's seeking
9 a legal opinion.

10 THE COURT: Sustained.

11 MS. GOLDING: Thank you, Your Honor.

12 MR. TISDALE: I can't ask him whether he knows about it.

13 THE COURT: If you want to qualify him as an expert, you
14 certainly may do that.

15 MR. TISDALE: I will not. He would like me, but I will
16 not.

17 THE COURT: Okay.

18 Q. Do you recall being in a meeting -- and tell me whether
19 it was standing committee or another meeting -- where it was
20 discussed among leadership of the diocese to change bank
21 accounts?

22 A. I do recall that. I think it was the last standing
23 committee meeting I ever attended.

24 Q. All right. Were you president of the standing committee
25 or president (sic)?

1 A. I was not president of the standing committee at the
2 time, I was simply a member-at-large.

3 Q. Member of the standing committee. And when would this
4 have been?

5 A. You know, I think probably sometime in 2011. I'm not
6 certain.

7 Q. 2011?

8 A. Right.

9 Q. So can you relate for the benefit of the Court, please,
10 the nature of the conversation concerning changing bank
11 accounts?

12 A. Yes. There was a concern that if any disciplinary
13 action against Bishop Lawrence would be taken, that the
14 assets of the diocese -- and there perhaps I think had been a
15 precedent for this -- would be frozen. And so there was
16 conversation about finding friendly bankers in South Carolina
17 who would give us assurances that that would not happen.

18 Q. And did in fact the committee decide to change banks?

19 A. As I said, that was my last standing committee meeting.
20 It was discussed at that meeting, but I believe that that
21 subsequently did happen.

22 Q. And do you know which bank the diocese was using prior
23 to this meeting or at the time of the meeting?

24 A. I know that all of their investments were being managed
25 by Wachovia Securities.

1 Q. Do you know whether those accounts were changed to
2 another bank?

3 A. Yes, they were changed.

4 Q. Do you know what bank it was changed to?

5 A. I do not.

6 Q. Was that announced to anyone?

7 A. I'm certain it was, I just don't recall.

8 MR. TISDALE: Your Honor, bear with me just one second.

9 THE COURT: Of course.

10 MR. TISDALE: Father Sanderson, thank you very much for
11 your time here today. And I would ask you to answer any
12 questions any other counsel here have for you.

13 THE WITNESS: Certainly.

14 THE COURT: Cross-examination?

15 MS. GOLDING: Indulge the Court for just a moment, Your
16 Honor.

17 THE COURT: Sure.

18 MR. RUNYAN: Sorry, Father, as we get our ducks in a row
19 here.

20 THE WITNESS: That's all right, Alan.

21 CROSS-EXAMINATION BY MR. RUNYAN:

22 Q. Father, do you recall asking for a quitclaim deed?

23 A. I received a quitclaim deed; yes.

24 Q. Do you recall, who is Patrick Allen?

25 A. Patrick Allen was my assistant at the time.

1 Q. Do you recall if Patrick Allen asked to get a quitclaim
2 deed?

3 A. No, I don't think so.

4 Q. Don't recall. Okay.

5 A. He wouldn't have had any reason to, he was never rector
6 of the parish.

7 Q. Okay. But you don't know if he asked on your -- you
8 don't recall him asking on your behalf?

9 A. I do not.

10 Q. Okay. Thank you. Have you ever heard the phrase
11 "intact and in TEC"?

12 A. I was going to use that phrase a moment ago before I was
13 not allowed to answer the question. But yes, I do recall
14 that.

15 Q. Who coined that phrase?

16 A. Mark Lawrence.

17 Q. What's your understanding of the meaning of that phrase?

18 A. I think, if I may address it within the context of the
19 very clergy day that I just was referencing, it was Bishop
20 Lawrence who said that that's what he wished to do, to remain
21 intact as a diocese and in TEC.

22 Q. This conversation about freezing accounts, do you recall
23 being provided a copy of a letter that Mr. Beers wrote to an
24 institution in Illinois directly without involving the Court
25 and that being discussed at the standing committee?

1 A. Mr. Runyan, I believe I remember that actually.

2 Q. Okay.

3 THE COURT: I'm sorry?

4 THE WITNESS: The answer is yes.

5 THE COURT: Okay.

6 Q. Just one other thing, Mr. Sanderson -- Father Sanderson,
7 excuse me.

8 (Plaintiff Diocese Exhibit 63 marked for
9 identification.)

10 Q. Father Sanderson --

11 MR. RUNYAN: May I approach the witness, Your Honor?

12 THE COURT: You may.

13 Q. -- I'm going to show you what's been marked as Diocese
14 63 for identification. Did you author that letter?

15 A. Let me read it first. It's got my name on it. I
16 suppose I did.

17 Yes, I did.

18 Q. With respect to the second full paragraph, were there
19 some questions raised about Father, then Father, Lawrence's
20 willingness to stay in the Episcopal Church?

21 A. Yes, there were.

22 Q. And he is the one that coined the phrase "intact and in
23 TEC"?

24 A. He did.

25 Q. Would you read the response that you gave on February 9,

1 2007, to that question?

2 A. Yes, I will. Are you talking about the -- which of the
3 responses do you mean, Mr. Runyan?

4 Q. The one that has to do with whether he was willing to
5 try to remain in the Episcopal Church.

6 A. Is that the one that begins "The Diocese of South
7 Carolina has faithfully" --

8 Q. Yes, that is the one.

9 A. "The Diocese of South Carolina has operated faithfully
10 within the canons of the Episcopal Church TEC since 1795 and
11 continues to do so. The Reverend Mark Lawrence signed the
12 oath of conformity at his ordination as priest and has
13 faithfully lived within the canons of the church for 26
14 years. When asked directly during our election process if he
15 would be able to sign the oath of conformity as a bishop, he
16 responded yes. Present behavior is the best indicator we
17 have of the future. Statistics released at the last general
18 convention reveal that the Diocese of South Carolina was
19 first in all categories of percentages of growth: Average
20 Sunday attendance, financial growth, and baptized membership.
21 Recent official church statistics show that we are the only
22 diocese that has grown faster than its surrounding
23 population. The tree is known by its fruit."

24 Q. Father Sanderson, how many years was it after this
25 letter that the diocese actually disaffiliated with the

1 Episcopal Church?

2 A. Six or so years more.

3 Q. And the comments by Father Miller that you refer to,
4 those happened in 2009?

5 A. That is correct.

6 MR. RUNYAN: Thank you, sir.

7 CROSS-EXAMINATION BY MS. GOLDING:

8 Q. How are you doing?

9 A. I'm fine. Thank you.

10 Q. Thank you. You've been present today at the trial?

11 A. I have, all day.

12 Q. Very good.

13 A. It's been a trial.

14 Q. Now, we've heard some testimony in this courtroom on
15 previous days about the Book of Common Prayer --

16 A. Yes.

17 Q. -- which I'm confident you are familiar with; is that
18 correct?

19 A. I am.

20 Q. Okay. And isn't it a fact that as the rector of your
21 church, your parish, you have not used the Book of Common
22 Prayer since the late 1990s?

23 A. My predecessor began to use a book that is called The
24 Anglican Service Book, but it is authorized by a rubric of
25 the 1979 Book of Common Prayer, which continues to be the

1 theological standard of our parish.

2 Q. So is that correct that you and your parish have not
3 used the Book of Common Prayer since at least the 1990s?

4 A. We use --

5 Q. Is that a yes or a no?

6 A. We do not use the 1979 Book of Common Prayer as it is
7 printed between the red cover pages, no.

8 Q. Okay. Thank you. With respect to your personal
9 association with the plaintiff diocese, you've testified on
10 direct examination that you have served on the standing
11 committee a number of times; is that correct?

12 A. Correct.

13 Q. And isn't it correct that the plaintiff diocese has a
14 constitution and canons that are the governing documents of
15 this entity?

16 A. That is correct.

17 Q. Okay. And the first constitution of the plaintiff
18 diocese was enacted, I believe it was, 1786; is that correct?

19 A. I believe that is correct.

20 Q. Okay. And over the years, since 1786 to the present,
21 there have been a number of amendments and changes to the
22 plaintiff diocese constitution; is that correct?

23 A. That is also correct.

24 Q. And in all of these changes over the years that have
25 occurred you have no knowledge that the diocese ever went to

1 the plaintiff national church and said plaintiff national
2 church, can I get this amended in our constitution?

3 A. I'm not sure I follow the question.

4 Q. I apologize. It's probably poorly stated. To your
5 knowledge has the plaintiff diocese in undertaking any
6 amendments to its constitution and canons ever submitted
7 those proposed amendments before they were ever presented in
8 an annual convention and submitted it to the national church
9 and said, can we do this?

10 A. There was always the understanding that parish bylaws
11 and diocesan --

12 Q. I'm sorry.

13 A. -- diocesan --

14 MS. GOLDING: I'm sorry. Can you ask the witness --

15 MR. TISDALE: Please let him answer the question.

16 THE COURT: I will. But he must be responsive. I'm
17 going to ask you to listen carefully to the question. If you
18 don't understand the question, that's fine.

19 THE WITNESS: I understood the question perfectly the
20 second time.

21 THE COURT: Okay.

22 MS. GOLDING: Your Honor, can you instruct the witness
23 to answer the question and then he may explain?

24 THE COURT: And that is correct. If it is a yes or no
25 question and you can answer it yes or no, I would ask that

1 you do that and then you certainly, absolutely may explain.

2 THE WITNESS: Would you repeat the question?

3 Q. Certainly, Father. With respect to any proposed
4 amendments to the plaintiff diocese constitution or canons,
5 to your knowledge, the plaintiff diocese has never submitted
6 those proposed amendments to the defendant national church
7 prior to submittal of those amendments to the plaintiff
8 diocese annual or special convention for approval?

9 A. That is correct.

10 Q. Okay.

11 A. May I continue?

12 Q. You may answer. You may explain.

13 A. The reason that that is correct is that the canons and
14 constitutions of any local diocese cannot contradict the
15 national canons, so there is no need to have them approved
16 because it's implicit.

17 Q. Would you agree that the canons, the plaintiff diocese
18 canons, are sometimes perceived as rules and regulations of
19 the plaintiff diocese?

20 A. Sure.

21 Q. You have attended some of the plaintiff diocese
22 conventions, have you not?

23 A. All of them until I was no longer a part of that
24 diocese.

25 Q. And I understand that in attending those plaintiff

1 diocese conventions you had a vote as a clergyman; is that
2 correct?

3 A. That is correct.

4 Q. And the individuals that are eligible to vote are set
5 forth in the constitution of the plaintiff diocese; is that
6 correct?

7 A. Correct.

8 Q. Okay. And only members at the convention are entitled
9 to vote; is that correct?

10 A. That is correct.

11 Q. Now, with the South Carolina corporation, the plaintiff
12 diocese, you understand that's a South Carolina nonprofit
13 corporation, do you not?

14 A. Yes, I do.

15 Q. Okay.

16 A. I think that's in my deposition as well.

17 Q. Okay. And you also understand that this South Carolina
18 corporation existed and has been existing since sometime in
19 the 1770s but not as a corporation?

20 A. Correct.

21 Q. It's been in existence for many, many years; is that
22 correct?

23 A. Yes.

24 Q. And at some point in time in 1973 the plaintiff diocese
25 decided to incorporate under South Carolina law?

1 A. I believe that's correct.

2 Q. Okay. Now, there's been discussion in this trial about
3 the Church Pension Group. Now, the Church Pension Group is
4 an independent entity; is that correct?

5 A. It is managed independently, yes, it is, that is
6 correct.

7 Q. And it's an independent entity from the national church,
8 the defendant national church?

9 A. It is governed separately, but it is not separate from
10 the Episcopal Church, it is a part of the Episcopal Church.

11 Q. And this entity, this Church Pension Group, has a CEO
12 and a president; is that right?

13 A. That is correct.

14 Q. And that CEO and president is not the presiding bishop
15 for the defendant national church, is it?

16 A. That is correct.

17 Q. And this Church Pension Group provides benefits for
18 clergy and lay employees; is that correct?

19 A. That is correct.

20 Q. And that's similar to such like a corporation like
21 Boeing, it provides employment benefits to its employees; is
22 that correct?

23 A. That is correct.

24 Q. And if you were an employee at Boeing, when you left,
25 you wouldn't expect to continue to receive benefits that are

1 not vested, would you?

2 A. No.

3 Q. Okay.

4 A. But there are those who have left who continue to
5 receive benefits.

6 Q. And if they're vested, they're entitled to those; is
7 that correct?

8 A. That is correct.

9 Q. Now, with respect to church insurance, that also is part
10 of a separate, distinct entity from the defendant national
11 church, is it not?

12 A. That is correct.

13 Q. Okay. And the church insurance, if a diocese -- no,
14 let's not say diocese. If a parish doesn't pay premiums,
15 does that parish continue to have church insurance?

16 A. No, it would lapse like any other policy.

17 MS. GOLDING: Thank you. No further questions. Thank
18 you, Your Honor.

19 THE COURT: Yes. Any other plaintiffs,
20 cross-examination.

21 Very well. Redirect.

22 MS. GOLDING: Your Honor, I would object to the
23 defendant national church having any redirect in light of the
24 fact that this defendant national church did not have any
25 direct, so I don't believe it's proper that there be

1 redirect.

2 MS. KOSTEL: Everybody's been standing up and talking on
3 both sides of the aisle through the whole case, Your Honor.

4 MR. HOLMES: That's not a legitimate objection.

5 THE COURT: This would be my position about that: While
6 there may have been nothing raised on direct, there may have
7 been something raised on cross that would concern the
8 national church and I would allow the national church
9 redirect.

10 MS. KOSTEL: Thank you.

11 THE COURT: Yes.

12 MS. KOSTEL: Just a couple questions.

13 THE COURT: Yes. But you understand with regards only
14 to what was brought up on cross.

15 MS. KOSTEL: Yes, of course.

16 REDIRECT EXAMINATION BY MS. KOSTEL:

17 Q. Just to clarify a couple of things, first of all, the
18 Church Pension Group, Father Sanderson, the trustees are
19 elected by the general convention, are they not?

20 A. That is correct.

21 Q. And that's the general convention of the national
22 church?

23 A. That is correct.

24 Q. Okay. And the Church Insurance Corporation is actually
25 part of the Church Pension Group; isn't that correct?

1 A. That is correct, under the umbrella.

2 Q. And I believe you testified that in an explanation to a
3 question Ms. Golding asked you that the diocese's
4 constitution and canons are required to be consistent with --

5 MS. GOLDING: Your Honor, I'm going to object. She's
6 leading the witness. I think it's completely improper in her
7 leading the witness.

8 MS. KOSTEL: Okay. Let me try something else.

9 Q. Ms. Golding asked you if governing documents included
10 the constitution and canons of the Diocese.

11 A. Right.

12 MS. GOLDING: Your Honor, I did not ask that question.
13 I asked the question if the diocese -- if the constitution
14 and canons of the diocese are the diocese-governing
15 documents, and he said yes.

16 Q. Okay. Let's go with that. Are there other governing
17 documents? Are there other documents that govern the
18 diocese?

19 A. Sure. The national church canons also come to bear on
20 each diocese.

21 Q. And the constitution?

22 A. That's correct.

23 MS. KOSTEL: Thank you. Nothing else.

24 THE COURT: Okay. Mr. Tisdale, nothing further?

25 MR. TISDALE: Thank you very much, Father Sanderson. I

1 have no further questions.

2 THE COURT: Thank you, sir. And you may come down.

3 And it is 5:00. Now, we will reconvene in the morning
4 at 9:30. And those of you that need to or wish to depart are
5 certainly able to do that. I needed to talk to counsel,
6 though, about scheduling. And we can go off the record to do
7 that unless anyone is concerned about that.

8 (Discussion off the record.)

9 (Trial of the case adjourned for the day.)

10 - - -

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the First Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 15th of July, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 August 14, 2014

16

17 Ruth L. Mott

18 Official Court Reporter

19

20

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23

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25

VOLUME VII

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

CASE NO. 2013-CP-18-00013

THE PROTESTANT EPISCOPAL)
 CHURCH IN THE DIOCESE OF)
 SOUTH CAROLINA, THE TRUSTEES)
 OF THE PROTESTANT EPISCOPAL)
 CHURCH IN SOUTH CAROLINA,)
 A SOUTH CAROLINA CORPORATE)
 BODY, ET AL.,)

PLAINTIFFS,)

vs.)

TRANSCRIPT OF RECORD

THE EPISCOPAL CHURCH, (A/K/A)
 THE PROTESTANT EPISCOPAL)
 CHURCH IN THE UNITED STATES)
 OF AMERICA); THE EPISCOPAL)
 CHURCH IN SOUTH CAROLINA,)

DEFENDANTS.)

JULY 16, 2014
 ST. GEORGE, SC

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

Ruth L. Mott, RPR, CRR
 Official Court Reporter

1 I N D E X

2

3 WITNESS DIRECT CROSS REDIRECT RECROSS

4 MARTIN C. MCWILLIAMS, JR.

5 MR. SMITH 1338

6 MS. GOLDING 1428

7 MR. RUNYAN 1452

8 MR. ORR 1477

9 MR. SMITH 1481

10 CERTIFICATE OF REPORTER 1486

11

12

13

14 E X H I B I T S

15

16 PLAINTIFF DIOCESE EXHIBITS

17 NO. DESCRIPTION ID EVD

18 DSC-64 DECLARATION AND PETITION FOR 1461 1477

19 INCORPORATION, 11/5/1973

20 DSC-65 IRS APPLICATION FOR 501(C) (3) - 1472 1476

21 6/22/1977

22 DSC-66 3/23/1977 LETTER FROM T. 1475 1476

23 TISDALE TO A. BLACKMON

24 THE COURT'S EXHIBITS

25 NO. DESCRIPTION ID EVD

26 C-4 M. MCWILLIAMS REPORT 1404

27 C-5 M. MCWILLIAMS DEPOSITION 1406

28

29 - - -

30

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35

1 THE COURT: All right. Are you ready to proceed?

2 MR. TISDALE: Your Honor, yes, we are. Before calling
3 the first witness today, I'd like to read into the record a
4 response to request for admission of the plaintiffs.

5 THE COURT: Okay.

6 MR. TISDALE: And this is plaintiff, the Protestant
7 Episcopal Church in the Diocese of South Carolina and the
8 Trustees of the Protestant Episcopal Church in South
9 Carolina. The South Carolina corporate body hereby responds
10 to the request for admissions of defendant, the Episcopal
11 Church in South Carolina. These responses are -- I don't
12 need to read that part. It's dated August 15th, 2013. And
13 I'm reading from the document, Request No. 13.

14 Quote, At the time that his election was submitted by
15 the Diocese of South Carolina for the second time to other
16 dioceses, Mark J. Lawrence in a letter dated March 8, 2007
17 made the following statements: Quote, I have been told that
18 some diocesan standing committees have graciously offered to
19 reconsider their denial of consent to my election as XIV
20 Bishop of South Carolina if they only have assurance of my
21 intention to remain in the Episcopal Church. Although I
22 previously provided assurance of my intention, this has not
23 been sufficient for some standing committees which are
24 earnestly seeking to make a Godly discernment. As I stated
25 at the walk-about in Charleston on September 9, 2006, and

1 again in a statement written on 6 November, 2006, I will make
2 the vows of conformity as written in the book of common
3 prayer and the constitution and canons, Article 3.11.8, and I
4 will heartily make the vows conforming, quote, to the
5 doctrine, discipline and worship, end quote, of the Episcopal
6 Church, as well as the trustworthiness of the holy
7 scriptures. So to put it as clearly as I can, my intention
8 is to remain in the Episcopal Church, period, end quote.

9 Response: Denied, period. It is admitted that Mark J.
10 Lawrence wrote a letter dated March 7, 2007, to the standing
11 committees of the dioceses, plural, stating as follows:
12 Quote, I have been told that some diocesan standing
13 committees have graciously offered to reconsider their denial
14 of consent to my election as XIV Bishop of South Carolina if
15 they only have assurance of my intention to remain in the
16 Episcopal Church, period. Although I previously provided
17 assurance of my intention, this has not been sufficient for
18 some standing committees which are earnestly seeking to make
19 a Godly discernment. Therefore, take into heart the
20 apostolic admonition of 1 Timothy 3:2, now a bishop must be
21 above reproach, temperate, free from rashness, sensible,
22 dignified, hospitable, and apt teacher. I am reminded to
23 make every attempt to reason with those who have denied
24 consent or who have not yet voted. As I stated at the
25 walk-about in Charleston on September 9, 2006, and again in a

1 statement written on 6 November, 2006, I will make the vows
2 of conformity as written in the BCP and the constitution and
3 canons 3.11.8. I will heartily make the vows conforming to
4 the doctrine, discipline and worship of the Episcopal Church,
5 as well as the trustworthiness of the holy scriptures. So to
6 put it as clearly as I can, my intention is to remain in the
7 Episcopal Church, period.

8 End of response. Thank you.

9 MR. RUNYAN: And we would object on the grounds of
10 relevance.

11 THE COURT: Okay.

12 MR. TISDALE: Are you ready for us to call the first
13 witness, Your Honor?

14 THE COURT: Very well. With regards to the objection on
15 relevance, Mr. Runyan, at this juncture, I would
16 conditionally admit it, admit that request to admit, and let
17 me be clear why. There may be issues related to the
18 signature on the quitclaim deed that may or may not become
19 relevant. So at this juncture, I am concerned about
20 excluding it.

21 MR. RUNYAN: Thank you, Your Honor.

22 THE COURT: Yes.

23 MR. TISDALE: Your Honor, we would call to the stand
24 Martin McWilliams.

25 CLERK OF COURT: Raise your right hand. State your full

1 name for the record.

2 THE WITNESS: Martin C. McWilliams, Jr.

3 THE COURT: Counsel, I have done this when Professor
4 McWilliams has testified in my courtroom just in terms of a
5 disclosure. I am the proud mother of a recent graduate of
6 the University of South Carolina School of Law. And her -- I
7 guess four years ago now -- how time flies. Four years ago,
8 Eve Goodstein had the good fortune to spend the summer --
9 isn't it interesting how your children have such a good time?
10 It's like, I'm working and she's -- okay. Anyway, Professor
11 McWilliams takes a group of students, I think, every year --

12 THE WITNESS: Yes, ma'am.

13 THE COURT: -- to London to -- oh, I'm fixing to mess
14 this up, the court of -- help me.

15 THE WITNESS: It's The Honourable Society of Gray's Inn,
16 which is one of the four London Inns of Courts.

17 THE COURT: Eve Goodstein went, learned how to get
18 across a bench with a black skirt on -- I was so proud -- and
19 not fall in her food. I was so proud of her. That was
20 really quite the accomplishment. She had a blast. But I
21 always feel compelled to disclose that she had that very
22 wonderful experience with Professor McWilliams, and it has
23 become my policy just to disclose that to counsel. I don't
24 think that disqualifies his testimony or my presiding over
25 these matters. But I do feel compelled to share that with

1 counsel.

2 All right. Anything from the plaintiffs?

3 MS. GOLDING: Nothing from the plaintiffs.

4 MR. RUNYAN: Nothing, Your Honor.

5 THE COURT: From the defense?

6 MR. SMITH: No, Your Honor. Thank you.

7 THE COURT: All right.

8 MARTIN C. MCWILLIAMS, JR.,

9 being first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. SMITH:

11 Q. Thank you for being here this morning, Professor
12 McWilliams. We'll start with some easy questions about your
13 background. I'll ask you first, how old are you and tell me
14 about --

15 THE COURT: That's an easy one?

16 THE WITNESS: It changes all the time. Well, if you
17 want to start with that, I'm 66. I'll be 67 in November.

18 Q. And where did you grow up?

19 A. I'm a service brat, so I grew up all over the world, all
20 over the place.

21 Q. Take me through your educational years.

22 A. Well, I went to college at the University of Virginia.
23 Went in the Army for three years after that. I was an
24 infantry officer from 1969 to '72. And when I got out, I
25 went to law school at Ole Miss, which at that time was my

1 home state, on the GI bill. I put myself through on the GI
2 bill, and then went to Harvard Law School after that for a
3 master in laws.

4 Q. Can you give me the dates that you graduated from each
5 of those schools?

6 A. I graduated from the University of Virginia in 1969. I
7 graduated from Ole Miss in 1975. And I graduated from
8 Harvard in 1976.

9 Q. Very good. Were you on the Law Review at the University
10 of Mississippi?

11 A. Yes, I was.

12 Q. Did you have any role on it?

13 A. I was student works editor on the Law Review. And for a
14 brief time, I was sort of associate editor-in-chief.

15 Q. So that leads into your professional experience. What
16 did you do after receiving your LLM from Harvard?

17 A. Well, after Harvard, I went to work as a law clerk to
18 Judge Robert Ainsworth, the late Judge Robert Ainsworth, in
19 the Fifth Circuit of the United States Court of Appeals.

20 After that -- I had already decided I wanted to be a law
21 professor. And so one of the boxes you have to check to get
22 that job is to work for a prominent law firm. So I went to
23 work for Davis, Polk and Wardwell in New York, one of the big
24 Wall Street law firms, and worked for them for three years in
25 their New York office, being trained as a corporate and

1 securities lawyer, and then went to their London office for
2 three years. And when the three years in London were over, I
3 resigned from Davis, Polk and came and took up my teaching
4 appointment at the law school in Columbia. That was in 1983.
5 And I've been on the faculty at the law school since 1983.

6 Q. Can you tell me about your time at the law school? What
7 kind of classes have you taught?

8 A. I was brought to the law school to teach the corporate
9 and securities courses. So since 1983, however many years
10 that is, over 30 years, I've taught the business courses,
11 especially the more sophisticated ones, like mergers and
12 acquisitions. I have taught contracts for many years. I
13 have taught nonprofit corporations and numerous other
14 courses, agency and partnership, Uniform Commercial Code, and
15 various other ones. But my focus has certainly been on
16 teaching the business courses.

17 Of course, I also teach transnational dispute resolution
18 in London for the month of May every year. And in
19 anticipation that that might come up today, I wore my Gray's
20 Inn tie, for whatever that's worth, Counselor.

21 Q. Can you tell me about publications over the years?

22 A. I've published a number of *Law Review* articles over the
23 years. They are -- they're set out in my resume, of course.
24 Particularly relevant to my testimony today is I published
25 two pieces in the *South Carolina Lawyer* in 1995 and 1996,

1 respectively, one having to do with the demise of the
2 doctrine in South Carolina of charitable immunity. And, of
3 course, it was that demise that stimulated many nonprofits to
4 organize as corporations.

5 And then I've also published a piece in the *South*
6 *Carolina Lawyer* on how to set up a nonprofit corporation.

7 So those are the two -- those are two relevant
8 publications.

9 Q. Are those two publications, among many?

10 A. Yes.

11 Q. Can you tell me about professional organizations that
12 you've been a part of?

13 A. Well, I'm an elected member of the American Law
14 Institute. I'm a member of the South Carolina Bar, the
15 American Bar Association, the New York Bar. And, of course,
16 I'm an elected fellow of The Honourable Society of Gray's
17 Inn, one of the four London Inns of Court that manages the
18 English justice system. I'm the only non-Brit who has ever
19 been elected a fellow of Gray's Inn.

20 Q. How about any involvement in legislation and law reform?

21 A. One of the great things about being a faculty member at
22 the University of South Carolina is we're right down the hill
23 from the general assembly. And it became clear to me almost
24 right away after I began teaching that even as a little, you
25 know, junior faculty member, I could have a direct effect on

1 the polity of the State of South Carolina.

2 So I got very interested and very active in law reform.
3 The first bit of law reform I worked on was I was one of the
4 reporters for the South Carolina Business Corporation Act,
5 which was enacted in 1989 and became effective on
6 January 1st, 1990.

7 Shortly after that, I began sort of a campaign to
8 revive, to modernize, the Uniform Commercial Code in South
9 Carolina. Our version of the Uniform Commercial Code had
10 gotten way, way out of date, and so I and committees under my
11 aegis revised -- well, first of all, we got Article 2A
12 enacted in South Carolina. And then we modernized Articles
13 3, 4, 4A, 5, 8 and 9, virtually the entire South Carolina
14 Uniform Commercial Code. That was a project that lasted from
15 the late '90s into the beginning of this century.

16 So if you look at those sections of the South Carolina
17 Uniform Commercial Code, you'll see South Carolina reporters'
18 comments. And those were all written either by me or by
19 members of committees that I chaired.

20 I realized in the early part of this century that we
21 needed to revise the Securities Act, the Uniform Securities
22 Act in South Carolina. And so I formed a committee that set
23 up the most recent version of the Uniform Securities Act for
24 passage by the general assembly.

25 And then relevant to today's activities, in the early

1 1990s, it became clear that in South Carolina we needed to
2 revise our Nonprofit Corporation Act. And sort of following
3 on from the new Business Corporation Act, I was engaged to
4 modify, bring up-to-date our Nonprofit Corporation Act. And
5 so a committee that I organized prepared for passage by the
6 general assembly the revised Model Business Corporation Act.
7 That's a joint project of the ALI and the American Bar
8 Association. I was one of the -- I hired myself, basically,
9 as one of the reporters for that project. And we revised the
10 entire statute. The old statute was repealed. The new
11 statute was enacted, put in its place. And if you ever have
12 a chance to look at that statute, you'll see there are South
13 Carolina reporters' comments in there; and I am the coauthor
14 of those South Carolina reporters' comments.

15 Q. Thank you. I have your CV here, which I would move to
16 enter into evidence.

17 MR. RUNYAN: Objection, cumulative.

18 THE COURT: Yes, it is.

19 MR. SMITH: Cumulative? I mean, there's information on
20 here that's more -- it is somewhat cumulative, but there's a
21 lot more detail in here that he didn't get a chance to speak
22 to.

23 THE COURT: Well, you can ask him, if you wish.

24 MR. SMITH: Thank you, Your Honor. I would move to
25 qualify Professor McWilliams as an expert in corporate and

1 nonprofit governance, fiduciary duties, corporate contracts
2 and the legislative history of the 1994 Nonprofit Corporation
3 Act.

4 MS. GOLDING: Could you repeat that, please?

5 MR. SMITH: I'll try. Corporate and nonprofit
6 governance, fiduciary duties, corporate contracts and the
7 legislative history of the 1994 Nonprofit Corporation Act.

8 THE COURT: Is there any objection? Any voir dire?

9 MR. RUNYAN: It's to the last comment, an expert of the
10 legislative history of that. That's the only problem I've
11 got. I don't have a problem with the rest of it.

12 MS. GOLDING: I do have concern with respect to an
13 expert as to fiduciary duties. I don't think there's any
14 foundation established to that.

15 THE COURT: And we have another one. Yes, sir?

16 MR. ORR: Your Honor, Larry Orr. As I understand it,
17 it's a question of law as to whether there is a fiduciary
18 duty. Whether the facts establish a breach of the fiduciary
19 duty is a question of fact. So whether there is a fiduciary
20 duty would be a matter of law for Your Honor to decide, to
21 discern, I believe, and whether the facts establish a breach
22 of that would be up to you, so I think it would be
23 inappropriate for Professor McWilliams to testify as to what
24 the fiduciary duties are.

25 MR. HOLMES: Your Honor, might we start with qualifying

1 him as an expert and then move to the issue of whether or not
2 he can offer particular opinions?

3 MR. RUNYAN: Well, the problem is he's been offered as
4 an expert on that area.

5 MR. HOLMES: He has yet to offer an opinion on it. If
6 the question is, is he an expert in the matter of fiduciary
7 obligations and so forth, the answer is plainly yes. The
8 question as to whether or not he can offer a particular
9 opinion with regard to a fiduciary relationship would be one
10 for the Court when that arises. As you know, in the case
11 that's been bandied about a bunch already, Professor Freeman
12 offered opinions on fiduciary obligations in a particular
13 context, and the Court of Appeals of South Carolina thought
14 that was fine. In State versus Morris, which is a sad case,
15 the expert witness in that case offered an expert opinion.
16 He was a law professor and wasn't even licensed in South
17 Carolina. So we think that the first step would be to
18 qualify him as an expert.

19 I also think it wouldn't hurt to ask him if he's an
20 expert in these areas. That might be of some probative
21 value.

22 THE COURT: Well, the objection of Ms. Golding goes to
23 whether or not there's been sufficient foundation with
24 regards to fiduciary duties. And I'm going to ask, just for
25 clarification with regards to the record, Mr. Smith go into

1 that.

2 MR. SMITH: Your Honor, can I have Professor McWilliams
3 speak to that issue?

4 THE COURT: Well, that's sort of what I'm asking. Ask
5 him that.

6 Q. Professor McWilliams --

7 THE WITNESS: Thank you, Your Honor. It might be
8 helpful in this respect if we add something to my sort of
9 self-disclosure that I have on a number of occasions been
10 engaged to teach continuing legal education courses on
11 nonprofit directors' ethics. I've taught at least three on
12 nonprofit -- nonprofit directors' ethics.

13 I also in my law school classes when I teach both a
14 business corporation course and the nonprofit corporation
15 course, of necessity, spend a considerable amount of time
16 teaching the students about fiduciary duties of directors,
17 officers and managers, generally, of nonprofit corporations.
18 It's a topic I have -- Your Honor, it's a topic I've spent a
19 lot of time thinking about, teaching about, in those
20 contexts.

21 THE COURT: Very well. Now --

22 THE WITNESS: May I add one more thing, Your Honor?

23 THE COURT: Sure.

24 THE WITNESS: This is one of the first things I was
25 going to say when I began to testify, and let me just say

1 right now, you are the person who decides whether there
2 exists a fiduciary duty. What I would proffer an opinion
3 about is whether under the particular circumstances and facts
4 of this particular case the standard of fiduciary duty was
5 met or not.

6 THE COURT: Okay.

7 MS. GOLDING: That's clearly going to the law, Your
8 Honor, what the witness just testified about. And, clearly,
9 that is not --

10 THE COURT: We'll get there.

11 MS. GOLDING: Okay.

12 THE COURT: Now, talk to me about legislative history.
13 I'm concerned about that, as well. Certainly, traditionally
14 in South Carolina we've not had legislative history. And,
15 Mr. Smith, you would offer this expert as one to speak to the
16 legislative history. Talk to me about that.

17 MR. SMITH: I believe Professor McWilliams has actual
18 personal knowledge of the legislative history. He was the
19 reporter of the '94 Act. He really is the living embodiment
20 of the legislative history on this issue.

21 THE COURT: Okay. We don't have legislative history in
22 South Carolina. We just don't have it. We don't do it. We
23 don't have it. We have reporters' comments, and those are
24 part of the statute. But traditionally, some states have it,
25 and it's published. We're not one of those states.

1 MR. HOLMES: Your Honor, I would call to Your Honor's
2 attention, if I might --

3 THE COURT: Sure.

4 MR. HOLMES: -- you'll recall the Wallace -- the
5 historian, Professor Wallace -- I believe he was a professor.
6 In his coverage of the South Carolina Constitutional
7 Convention of -- there, I can't remember, but his coverage of
8 that is often cited in terms of -- well, it used to be often
9 cited. I've heard it cited at the Court of Appeals of the
10 Fourth Circuit -- as to what occurred and what the intentions
11 of the authors of those amendments were. And this is a
12 witness to the legislative undertaking, who is a skilled
13 professor, who understands the dynamics of it. And I think
14 certainly, whether you want to call it legislative history or
15 whether you want to call it some witnessing of the intentions
16 that went into the act, it seems to me it's no less
17 admissible than Professor Wallace's.

18 THE COURT: Let me be clear. We don't have legislative
19 history in South Carolina, so -- we don't. And that is a
20 term of art, legislative history. We don't have that in
21 South Carolina. And Professor McWilliams has discussed the
22 fact that he was the official reporter and made those
23 comments, and certainly those are included.

24 Will I allow him, then, to testify regarding
25 objectionable -- potentially objectionable hearsay? I don't

1 know. We're going to have to see when we get there. But we
2 don't have legislative history. And that is a term of art.
3 We have reporters' comments. He's got those. But I will not
4 qualify him as an expert with regards to legislative history
5 because we don't have that in South Carolina. And I would
6 quote Goodstein, Arnold S. as my citation for that.

7 MR. SMITH: Your Honor, if we focus our testimony on his
8 personal knowledge of what he did in relation to the '94 Act
9 and stay away from the words "legislative history" and
10 those -- the idea of legislative history, as Your Honor has
11 said, would that be acceptable?

12 THE COURT: I don't know. I'm going to have to see. So
13 he clearly is an expert in -- you had a litany. Let's go
14 through the field so that I'm absolutely clear.

15 MR. SMITH: Corporate and nonprofit corporate governance
16 is the first category.

17 THE COURT: Yes, he's an expert in that field.

18 MR. SMITH: Fiduciary duties.

19 THE COURT: He's an expert in that field.

20 MR. SMITH: Corporate contracts.

21 THE COURT: Sure.

22 MR. SMITH: And then we won't go into the last one
23 again.

24 THE COURT: Legislative history, right. Great.

25 MR. SMITH: That's it.

1 THE COURT: Very well. So have you got your expertise?

2 Are you ready?

3 THE WITNESS: Yes, ma'am.

4 MR. SMITH: Thank you, Your Honor.

5 THE COURT: Yes.

6 Q. Professor McWilliams, we'll start with, can you explain
7 to the Court your understanding of what we've asked you to do
8 in this case and what we've asked you to opine on?

9 A. Well, yes. I've been asked to give opinions today on,
10 first of all, the fiduciary obligations of the management, if
11 you will, including the bishop, the management of the
12 nonprofit corporation, which is the plaintiff diocese, on the
13 understanding that the existence of fiduciary duty is for the
14 Court to decide. But I am -- I'm confident -- I'm confident
15 that the Court will find that there is a fiduciary duty owed
16 in this case.

17 MS. GOLDING: Your Honor, I'm going to make an objection
18 as to his testimony as to confidence as to what the Court
19 will find. I think that's inappropriate. He can only
20 testify as to, you know, the facts that he has been provided
21 and then his opinion, based upon those facts, based upon the
22 Court's qualification.

23 THE COURT: Sustained. You may proceed.

24 THE WITNESS: And because I understand that it's the
25 Court that will determine whether there is a fiduciary duty

1 or not, I've been asked to give an opinion whether the
2 standards that must be met under those fiduciary obligations
3 in these facts and circumstances were met or not.

4 THE COURT: Yes.

5 THE WITNESS: And it will be my opinion that they were
6 not met, Your Honor. So that's the first opinion that I
7 expect to give.

8 The second opinion I've been asked to give is whether
9 the -- as a matter of corporate governance -- and again, I'm
10 not going to testify as to what the law is. I mean,
11 here's -- you know, let the record show I have a copy of the
12 code right here, and the code is pretty clear as to what the
13 law is, and that's for the Judge to decide. But I'm going to
14 expect to give an opinion -- I've been asked to and expect to
15 give an opinion that the statutory requirements of the code
16 in these particular facts and circumstances were not met by
17 the bishop and by the other officers of the corporation.

18 And, Your Honor, when I refer to the corporation, I mean
19 the nonprofit corporation that was chartered in 1973, which
20 is the way in which the plaintiff diocese is organized today.

21 THE COURT: I understand.

22 THE WITNESS: And so I will give a second opinion that
23 the bishop and the other officers, management of the
24 corporation, did not satisfy the statutory requirements for
25 the ways in which they purported to carry out the governance

1 of the corporation.

2 And drawing on from those two opinions, it will be my
3 opinion, based on the facts and circumstances of this case,
4 that the purported amendment of the corporation's charter in
5 the year 2010 was invalid and of no effect.

6 Q. Thank you, Professor. Can you tell the Court what
7 documents you've reviewed preparing to testify?

8 A. I've reviewed the -- I've had a pretty thorough review
9 of the record in the case. I've seen all of the -- I believe
10 I've seen all of the depositions. Certainly, I've seen the
11 pleadings. I have spent a good bit of time going through the
12 minutes and other corporate books and records that were
13 received in discovery.

14 As far as other matters, other documents, that I've
15 looked at, of course, I've reviewed the code. And I have a
16 copy here with me. In case I need it, I also have a copy of
17 the previous version of the code, Your Honor, which is the
18 code that was in effect at the time that the 1973 charter of
19 the corporation was filed with the Secretary of State. And,
20 of course, I've looked at the 1973 charter and at subsequent
21 charters of the corporation. So a pretty thorough review of
22 the record, I'd say.

23 Q. Thank you. Have you reviewed any of the early
24 transcripts of the trial testimony in this case?

25 A. I have. I reviewed the trial transcripts from the first

1 two days. I have an unedited, sort of rough copy from the
2 first two days. Yes, I've read those.

3 THE COURT: Thank you for not -- you know, in fairness
4 to Ms. Mott, as extraordinary as she is, that could not be
5 considered a transcript nor would that be fair to her because
6 I know that she -- while she may be producing those for you,
7 they're pretty close, but they don't have the review and the
8 editing and everything to be called a transcript, but they're
9 pretty good, pretty awesome. So, in other words, as you said
10 the rough. Because she has realtime, she has the ability to
11 produce that.

12 THE WITNESS: Yes, ma'am. I understand that they are
13 preliminary transcripts.

14 THE COURT: And I also say that just because if there's
15 a request for the transcript, she wants to be able to charge
16 y'all for that. I've got to kind of protect her on that.

17 Q. So where does your analysis on these issues begin?

18 A. I think a good place to begin is Plaintiff's Exhibit 7,
19 and that's the 1973 charter. Now, mindful that I'm not
20 testifying as to the law, I think that I still would like to
21 remind ourselves and put in the record that the '73 charter
22 is the founding document of the corporation. This is the
23 seminal corporate document of the corporation. That's not an
24 opinion that I'm giving. I mean, that's what a charter is.
25 And this is the initial charter that began the life of the

1 corporation.

2 And it's my intention to go through this and see what we
3 can glean from the '73 charter. We begin -- there's a little
4 number up at the top, 10,676. That may be somebody's
5 pagination or Secretary of State's number. I don't think
6 it's a relevant number.

7 What we have here -- what we're looking at in
8 Plaintiff's Exhibit 7 is the form that the Secretary of State
9 promulgated back in these days. It's 1973, again, mindful
10 that the statute we have today wasn't enacted until 1994. So
11 this charter -- this charter was filed with the Secretary of
12 State, you know, almost 20 years before our present statute
13 came into being.

14 And this is the form the Secretary of State would hand
15 you when you asked for a form to charter a nonprofit
16 corporation. And there is a -- it begins right at the top,
17 you notice "whereas" is printed and then typed in. You get a
18 blank form. You type in the answers. Whereas, the Right
19 Reverend Gray Temple, and gives his address, reverend Canon
20 George Chassey, who are two or more of the officers or agents
21 appointed to supervise or manage the affairs of the
22 Protestant Episcopal Diocese of South Carolina.

23 Now, what are we saying here?

24 THE COURT: I'm sorry to interrupt you.

25 (Off the record.)

1 A. All right. Well, here's where we are, right here,
2 (indicating). As we'll see in a minute, of course, Bishop
3 Temple was the bishop, and George Chassey was a canon to
4 Bishop Temple.

5 Now, where we are at this point is the nonprofit hasn't
6 been formed yet. The Protestant Episcopal Diocese of South
7 Carolina is an unincorporated association at this point, what
8 I'm going to refer to as the plaintiff diocese. And so what
9 the Secretary of State wants is to have a couple of
10 responsible people, officers or agents, to make the
11 declaration that's going to be part of this application for
12 incorporation.

13 Duly and regularly organized, it says, on the 14th day
14 of November, 1973... Well, this shows you a little bit of
15 the clumsiness of the forms that the Secretary of State had
16 to work with in 1973. In those days, there was a Nonprofit
17 Corporation Act, and I have it here (indicating). It really
18 was only made up of about 25 sections. It didn't have much
19 content to it at all. And nonprofits were treated a lot like
20 business corporations. And so this form looks a lot like a
21 form that a business corporation might fill in.

22 So you'll see that this is printed material in the
23 Secretary of State's form, which is organized -- which is
24 organized. Then the two officers or agents did on the 14th
25 day of November 1973 -- you'll see the typed-in stuff --

1 file. Okay. So this -- up to this point, it's just a
2 recitation that two responsible people filed this written
3 declaration.

4 And, once again, we get to sort of a Secretary of State
5 boilerplate, that at a meeting of the aforesaid organization
6 held pursuant to the bylaws or regulations, they were
7 authorized to apply for incorporation. That is boilerplate.
8 When the bishop and Canon Chassey signed this, they, of
9 course, are agreeing that that's correct.

10 The next thing we get to is that the organization
11 desires to hold property for. Now, you'll notice that is
12 printed material, but then we have fill-in-the-blank stuff,
13 religious, educational, social, fraternal, charitable or
14 other eleemosynary purpose typed in.

15 Now, that is the purpose clause of this -- of this
16 filing. And the reason it's in there is because to get a
17 501(c)(3) tax exemption, you have to put into your articles
18 of incorporation that you are formed for a charitable
19 purpose. And so the Internal Revenue Service will make
20 sure -- the Internal Revenue Service will review your
21 articles and make sure that you have some charitable purpose
22 in your purpose clause. And it is not organized for the
23 purpose of profit or gain to the members. And that again is
24 Internal Revenue Service stuff. The whole point of nonprofit
25 corporations that would get a 501(c)(3) tax exemption is that

1 it is an eleemosynary purpose, a charitable purpose, a
2 religious purpose, not for gain to the members. And it's not
3 an insurance company.

4 And then they, Bishop Temple and Canon Chassey -- and I
5 bet I can do this. No, I can't do that. How can I make this
6 go up? Because I need to look further down on the document.
7 Could we slide this down a little bit? I want to get down to
8 the part about the news and courier.

9 In 1973, in order to form a nonprofit under the 1973
10 statute, the incorporators had to publish notice in a
11 newspaper published in the county in which the nonprofit is
12 going to operate. So we get the News and Courier in
13 Charleston typed in. And so notice has been given that this
14 document would be filed.

15 And so the declarants and petitioners declare and
16 affirm, first of all, who they are; second, the name of the
17 corporation, Protestant and so on; and the place at which its
18 headquarters will be. Now, then we get to paragraph four.
19 Now, you'll notice, once again, the constraints that we're
20 under, using this old-fashioned form, this 1973 vintage form.
21 And one of those constraints is that printed in the document
22 is "The purpose of the proposed corporation is," and then
23 something has to be filled in there. Something is then
24 filled in by the incorporators.

25 And so what Bishop Temple and Canon Chassey filled in at

1 this point is the words we see typed here, "To continue the
2 operation." Now, I'm going to sort of parse this. And it's
3 important, so I'm going to take some time with it, is to
4 continue the operation. So we're going to -- we're forming a
5 brand spanking new corporation in 1973, but the corporation
6 is not for something new or some new line of business or some
7 new charity. It's to continue what is already in operation,
8 an Episcopal diocese, an Episcopal diocese. The point is to
9 continue the operation of an Episcopal diocese under the
10 constitution and canons of the Protestant Episcopal Church in
11 the United States of America.

12 Now, that's an old name, I don't think used anymore, for
13 what is often referred to in this litigation and other places
14 as The Episcopal Church, with a capital T, The, capital T,
15 Episcopal, TEC.

16 THE WITNESS: I'm going to refer to that institution,
17 Your Honor, if it's okay with you, as the national church.

18 THE COURT: That would be wonderful because we've been
19 doing that to keep everyone separate. So thank you for that.

20 THE WITNESS: Yes, ma'am. And I will try as I continue
21 through these materials to stick with the names that have
22 already been agreed to by everybody.

23 THE COURT: Well, exactly. And what we've done is we
24 have the national church, and then we have the plaintiff
25 diocese, and then we've referred to the diocese in South

1 Carolina or defendant diocese. And what that does is it sort
2 of keeps -- I think it's done a good job, at least for me, of
3 keeping everybody separate. It took me a while to get there,
4 but that really allows me to keep them separate, because the
5 names -- all of the names are so close.

6 THE WITNESS: Thank you, ma'am. And as long as we're on
7 that topic, I might as well just fill it in and say when I
8 refer to the bishop, I'm referring to Bishop Lawrence --

9 THE COURT: Thank you.

10 THE WITNESS: -- the Bishop, Bishop Lawrence.

11 THE COURT: Got it.

12 THE WITNESS: Now, to continue the operation of an
13 Episcopal diocese under the constitution and canons of the
14 national church. Now, this fourth paragraph is real
15 important. And the reason is that when we fill in these
16 documents, there's a chance to put in a purpose clause, and
17 that's -- and let me point out to -- let me put on the record
18 that I have brought up with me a little no-content outline of
19 the act, the '94 Act. I've brought this up here with me to
20 make it easier for me to find my way through the statute.
21 And if anybody wants a copy of this, we have copies
22 available. It's just -- there's no content. I don't think
23 it needs to be an exhibit. It's just a memory refresher.

24 And right now I'm looking at it because I want to make a
25 point about what is Section 33-31-202 of the present --

1 33-31-202 of the '94 Act. And that permits articles -- and
2 these are articles of incorporation. That section permits
3 articles to have a purpose clause in them, as this one does
4 and as this one must have for tax exemption reasons, but also
5 permits the articles to set forth -- and I'm reading from the
6 statute. I'm quoting from the statute -- provisions
7 regarding, one, managing and regulating the affairs of the
8 corporation; and two, defining, limiting and regulating the
9 powers of the corporation, its board of directors and
10 members, if any. I'm going to read that again.

11 Provisions -- you can put in your articles provisions
12 regarding to the management and regulation of the affairs of
13 the corporation. That is the kind of stuff you might find in
14 bylaws, for example, or special rubrics for management, and
15 then defining, limiting and regulating the powers of the
16 corporation, its board. Corporations and nonprofit
17 corporations can limit the powers of their board of
18 directors. How do you limit those powers? You put it in the
19 articles.

20 Now, what do we have here? We have in front of us
21 here -- it says continue the operation, not new. We're going
22 to keep doing what we've been doing of an Episcopal Diocese
23 under the constitution and canons of the national church,
24 under -- under the constitution and canons of the Protestant
25 Episcopal Church of the United States of America.

1 This document -- this form of words subordinates or
2 continues the subordination of the defendant -- sorry, the
3 plaintiff diocese, continues the subordination of the
4 plaintiff diocese to the constitution and canons of the
5 national church.

6 Further, what this does is incorporate by reference
7 those constitution and canons in this charter. In other
8 words, the constitution and canons of the national church are
9 embedded in this charter. They are part of the founding
10 document of this corporation -- of the corporation. They're
11 a part of the founding document. That means that this little
12 one-page Exhibit 7 is really about a 300-page document,
13 because the constitution and canons are incorporated by
14 reference right there.

15 Fifth -- and this continues to be of substantial
16 importance. There's nothing we can just skip over in this
17 document. Paragraph five, the names and residence of all you
18 have to identify. Managers, trustees, directors or other
19 officers. So now, that's printed in the form. The Secretary
20 of State requires the petitioners, the incorporators, to
21 identify all -- notice, all of the managers, trustees,
22 directors or other officers. And so whose names are here?
23 We've got the bishop, the Right Reverend Gray Temple. We
24 have Canon Chassey. The secretary. That's a corporate
25 officer -- that's a corporate office. The secretary is a

1 corporate office. And we have Tom Myers, treasurer, a
2 corporate office.

3 Now, we have to remember that in this part of the
4 document all officers and directors have to be named, and
5 there are only three. Two of them are officers.

6 MS. GOLDING: Your Honor, I would move to strike that
7 because he is trying to revise the wording of the document,
8 because the document clearly says all managers, directors
9 or -- so he is trying to change the language in this
10 document, and I believe that that's improper.

11 MR. RUNYAN: Your Honor, could I also -- I'm not
12 objecting to the substance except as she did, but I think
13 maybe this should be question and answer. We don't have a
14 question on the table, as I heard it.

15 THE COURT: In other words, you're concerned about the
16 degree of the narrative?

17 MR. RUNYAN: Yes.

18 THE COURT: All right. Very well. The document speaks
19 for itself, so I concur with that. The document speaks for
20 itself. And with regards to the narrative, Mr. Smith, every
21 once in a while you might just want to pop in there.

22 MR. SMITH: I'm happy to, Your Honor.

23 THE COURT: I don't know that Professor McWilliams
24 really needs one, but you might just want to do it just for
25 fun. Good exercise for you. You know what I mean?

1 (Off the record.)

2 MR. SMITH: Can I ask Professor McWilliams to continue
3 analyzing the fifth provision of this charter?

4 THE COURT: How about that?

5 THE WITNESS: With the Court's permission, there's just
6 one more point I wanted to make, and that is that Bishop
7 Temple signed as bishop. And if somebody were to ask me what
8 is the effect of signing as bishop, what I would say is that
9 by default we have two people named as secretary and
10 treasurer, and the document absolutely speaks for itself in
11 that respect. By default -- and also another requirement of
12 this document is that the corporation has to have a board of
13 directors. And so by default, the bishop is the director.
14 There's no one else. As counsel has pointed out, the
15 document speaks for itself. This is all of them. There has
16 to be a director. It's the bishop. As bishop -- now, in the
17 nonprofit world, you can get directors in three ways. One is
18 they can be elected. They can be elected by members, but
19 this corporation doesn't show that it has any members. If
20 there are no members, directors can be elected by the board
21 of directors, but at this point there's no board of directors
22 yet. Directors can be appointed. There might be some senior
23 organization that has the right to appoint directors. We
24 don't see any evidence of that in this document. That speaks
25 for itself. Or directors may be designated, designated.

1 What does designated mean? What designated means is that
2 some jural person designates a person as a director, and that
3 person continues -- and that has to be on the face of the
4 articles. The designation has to be on the face of the
5 articles, and the designation lasts until either the articles
6 are amended to take the designation away or until the person
7 who is designated ceases to exhibit the characteristics that
8 stimulated the designation. And that can be either by
9 resignation or by dying or something like that.

10 Now, one of the examples that the official comments use
11 for a designated director is bishop. And the point of a
12 designated director is that when the original designated
13 director moves on, for some reason, their successor in the
14 designated -- in the designated status succeeds them. And so
15 what we have here is the designated director is not Gray
16 Temple. The designated director is the bishop. And when
17 Bishop Temple ceases to be bishop, his successor became the
18 designated director. And on -- in an unbroken line of
19 bishops in the plaintiff diocese right down to Bishop
20 Lawrence and I would argue Bishop vonRosenberg, an unbroken
21 line of designated directors.

22 Now, the statute also permits a nonprofit corporation to
23 delegate to persons or even just one person some or all of
24 the duties and responsibilities of the board of directors.
25 By implication, then -- because we only have one director,

1 and that's the bishop, whoever the bishop is from time to
2 time. There are no other directors. Then that one director
3 is given, by implication, all of the duties and
4 responsibilities of the board of directors.

5 So can you have a one-person board of directors in a
6 South Carolina nonprofit? Yes, you can. Can that one person
7 be delegated all of the rights, duties and responsibilities
8 of the board of directors? Yes, that can happen, and it has
9 happened in the corporation, an unbroken line of succession
10 of bishops as designated one-person boards of directors,
11 right through to the present time.

12 Q. Professor, can I ask what your analysis is -- the
13 relationship between the fourth and fifth paragraph and the
14 interplay between those two paragraphs, their effect on each
15 other?

16 A. Well, the fourth paragraph is the one that incorporates
17 by reference -- it's the paragraph that incorporates by
18 reference the constitution and canons of the national church.
19 The fifth paragraph is the one that designates the bishop
20 from time to time as the one-person board of directors.

21 Now, to be bishop, you have to do certain things,
22 certain things that are required by the constitution and
23 canons of the national church. And so the connection between
24 the fourth and fifth paragraphs is that the starting place
25 with Bishop Temple was that Bishop Temple had to do those

1 things required by the national church to become a bishop.
2 He then signs this document as bishop, implicating the
3 authority of the national church over this corporation via
4 the incorporation by reference of the constitution and canons
5 of the church.

6 Does that answer your question?

7 There's a relevant section of the statute, by the way,
8 Section 1030 of the '94 Act -- and by the way, the '94 Act is
9 the one that's in effect now, of course -- that permits
10 organizations to be given powers over directors of nonprofit
11 corporations. There are many nonprofits that are sort of
12 subsidiaries of other nonprofits. So Section 1030 permits
13 one entity to have authority over the directors of another
14 entity, and that's what's happening here. That is the
15 template that is set up by the 1973 -- by the 1973 Articles
16 of Incorporation.

17 And I want to just say it one more time. This is the
18 initial seminal, fundamental founding document of the
19 corporation.

20 Q. Professor, in your analysis, how does this corporation
21 have the flexibility to incorporate by reference the
22 constitution and canons of the national church?

23 A. Well, that's part of -- that's part of this fourth
24 paragraph. It's part of Section 202 C3. The corporation at
25 the time of its founding in 1973 was able to put into its

1 charter, become part of its charter, provisions regarding
2 managing and regulating the affairs of the corporation,
3 defining, limiting and regulating the powers of the
4 corporation, its board of directors and members, if any. So
5 the corporation -- the corporation had the power at the time
6 of its founding to incorporate the constitution and canons as
7 part of its founding documents.

8 THE WITNESS: Whoever has got the handle on this, could
9 we scroll down to the bottom of this document? Can we get
10 all the way down past the seal?

11 Sixth, incorporated in perpetuity. A nonprofit can be
12 organized for a particular purpose, for a particular period
13 of time or in perpetuity, and that's what we have here. And
14 then when Frank Thornton signed this back in 1973, as of that
15 moment, the corporation was formed and came into being. And
16 the significance of that is that the diocese as of the 14th
17 day of November 1973 is the corporation. The corporation is
18 the diocese. Just like an enterprise for profit can be
19 organized as an LLC and subject to the LLC Act or organized
20 as a business corporation, subject to the Business
21 Corporation Act, the diocese, which had been an
22 unincorporated association, converts hereby from being an
23 unincorporated association to being a nonprofit corporation,
24 thereby putting itself within the aegis, within the
25 regulation, the regulatory control, of the Nonprofit

1 Corporation Act and at the same time, as we've seen,
2 incorporates by reference the constitution and canons of the
3 national church.

4 Now, a couple of things -- would you like to ask me
5 another question?

6 Q. I would.

7 A. I'd be glad to be asked a question, Counselor.

8 Q. Professor, can you speak to the environment around this
9 time? Generally, what was going on with nonprofit
10 corporations back in this time and how that might relate to
11 your analysis as to what the overall intent of this charter
12 was?

13 A. Well --

14 MR. RUNYAN: '73, 1973, is that the question?

15 MR. SMITH: That's the question.

16 MR. RUNYAN: Thank you.

17 MS. GOLDING: Your Honor, I'm going to object to any
18 testimony with respect to intent. They're going through the
19 back door trying to get the legislative history, and I don't
20 think that's proper.

21 MR. SMITH: Your Honor, I'm not going to the legislative
22 history. I'm just asking him to speak as to what was going
23 on with corporations at that time, not about the law, just
24 how were nonprofit corporations operating around that time.
25 He's very knowledgeable in this area.

1 THE COURT: Sustained.

2 Q. Professor, are there any other provisions in here that
3 we haven't gotten a chance to talk about that you'd like to
4 that are a significant part of your analysis? We can come
5 back to it as we go forward with other documents. But is
6 there anything we've missed?

7 A. Well, yes, there is -- and the reason I went all the way
8 to the bottom on the document was there's something that is
9 significant in this case that grows out of this -- that grows
10 out of this document. And that is that the current Nonprofit
11 Corporation Act, the 1994 Act, by which the corporation is
12 now regulated is designed to make it possible for religious
13 corporations to -- it's designed, in part, to make it
14 possible for religious corporations to be incorporated as
15 nonprofits, thereby getting the benefits of the nonprofit
16 while still being able to cling onto their ecclesiastically
17 informed polity. Now, that is a complicated sentence.
18 What's all that about? Well, South Carolina --

19 MS. GOLDING: Your Honor, I believe, and I'm sorry to
20 say, but based on his statement, what he's going into now,
21 he's going into legislative history. He's going into intent,
22 and I think that's completely improper.

23 THE COURT: Here's -- what I'm happy to hear is that you
24 were relating to the relevance of this language as it relates
25 to this corporation. And I don't want to keep you from

1 answering that.

2 THE WITNESS: Thank you, ma'am.

3 THE COURT: Yes.

4 THE WITNESS: And I understand, and that's exactly where
5 I'm headed.

6 THE COURT: Got it. And let me tell you what concerns
7 me much, much less. I'm not particularly -- I don't
8 really -- I'm not concerned about what's going on with
9 nonprofits generally in the world or even in the world in
10 South Carolina because that is of no moment to me or help.
11 This is unique. And because of the uniqueness of the issues
12 with which I must deal, that is clutter for me. So I'm not
13 interested in that.

14 With regards to where the legislature was and what the
15 legislature may have intended, while I think y'all are brave
16 to even venture into that, I would be interested in the
17 reporters' comments. I am, obviously, guided by the statute
18 itself. But beyond that, I'm so very reluctant to go beyond
19 that. Just because sausage gets made in Columbia and there's
20 so many -- imagine that I would know that. But because
21 there's so many different forces at work, I think that I am
22 more comfortable with the official reporters because that's
23 what they intended for me to see, the legislature, and, of
24 course, the language itself.

25 Now, if you need to bring in other statute, that's

1 different. I believe this language means this because I'm
2 also aware of this language. Something like that is
3 certainly fine. But beyond that, it's just going to be
4 clutter for me. I hope that handles it.

5 MS. GOLDING: Thank you, Your Honor. Yes, Your Honor.

6 THE COURT: Now, just to direct where we are, you were
7 talking to me about the concluding language in this document
8 from '73 and the relevance that that has for your opinion,
9 your analysis?

10 THE WITNESS: Yes, ma'am, in this particular
11 corporation --

12 THE COURT: Yes.

13 THE WITNESS: -- and in this particular set of
14 circumstances -- and as Your Honor points out, there are a
15 lot of special things about a religious corporation. This
16 one is no different than any other in that respect.

17 Now, this corporation, by filing these articles of
18 amendment, provides its officers and directors --

19 Q. Professor, I think you said articles of amendment, and
20 we're still on the --

21 A. Articles of incorporation.

22 Q. Sorry.

23 A. Articles of incorporation, 1973 charter. By doing this,
24 this corporation -- I'm sure Canon Chassey was all over this
25 and Bishop Temple was all over this -- is providing --

1 MS. GOLDING: Your Honor, I'm going to make an
2 objection. I don't think that he has any way to know the
3 intentions --

4 THE COURT: You're talking about the state of mind?

5 MS. GOLDING: State of mind of these individuals.

6 THE COURT: I understand.

7 MS. GOLDING: And he's going now into intent again, into
8 the legislative intent. And I think he needs to stick to the
9 document and not assume or presume what other people were
10 thinking.

11 MR. SMITH: Your Honor, I would say he's not going into
12 legislative intent at all. When he's talking about intent,
13 it's the incorporators' intent. He's not trying to read
14 anybody's mind, but he's analyzing this document and saying
15 what is the intent of this charter as a whole.

16 THE COURT: Let me just say this. With regards to
17 whether or not Bishop Gray Temple or Canon Chassey were all
18 over it or not, I think it's impossible for you to know that.
19 Their lawyer might have been all over it and they just went
20 along. So they're here. The document is here. Whether they
21 are all over it or not really is of no moment. It's here.
22 They signed it. They're on it. It's done. Continue on.
23 But as to the state of mind, I would sustain the objection.

24 MS. GOLDING: Thank you, Your Honor.

25 THE WITNESS: And I would withdraw that. You're --

1 absolutely. Absolutely. I'm carried away by my enthusiasm,
2 Counselor, if you'll permit me.

3 One of the effects, whether intended or not, of this
4 filing is to give the officers and directors of this
5 brand-new corporation protection, immunity -- almost immunity
6 from personal liability for activities of the corporation.
7 Now, when they do that, they pay a price, "they," being the
8 incorporators. They pay a price for that benefit. And that
9 is that they are now regulated by the Nonprofit Corporation
10 Act, which is really different than what they were regulated
11 by before in this particular case. And, therefore -- could
12 I -- could we scroll back up on the document? Okay. That's
13 good.

14 What I'm looking at is the fourth paragraph, the fourth
15 numbered paragraph. Whether they intended to do this or not,
16 the incorporators of this nonprofit corporation dealt with
17 that price they were paying in a way that, whether they
18 intended to or not, matched up what their governance was
19 going to be going forward very closely to what their
20 governance had been up to now. Up to now, their governance
21 had been to operate an Episcopal Diocese under the
22 constitution and canons of the national church. That had
23 been their governance. Whether they meant to do it or not,
24 by organizing this corporation to continue the operation
25 under, subservient to, the constitution and canons of the

1 national church, they preserved -- whether they meant to or
2 not, they preserved governance that was almost the same as it
3 had been before.

4 Now, you say to yourself, well, wait a minute. What
5 happens if under your new area of governance, which is the
6 '94 Nonprofit Act, there are governance provisions that
7 conflicts with the constitution and canons of the church,
8 conflict in ecclesiastical ways? And I'm not going to
9 testify about the constitution and canons and the
10 ecclesiastical side of this. But just what would happen if
11 in ways that were important to the polity of the national
12 church the constitution and canons conflicted with stuff
13 that's in the statute? Which trumps? Are they stuck now
14 with changing or what's in the statute? And the answer is,
15 whether they intended or not to do it this way, there in
16 Section 108 [sic] of the statute that says that where
17 religious corporations have matters of organization and
18 governance that conflict with this statute, the organization
19 and governance of the religious corporation trumps to the
20 extent required by the constitution of the United States, the
21 first amendment, the freedom of religion, the freedom of --
22 and so the effect of that -- and again, I'm not saying what
23 the law is. I'm saying in particular circumstances like
24 these, the effect is that where the constitution and canons
25 of the national church conflict with matters that are in the

1 corporation act, to the extent that the constitution and
2 canons of the church have ecclesiastical content, they trump.
3 What they become is neutral principles of corporate law. The
4 constitution and canons are converted -- are converted by
5 Section 180. I think I said 108 a minute ago, but it's
6 180 -- are converted from canonical provisions to neutral
7 principles of corporate law of governance by Section 180.

8 What that does is it has the effect -- whether it is
9 intended or not by the drafters of this statute, it has the
10 effect of keeping the -- this corporation in the same
11 governance mode it was in when it was an unincorporated
12 enterprise. And that is crucial to the way in which this
13 enterprise, this nonprofit corporation, was founded. In
14 short, right here on the page it is a founding principle
15 through the operation of Section 108, a founding principle --

16 THE COURT: 180.

17 THE WITNESS: 180. Thank you, ma'am.

18 -- a founding principle of this nonprofit corporation
19 that its governance will be under the Nonprofit Corporation
20 Act to the extent that doesn't conflict with the constitution
21 and canons of the national church. And to the extent that it
22 does conflict under Section 180, the constitution and canons
23 of the national church become neutral principles of corporate
24 governance law.

25 I welcome your next question.

1 Q. Thank you, Professor. Again, relating back to the
2 relationship, the interplay, between the fourth and fifth
3 paragraphs, could you explain your analysis as to how any
4 duties of loyalty or fiduciary duties arise pursuant to those
5 provisions?

6 A. Well, I think it's the Judge who's going to have to tell
7 us if any duties arise. And the -- maybe you want to
8 rephrase your question.

9 MR. HOLMES: Could you provide the basis for your
10 opinions on the issues related to whatever is you're talking
11 about?

12 Q. Could you provide the basis of your opinions -- let's
13 just go to the next question.

14 (Attorneys confer.)

15 Q. In your analysis of this document, did you try to
16 determine if the convention of the diocese has any authority?

17 A. Well, you know, the document speaks for itself. And
18 there's nothing on the -- there's nothing on the face of this
19 document that gives any authority to the convention. I
20 assume you're talking about the annual convention of the
21 diocese --

22 Q. Correct.

23 A. -- of the plaintiff diocese, which is now as of this
24 document, a nonprofit corporation. There's nothing on the
25 face of this document that gives the convention of the

1 diocese any authority whatever.

2 Q. In your analysis of this document, are there any members
3 of the corporation that would be entitled to vote?

4 A. I see nothing in this document that designates members.
5 And that's consistent with -- that's consistent all the way
6 through to 2010. And I might add that if you're going to
7 have members -- since 1994, if you're going to have members
8 of a nonprofit corporation, members, being people who are
9 entitled to elect the board of directors, those members have
10 to be named or designated in the articles.

11 This first set of articles, which on its face, speaking
12 for itself, does not mention anything about any members.
13 Right through -- zooming right through 1994 up to 2010, there
14 was never any mention of members. So this is a corporation
15 without members.

16 Q. In your analysis of this charter, is there any way for
17 it to be amended, or is it set in stone and it can never be
18 amended?

19 A. It can be amended. The old law and the present law is
20 that the articles can be amended by members, if you have
21 members, but we don't have any, or the articles can be
22 amended in that case by the board of directors. And the
23 board of directors that we have on the face of this charter
24 is a one-person designated directorship, which is the bishop
25 of the diocese, which was Bishop Temple at the time.

1 Q. In your analysis, what kinds of -- what are examples of
2 things that the bishop might be able to amend in this
3 charter?

4 A. Well, the -- I mean, the bishop, being the board -- you
5 know, acting as, having all of the duties, responsibilities
6 and powers of the board of directors, the bishop can -- has
7 sort of a plenary authority to make amendments and has made
8 some amendments over the years. I think there is an
9 amendment to alter the name a little bit. The bishop signed
10 that. And there is -- if memory serves, there is an
11 amendment to change the authorized agent for process or
12 something like that. So the bishop, acting as the board, can
13 make amendments up to a point.

14 Now, this gets us back to some other clear words on the
15 face of the document, that -- these words under the
16 constitution and canons of what we're calling the national
17 church. It's possible, of course, for there to be
18 limitations on the powers of the board of directors. As I
19 mentioned earlier on, it's possible for the articles
20 themselves to limit the powers of the board of directors.

21 In this case, when the constitution and canons of the
22 national church are incorporated by reference into these
23 articles, what's happened is that the constitution and canons
24 themselves serve as a limit to the powers of the bishop to
25 amend. And because the nonprofit is organized under the

1 constitution and canons, then any attempt by the bishop to
2 amend this charter in a way that's inconsistent with the
3 constitution and canons would be outside of his powers.

4 Q. Now, Professor, would there have to be -- in the
5 constitution and canons, would there have to be a particular
6 provision that talked specifically about amending the
7 corporate charter filed by the diocese?

8 A. No. No. Anything inconsistent -- I mean, it would just
9 follow from the drafting of the document that anything
10 inconsistent with the constitution and canons would be
11 outside of the bishop's authority. You know, the bishop is,
12 after all, the creature of the national church. You can't be
13 a bishop if the national church doesn't make you a bishop.
14 That was tried in the case of Bishop Lawrence when his first
15 go at being made bishop worked as far as getting elected by
16 the diocese was concerned. But it's very interesting that
17 even though the diocese, evidently, voted to elect him as
18 bishop, the requirements of the national church were not met;
19 and, therefore, he didn't become a bishop. And it's
20 interesting that the diocese and the convention, the diocesan
21 convention and the standing committee, much as they wanted
22 Bishop Lawrence for a bishop, they couldn't have him because
23 he didn't pass the requirements of the national church. Then
24 when he went up a second time and he did pass the
25 requirements of the national church, then he became bishop.

1 And my point here is that the bishop is the creature of
2 the national church and cannot be a bishop --

3 MS. GOLDING: Your Honor, I'm going to make an
4 objection. This is outside of his qualifications. He
5 certainly is not qualified or hasn't been qualified as to the
6 position of a bishop in any church, so I do not believe that
7 that should be -- his testimony should not be permitted.

8 THE COURT: Sustained.

9 Q. We're going to move to the next exhibit in your stack.
10 It's Plaintiff's Exhibit 8. And you referred to it a minute
11 ago. This is the 1987 amendment to the charter. And if I
12 could ask how this document plays into your analysis.

13 A. These are articles of amendments. In '87, we're
14 14 years down the calendar, so you see it's a different
15 fill-in-the-blank form. And notice the word "eleemosynary."
16 Here we have the Protestant Episcopal Diocese -- that is the
17 nonprofit corporation -- having published, as was still the
18 requirement in 1987 -- having published its intent to amend
19 its charter, resolved that the bishop and executive secretary
20 are hereby authorized and directed to apply to the Secretary
21 of the State of South Carolina for an amendment of the name
22 of the charter of this organization from, quote, the
23 Protestant Episcopal Diocese of South Carolina, closed quote,
24 to, quote, the Protestant Episcopal Church in the Diocese of
25 South Carolina, closed quote.

1 And the -- that amendment, having been approved by
2 convention, the bishop and executive secretary of the
3 convention are authorized to file this document. And there's
4 the change at the bottom of the fill in the blanks. And then
5 you'll notice that it is -- it's signed by Bishop Allison as
6 bishop. It's also signed by the executive secretary, John
7 Beckwith.

8 What this document does is demonstrate the continuity of
9 bishops, the bishop, from time to time, of the plaintiff
10 diocese, having the authority to amend the charter in ways
11 that don't conflict with the constitution and canons of the
12 national church.

13 Q. Let me ask you, what is the significance of the fact
14 that there was a resolution by the convention? Because I
15 believe your prior testimony was that --

16 MS. GOLDING: Your Honor, I'm going to make an objection
17 as to any questions with respect to his prior testimony. I
18 don't think that that's proper.

19 MR. TISDALE: Just leave that part out.

20 MR. SMITH: Okay.

21 Q. Just the first part of the question, what is the
22 significance of the convention having resolved -- made a
23 resolution prior to this amendment?

24 MS. GOLDING: Your Honor, I'm not sure that this witness
25 is qualified to testify as to significance of conventions in

1 an Episcopal Diocese.

2 Q. What I'm asking is, based on the '73 charter -- based on
3 our understanding and our analysis of the '73 charter, what
4 does this language mean in this amendment, this corporate
5 amendment?

6 A. Neither the '73 charter nor the statute that was in
7 effect --

8 THE COURT: Hold on. I'm sorry.

9 THE WITNESS: I'm sorry.

10 THE COURT: There was an objection that was interposed.
11 Let me say that when I heard that testimony, I had some
12 concern because -- well, move it over for me a little bit.
13 All right. The document speaks for itself. And let me say
14 this. When Professor McWilliams was talking about the items
15 that he had an opportunity to review, he talked about
16 depositions. He talked about pleadings. What he did not
17 discuss was having reviewed the journals. And so my concern
18 is that the testimony that certain things were done at a
19 convention. This says what it says, and I understand that.
20 But unless you can give me more foundation, which I'm happy
21 to receive, this document would speak for itself because
22 what he has testified to, he hasn't let me know that he's
23 about to review it. And I hope that's making sense. In
24 other words, I think he's doing what I'm doing, which is
25 reading that. And I gather, presuming, because it says the

1 executive secretary of the convention be and are hereby
2 authorized, that he believes that that came from the
3 convention based on this language. But what he hasn't told
4 me is that he's read the journals and, in fact, it came from
5 the convention. See what I'm saying? Does that handle the
6 objection?

7 MS. GOLDING: Yes, Your Honor. Thank you.

8 THE COURT: Let me say this to you. I was concerned
9 about that also and wondered had he reviewed that. He didn't
10 tell me that he had reviewed it, but maybe he's just reading
11 what I'm reading.

12 MR. SMITH: Okay. Let me try again.

13 THE COURT: Sure.

14 Q. Based on the '73 corporate charter, was it necessary to
15 have a resolution from the convention to file this amendment?

16 MS. GOLDING: I object, Your Honor. There again, you're
17 going to the convention. He has absolutely no foundation as
18 to the basis of the convention and the words "authorized" and
19 "directed." And he's attempting with that question to vary
20 the terms of Exhibit 8.

21 THE COURT: At this time, Mr. Smith, what this expert
22 has not been asked is, Did you connect those dots? Have you
23 connected the dots with regards to the management of the
24 diocese's business as it relates to these documents? Now, if
25 you want to go back and lay a foundation, that's different.

1 But at this moment, we have to deal with the language as we
2 see it.

3 MR. SMITH: One second.

4 THE COURT: And, Mr. Smith, if it's helpful, he can just
5 presume that it is a hypothetical that it occurred.

6 MR. SMITH: Let me try it this way.

7 THE COURT: Sure.

8 Q. Going back to our Plaintiff's Exhibit 8, does it make
9 any difference whether this resolution is in this document or
10 not?

11 MS. GOLDING: Your Honor, there again, he is attempting
12 to vary the terms of the document. He cannot change what
13 this document says, and that's exactly what defendants are
14 trying to do.

15 MR. SMITH: Could I try again, Your Honor?

16 THE COURT: Sure.

17 Q. Does this language have any effect on the validity of
18 the name change through this amendment?

19 A. No.

20 THE WITNESS: She didn't get her objection out fast
21 enough. Sorry. I'm trying, Your Honor.

22 MS. GOLDING: They're just trying to vary the terms of
23 the document. They cannot interpret this document. It
24 speaks for itself. And that's what they're attempting to do.

25 MR. SMITH: Your Honor, I would say that this is his

1 analysis of the effect of the document. We're not trying to
2 vary the terms. I agree they are what they are. Was it
3 necessary for that to be there? That's the question. Could
4 this amendment have been passed without a vote at the
5 convention?

6 MS. GOLDING: That's a hypothetical, and that's
7 speculative, totally speculative.

8 THE COURT: Let me say this: There's insufficient
9 foundation at this moment -- not that it can't be laid, but
10 there's insufficient foundation at this moment, I believe,
11 for this witness to opine with regards to whether or not the
12 resolution is necessary, really, and for several reasons.
13 Number one, because of his prior testimony with regards to
14 the constitution and the canons and with regards to the fact
15 that any foundation regarding the effect vis-a-vis governance
16 of a convention and vis-a-vis that governance with regards to
17 this resolution. And again, Mr. Smith, that foundation very
18 well may be able to be laid with this witness, but at this
19 moment I don't believe it's in there.

20 MR. SMITH: Thank you, Your Honor.

21 THE COURT: And that's a way of just telegraphing to you
22 that I don't have the information that I need to make that
23 determination.

24 MR. SMITH: Okay.

25 Q. Professor, before we move on, was there anything else in

1 this document pertinent to your analysis that we haven't
2 touched upon?

3 A. No.

4 Q. Moving now to Plaintiff's Exhibit No. 9.

5 A. I have it.

6 Q. Okay. What is this document?

7 A. Articles of amendment of the charter, of the --

8 MR. BEERS: Excuse me, Your Honor. If we're starting a
9 new document, would this be an appropriate time for our
10 morning break?

11 THE COURT: If you request it, it is. Absolutely. Good
12 time for a -- excellent time for a morning break. We'll take
13 15 minutes. Thank you.

14 (Recess held.)

15 MR. HOLMES: Very quickly, Your Honor, opposing counsel
16 has agreed I can open these. We're designating depositions.
17 There are two here that are in their original state, still in
18 their little thing. We want to open them so we can designate
19 them. It's okay with them, but I've never done it without
20 asking the Court.

21 THE COURT: Thank you so much. And which ones are they,
22 just so our record is complete?

23 MR. HOLMES: They are Stewart Marshall Huey and Conrad
24 Zimmerman, Jr.

25 THE COURT: Thank you so much. You get to take the

1 copy.

2 MR. SMITH: Thank you.

3 Q. Professor, have you reviewed the constitution and canons
4 of the national church?

5 A. Yes, I have.

6 Q. And have you reviewed the constitution and canons of the
7 Diocese?

8 A. Yes, I have.

9 Q. Is this the type of material that an expert of your
10 expertise ordinarily would examine when asked for an opinion
11 involving a nonprofit corporation with a designated director?

12 A. Yes, in circumstances like this, in particular.

13 Q. I'm going to move now to Plaintiff's Exhibit No. 9.

14 A. I have it.

15 Q. Have you reviewed this document?

16 A. Yes, I have.

17 Q. And what is it?

18 A. These are articles of amendment to the charter of the
19 corporation, 2013. And the date is significant in two
20 respects. One is it's post 1994. And that means, of course,
21 that the 1994 statute was in effect. And 2013 --

22 Q. Professor, the stamp on here, I think, is 2013, but
23 the -- this is an amendment back in 2010. This is just --
24 that's the stamp, the registered copy, from the Secretary of
25 State.

1 A. And so this exhibit that I just testified I had
2 reviewed, I was looking at the stamp to see what the date
3 was.

4 Q. Right.

5 A. Thank you for pointing that out to me. Okay. Nonprofit
6 corporation articles of amendment.

7 Can you give me a chance to review this and make sure
8 that I have reviewed this?

9 Q. Yes.

10 A. Thank you. (Reviewing document.)

11 Yes, I recognize this document. I've reviewed this.

12 Q. And can you explain where this fits in in your analysis?

13 A. Yes. To go back to where I was a minute ago, the --
14 this is not a 2013 document. It's 2010. And so I'll go back
15 to my original point. This is after the 1994 statute had
16 been enacted and was in effect, number one. And number two,
17 this is at the time when the various articles of amendment
18 under the original charter of the corporation had always been
19 approved by the bishop as the -- what is, in effect, the
20 board of directors, the one-person board of directors. In
21 this particular one -- and I'm -- you know, we have it here
22 on the screen. The operative section of this, paragraph
23 numbered four says the applicant represents -- and I'm going
24 to go ahead and read it, even though it's up on the screen,
25 if that's all right. The applicant represents that, A,

1 approval of the amendment by members was not required, and B,
2 the amendment was approved by a sufficient vote of the board
3 of directors.

4 Now, this is significant in two respects. One is this
5 confirms that as late as 2010 there still were no members in
6 this nonprofit corporation, so a nonmember nonprofit still
7 here in the year 2010. And when you don't have members who
8 can amend articles, then you have to turn to the board of
9 directors. And what this paragraph four is telling us, that
10 a sufficient vote of the board or the incorporators voted in
11 favor of the amendment.

12 Now, the incorporators are the people who form a
13 corporation in the first instance. That would have been in
14 1973 in this case. So that's -- a vote of the incorporators
15 is irrelevant. So the operative section is 4B. What the
16 Secretary of State is being told is that the amendment was
17 approved by a sufficient vote of the board.

18 When we look over to the next page which has the --
19 well, let's look up to three, first, before we go to the next
20 page. What three does is purport to amend the important
21 operative part of the 1973 charter, the part that said that
22 the corporation was being formed under the constitution and
23 canons of the national church.

24 What's happening here is the -- this amendment purports
25 to change those words to make the operative governance

1 provisions of the charter be changed from the national church
2 to the Protestant Episcopal Church in the Diocese of South
3 Carolina, in other words, shifts the governing policy from
4 the national church to the diocese, the constitution and
5 canons of the Diocese of South Carolina, which is, of course,
6 the corporation itself.

7 Now, when we -- if we could look at the second page,
8 whoever's got control. Date, October 19th, 2010, and there
9 is the name of the corporation, and it's signed by Bishop
10 Lawrence. But what the Secretary of State wants to know is,
11 what is the source of authority for whoever signs a document
12 like this? And in this case, Bishop Lawrence has not signed
13 as the bishop. He has signed as president, and it doesn't
14 say president of what. You might -- I mean, when I first saw
15 this document, I thought, oh, well, he's signing as president
16 of the corporation, but the record shows that that's not the
17 case. As I read the record, he was signing as president of
18 the convention.

19 Now, what we've seen since 1973 is a board of directors
20 constituted of one designated director, the bishop in office
21 from time to time as bishop, signing as bishop. And that is
22 congruent with the requirement under the 1994 statute, that
23 the board of directors can modify, can amend articles.
24 There's nothing in the 1994 statute that says that an officer
25 can amend articles, and there's nothing in the statute that

1 gives the convention -- and here I'm not -- I want to make
2 sure everybody understands I'm not testifying about the
3 powers of the convention. What I'm saying is that the
4 statute doesn't have anything in it that would authorize the
5 convention to amend articles. And this form from the
6 Secretary of State and the preceding forms from the Secretary
7 of State, none of them authorize the convention to amend
8 articles. And so I think this is an example of Bishop
9 Lawrence purporting to act outside of his authority in two
10 ways. One way he's acting outside of his authority is he is
11 purporting -- he is purporting to sign as president, and that
12 is not an appropriate person to sign. And so he's acting
13 outside of his authority in that respect.

14 Now, at this point, he's still bishop. And I know that
15 I've seen -- if I'm allowed to refer to this, I've seen in
16 his testimony that it's his view that when he puts the cross
17 in front of his name, that implies bishop signing as bishop,
18 but it doesn't say that in the document. So we have -- and
19 so he's outside here of the usual practice going back to 1973
20 of any amendments being made by the bishop as bishop.

21 Now, further, the other reason that he is, in my
22 opinion, outside of his authority in purporting to make this
23 amendment is the amendment is inconsistent as a matter of
24 neutral principles of corporate governance law, not as an
25 ecclesiastical matter -- because I'm not testifying about

1 ecclesiastical matters -- as a matter of neutral principles
2 of corporate governance law, an amendment that purports to
3 vary the crucial words of the founding document, the 1973 --
4 the 1973 articles of incorporation. That is as manifestly
5 inconsistent with the constitution and canons of the national
6 church as this is, lies outside of Bishop Lawrence's powers
7 as a bishop, not as an ecclesiastical bishop -- this is not
8 an ecclesiastical issue -- outside of his powers as bishop
9 who is the sole director of this board of directors as
10 bishop. And his powers are limited by the 1973 charter to
11 make amendments, if any, that are consistent with the
12 constitution and canons of the national church. And as I've
13 explained before, under Section 180 of the statute, the
14 constitution and canons of the national church become under
15 Section 180 the neutral rules of law of corporate governance.
16 This flatly contradicts that and, therefore, lies out -- the
17 bishop's powers are limited as a matter of corporate law to
18 what he can do, and this lies outside those limitations.

19 Q. Thank you, Professor. Have you reviewed the section on
20 ordination of a bishop that's in The Book of Common Prayer?

21 A. Yes, I have.

22 Q. Does Bishop Lawrence's ordination and promises that he
23 would have made in this ordination ceremony -- do they play
24 into your analysis at all?

25 MS. GOLDING: Your Honor --

1 MR. RUNYAN: Your Honor --

2 THE COURT: Sustained. I gather your objection is he's
3 not been qualified as an expert in the field of ecclesiastic
4 law; yes?

5 MR. RUNYAN: Among others, yes, Your Honor.

6 THE COURT: All right.

7 MR. SMITH: Your Honor, I'm not offering this for any
8 ecclesiastical purpose. Our position is that Bishop Lawrence
9 assumed any and all corporate authority over this corporation
10 at the instant he finished this ordination. And, therefore,
11 this should be viewed from a secular perspective and it
12 constitutes a promise.

13 THE COURT: Thank you so much. You may proceed, but not
14 with this.

15 Q. If I could direct you to Plaintiff's Exhibit 6C.

16 MR. TISDALE: What number?

17 MR. SMITH: 6C.

18 Q. Have you reviewed this document, Professor?

19 A. Yes, I have.

20 Q. Can you explain what it is?

21 A. It purports to be bylaws of the plaintiff corporation.

22 Q. And how does this fit into your analysis?

23 A. Well, back in 1973, a nonprofit corporation didn't have
24 to have bylaws if it didn't want to have them. And so there
25 was no document that was called bylaws promulgated with

1 respect to this nonprofit corporation until this document in
2 2010.

3 Now, the record -- the testimony of the chancellor of
4 the diocese was that the constitution and canons of the
5 diocese were, in effect, the bylaws of the diocese from 19 --
6 they weren't called that, but that's okay. They are -- it is
7 a governance document. And so up until 2010 -- well, in
8 1994, in the new statute there came in a requirement that
9 nonprofit corporations have bylaws. It's mandatory. They
10 shall have bylaws. And so what I assume is that -- and
11 pardon me for making an assumption, but -- so let me take
12 back the words "I assume." So it might well be -- and I'm
13 speculating -- that since no bylaws appear --

14 MR. RUNYAN: By his own mouth, I think he's speculating.

15 THE COURT: Sustained.

16 THE WITNESS: May I revise my answer?

17 Q. Professor, if there were no documents labeled "bylaws"
18 up until 2010, did the corporation, in fact, have bylaws
19 prior to that point?

20 A. If we agree with the chancellor of the diocese that the
21 constitution and canons of the diocese were, in effect,
22 bylaws, then yes. And there's no reason why they couldn't
23 be. And, therefore, maybe the way to say it is it doesn't
24 matter that nothing called bylaws came into play until 2010,
25 because the statute, arguably, was complied with.

1 In 2010, there appeared on the scene what we're looking
2 at in Exhibit 6C called bylaws. Now, where do bylaws come
3 from? Where do we get bylaws? In these days, bylaws are
4 usually adopted right at the beginning of a corporation's
5 existence at something called the organizational meeting.
6 And right away you have bylaws.

7 Now, what happens if you don't have any bylaws at an
8 organizational meeting? Where can you get bylaws? Who has
9 the authority to create bylaws? Well --

10 MS. GOLDING: Your Honor, I'm going to make an objection
11 to this line of testimony. This witness has already
12 testified that bylaws were in existence when this corporation
13 was formed. He testified that he accepts the chancellor's
14 testimony that the canons were the bylaws. He just testified
15 to that.

16 THE WITNESS: May I correct her representation of my
17 testimony, Your Honor?

18 THE COURT: He can ask you another question. Do you
19 want to ask another question?

20 MR. SMITH: Sure.

21 Q. Professor, can you talk about bylaws versus rules that
22 are incorporated by reference under the '73 charter?

23 A. Well, there's a sharp distinction. Rules that are
24 incorporated into a charter become part of the charter, and
25 that would include the constitution and canons of the

1 national church. They're part of the charter. The charter
2 trumps bylaws. And in this case, accepting the chancellor's
3 analysis that the constitution and canons of the diocese --

4 MS. GOLDING: Your Honor, that is not responsive to the
5 question that was asked. He's now gone beyond the question
6 that was asked in his response.

7 Q. Professor, based on your review, were there any bylaws
8 as in the constitution and canons of the diocese that were
9 inconsistent with the constitution and canons of the
10 Episcopal Church prior to 2010?

11 MR. RUNYAN: I think he -- I have a foundational
12 objection. He hasn't laid the foundation as to his knowledge
13 about the constitution and canons of the Episcopal Church.
14 He just asked him if he reviewed them.

15 MR. SMITH: I did.

16 MR. RUNYAN: Yes, you did. I don't think you laid the
17 foundation.

18 MR. SMITH: I did ask him that.

19 THE COURT: You do need foundational questions. Because
20 here's what you've asked him. You've asked him, Have you
21 compared them? How do they compare? What is the
22 significance of that comparison? Yes. I mean, that's what
23 you want to know.

24 MR. SMITH: That's right.

25 THE COURT: So you've got to lay a foundation for that

1 because at this point, his expertise doesn't -- he doesn't go
2 there. It stays over on the secular side.

3 MR. SMITH: Okay.

4 Q. Professor, have you examined the constitution and canons
5 of the national church with respect to the charter and
6 compared them with constitution and canons of the diocese
7 from 19 -- in the period between 1973 and 2010?

8 MR. RUNYAN: Foundation objection as to the diocese. He
9 hasn't laid the foundation as to that either.

10 THE COURT: At this point, he just asked him, Did you
11 look at them?

12 MR. RUNYAN: Yes.

13 THE COURT: And I'll allow, Did you look at them?
14 You can answer did you look at them.

15 THE WITNESS: Yes, I did.

16 Q. And what did you find?

17 MS. GOLDING: Your Honor, I'm going to make an
18 objection.

19 THE COURT: Yes. Yes. Sustained.

20 MS. GOLDING: Thank you.

21 THE COURT: And let me be clear. Because they speak for
22 themselves. There are two documents. They speak for
23 themselves. If you're going to -- so then are you eliciting
24 some sort of expert testimony in that regard? He hasn't been
25 qualified as an expert in that, just so my ruling is clear.

1 MR. SMITH: Thank you, Your Honor.

2 THE COURT: Yeah.

3 Q. In this exhibit before you, who -- what does this
4 document purport to do?

5 THE COURT: Which one? I'm so sorry.

6 MR. SMITH: I'm sorry. 6C, Plaintiff's Exhibit 6C.

7 THE COURT: Thank you.

8 MS. GOLDING: Your Honor, of course, the document speaks
9 for itself.

10 THE COURT: It does speak for itself. I'm so sorry,
11 Mr. Smith.

12 Q. Have you examined this document, Professor?

13 A. I have.

14 Q. And how does this document fit into your analysis?

15 A. There were bylaws, which were the constitution and
16 canons of the diocese, according to the chancellor's
17 testimony. These -- what this referred to itself as the
18 bylaws is different than the constitution and canons of the
19 diocese. And those -- both of those documents speak for
20 themselves. Anybody could look and see that they are
21 different. So what do we have here? And this is part of the
22 testimony of the chancellor, that these bylaws in 2010 didn't
23 make the constitution and canons go away. They added to the
24 constitution and canons. And, in other words, this is an
25 amendment, an amendment to the bylaws that were in effect in

1 2010. So how do we amend bylaws under the statute? And the
2 statute speaks for itself when it says in Section 33-31-1020,
3 that if there are no members, the bylaws can be amended by
4 the board. In 2010, who was the board? It was Bishop
5 Lawrence, as the sole designated director.

6 We look at Exhibit 6C in vain to see who produced this
7 document and how this document fit into the corporate
8 governance rules under the '94 Act. And the officers -- the
9 testimony of the officers of the corporation is that they
10 don't know who produced this document or how it got to be the
11 bylaws, and they don't know what authority -- by what
12 authority the bylaws were amended.

13 And now, the bylaws purport to create directors. And
14 there's a group of people listed in here as directors of the
15 corporation, board of directors. Now, there are a couple of
16 problems with this. Well, of course, one part of it is it
17 happens the people on this list are also members of the
18 standing committee at the time that this was promulgated, but
19 it doesn't say that here. This document does not vest the
20 standing committee with the powers of the board of directors.
21 It just vests 12 people, who happen to be the members of the
22 standing committee. And there is a difference between
23 individuals being vested with authority as directors and an
24 institution of corporate governance, if you will, that is,
25 the board from time to time in office. And so that's a bit

1 clumsy. Nevertheless, I don't think these bylaws are
2 effective because they -- this is an example of the
3 governance of the corporation that was carried out
4 inappropriately by people not authorized to do what they
5 purported to be doing. And so it's my opinion that this
6 document is not a valid set of bylaws.

7 Q. Can you turn next to Plaintiff's Exhibit 6A?

8 A. I have it.

9 Q. And have you reviewed this document?

10 A. Yes, I have.

11 Q. And can you explain how this document fits into your
12 analysis?

13 A. Well, it purports to be another set of bylaws. This
14 set -- sorry. I'm looking for the effective date. This is
15 12/16/10. The set that we just looked at is 10/22/10. So
16 the -- for whatever reason, whatever the intent of the
17 corporation was -- and I won't speculate what that was -- a
18 new set of bylaws is promulgated. Once again, who under the
19 '94 statute can amend bylaws? Because this is clearly an
20 amendment of the ones we just looked at. And it would be
21 cumulatively also an amendment of the constitution and canons
22 of the diocese, you know. So it's a cumulative amendment of
23 both, you know, what was probably the bylaws from 1973 up to
24 2010 and then these purported bylaws of 2010, which I think
25 were ineffective. We now have a further amendment. Who can

1 amend bylaws? Members, but there are no members. The board,
2 then, is the only party that can amend the bylaws. The
3 default rule is either the board or the members can amend the
4 bylaws. But where there are no members, you're just left
5 with the board.

6 At this point in 2010, who is the board? Well, it's
7 Bishop Lawrence as the sole designated -- he's the bishop,
8 the sole designated director in this unbroken line of bishops
9 as bishops being the sole designated director.

10 How did these bylaws come into being? By what authority
11 were these bylaws promulgated? Well, once again, there's
12 nothing in the record about it. And I've reviewed the record
13 for this purpose, and I can't find anything in the record
14 that says how these were promulgated and by what authority
15 they were promulgated. And when I say the record, I'm not
16 just talking about the minutes of the meetings and the
17 journals. I'm also talking about -- when I talk about the
18 record in this respect, I'm talking about the testimony of
19 the officers of the corporation. And nobody -- nobody can
20 establish any authority for the promulgation of this set of
21 bylaws.

22 Now, this one does purport -- you'll notice this is a
23 larger document. It's got a lot more material in it. This
24 does purport to making the -- making the board -- is this the
25 one that makes the board be coextensive with the standing

1 committee? (Brief pause.)

2 The problem with this document, once again -- well,
3 there are two problems with this document. One is we don't
4 know who had the authority to promulgate all this stuff. And
5 another is that, in some respects, this one is inconsistent
6 with the constitution and canons.

7 Q. Professor, if I could direct you to the second page.

8 It's the second paragraph up from the bottom, starting, "The
9 bishop of the body now known as..." If you could review that
10 and tell me how that paragraph fits into your analysis.

11 A. I'm going to -- this is not up on the board. I'm going
12 to read this into the record. "The bishop of the body now
13 known as the Protestant Episcopal Church in the Diocese of
14 South Carolina, hereinafter the bishop, shall be an
15 ex-officio member of the board with seat and voice but no
16 vote. In the event of a dispute or a challenge regarding the
17 identity of the bishop of the Protestant Episcopal Church in
18 the Diocese of South Carolina, the elected directors shall
19 have the sole authority to determine the identity and
20 authority of the bishop." And the bishop is Mark Lawrence,
21 Diocese of South Carolina.

22 Now, the -- what this provision of the bylaws purports
23 to do is take away from the constitution and canons of the
24 national church the power --

25 MS. GOLDING: Your Honor, we've already -- there is no

1 foundation as to his expertise with respect to the
2 constitution and canons of the national church. So I believe
3 that testimony is not proper, nor does his opinion express --
4 nor does his written opinion, which we received, express any
5 opinion that Bishop Lawrence has contravened the constitution
6 and canons of the national church. That is not in his
7 opinion in any respect.

8 THE COURT: Okay.

9 MS. GOLDING: Further, Your Honor -- and because -- and
10 I bring that up because of your order dated June 9, 2014, in
11 which you specifically state that any opinions that are
12 attempted to be -- that he provides 72 hours before his
13 deposition are the only opinions he can testify to, and now
14 he's gone beyond that.

15 THE COURT: Yes, sir, Mr. Smith.

16 MR. SMITH: Your Honor, I'll say that we provided a
17 six-page report within that timeframe. We provided him for a
18 deposition. He traveled from Columbia to Charleston to take
19 that deposition. Ms. Golding and Mr. Runyan asked him ten
20 minutes worth of questions. It was their intent to try to do
21 what they're doing now. They don't -- they didn't want to
22 know the substance of his testimony. His expert report is
23 quite detailed. And if they wanted to flesh out more support
24 for it, they had every opportunity to do that, and they chose
25 not to.

1 THE COURT: Okay. Well, let me see it. Just let me see
2 what was provided the 72 hours in advance.

3 We'll mark this as the Court's 4.

4 (The Court's Exhibit 4 marked for identification.)

5 THE COURT: All right. Let me hear the question.

6 (Record read.)

7 THE COURT: All right. Ms. Golding, I want you to look
8 at page -- really, beginning at the bottom of -- well, I was
9 going to say at the bottom of page 4, but page 4 deals with
10 the '73 charter. Then we've got the amendment of the
11 charter. And reading on on page 5 and page 6, Do you
12 believe -- the first question is, Do you believe that you all
13 were notified that this witness would testify that the
14 actions of Bishop Lawrence were those impermissible actions
15 to invalidate parts of the national constitution that was
16 incorporated in the original articles of incorporation?

17 MS. GOLDING: Not bishop, no. With respect to the
18 opinion, he takes -- he states in his opinion the actions
19 purportedly taken by Bishop Lawrence.

20 THE COURT: Right.

21 MS. GOLDING: And those cooperating with him were ultra
22 vires and unenforceable.

23 THE COURT: That's right.

24 MS. GOLDING: He does not state in this opinion that the
25 bylaws are in contravention of the charter. He does not

1 state that the bylaws are in contravention of the National
2 Episcopal Church constitution and canons. And that last part
3 is just what this witness was trying to say. There is
4 nothing in his opinion as to the validity and enforceability
5 of the bylaws. And that's where my objection is, Your Honor.

6 MR. RUNYAN: Your Honor, I would add to that one more.
7 I believe his last word was "power."

8 THE COURT: Right.

9 MR. RUNYAN: That implicitly brings an opinion into
10 play, which is an opinion that he should not have the
11 expertise to express in terms of the national canons.

12 THE COURT: All right. Mr. Smith, let me hear from you.

13 MR. SMITH: Your Honor, without some time to sit down
14 and try to pick through this report, I think it speaks for
15 itself. I think he's covered the issues generally. And
16 again, I would say that they spent five or ten minutes
17 deposing him, so...

18 THE COURT: Okay. Well, it's 1:00, and we're going to
19 take lunch. And let me look at this line of questioning.
20 I'll look at what's now the Court's Exhibit 4 and give you my
21 decision at 2:15, which is when we'll reconvene.

22 MS. GOLDING: May I?

23 THE COURT: Yeah.

24 MS. GOLDING: When I took his deposition, I had
25 subpoenaed his entire file, Your Honor. And with his file,

1 Professor -- he had set forth a list of documents he had
2 reviewed. And, of course, these bylaws were not part of the
3 list, nor were the constitution and canons of the national
4 church. And I'd like to, for your edification on this, on
5 his deposition and what he did present, his file, may I
6 present his original deposition?

7 THE COURT: You may.

8 MS. GOLDING: Thank you, Your Honor. I'm showing
9 Mr. Tisdale the original deposition.

10 THE COURT: And you're going to open it for me?

11 MS. GOLDING: Yes, I'll be glad to, Your Honor.

12 THE COURT: You're so kind. I'll certainly take a look
13 at that portion of the deposition, as well. And I will see
14 everyone at 2:15.

15 (The Court's Exhibit 5 marked for identification.)

16 (Lunch recess held.)

17 THE COURT: All right. Yes, sir. You were going to
18 look at your document over lunch and tell me whether you
19 believed that under the document as provided to the
20 defendants that Professor McWilliams was eligible to testify
21 regarding the effect of the constitution and canons of the
22 National Episcopal Church. I think that was the question;
23 yes?

24 MS. GOLDING: As to the bylaws.

25 THE COURT: Sans constitution and canons, bylaws.

1 MR. SMITH: Your Honor, at the deposition, the professor
2 produced --

3 THE COURT: Mr. McWilliams.

4 MR. SMITH: -- he produced a summary of documents that
5 he had reviewed. And among them are listed corporate bylaws.
6 And I believe there's nothing wrong with him continuing to
7 review materials as trial approaches. So I'm not sure if he
8 reviewed the constitution and canons prior to trial or not,
9 but I would think that he should be able to testify to that
10 now if he has done so.

11 THE COURT: Except I messed you up. It was bylaws, not
12 constitution and canons. That was my mistake. I messed you
13 up. Bylaws. Bylaws.

14 MR. SMITH: Oh, the corporate bylaws?

15 THE COURT: Yes. The question is whether or not he
16 should be able to testify regarding the effect of the bylaws
17 of the national church, right?

18 MS. GOLDING: He was about to opine that the bylaws of
19 the plaintiff diocese were in contravention of the canons and
20 constitution of the national church.

21 THE COURT: Right. I guess where my head is, is to do
22 that, he's got to be able to testify and know the
23 ecclesiastic part.

24 MS. GOLDING: That's correct, Your Honor.

25 THE COURT: He's here doing the corporate part, but it's

1 the ecclesiastic part that causes me consternation. And
2 that's the part that I've been focusing on. In other words,
3 is he qualified -- has he been qualified as an expert in the
4 field of the ecclesiastical part of this case so that he can
5 do the comparison? That's where I've been focused. Because
6 I think he can testify and has been testifying regarding the
7 corporate law of South Carolina as it applies to nonprofit
8 corporations and the code. And he's talked about the bylaws.
9 He's talked about the amendments and the articles of
10 incorporation and the statute. The question then gets to be,
11 when you start doing this comparison, he cannot compare the
12 constitution and canons of the national church with the
13 amendments unless he is qualified to testify with regards to
14 the ecclesiastic information.

15 My concern is that piece of it, whether or not Professor
16 McWilliams has been offered as an expert for the ecclesiastic
17 part.

18 MR. SMITH: The answer to that is no, Your Honor. We're
19 not offering him as an ecclesiastic expert.

20 THE COURT: Okay. So then ask him another question.

21 Q. Can you please turn to Plaintiff's Exhibit 32?

22 A. I have it.

23 Q. And is this a document you have reviewed?

24 A. Yes.

25 Q. Can you tell me how this document fits into your

1 analysis?

2 THE COURT: Can I ask you a question? Could you please
3 tell me what Plaintiff's Exhibit 32 is, because I would like
4 to be able to follow along?

5 MR. SMITH: Right. It is entitled Minutes of the
6 Meeting of the Standing Committee of the Protestant Episcopal
7 Church in the Diocese of South Carolina, October 2, 2012.

8 THE COURT: Thank you, sir.

9 Q. And, Professor, I'll direct you towards the end of the
10 page, the last paragraph on this first page.

11 A. I'm going to read this paragraph, if that's appropriate.

12 Q. Yes, please.

13 A. And this is quoted from a motion made by a member of the
14 standing committee of the plaintiff diocese. Quote, The
15 Protestant Episcopal Church in the Diocese of South Carolina,
16 through its board of directors and its standing committee,
17 hereby withdraws its accession to the constitution of the
18 Episcopal Church and disaffiliates with the Episcopal Church
19 by withdrawing its membership from the Episcopal Church.
20 This decision shall be effective immediately upon the taking
21 of any action of any kind by any representative of the
22 Episcopal Church against the bishop, the standing committee
23 or any of its members or the convention of this diocese or
24 any of its members, including purporting to discipline,
25 impair, restrict, place on administrative leave, charge,

1 de-recognize or any other actions asserting or claiming any
2 supervisory, disciplinary or other alleged hierarchical
3 authority over this diocese, its leaders or members.

4 And then there's another paragraph. The chancellor
5 shall certify to the ecclesiastical authority and to the
6 board of directors that such condition has occurred which
7 certification shall be conclusive.

8 Q. Thank you. And can you tell me how -- in reviewing this
9 paragraph, how that fits into your expert analysis?

10 A. The point of this paragraph appears to me --

11 MS. GOLDING: Your Honor, I would like to make an
12 objection for the record that there is nothing in the
13 expert's opinion relating to this exhibit or the provision
14 that he has just made -- provision he has just read. So I
15 believe that under his opinion he's restricted to his
16 opinion, and he is now going outside of his opinion.

17 MR. RUNYAN: In addition to that, I believe it speaks
18 for itself. The document speaks for itself.

19 MR. SMITH: Your Honor, I would just say that this
20 resolution is clearly one of the core disputed issues in this
21 case as to whether this resolution is effective or proper. I
22 believe, again, that his report covers these issues generally
23 and that he should be allowed to testify as to this.

24 THE COURT: As to whether or not that resolution was
25 entered properly?

1 MR. SMITH: Yes, as to whether it was proper, as to
2 whether it's a proper process to have a retroactive
3 resolution, corporate resolution.

4 THE COURT: That was a motion -- as I understand it,
5 that came from the minutes of the standing committee, right?

6 MR. SMITH: That's right.

7 THE COURT: And that was a resolution before the
8 standing committee, correct?

9 MR. SMITH: That's right.

10 THE COURT: Was there an appeal from that resolution and
11 determination by the standing committee?

12 MR. SMITH: I'm not aware of what you mean by appeal.

13 THE COURT: Well, in other words, was that the highest
14 ecclesiastic body that addressed that resolution?

15 MR. SMITH: At this time, Your Honor, the standing
16 committee, pursuant to the plaintiff's arguments, is
17 purporting to act as the corporation.

18 MR. HOLMES: Your Honor, I think the question that's
19 being asked is what is the -- from a neutral principle
20 standpoint, what is the effect of this document on this
21 secular corporation?

22 MR. TISDALE: Right, that's correct.

23 THE COURT: That's a different question, Mr. Holmes.
24 That might be a good one. But what is the effect of that on
25 this? Because I can't go behind that, you see.

1 MR. HOLMES: No, I don't think the professor intends
2 to -- although I haven't really discussed it with him, but I
3 don't believe he plans to go there. I think he's going to
4 say if you look at this document and apply neutral principles
5 of corporate and business law to it, what does it do in the
6 context of this corporation?

7 THE COURT: Okay. So tell me where you believe in
8 the -- because -- if you would do this for me. Just look at
9 the expert report and tell me where you think -- or you can
10 ask him where it is he thinks this issue lies within his
11 report.

12 MR. SMITH: If I could have a moment, Your Honor.

13 THE COURT: Absolutely.

14 MR. TISDALE: Ask him.

15 MR. SMITH: Professor, please, if you could look at it,
16 as well.

17 On page 5, the last sentence in the bullet point:
18 Actions taken by corporate officers in violation of their
19 fiduciary duties of loyalty are invalid.

20 And then on page 6, the first bullet point on page 6:
21 The actions purported to be taken by Bishop Lawrence and
22 those cooperating with him in the course of attempting to
23 withdraw from TEC were ultra vires and unenforceable.

24 And this, obviously, is the withdrawal resolution. This
25 resolution in the standing committee minutes in 2012 is what

1 the plaintiffs purport to have effectuated their withdrawal.

2 And then I'll read another paragraph, the third point
3 there on page 6: The record as developed in this case up to
4 the present does not make clear how Bishop Lawrence at one
5 point was authorized to characterize himself as president of
6 TECDSC or how others subsequently adopted that title or how
7 or by what authority the standing committee was called the
8 directors or indeed by what authority virtually any of the
9 corporate actions taken on Bishop Lawrence's watch were
10 justified.

11 And this is just another one of the purported corporate
12 actions and, obviously, a very important one.

13 And I would add, Your Honor, it can be no surprise to
14 the plaintiffs that we're bringing this issue up. This is
15 their -- one of their key pieces of evidence in this case
16 that they withdrew through this standing committee.

17 THE COURT: All right. But the question you want to ask
18 this witness is what, so that I am absolutely crystal clear?

19 MR. SMITH: Based on his -- I want to know the corporate
20 effect. I don't want to go anywhere ecclesiastical.

21 THE COURT: Okay.

22 MR. SMITH: Does this have any corporate effect?

23 THE COURT: Does that resolution have any corporate
24 effect?

25 MR. SMITH: Right. This type of resolution.

1 THE COURT: This resolution?

2 MR. SMITH: This resolution, yes.

3 THE COURT: All right. Okay. How about that?

4 MS. GOLDING: It's clearly not in his report.

5 THE COURT: Now, he does say that the attempt to
6 withdraw was ultra vires.

7 MS. GOLDING: I understand that. But I think that he --
8 has given an opinion, and your order strictly said you can't
9 give any opinions out of what you have given.

10 THE COURT: He's going to tell me he thinks it's ultra
11 vires.

12 MS. GOLDING: I understand, but he's not -- I
13 understand, Your Honor.

14 THE COURT: What he can't do is he can't go behind it,
15 because under the Pearson, that's it. It's ecclesiastic. It
16 was done. I cannot look behind it. It exists. But taking
17 it as it is, does it have a corporate effect?

18 You already said it's ultra vires. Anything else? Do
19 you understand the question.

20 THE WITNESS: I believe I do. Let me have a shot at it.

21 Q. Could you please provide your analysis, Professor?

22 THE COURT: Understand, I cannot allow you to opine
23 regarding the way that the resolution came about. The
24 resolution was done in an ecclesiastic forum. Pearson says
25 I've got to take it. I cannot go behind it. That is where

1 the separation -- one of the places where the separation of
2 church and state finds me. So I will accept the resolution.
3 So just take that as reality.

4 Does it have a corporate effect?

5 THE WITNESS: Yes, Your Honor, it does, in my opinion.
6 The first is -- will be a point that I think is familiar in
7 our context today, and that is that it purports to do
8 something that is outside the corporate -- the corporate
9 powers of the diocese, which is also the corporation. And
10 that is it is manifestly inconsistent with the -- it's
11 manifestly inconsistent with the 1973 charter.

12 THE COURT: Got it.

13 MR. RUNYAN: The problem with that opinion, in order to
14 come to that conclusion, he has to be opining on what that
15 charter incorporates. If it is incorporating the
16 constitution and canons, then he's really opining that it is
17 inconsistent with those constitution and canons. Otherwise,
18 he couldn't say what he said.

19 THE COURT: I know.

20 MR. RUNYAN: And so we object to that.

21 THE COURT: I understand that. The document says what
22 it says. And his opinion is that the resolution withdrawing
23 it is at odds with that, and that's his opinion. Okay.

24 Q. Professor, could I get you to focus your analysis on the
25 purported retroactivity of this resolution?

1 THE COURT: There is nothing in this piece that talks
2 about any retroactive action, I don't think, unless I missed
3 it. And I could have. So if I did, help me.

4 MR. SMITH: All right. Can I rephrase?

5 THE COURT: Sure.

6 Q. Professor, can you talk about -- can you analyze whether
7 this resolution -- the good standing of the people passing
8 this resolution at the time it's passed?

9 MS. GOLDING: Clearly, Your Honor, good standing,
10 there's absolutely no foundation as to that -- what is good
11 standing with respect to this witness having any knowledge of
12 such.

13 MR. HOLMES: Your Honor, he certainly can testify as to
14 whether or not status in good standing would make a
15 difference in terms of the action that was taken. Whether or
16 not these people are in good standing, I don't know that he
17 has to know that. He just simply has to say, Does it matter?
18 And as Your Honor knows from the cases, the standing of
19 people to do things is a matter inquiry for the Court, even
20 if it's an ecclesiastical issue. At some point, Your Honor
21 is entitled to make the decision as to whether or not they
22 were or they weren't. It may be an ecclesiastical
23 determination that's handed to you by the highest
24 ecclesiastical authority, but its effect on a corporate
25 document on neutral principles is something that the Court

1 seems to be able to say that you can look at, like in the
2 bishop case where the court decided that the bishop had been
3 defrocked and, therefore, would not have standing to do what
4 it was he was trying to do. Deferral was to the ecumenical
5 power, but the effect of that was a legal question.

6 MR. RUNYAN: Your Honor, on the record before us, this
7 decision is a decision of the standing committee. The
8 standing committee is -- subject to the bishop, is a little
9 bit higher, the highest ecclesiastical authority of the
10 diocese. And he wants to ask him about standing under an
11 ecclesiastical concept to pass the resolution. It was
12 passed, and the effect of that, I think, is for the Court.

13 MS. GOLDING: Just the other thing I want to add,
14 Mr. Holmes, his reference to deferral or deference, that's
15 not law in South Carolina.

16 THE COURT: That's correct. And let me just maybe add
17 this. I know where this is coming from. I know where this
18 inquiry is coming from. The inquiry is coming from -- oh,
19 what's the term where you ask a question and you don't really
20 look for an answer? And it's in the All Saints case. And
21 what it says is, is that there's no evidence before the Court
22 whether or not those who were voting were in good standing or
23 not. And he just sort of makes that in passing. In other
24 words, we've got people voting. We've got a majority. We've
25 got a quorum. But there was no evidence before the Court

1 whether or not those who were voting were those who ought be
2 voting, were they in good standing? And they just sort of
3 make that in passing and say since nobody raised this, this
4 is not before the court, since there's no evidence, we will
5 assume that everybody who voted was in good standing. And
6 that would go to be true whether it was a board of -- whether
7 it was an election by the membership of John Deere or Intel
8 or Apple or anybody else. There are those members who are
9 allowed to vote and those who aren't allowed to vote. And
10 there's some passing reference to that in the All Saints
11 case. And I believe that's where this is coming from.
12 That's an evidentiary matter. And there isn't any -- that
13 I'm aware of, there isn't any evidence on that issue. And at
14 this point, unless you can tell me otherwise -- do you intend
15 to offer evidence that the individuals who actually voted on
16 this particular resolution were not people who were allowed
17 to vote because they were not in good standing?

18 MR. SMITH: Your Honor, my intent with this question was
19 not to go into ecclesiastical waters at all. I want to know
20 simply from a corporate perspective, a resolution that
21 purports to be automatic to activate at a later time but is
22 passed by people at a time when they may have had authority,
23 but when the resolution takes effect, it effectively accedes
24 whatever authority they have, is that -- is that an effective
25 legal typical corporate resolution?

1 THE COURT: That's a different question.

2 MR. SMITH: That's what I want to ask the professor. I
3 don't want to go into ecclesiastical, who has ecclesiastical
4 standing with this question at all.

5 THE COURT: Okay. In other words, you want to ask him
6 if there is a resolution that is a self-executing resolution
7 at some point in the future based upon conditions that may
8 exist in the future, is that allowed?

9 MR. SMITH: Yes.

10 THE COURT: Something like that?

11 MR. SMITH: Something like that.

12 THE COURT: Something like that? All right. That's
13 different.

14 MR. SMITH: May I ask that, Your Honor?

15 THE COURT: Sure.

16 Q. Can you answer that question?

17 THE COURT: It would be an executory resolution.

18 THE WITNESS: That's well put, Your Honor.

19 THE COURT: Well, thank you.

20 THE WITNESS: The issue in corporate law is can a board
21 bind a future board that is made up of different people with
22 perhaps different levels of authority. And the answer is no
23 in corporate law. A board today cannot bind a future board
24 based on events that happen in the future.

25 In this particular case, you have folks who have -- you

1 know, arguably, they have authority to act on behalf of the
2 standing committee. We're anticipating events that may mean
3 that some of those people don't have authority in the future,
4 perhaps. Can this group bind a future group that has a
5 different level of authority? And in corporate law, the
6 answer would be no.

7 THE COURT: That wasn't really the question, though.
8 The question was, can a board pass an executory resolution?

9 THE WITNESS: An executory resolution is one that is not
10 today executed.

11 THE COURT: Necessarily.

12 THE WITNESS: Necessarily.

13 THE COURT: Depending on conditions preceded, occurring
14 in the future.

15 THE WITNESS: It will be executed at -- today's board
16 makes an executory resolution to something that will happen
17 later. Boards can make executory resolutions, but they're
18 always conditioned upon what the circumstances are in the
19 future when they actually get executed.

20 I go back to my original point, which is that a board
21 cannot bind a future board. And that's a clear rule of
22 corporate law.

23 THE COURT: Okay. Next.

24 MR. SMITH: Thank you.

25 Q. Professor, if you could turn to Plaintiff's Exhibit 28.

1 A. I have it.

2 THE COURT: Tell me what that is.

3 MR. SMITH: It is a lease agreement.

4 THE COURT: Okay.

5 Q. And have you reviewed this agreement, Professor?

6 A. I have.

7 Q. Can you give me your analysis on this document?

8 A. This is a lease agreement for the benefit of Bishop
9 Lawrence.

10 MS. GOLDING: Your Honor, I'm going to make an objection
11 again that this lease agreement was never mentioned in his
12 report and, therefore, should not be part of his testimony.

13 THE COURT: I don't see it, but you all help me. I had
14 lunch with this.

15 MR. SMITH: Your Honor, it would go to some of the same
16 points I just read to the Court.

17 THE COURT: Okay. Something about the lease? Okay.

18 MR. SMITH: Your Honor, the last bullet point on page
19 6 --

20 THE COURT: Okay.

21 MR. SMITH: And I'll skip to the middle of that
22 paragraph: The corporate assets have been and are being
23 misapplied and wasted.

24 THE COURT: Okay.

25 MR. SMITH: And that's going to be the focus of this

1 testimony.

2 THE COURT: Okay. All right.

3 Q. Professor, could --

4 MS. GOLDING: Your Honor, I'd just make -- at the time
5 of his deposition, certainly he had not reviewed this
6 document. This document was not in his file, nor had it been
7 mentioned in any of the documents that he provided that were
8 part of his file.

9 THE COURT: The lease?

10 MS. GOLDING: I'm sorry, Your Honor?

11 THE COURT: The lease?

12 MS. GOLDING: The lease, yes, ma'am.

13 THE COURT: Okay.

14 Q. Have you reviewed it, Professor?

15 A. I have reviewed it, yes.

16 MS. GOLDING: Not at the deposition.

17 THE COURT: Yes. When? Ask him when.

18 Q. When did you review it?

19 A. I cannot tell you the date on which I reviewed it.

20 THE COURT: Was it before or after your deposition?

21 THE WITNESS: Well, if it had been before the
22 deposition, it would be on the list, Your Honor.

23 THE COURT: I gotcha. Okay. Moving right along.

24 Q. So, Professor, can you tell me why it is your analysis
25 that this lease agreement evidences --

1 THE COURT: I'm so sorry, Mr. Smith. See, here's the
2 thing, you've got to move on.

3 MR. SMITH: Your Honor, I'm just informed it is on the
4 list of documents we identified for the deposition. It is
5 part of a form. So it was on the list.

6 THE COURT: Okay. If you could help Ms. Golding and
7 help me find that, that would be wonderful.

8 MS. GOLDING: I don't see it on Exhibit 6.

9 MR. SMITH: It's listed on the IRS Form 1023. You all
10 produced it.

11 MS. GOLDING: It's got IRS Form 1023, Your Honor.

12 MR. SMITH: It's an attachment to that. That's how we
13 received it from you.

14 MS. GOLDING: But it's not part of the file. It was not
15 part of the file. It was not in his file.

16 MR. SMITH: I mean, it's listed as one of the things he
17 reviewed. I'm not sure that he gave you copies of everything
18 he reviewed. You produced it to us, again, at this point.
19 And he's identified exactly what it is in his list.

20 MS. GOLDING: It's not in his exhibits.

21 THE COURT: All right. Now, I don't see the lease on
22 here.

23 MR. SMITH: Your Honor, it's attached. There was a form
24 filed with the IRS that had all sorts of attachments to it,
25 and this lease was one of those attachments. And that's how

1 we received it from them.

2 MR. HOLMES: What's the name of it in the list?

3 MR. TISDALE: IRS 1023.

4 THE COURT: Have you all got it? Did you get that? Did
5 you look at the IRS Form 1023?

6 MS. GOLDING: That is our document we had provided
7 during discovery, Your Honor, the plaintiff diocese, Your
8 Honor.

9 THE COURT: I understand. And do you know if the lease
10 was attached to it?

11 MS. GOLDING: Yes, Your Honor, it was attached to that
12 document.

13 THE COURT: Okay. Go ahead.

14 MR. SMITH: Thank you.

15 Q. Professor --

16 A. To eliminate the discussion we've just had, it was
17 actually as an exhibit to Form 1023 that I saw in Exhibit 28.
18 And it's -- what you have to do -- what 1023 is, is an
19 application for a 501(c)(3) tax exemption.

20 THE COURT: I know. We've got that. We've passed that
21 row. We've plowed it. So now the question is the wasting of
22 the assets on the lease.

23 THE WITNESS: And one of the things the IRS wants to
24 know about is whether there --

25 MS. GOLDING: Your Honor, I'm going to make an objection

1 as to what the IRS wants to know. He's not a tax person.
2 He's not been qualified as a tax person. And so I don't
3 think that this witness is competent to testify to that
4 respect.

5 MR. HOLMES: He's qualified as an expert in business and
6 corporate matters, which, unfortunately, in this country
7 includes taxes.

8 THE WITNESS: Let me just move on to the document. It's
9 a lease entered into between the trustees of the diocese, the
10 trustees --

11 MS. GOLDING: Your Honor, I'm going to make an
12 objection. There's nothing in his opinion as to the
13 plaintiff trustees. His opinion only relates to the
14 plaintiff diocese.

15 MR. SMITH: The plaintiffs claim to be the beneficiaries
16 of that trust, Your Honor. I would think --

17 MS. GOLDING: It is not a trust, Your Honor. Plaintiff
18 trustees is a South Carolina corporation.

19 THE COURT: I think you're trying to get to the part
20 which they have pointed out to me that says the corporate
21 assets have been and are misapplied and wasted. Go there.

22 THE WITNESS: May I continue? The corporate assets are
23 owned by the corporation. The diocesan assets, which are the
24 corporate assets, are owned by the corporation, which is the
25 trustees.

1 MS. GOLDING: Your Honor, I'm going to make an
2 objection. This witness does not have any qualification nor
3 any foundation as to the ownership of property and who the
4 beneficiaries may be of the ownership of property. And,
5 clearly, that was not within his exhibit. They're trying to
6 get in the back door where they can't get in the front door
7 and create -- and create issues that are not even in the
8 pleadings, Your Honor, with respect to this corporate
9 plaintiff trustees.

10 THE COURT: I'm with you. And you would add by saying?

11 MR. RUNYAN: The asset question --

12 THE COURT: Yes.

13 MR. RUNYAN: -- is exclusively owned by the trustees --

14 THE COURT: Yes.

15 MR. RUNYAN: -- to which he added no opinions in his
16 opinion.

17 THE COURT: Okay. Try it this way. I'm going to hand
18 you this. And that last bullet is the one that they said the
19 lease falls under. Go for it.

20 THE WITNESS: This lease gives the bishop the free --
21 virtually free use --

22 MS. GOLDING: Your Honor, again, that's not under the
23 bullet point. His whole report is about the Protestant
24 Episcopal Church in the Diocese of South Carolina, the
25 plaintiff diocese, nothing about the plaintiff trustees.

1 THE COURT: Gotcha.

2 MR. SMITH: Your Honor, again, if they had actually
3 taken a real deposition, they could have asked him about this
4 bullet point.

5 MR. RUNYAN: It's not our obligation to do that. It's
6 your obligation to lay out the opinions.

7 THE COURT: Hold on. Hold on.

8 MR. RUNYAN: I apologize, Your Honor.

9 THE COURT: That's okay. I got the point. I'm with you
10 completely. Yes. So what I need to know from you is, with
11 regards to the diocese, how did the diocese waste the
12 property?

13 THE WITNESS: The diocese is the corporation. The
14 diocese -- it is clear in the record that property of the
15 diocese is held by the corporation called the trustees for
16 the benefit of the diocese.

17 MS. GOLDING: That's completely in error.

18 THE COURT: That would be for cross-examination.

19 MS. GOLDING: I'm sorry, Your Honor.

20 THE COURT: Yes. All right.

21 THE WITNESS: This is a house which the bishop is given,
22 essentially, the free use of, at a very nominal rent, for
23 years, not only while he's the bishop, but even after he
24 ceases to be the bishop. And, therefore, the use of this
25 property is being wasted, in effect, by giving him the use of

1 the house, even when he's no longer the bishop of the
2 diocese.

3 THE COURT: Okay.

4 THE WITNESS: That is waste of the property of the
5 corporation, and it is a self -- this is important. It is a
6 self-interested transaction because the bishop was the
7 president of the corporation called the trustees at the time
8 this was entered into. So this is an interested officer
9 transaction. The Nonprofit Corporation Act holds those
10 transactions to be wrongful unless certain steps are taken to
11 have them approved. Those steps were not taken in this case.
12 So this is an example of corporate waste, breach of fiduciary
13 duty, in a self-interested transaction that's not cured.

14 MR. SMITH: Thank you, Professor. That is all I have.
15 Please take questions from the plaintiffs.

16 THE COURT: First of all, national church, any
17 questions?

18 MR. BEERS: No, Your Honor.

19 THE COURT: All right. Very well. All right.

20 MS. GOLDING: Thank you, Your Honor.

21 THE COURT: Yes, ma'am.

22 CROSS-EXAMINATION BY MS. GOLDING:

23 Q. Mr. McWilliams, for some reason, you didn't tell this
24 Court that you've been a member of a church in Columbia for a
25 long time. Why is that?

1 A. That's because the lawyers who I asked to ask me that
2 question didn't ask me the question.

3 Q. And that hasn't stopped you from answering -- providing
4 information that wasn't asked. So why didn't you provide
5 that today?

6 MR. HOLMES: Object to that. That's argumentive,
7 improper and rude.

8 MS. GOLDING: Cross-examination.

9 Q. I think you need to go ahead and tell the Court where
10 you go to church and how long you've gone to that church.

11 MR. TISDALE: Your Honor, I object to that mode of
12 questioning, manner of the questioning, also. She's entitled
13 to ask questions but not in that manner to the witness. It's
14 impolite.

15 THE COURT: Okay. Very well. I don't think she's being
16 impolite.

17 MS. GOLDING: I just want the witness to tell this
18 Court, to tell you, where you go to church, how long you've
19 been going to that church.

20 THE WITNESS: Are you going to put that in the form of a
21 question or are you --

22 Q. I thought I just asked you that question.

23 A. I don't think you asked me a question.

24 Q. Oh, my goodness.

25 A. I think you made a statement that I ought to tell

1 something.

2 THE WITNESS: I'd be glad to respond to the question,
3 Your Honor.

4 Q. Would you please, then, tell the Court that information,
5 or is this something you want to hide that you don't want to
6 tell the Court?

7 THE COURT: That was two questions.

8 MS. GOLDING: Thank you.

9 Q. So, I mean, how many times have I got to ask you to tell
10 the Court where you go to church?

11 A. How many times do you have to ask me?

12 Q. Yes.

13 A. I think once would have been enough.

14 Q. Okay. Please tell the Court.

15 A. I go to St. Martins in the Fields in Columbia, South
16 Carolina.

17 Q. And what kind of church is that?

18 A. It's an Episcopal Church.

19 Q. And how long have you been going to that church?

20 A. Oh, 25 or 30 years.

21 Q. Okay. And you're a member of that church, aren't you?

22 A. Yes, ma'am.

23 Q. Okay. And you haven't served on any vestry or governing
24 boards of that church, have you?

25 A. No, I haven't.

1 Q. Okay. Now, that wasn't too hard, was it?

2 MR. BEERS: I object to that, Your Honor. That was
3 really rude.

4 Q. Was it? I've asked you a question. Was that too hard
5 to tell the Court?

6 MR. HOLMES: Your Honor, objection.

7 THE COURT: Hold on. Sustained. You may proceed,
8 Ms. Golding.

9 MS. GOLDING: Thank you, Your Honor.

10 Q. Mr. McWilliams, was that too hard to tell the Court?

11 A. No.

12 Q. Okay. Thank you. Okay. So you've been on that --
13 you've been a member of this Episcopal Church, and that
14 church is a member of the upper diocese in South Carolina, is
15 it not?

16 A. That's correct.

17 Q. Okay. You are not a member of the upper diocese, are
18 you? You personally are not a member of the upper diocese?

19 A. I don't understand your question.

20 Q. Okay. Are you a member of this corporate entity called
21 Upper Diocese of South Carolina?

22 A. No, I'm not.

23 Q. Okay. Your church is a member of that entity called the
24 Upper Diocese of South Carolina; is that correct?

25 A. Not in the corporate law sense, no.

1 Q. So what is your church's association with the Upper
2 Diocese of South Carolina?

3 A. It is in union with the upper diocese.

4 Q. Okay. Is the Upper Diocese of South Carolina a South
5 Carolina nonprofit corporation?

6 A. Yes, it is.

7 Q. Okay. How long has it been a South Carolina nonprofit
8 corporation?

9 A. Since 1923.

10 Q. Okay. And it's been a South Carolina nonprofit
11 corporation since 1923. So what act was it incorporated
12 under?

13 A. Back in those days, you went to the Secretary of State's
14 office and signed up as an eleemosynary institution. And I
15 will have to say I don't know what statute was in effect in
16 those days. My guess is that it was just the regular
17 Business Corporation Act.

18 Q. Okay. And at the time of that incorporation in 1923, do
19 you -- have you ever reviewed those articles of incorporation
20 for your upper diocese?

21 A. For the diocese of --

22 Q. For your upper diocese.

23 A. Upper diocese. No, I haven't reviewed them.

24 Q. Now, you were at one time a special counselor to your
25 church, or was it to the upper diocese for amending the

1 constitution and canons?

2 A. There was a special commission for constitution and
3 canons that was formed by the bishop and -- the then bishop.
4 And I was counsel to that special commission for constitution
5 and canons.

6 Q. And so that was for the upper diocese?

7 A. For the upper diocese.

8 Q. Okay. And the upper diocese essentially is the same
9 position as the plaintiff diocese in this case. It's the
10 same type of entity; is that correct?

11 A. Well, no. It's still -- it's still in union with the
12 national church.

13 Q. Okay. So let's, then, say in 2009, the upper diocese
14 was a similar entity as the lower -- as the diocese, the
15 plaintiff diocese; is that correct?

16 A. We call it the lower diocese, ma'am.

17 Q. Okay. But it was a similar type of entity?

18 A. Yes.

19 Q. Okay. And so when were you special counsel to this
20 commission to amend the constitution and canons of the upper
21 diocese?

22 A. 1999-2000.

23 Q. Okay. And at that time, the upper diocese utilized
24 those constitution and canons as its governing documents, did
25 it not?

1 A. Yes, the constitution and canons.

2 Q. Okay. And, in fact, there were amendments made to those
3 constitution and canons of the upper diocese, were there not?

4 A. At the time that we're talking about?

5 Q. Under your auspices when you were special counsel.

6 A. Yes, they were comprehensively revised.

7 Q. Okay. And you were part of that comprehensive revision?

8 A. I was.

9 Q. Okay. And in those constitution and canons of the upper
10 diocese as they were amended, then became the governing
11 documents as revised for the upper diocese; is that correct?

12 A. Well, they became the constitution and canons of the
13 upper diocese.

14 Q. That's right. Okay. Now, were you -- did you
15 participate in the approval process for the upper diocese
16 constitution and canons?

17 A. No.

18 Q. Okay. Did you attend any type of special meeting or
19 convention for the approval of those constitution and canons?

20 A. Well, they were read at the annual convention in one
21 year, and then they had second reading in the second year,
22 and I attended both of those.

23 Q. Okay. And did you attend as a delegate from your
24 church?

25 A. No.

1 Q. What was your capacity that you attended the convention
2 of the upper diocese?

3 A. I came at the invitation of the chancellor just in case
4 anybody had any questions.

5 Q. And did those amendments that you worked with and
6 presented to the convention -- did those pass at the
7 convention?

8 A. They did.

9 Q. And at the time those passed at the convention, it would
10 be fair to state that the national church was not present and
11 voted on those constitution and canons; isn't that correct?

12 A. I don't know the answer to that.

13 Q. Okay. And isn't it correct, since you were special
14 counsel for the diocese, the upper diocese, you never
15 contacted the national church and said, Hey, we want your
16 authority to amend our constitution and canons, did you?

17 A. No, and it would not have been within my role, my
18 purview as counsel, to the special commission.

19 Q. And, in fact, nobody, to your knowledge, on behalf of
20 the upper diocese ever contacted the national church and
21 said, We want approval or permission to present these
22 amendments to our general convention, to your knowledge -- or
23 annual convention?

24 A. To my knowledge, no.

25 Q. Okay. Now, you will agree that the plaintiff diocese

1 has been in existence from the late 1700s?

2 A. Yes.

3 Q. Okay. And when it first came into existence and for
4 over 250 years of its existence, it was an unincorporated
5 association?

6 A. Correct.

7 Q. And as an unincorporated association, it had
8 constitution and then subsequently canons; is that correct?

9 A. That's my understanding, yes.

10 Q. And, in fact, the first constitution adopted by the
11 plaintiff diocese was in 1785. Do you understand that?

12 A. I'm sorry. Are you asking me a question?

13 Q. Yes, sir.

14 A. I don't know the exact year. If your --

15 Q. It was in March of 1786; is that correct?

16 A. That sounds more like my recollection, but I'm just --
17 I'm not testifying to that, you understand. You're asking me
18 if that seems about right. Yes, it seems about right.

19 Q. And this constitution, which was 41, Plaintiff's Exhibit
20 41, have you had an opportunity to review that constitution?

21 A. The 1786 one?

22 Q. Correct.

23 A. I briefly looked at it a long time ago, ma'am.

24 Q. And you won't deny that this constitution, when it was
25 enacted, was enacted to govern the plaintiff diocese?

1 A. Well, yes.

2 Q. Yes, it was enacted to govern the plaintiff diocese?

3 A. I mean, I would assume so. I wasn't there.

4 Q. Well, I really don't believe you were there. I think we
5 can agree on that, Mr. McWilliams.

6 Let's look at Exhibit 41. You have that in front of
7 you? And I think it's Section 5 in that exhibit.

8 A. I have it on my magic screen.

9 Q. Do you see that, Section 5? Or it's Article 5.

10 A. My screen only goes down to 3.

11 THE COURT: May I, Ms. Golding?

12 MS. GOLDING: Yes, Your Honor.

13 THE COURT: May I pass him mine? It is extremely
14 legible.

15 MS. GOLDING: Thank you, Your Honor.

16 THE COURT: Yes. And I've read it several times, so...
17 It's going to be easier for me to look at the screen, I
18 think, than for him, perhaps. 5, Article 5.

19 THE WITNESS: Thanks, whoever has got the screen going.
20 Got it.

21 Q. Can you read Article 5?

22 A. Yes, ma'am.

23 Q. Okay. Can you read it out loud?

24 A. Yes. Article 5 -- and then there's a little sort of bit
25 of hen scratching right there that I can't read. That to

1 make regulations, rules and laws -- and I can't read the next
2 word and then -- or the next word.

3 Let me start again. That to make regulations, rules and
4 laws -- and I can't read the next two words. And then it
5 says no other authority than that of a representative body of
6 the clergy and laity conjointly, hyphen.

7 Q. Now, since you have attended the conventions of your
8 upper diocese, you do know that your conventions of your
9 upper diocese, the governance is based on vote of a body of
10 the laity and a body of the clergy; is that correct?

11 A. That's what we do, yes.

12 Q. Okay. And would you, then, be surprised to know that in
13 1786 that same type of governance existed for the plaintiff
14 diocese?

15 A. I'm not surprised.

16 Q. Okay. And with respect to the annual convention or this
17 governance by the body of the laity and the body of the
18 clergy, that has existed with the plaintiff diocese from 1786
19 to today, is that not a fact?

20 A. I'm not aware of any interruptions during that time. I
21 don't want to testify beyond my understanding, if you take my
22 point.

23 Q. Now -- and I think you testified on direct examination
24 that when the plaintiff diocese converted its type of
25 organization from a nonprofit to -- from an association to a

1 nonprofit corporate entity, it was still existing. That
2 didn't stop its existence, did it?

3 A. Correct.

4 Q. Okay. And so all the usage and practices that had been
5 followed by the plaintiff organization from 1786 to 1973 was
6 the source of their corporate governance that continued
7 beyond 1973; is that not correct?

8 A. Yes.

9 Q. Okay. Now, with respect to the articles of
10 incorporation, the 1973 articles -- I believe that's
11 Exhibit 7, Plaintiff's Exhibit 7.

12 A. 7, I have it.

13 Q. Okay. Good. Thank you.

14 You will agree that at that time, in 1973, the Nonprofit
15 Act did not require that the articles of incorporation set
16 forth any governing documents or an identification of
17 governance of a corporation, did it?

18 A. I don't quite take your meaning. I mean, from this
19 time, the diocese was a corporation and was now governed by
20 the 19 -- no, in these days, the 1962, actually, Nonprofit
21 Corporation Act, so it did have now an additional source of
22 governance beginning in 1973.

23 Q. Let me do it this way, then. In 1973, when the
24 plaintiff diocese changed its form from a nonprofit -- excuse
25 me, from an association to a nonprofit entity in South

1 Carolina, to do that, it had to file a declaration; is that
2 correct?

3 A. That's correct.

4 Q. And the declaration is Exhibit 7?

5 A. That's correct.

6 Q. And in that declaration, the statute at that time did
7 not require that the declaration set forth the governing
8 documents, did it? Let me refer you to the statute. Let's
9 pull it up.

10 A. May I respond to that by saying that Exhibit 7 speaks
11 for itself?

12 Q. No, that wasn't my question, but thank you anyhow.

13 Let's go to the old law that existed, 33-31-20. Let's
14 take a look at that.

15 Mr. McWilliams, do you have now in front of you on the
16 computer monitor, the screen --

17 A. I do.

18 Q. -- 33-31-20?

19 A. Yes. And I, in fact, have my own copy.

20 Q. Okay. Good. And that's entitled Written Declaration,
21 is it not?

22 A. That's correct.

23 Q. Okay. And it identifies the information that's required
24 on the written declaration?

25 A. Yes.

1 Q. Okay. And that is one through six, right?

2 A. That's correct.

3 Q. And one through six, none of those items say identify
4 your governing documents, does it?

5 A. It does not say that in 33-31-20.

6 Q. Okay. And, in fact, even under today's code there is no
7 requirement that the articles of incorporation set forth the
8 governing documents of the nonprofit?

9 A. That's -- that's --

10 Q. Well, let's look at that if you don't --

11 A. That's correct.

12 Q. Okay. Thank you.

13 A. And it's true under the Business Corporation Act, as
14 well.

15 Q. Okay. Thank you. So it's fair to state that because a
16 declaration or articles of incorporation do not have anything
17 on the face of their document about governing documents --
18 it's fair to state that doesn't automatically exclude
19 governing documents to be considered, does it?

20 A. I'm sorry. I don't quite take your question.

21 Q. I apologize. That's a poor question.

22 Because the articles of incorporation that existed in
23 1973, Exhibit 7, doesn't set forth constitution and canons of
24 the plaintiff diocese, that doesn't mean that the
25 constitution and canons of the plaintiff diocese are not the

1 governing documents?

2 A. No, it does not. It means they are -- I mean, they are
3 some of the governing documents, yes.

4 Q. And that's true for any amendments we make, amendments
5 that were made in 2010. Those amendments to the articles of
6 incorporation did not have to set forth or identify the
7 governing documents of the plaintiff diocese, did it?

8 A. No.

9 Q. Okay. So because the articles of incorporation did not
10 identify the constitution of the plaintiff diocese nor the
11 constitution of the -- nor the canons, that doesn't
12 automatically say that the constitution and canons of the
13 plaintiff diocese are not in effect at the time of
14 incorporation?

15 A. Correct.

16 Q. Okay. Now, if you'll look at Plaintiff's Exhibit No. 7,
17 and it lists two officers as the -- on the top. It's got two
18 or more officers or agents appointed to supervise or manage
19 the affairs of the plaintiff corporation, correct?

20 A. Yes.

21 Q. Okay. And neither of those two officers are officers of
22 the defendant national church, are they?

23 A. I don't know the answer to that.

24 Q. Okay. And then let's look at the fifth paragraph. It
25 says names and residences of all managers, trustees,

1 directors or other officers. Those three listed are not
2 officers of the national church, are they?

3 A. I don't know whether they are or not. They may have
4 been.

5 Q. To your knowledge, on Exhibit 7 is anyone identified as
6 an officer of the national church?

7 A. No.

8 Q. And let's look at the next amendment, Plaintiff's
9 Exhibit No. 8.

10 A. I have it.

11 Q. Okay. There's some individuals identified in
12 Plaintiff's Exhibit 8; is that correct?

13 A. Yes, ma'am.

14 Q. Okay. And on Plaintiff's Exhibit 8, which is the
15 application for amendment, nowhere on that document is there
16 any individual identified as an officer of the national
17 church?

18 A. That's correct.

19 Q. Now, you will agree that Plaintiff's Exhibit 7 and
20 Plaintiff's Exhibit 8 are valid and enforceable documents
21 that were filed with the Secretary of State and they continue
22 to be valid to today; is that correct?

23 A. That is correct.

24 Q. Now, going back to Plaintiff's Exhibit No. 7, the
25 original articles of incorporation, there is nowhere on these

1 articles of incorporation that state that they cannot be
2 amended; is that correct?

3 A. That's correct.

4 Q. Plaintiff's Exhibit No. 1 contains the canons and
5 constitutions of the plaintiff diocese through the calendar
6 year 2007. Isn't it a fact there is nowhere in plaintiff
7 diocese's constitution and canons in which it states that the
8 articles of incorporation cannot be amended?

9 A. That's correct.

10 Q. Okay. In fact, from 2007 back, there is nowhere in any
11 version of the articles and canons -- excuse me, of the
12 constitution and canons of the plaintiff diocese that
13 articles or declarations of incorporation cannot be amended?

14 A. That's correct.

15 Q. Now let's go to the national church. Isn't it a fact
16 there is no provision in the national church's constitution
17 and canons that states that articles of incorporation of a
18 diocese cannot be amended?

19 A. A flat statement that they cannot be amended?

20 Q. Right.

21 A. No, it's not in there.

22 Q. And, to your knowledge, the defendant national church's
23 constitution and canons has never had a provision that a
24 diocese's articles of incorporation cannot be amended?

25 A. That's a little broad for me, Counsel.

1 Q. Well, to your knowledge. I asked to your knowledge.

2 A. Not to my knowledge.

3 Q. Okay. So as of today, there is no limitation in the
4 plaintiff diocese's constitution and canons as to amending
5 articles, and there is no limitation in the national church's
6 constitution and canons limiting amendment of articles of
7 incorporation of a diocese; is that not a fact?

8 MR. BEERS: Asked and answered, Your Honor, with force,
9 I might add.

10 THE COURT: It has been asked and answered, and I have
11 the information.

12 MS. GOLDING: Thank you, Your Honor.

13 Q. Let's talk a little bit about bylaws. You will agree
14 bylaws are rules and regulations?

15 A. Yes.

16 Q. Okay. And bylaws don't have to use the name or the word
17 "bylaws," do they?

18 A. That's right.

19 Q. Okay. And the canons of the plaintiff diocese have been
20 considered to be rules and regulations; is that not correct?

21 A. The canons, yes.

22 Q. Okay. And so the canons of the plaintiff diocese can be
23 considered to have been its bylaws?

24 A. Yes. I mean, within certain date limitations, yes.

25 THE COURT: Within certain what now?

1 THE WITNESS: Date limitations.

2 Q. Now, I'd like to now look at Section 33-31-180 of the
3 Nonprofit Act.

4 THE COURT: 33 -- which one?

5 MS. GOLDING: 33-31-180 of the Nonprofit Act.

6 THE COURT: Okay.

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

8 A. Yes, ma'am.

9 Q. Okay. I'm going to read it out slowly. And if I've
10 read it out incorrectly, I'm confident you will let me know,
11 will you not?

12 A. I'm equally confident you'll get it right, Counsel.

13 Q. Thank you. "If religious doctrine governing the affairs
14 of a religious corporation is inconsistent with the
15 provisions of this chapter on the same subject, the religious
16 doctrine controls to the extent required by the Constitution
17 of the United States or the Constitution of South Carolina or
18 both."

19 Did I read that correctly?

20 A. It looked right to me, yes, ma'am.

21 Q. Okay. Now, let's go to Section 33-31-1001. Do you have
22 that?

23 A. I will have it in just a second.

24 Q. Okay. And let's highlight A.

25 A. Okay. I'm there.

1 Q. Now, that Provision A states: "A corporation may amend
2 its articles of incorporation to add or change a provision
3 that is required or permitted in the articles or to delete a
4 provision not required in the articles. Whether a provision
5 is required or permitted in the articles is determined as of
6 the effective date of the amendment."

7 Did I read that correctly?

8 A. It sounded right to me.

9 Q. Okay. Thank you. Now, let's, then, look at your
10 answers with respect to the amendment of an articles of
11 incorporation. You've already testified that there's nothing
12 in the plaintiff diocese's constitution and canons that
13 prohibits amendments to its articles; is that correct?

14 A. That's right.

15 Q. And you've already testified that there's nothing in the
16 defendant national church's constitution and canons that
17 prohibit the plaintiff diocese to amend its articles of
18 incorporation; is that correct?

19 A. I believe that's right.

20 Q. Okay. So going back, then, to section -- let me strike
21 that.

22 But the nonprofit code which I just read out permits
23 amendments to articles of incorporation; is that correct?

24 A. That's correct.

25 Q. Okay. So let's go back to 180. So we've got if

1 religious doctrine governing the affairs of a religious
2 corporation is inconsistent. Well, we already know there's
3 no religious doctrine that's inconsistent with respect to
4 amending corporate articles; is that correct?

5 A. It's not the same thing.

6 Q. Okay. With the provisions of this chapter on the same
7 subject; is that correct?

8 A. That's what --

9 Q. Did I read that --

10 A. That's what 180 says, yes.

11 Q. So going back, then, to 33-31-1001A, the same subject is
12 amendment of articles of incorporation, correct?

13 A. Correct.

14 Q. Okay. Now, so we've determined now that there is no
15 inconsistent provision in the defendant national church's
16 constitution and canons nor the plaintiff's constitution and
17 canons?

18 A. No, ma'am, we have not determined that.

19 Q. Okay. Well, then let's go to 33-31-1030.

20 A. Got it.

21 Q. Now, that provision -- and I'll read it out: "The
22 articles of only a religious corporation or public benefit
23 corporation may require an amendment to the articles or
24 bylaws to be approved in writing by a specified person or
25 persons other than the board. The article provision must be

1 amended only with the approval in writing of such person."

2 Did I read that correctly?

3 A. It sounded right to me.

4 Q. Okay. Now, isn't it a fact -- and you've already
5 testified -- that the articles of incorporation of the
6 plaintiff diocese has no reference to any person identified
7 with the National Episcopal Church?

8 A. You have to think about what the word "person" means.
9 Person is not a human being, necessarily. A person can be a
10 corporation or a partnership or whatever. If you look at the
11 definition of person in the statute, that doesn't -- it
12 doesn't relate to a particular human being.

13 Q. Well, where in Article -- where in the article,
14 Exhibit 7, is it set forth that the national church must
15 approve in writing any amendment to its articles of
16 incorporation -- to the plaintiff's articles of
17 incorporation?

18 A. It doesn't say that.

19 Q. Okay. And isn't that the purpose of Section 33-31-1030?

20 A. What 1030 does --

21 Q. That's a yes or a no, and then you can explain. You can
22 answer yes or no. Then you have a right to explain.

23 A. Would you kindly repeat the question?

24 Q. Okay. Is it not the purpose of Section 33-31-1030 to
25 obtain outside authorization to an amendment of articles if

1 outside authorization is mandated?

2 A. By a specified person or persons other than the board,
3 if I may complete.

4 Q. Yes or no?

5 A. For the sake of argument, I'll say yes so I can see
6 where you're going with this, Counsel.

7 Q. Now, let's look at 1005, 33-31-1005.

8 A. Got it.

9 Q. Okay. This provision -- and Number 6. I'm particularly
10 looking at Number 6. Can you read Number 6?

11 A. I can.

12 Q. Okay. That says: "If approval of the amendment by some
13 person or persons other than the members, the board or the
14 incorporators is required, pursuant to Section 33-31-1030, a
15 statement that approval was obtained must be filed about the
16 articles of incorporation or the amendment."

17 Is that not correct?

18 A. We're looking at -- I'm sorry. I'm not being
19 argumentive here. 10-05-6, is that where we are?

20 Q. Yes, sir.

21 A. "If approval of the amendment by some person or persons
22 other than the members, the board or the incorporators is
23 required, pursuant to Section 33-31-1030, a statement that
24 the approval was obtained," is what 6 says.

25 Q. And that must be filed --

1 MR. TISDALE: Your Honor, she's interrupting.

2 MS. GOLDING: I apologize. I didn't mean to.

3 THE WITNESS: And that is among the things that must be
4 filed, yes.

5 Q. Okay. So when a religious corporation amends its
6 articles of incorporation and this religious corporation is
7 required to get outside approval, that approval must be filed
8 with the amendment; is that correct?

9 A. If it's required to get outside approval, yes.

10 Q. Okay. Let's go back to Exhibit 8.

11 A. Exhibit 8.

12 Q. Yeah.

13 A. Okay. I have it.

14 Q. Okay. You've already testified that, in your opinion,
15 Plaintiff's Exhibit 8, an amendment to our articles of
16 incorporation, is valid; is that not correct?

17 A. Yes.

18 Q. Okay. And in Exhibit 8, this amendment to the
19 corporation, there is no signature on behalf of anyone of the
20 defendant, the national church; is that correct?

21 A. Correct.

22 Q. Okay.

23 A. I mean, I am assuming, again, that neither Bishop
24 Allison nor John Beckwith were agents or officers of the
25 national church, just to make it clear.

1 MS. GOLDING: Thank you, Your Honor. No more questions.

2 MR. TISDALE: Your Honor, consistent with our
3 conversation yesterday, may I depart at this point?

4 THE COURT: Yes, sir. We'll miss you.

5 MR. TISDALE: Thank you very much.

6 THE COURT: Thank you, sir. We'll see you tomorrow.

7 Yes, sir.

8 CROSS-EXAMINATION BY MR. RUNYAN:

9 Q. Good afternoon.

10 A. Yes, sir.

11 Q. Let me just ask you a couple of openers here, if I
12 could.

13 A. Yes, sir.

14 Q. The Nonprofit Act of 1994 does not require, does it,
15 corporations incorporated prior to 1900 to be bound by this
16 act unless they file an irrevocable election to be bound,
17 does it?

18 A. You're talking about Section 1707?

19 Q. 1701, 305, and 122. We can look at all of them. Start
20 with 1701.

21 A. Sorry. I'm getting there.

22 Q. I thought you might have it memorized by now.

23 A. Thinking you have things memorized can be a rocky road,
24 Counselor.

25 Q. I agree.

1 A. Okay. I'm looking at -- we're starting with 1701 and
2 which begins by saying, "This applies to all domestic
3 corporations which on this chapter's effective date, 1994,
4 were governed by Title 33, Chapter 31 of the 1976 codes,"
5 which this one was.

6 Q. Let me save your energy on this. My questions are not
7 related to the Diocese of South Carolina as a corporate
8 entity, okay? There are other plaintiffs in this case.

9 So my question is, are corporations, pre-1900
10 corporations, not subject to this act unless they file an
11 irrevocable election to be governed by this act; yes or no?

12 A. Counselor, could you refer me to the section that --
13 that is the source of your question?

14 Q. Well, there are three. 1701.

15 A. Which we just looked at.

16 Q. 305.

17 A. Just plain old 305?

18 Q. Well, 31 -- 33-31-305.

19 A. Okay.

20 Q. And just for shucks, although I don't know that we need
21 to, 122.

22 A. And 305 says -- the title is Powers of Corporations
23 Created By Legislative Authority Before 1900. And it says,
24 "All charitable, social and religious corporations validly
25 created by legislative authority before 1900 were validly

1 created before 1900 by the act of a city, county government
2 or other political subdivision. In addition to the powers
3 theretofore granted to them, have the powers enumerated in
4 Section 33-31-302."

5 Now, I've always read that to mean that pre -- what
6 happened was the General Incorporation Act came in in South
7 Carolina in the year 1900. That's how 1900 --

8 Q. Excuse me, sir. I just asked you to answer the question
9 yes or no. You can do that, and then you can explain. So
10 can you answer that yes or no?

11 A. And ask me the question again. I'm sorry.

12 Q. Is it correct that the Nonprofit Act of 1994 does not
13 apply to corporations -- and we will be specific,
14 legislatively incorporated entities, unless they file an
15 irrevocable election seeking to be governed by that act; yes
16 or no?

17 A. No. And I'm saying no on the basis that Section 305
18 doesn't say that.

19 Q. I'm talking about the whole act, not just Section 305.
20 You're the one -- you were the reporter, right? Do you not
21 know the answer to that question?

22 A. Yes, I was the reporter.

23 Q. What's the answer to the question, no?

24 A. Well, the answer on the basis of 305 is that they are
25 governed by this act, as well as their previous ones.

1 Q. That's not the question. Based on the Nonprofit Act as
2 a whole, are you able, Mr. McWilliams, to answer the question
3 or not?

4 A. Taking the statute as a whole, the answer is yes.

5 Q. Oh. Thank you. Now, the second issue: Would you agree
6 with me that membership in South Carolina in a nonprofit
7 corporation is entirely voluntary?

8 A. Yes.

9 Q. Okay. I didn't understand you to say this on direct,
10 but I just want to get it out of the way: Were you
11 testifying on direct, when you said the bishop was the only
12 director, that this is a corporation sole?

13 A. No.

14 Q. Okay. Now, let's get to something else. I believe you
15 told us in some of your testimony that there was a
16 significant difference in terms of the scope of the Nonprofit
17 Act of 1994 and previous legislation; is that correct?

18 A. Yes.

19 Q. Would you agree with me that the previous legislation --
20 and I'm specifically talking about 1973 right now -- was
21 vague as to how the corporation was to be organized?

22 A. Counselor, it certainly was vague in that respect and
23 other respects, yes.

24 Q. Okay. And, in fact, were you involved in the --
25 associated with either the creation of or passage of the 1988

1 Business Corporation Act?

2 A. Yes.

3 Q. Okay. And that act indicates that the current nonprofit
4 laws, that is in '88, were inadequate?

5 A. I'm sorry. I couldn't hear your last word.

6 Q. Were inadequate.

7 A. Inadequate, yes.

8 Q. In fact, there's a phrase that they are very incomplete.

9 A. Yes.

10 Q. And you would agree with that?

11 A. Yes, sir.

12 Q. All right. Well, let's go back to that time during --
13 when that was the case.

14 MR. RUNYAN: Would you put up, please, Exhibit 7,
15 Diocese Exhibit 7?

16 Q. Now, I just have a couple of questions about this. The
17 first one is going to the bottom of the page. There are
18 three names there. And if you read, as we have many times
19 today, the introductory phrase, you come away with the belief
20 that whoever those people are, managers, trustees, directors
21 or officers, all of them are supposed to be there; is that
22 correct?

23 A. I'm sorry. You mean all of those names are supposed to
24 be there?

25 Q. All of the managers, trustees, directors or other

1 officers. I think you emphasized it was important that they
2 all be there.

3 A. Yes. It says the name and residences of all.

4 Q. Okay. Now, I didn't hear this on direct, but isn't it
5 correct that a director can be an officer?

6 A. A director can also be an officer, yes.

7 Q. Okay. So we know that these are all managers, trustees,
8 directors or other officers, but we really don't know who the
9 directors are, do we?

10 A. Well, according to this, all of the officers -- if we
11 can -- well, I'm sorry. I should answer yes or no. Yes, I
12 think we do know, and it's my opinion that we do know. And
13 the reason -- how I get there is all officers must be named,
14 all officers must be named. And so we have one named as --
15 who was the secretary, one named who was the treasurer.

16 Q. No, that's not what it says, does it? Let's read it
17 again. All managers, correct?

18 A. Managers.

19 Q. All directors, correct?

20 A. Yes.

21 Q. All other officers, correct?

22 A. You skipped trustees.

23 Q. Excuse me. Trustees?

24 A. Yes.

25 Q. That all applies to each of those, doesn't it?

1 A. Are they all managers? You'll notice that there is a
2 capital M --

3 Q. That's not the question, not the question. Does that
4 require that if there are managers and if there are trustees
5 and if there are directors and if there are officers, all of
6 them must be listed there?

7 A. Yes.

8 Q. And it doesn't indicate by any of those names who is or
9 who is not a board member, and we know that officers may be
10 board members; is that correct?

11 A. That's correct. But you asked me two questions, and I'd
12 like to answer the first one, if you would repeat the first
13 question, please.

14 Q. I wish I could, but I can't. Give me just a hint, and
15 I'll head in that direction.

16 A. When you said -- you said is it not true that some of
17 these people may be both officers and directors and,
18 therefore -- you had a followup. And the way I understand
19 this document from having filled in a lot of these in my time
20 is we have George Chassey, who was the secretary. That's an
21 officer. We have Tom Myers, who was treasurer. That's an
22 officer. We don't have anybody here named as a manager or a
23 trustee. We have the bishop, and the bishop doesn't sign as
24 a director. The bishop does not sign as an officer or
25 manager or trustee. He signs as the bishop.

1 Q. Is there a signature on here?

2 A. Well, he is named -- I'm sorry. He is named as the
3 bishop. And it's a technical little thing here, but this has
4 to do with what I talked about earlier about designated
5 directors.

6 Q. Do you see something that says this is a designated
7 director? Can you show that to me on that piece of paper?

8 A. It doesn't say it on the piece of paper.

9 Q. Does it say that if there are directors, they must be
10 listed there?

11 A. It does say that.

12 Q. And how is it you go from that to saying that the bishop
13 and Canon Chassey and Thomas Myers could not all three be
14 directors?

15 A. Because Canon Chassey, Thomas Myers are listed expressly
16 as officers.

17 Q. So that would exclude the possibility that they are
18 board members? Is that what your testimony is?

19 A. Yes.

20 Q. So whenever a person is listed as a secretary of a
21 nonprofit corporation, we know automatically that person
22 cannot be a board director?

23 A. In 1973.

24 Q. Well, what -- show me in the statute where that appears.

25 A. You don't need the statute, Counselor. You can look at

1 this. Let's look again at what we have here. It says all
2 trustees, directors, other officers, managers. Two people
3 expressly are in there as officers. The statute does require
4 that directors be listed. And so the one who is not listed
5 as an officer, in my opinion, defaults to the director and
6 defaults in his position as bishop. And that opinion is
7 confirmed by the fact that the bishop continued until 2010
8 always to be listed on these kinds of documents as the
9 bishop.

10 Q. Okay.

11 A. And that, in the law of nonprofit corporations, in my
12 opinion, makes him a designated director and the one and only
13 designated director.

14 Q. We can agree that there was no such term in 1973,
15 correct?

16 A. Designated director is in the 1994 Act.

17 Q. All right. We can agree that there are quite a few
18 things in the '94 Act that are not in the '73 Act?

19 A. Yes, sir.

20 Q. Would you agree with me that you can't take something in
21 the '94 Act and drag it to '73 and have it applicable then?

22 A. As a matter of statute, no.

23 Q. Okay. So are you telling us when the curtain came down
24 on the passage of this act that that changed everything for
25 an existing corporation?

1 A. I'm sorry. You say "this act." You mean the 1994 Act?

2 Q. Yes, sir.

3 A. Well, certainly, when the 1994 Act came in under the
4 reserve power, all Section 33-31 nonprofits were regulated as
5 of the moment of effectiveness by the '94 Act.

6 Q. Okay. So that act created certain requirements that
7 might not have been there prior to the act?

8 A. Correct.

9 Q. For an existing corporation?

10 A. For a corporation that was in existence in 1994, yes.

11 Q. Such as the requirement that there can be no fewer than
12 three directors?

13 A. That's correct.

14 Q. Okay. Who are the three directors today?

15 A. Today there is one director.

16 Q. I thought there had to be three.

17 A. There is a section that says that there have to be
18 three, but there's another section that says that all of the
19 powers and responsibilities of the board can be delegated to
20 some or one person. And I repeat, all of the powers of the
21 board can be delegated to one person.

22 Q. We'll get to that in just a minute. Let me hand you a
23 document. I don't know if you've seen this before. And I'll
24 tell you what, let's mark it first.

25 (Plaintiff's Exhibit DSC-64 marked for identification.)

1 Q. Have you ever seen this before?

2 A. May I look at this for a moment?

3 Q. You certainly may.

4 A. (Reviewing document.)

5 MR. SMITH: Alan, did you produce this to us?

6 MR. RUNYAN: We did.

7 THE COURT: It's just marked for ID at this point,
8 right?

9 MR. RUNYAN: It is.

10 Q. Have you ever seen that before?

11 A. No, I haven't.

12 Q. Counsel did not provide that to you? Mr. McWilliams --

13 A. Yes, sir. Sorry?

14 Q. -- did counsel provide that to you?

15 A. Well, I haven't seen it.

16 Q. Okay. This is the initiating document, is it not, for
17 the 1973 incorporation?

18 A. Well, is there a date on here? It just says November
19 1973. The other says November 14th.

20 Q. Well, there's a stamp on the back. Would you like to
21 see the original?

22 A. I'll take your word for it.

23 Q. I have it, if you would like to look at it.

24 A. November -- November 5th. Is that the stamp you're
25 referring to -- no. That's a received stamp of some kind.

1 Q. Okay.

2 A. That's received by the Diocese of South Carolina.

3 Q. All right.

4 A. I don't see the stamp that you're referring to.

5 Q. That was the one I was referring to.

6 A. That just says -- that's not a Secretary of State stamp.

7 That's the diocese.

8 Q. Are you telling us that in your belief this was not

9 filed?

10 A. I don't see any indication on it that it was filed.

11 Q. Okay.

12 MR. RUNYAN: Get the certified copy, James, please.

13 Q. Would you like to see a certified copy?

14 THE COURT: I think the answer is "yes."

15 THE WITNESS: Yes.

16 MR. RUNYAN: Well, we'll work on that.

17 THE COURT: Okay.

18 Q. Let's look at this document for a moment to save a

19 little time. And if this is filed, would you agree with me

20 that this is the initiating document for the 1973 charter?

21 A. Well, if it was filed and filed before November 14th --

22 I see -- you know, I've looked at the Secretary of State's

23 box at the top of the page. No, I don't agree with you. I

24 don't agree with you --

25 Q. Okay.

1 A. -- for two reasons. Well, one is the Secretary of
2 State's box is not filled in. But the other is this is the
3 declaration. This is a document that would have been handed
4 over to the Secretary of State's office as the declaration.
5 But Exhibit 7 is the certificate.

6 Q. Gotcha, but that wasn't my question. My question is, is
7 this the initiating document in the process that led to the
8 incorporation?

9 A. And the answer is no, just so that I'll get a chance to
10 explain the answer. And that is because it is the
11 certificate of incorporation that is the document that
12 creates the corporation.

13 Q. You're not answering my question.

14 A. If you'll let me finish answering it.

15 THE COURT: I think you all have got to talk to me. If
16 there's a concern, let me know. All right.

17 THE WITNESS: If by initiating document you mean the
18 first step towards incorporation, then perhaps yes is the
19 answer. But I don't know. I don't know enough about this
20 document. If what you're asking me is, is this document the
21 one that creates the corporation and is the founding
22 document --

23 Q. That is not the question.

24 A. -- of the corporation, then the answer is no. Exhibit 7
25 is that.

1 Q. I gotcha. But you don't get Exhibit 7 without doing
2 something like Exhibit 64, do you?

3 A. Yes, but hold on just one second.

4 Q. Do you want to finish an answer?

5 A. Could you stick with me for just one second?

6 Q. Well, I don't know. What would you like to do?

7 A. Well, what I want to do is look in here (indicating).

8 Q. What are you looking for?

9 A. What I'm looking for is how you incorporate a nonprofit
10 incorporation under the old statute.

11 Q. Right.

12 A. And I find in 33-31-20, the requirement of a written
13 declaration and names and residences of petitioners and
14 purpose and things like that. And then 33-31-50 says, "Upon
15 the filing of the declaration, accompanied by the first
16 report, the Secretary of State shall issue..."

17 And there's also the possibility under 33-31-60 of an
18 investigation prior to the issuance of the charter. And so
19 what we have here is a requirement for a declaration.
20 Exhibit 64 appears by -- on its face to be a declaration, you
21 know. I'm willing to posit that's the 33-31-20 declaration.
22 Then there is the possibility of an investigation prior to
23 the issuance of the charter. And only then is the charter
24 issued and the corporation comes into existence.

25 Q. Are you trying to tell us you have doubts this is

1 genuine? I'm just trying to understand. You're walking all
2 around the issue. Just cut to the chase.

3 A. Plaintiff's Exhibit 64, I don't -- I mean, it's got two
4 signatures on it. I'm not saying it's not genuine.

5 Q. Okay. What are you saying? You just don't know if it's
6 been filed and issued and is the document --

7 A. Well, I don't know if it's been filed. But when you
8 asked me the question, is this the initiating document, and I
9 understood your question to be is this the document that
10 launches the corporation, the answer is no. And I remembered
11 from the statute that there is something called a written
12 declaration to be filed under the statute before the charter
13 will be issued. And so even if this -- even if this is
14 genuine -- and, you know, it's got two signatures on it.
15 Even if this is genuine, it still is not the document that is
16 the fundamental seminal founding document of the corporation.

17 Q. Which is the charter?

18 A. Which is the charter, yes, sir.

19 Q. All right. Well, can you agree with me that on this
20 document there are 21 people listed where it says "The names
21 and residences of all managers, trustees, directors or other
22 officers are as follows"?

23 A. Well, I mean, there -- yes. I mean, I'm not going to
24 dispute you. Yes, there are three names, and then there are
25 just 18 members. They're not listed.

1 Q. Okay. What does it say? Members?

2 A. They're referred to as members of bishop and council,
3 which I would understand to be the bishop's council under the
4 constitution and canons.

5 Q. Have you left out one thing, "elected by convention"?

6 A. Elected by convention, yes, sir.

7 Q. Well, let's leave that alone until we dredge up our
8 certified copy. We might come back to it.

9 Let's go to Diocese 8.

10 A. I have it.

11 Q. By the way, on Diocese 7, it does say -- I know you said
12 it's boilerplate, but it does say that a meeting was held
13 pursuant to bylaws and regulations before the incorporation,
14 right?

15 A. Yes.

16 Q. Okay. Diocese 8.

17 A. Got it.

18 Q. We have two people listed at the top by name, and I'm
19 not sure by title, but, anyway, by name, at least. And then
20 what does it say in type after that?

21 That's the wrong one.

22 A. This says Plaintiff's Exhibit 8.

23 Q. All right. Well, scroll down further. Further.

24 Further, if you can. If you can't, we've got the wrong
25 document. There it is. Zoom in on the top part, please.

1 A. I have a second -- I have a page 395 stapled to the back
2 of my copy. Is that what you're looking for?

3 THE COURT: Yes. It's up on the screen now.

4 Q. Look on the screen and tell me if that's what you're
5 looking at.

6 A. Yes. So State of South Carolina, executive department.
7 And there are the names of Bishop Allison and John Beckwith,
8 yes, sir.

9 Q. And those are typed in.

10 A. Yes, sir.

11 Q. And then the form says what?

12 A. A majority of the board of directors.

13 Q. Okay. Do you think there might be more than one board
14 of director, according to the Secretary of State in 1987?

15 A. Well, those are typed-in names. That's a boilerplate
16 line. The fact is that Bishop Allison, in my opinion, by
17 himself would have been a majority of the board. Now, there
18 is nothing in the record that suggests that by 1987 somebody
19 else was elected to the board.

20 Q. There's nothing to say that they weren't, is there?

21 A. There's nothing one way or the other.

22 Q. That's right. Okay.

23 A. So the record --

24 Q. At least the boilerplate and whoever typed this in
25 didn't change it, it says that these two people are a

1 majority of a board of directors; is that correct?

2 A. That's what the boilerplate says, yes. You're right.

3 Q. All right. Finally, let's get to the area where you
4 were headed a while ago and I wasn't quite ready to go yet,
5 33-31-801.

6 A. Oh, yes, indeed.

7 Q. You're probably quite familiar with this section, are
8 you not?

9 A. I'm sorry. I'm looking in the old statute. Pardon me.
10 33-31-801 of the new statute?

11 Q. Yes, sir.

12 A. The current statute. Okay. I am there.

13 Q. I'm going to try and -- there's a lot of comments in
14 here, including a lot by the South Carolina reporter, who
15 happened to be you, right?

16 A. Well, I was the coauthor, yes.

17 Q. Coauthor, okay. Would it be fair to just summarize the
18 concepts up into this: The person or group under whose
19 authority corporate powers are exercised and under whose
20 direction the affairs of the corporation are managed,
21 regardless of the name of the group, is a director?

22 A. Yes.

23 Q. So title doesn't matter. What matters is what you do.
24 Is that another way of saying that?

25 A. Yes.

1 Q. Now let's go to 180, 33-31-180. Do you have that?

2 A. I'm there.

3 Q. Okay. I'd like you to read into the record a comment,
4 if you would.

5 A. I'm ready.

6 Q. Okay. Under the official comments, the last paragraph,
7 would you read the first sentence?

8 A. "While in one sense, Section 1.80 simply states the
9 obvious, it is helpful to remind those dealing with the
10 religious corporations that they must consider constitutional
11 mandates."

12 Q. Okay. That's great. Was this nonprofit act in effect
13 in September 2009?

14 A. Yes.

15 Q. Do you agree with me that the controlling portions of
16 this act are the words of the act itself and not the
17 comments?

18 A. Yes.

19 Q. And do you agree with me that it is up to a court in
20 South Carolina to determine the applicability of portions of
21 this act under the facts that are provided to them?

22 A. Yes.

23 Q. A couple of questions about the lease issue. Do you
24 recall broadly that topic?

25 A. Yes, sir. Yes.

1 Q. You don't know, do you, whether the provision of a house
2 was part of the compensation package for Bishop Lawrence, do
3 you?

4 A. No, I don't know.

5 Q. And if it were, at least if the amounts were reasonable
6 and the compensation were reasonable, it wouldn't be
7 corporate waste, would it?

8 A. It might be. I don't agree with what you say.

9 Q. Okay.

10 A. And I'll explain the reason, and that is at least one
11 reason is that it leases the house under conditions
12 that let's just hypothetically assume were reasonable for the
13 bishop, but at least it gives him the right to continue to
14 use the house even when he's no longer bishop.

15 Q. But that's the right that the diocese has, don't they?
16 They can have a chief operating officer who may or may not be
17 a bishop?

18 A. In that case, I would say it's not fair. I think it's
19 excessive. And I don't see anything in the 1023 that
20 explains why it's fair. Form 1023 is meant to have a
21 schedule in it. It requests a schedule explaining why the
22 compensation for the highly-paid executives is fair. And the
23 only thing I could find responsive to that in 1023 was that
24 this is what most bishops get. This is what most bishops
25 get.

1 Q. Did the IRS grant the 501(c)(3) application?

2 A. As far as I know, yes.

3 Q. Did they have the ability not to do that?

4 A. They do have the ability not to do it.

5 MR. RUNYAN: Okay. Just one more document, and then
6 we'll wrap it up.

7 (Plaintiff's Exhibit DSC-65 marked for identification.)

8 Q. I hand you what's been marked as Exhibit 65. That's the
9 IRS application. Have you seen that before?

10 A. No.

11 Q. I just have a couple of quick questions. Did you, per
12 chance, ask your lawyers to provide you with any IRS
13 applications or they just gave you one?

14 A. They gave me the 1023 that they had gotten from you.

15 Q. Okay. Do you know they got this one from me, too?

16 A. I don't know.

17 Q. Okay. Let me hand you one more -- well, let's wait on
18 that.

19 If you would flip through there and find the section
20 where it discusses the governing body of the diocese, please.

21 A. Can you give me a page number -- or I guess there aren't
22 page numbers here, are there?

23 Q. I don't have my copy. I'll get the original. Just a
24 minute. Let's see. I think it would be -- it's page 3,
25 question 4.

1 Have you found it?

2 A. No.

3 MR. HOLMES: Your Honor, we just had a question as to
4 where this document was furnished to the defendant.

5 MR. RUNYAN: Do you want the number?

6 MR. HOLMES: Sure.

7 MR. RUNYAN: I will furnish that to you. Do you want it
8 right now?

9 MR. HOLMES: We just want to make sure it was furnished.

10 MR. RUNYAN: Well, it was furnished. Would you like it
11 right now?

12 THE COURT: Yes, I think he does.

13 MR. RUNYAN: I think he does. DSC 730-08941-09401.

14 MR. HOLMES: Thank you.

15 Q. Page 3 of the application, paragraph 4, are you with me?

16 A. Yes. Where it says see attached?

17 Q. Yes. What is the question on this form beside No. 4?

18 A. It says, "The membership of the organization's governing
19 body is, colon."

20 Q. And then it says --

21 A. "Names, addresses and duties of officers, directors,
22 trustees, etc."

23 Q. It says, "See attached"?

24 A. Then it says "See attached."

25 Q. Would you take a look at the attached and tell me if you

1 see more names than just Bishop Temple?

2 A. I see more names than just Bishop Temple, but let me
3 explain my answer. This is a list of the diocesan council --
4 well, it begins by saying diocesan council members, but then
5 it says membership of the organization's governing body. And
6 it continues to characterize them as diocesan council members
7 all the way through.

8 Q. So your testimony is that they could not be the board of
9 directors?

10 A. They're not listed here as the board of directors. I
11 notice the board of trustees of the corporation that is the
12 Trustees of the Protestant Episcopal Church characterizes
13 them as a board of trustees and then the membership of that
14 governing body.

15 Q. This is an application for two entities, isn't it, for
16 the diocese?

17 A. Yes, it is. It's for two entities, the two separate
18 corporations.

19 Q. And for the diocese it lists quite a number of people as
20 the governing body, and you just don't know who the governing
21 body is?

22 A. Well, it says here diocesan council members.

23 Q. Okay. But your view still is that in 1977 the board of
24 directors would have just been Bishop Temple?

25 A. Yes.

1 Q. All right. Look down at paragraph 5 on that same page.
2 Would you read the question that appears and tell us which
3 box is checked?

4 A. Paragraph 5. "Does the organization control or is it
5 controlled by any other organization?" Checked is "no."

6 Q. Okay.

7 A. Next question. "Is the organization the outgrowth of
8 another organization or does it have a special relationship
9 to another organization by reason of interlocking
10 directorates or other factors?" "No."

11 MR. RUNYAN: And one final document.

12 (Plaintiff's Exhibit DSC-66 marked for identification.)

13 Q. Have you seen this document before?

14 A. No.

15 Q. You weren't furnished this one either?

16 A. I haven't seen it.

17 Q. Okay. So you weren't furnished it?

18 A. Presumably, not, no.

19 Q. Okay. Who's the author?

20 A. Tom Tisdale.

21 Q. Who's it addressed to?

22 A. Arnold Blackman at the Diocese of South Carolina.

23 Q. Is that the same person who signed the application that
24 we just looked at?

25 A. It is.

1 Q. What's the date of the letter?

2 A. March 23rd, 1977.

3 Q. What's the date of the application?

4 A. June 22, 1977.

5 Q. Okay. Would you read the paragraph, please, sir?

6 A. "Dear Arnold, Enclosed herewith is a pertinent portion
7 of Internal Revenue Service forms to obtain tax exempt status
8 for the diocese and its institutions. I would like you to
9 fill out and get the information together for as much of the
10 forms as you can, while at the same time I'll do the same
11 thing, and in a few days we will get together and attempt to
12 get it all together for filing. With best wishes."

13 MR. RUNYAN: Move those last two documents into
14 evidence. I believe there's no objection.

15 MR. BEERS: We have no objection.

16 THE COURT: Very well. Any objection?

17 MS. ST. AMAND: No objection.

18 THE COURT: Very well. Thank you.

19 (Plaintiff's Exhibits DSC-65 and DSC-66 admitted into
20 evidence.)

21 Q. Do boards of directors appoint officers?

22 A. Yes.

23 Q. If an officer leaves or dies or in some way is
24 incapacitated, would you expect the board of directors to
25 appoint his or her replacement?

1 A. Yes.

2 MR. RUNYAN: Thank you. That's all I've got.

3 And also move Exhibit 64 into evidence.

4 THE COURT: And that is the declaration and petition for
5 incorporation?

6 MR. RUNYAN: Yes.

7 THE COURT: And you all were looking to see if you had a
8 certified copy.

9 MR. RUNYAN: We do have. I will find it.

10 THE COURT: All right. Very well. Of course, that
11 makes it a self-authenticating document, and it will be
12 admitted once you're able to locate that. Thank you.

13 (Plaintiff's Exhibit DSC-64 admitted into evidence.)

14 THE COURT: I'm so sorry. Mr. Orr has a question on
15 behalf of the plaintiffs.

16 MR. ORR: Just a few quick questions.

17 THE COURT: Sure. I'm sorry. Yes, sir.

18 CROSS-EXAMINATION BY MR. ORR:

19 Q. Professor McWilliams, my name is Larry Orr. I represent
20 two of the parishes.

21 A. Yes, sir.

22 Q. As I understand the opinions that you expressed earlier
23 this morning, by paragraph No. 4 on the certificate of
24 incorporation in 1973 --

25 A. Exhibit 7?

1 Q. Exhibit 7, yes, sir.

2 A. Yes, sir.

3 Q. -- you said that that incorporated the constitution and
4 canons of the national church.

5 A. Incorporated by reference, yes, sir, into this document.

6 Q. Okay. There's no reference in there to the constitution
7 and canons of the Episcopal Church of the United States as
8 amended from time to time, is there not? It doesn't state
9 that?

10 A. Those words are not here, no, sir.

11 Q. So is it your testimony that the constitution and canons
12 of the national church as they existed in -- what was
13 this? -- November of 1973 are the ones that were
14 incorporated?

15 A. Incorporated at that time. But I think the reasonable
16 inference to make, sir, is that it would be the constitution
17 and canons from time to time.

18 Q. But that's an inference that you make?

19 A. Yes, sir.

20 Q. And it's not contained in the document?

21 A. It doesn't say it in the document.

22 Q. And I believe you also testified that by incorporating
23 the constitution and canons in there, they became neutral
24 principles of law.

25 A. Yes, sir.

1 Q. Okay. Those would be the same neutral principles of law
2 that our courts would have applied in the All Saints Waccamaw
3 case?

4 A. I'm not sure I can give you an answer to that question.
5 Certainly, the concept of neutral principles of law is
6 present in the All Saints Waccamaw case.

7 Q. Yes. But this was 1973, and you're saying that the
8 Episcopal Church -- the national church's constitution and
9 canons were incorporated and they became neutral principles
10 of law?

11 A. And under Section 180, they would be -- they would
12 become the governing neutral principles of corporate law,
13 yes, sir.

14 Q. And those would have been the neutral principles that
15 were in existence when the South Carolina Supreme Court
16 considered the All Saints case?

17 A. Under Section 180, yes. I'm still having a little
18 trouble with the dates here. I think the concept is the
19 same. I think the concept is the same. Now, I'm not
20 familiar with the constitution and canons -- I'm sorry. I'm
21 not familiar with the articles of incorporation, if any, of
22 All Saints Waccamaw and whether it would have a reference
23 like this in it.

24 Q. But neutral principles of law are those that are
25 applicable in the state, are they not?

1 A. They would become -- Section 180 refers to particular
2 circumstances.

3 Q. Yes, sir.

4 A. And so I think that what might be neutral principles of
5 law applicable to the plaintiff diocese in this case would
6 derive from these words in their certificate of
7 incorporation. And I'm testifying in that respect only with
8 respect to Exhibit 7. And the extent to which those
9 particular neutral principles would apply to other nonprofit
10 corporations, I do not know the answer. It would depend on
11 the circumstances of the particular nonprofit.

12 Q. So the neutral principles of law that you're talking
13 about are not those neutral principles that apply to any
14 corporations in the State of South Carolina? Is that what
15 you're saying?

16 A. What I'm saying is that the opinion that I'm giving is
17 that in the facts before us, looking at Exhibit 7, that it is
18 the constitution and canons of the national church that under
19 Section 180 become neutral principles of law applicable to
20 the Diocese of South Carolina, to the corporation.

21 Q. Those are not necessarily neutral principles of law of
22 the state of South Carolina as the Court applies in this
23 case?

24 A. No. They are neutral -- the concept is the same.
25 Whether it would spread throughout the state, I don't know.

1 Q. Thank you very much.

2 A. Yes, sir.

3 THE COURT: Anyone else? Now Mr. Smith. Thank you.

4 MR. SMITH: Thank you.

5 REDIRECT EXAMINATION BY MR. SMITH:

6 Q. Professor, I'd like you to pull out Plaintiff's

7 Exhibit 65 that he just handed you --

8 A. Got it.

9 Q. -- dated June 22nd, 1977.

10 A. Yes.

11 Q. I'd like for you to flip to the fifth page.

12 A. The fifth physical page?

13 Q. Yes.

14 A. Part 3 it says here.

15 Q. That's right. And can you read this for me? Read at

16 least the first sentence where it says No. 3 and then the

17 paragraph below it.

18 A. Okay. In printed words, printed text, it says, "Give a

19 narrative description of the activities presently carried on

20 by the organization and also those that will be carried on."

21 Q. And then go down and read the paragraph that appears

22 below.

23 A. Typed in is a response to the request for the narrative

24 description, and it says, "The Episcopal Diocese of South

25 Carolina carries on the work of the Episcopal Church under

1 the constitution and canons, doctrine, discipline and worship
2 of the Protestant Episcopal Church in the United States of
3 America. It carries on this work through the parishes and
4 missions, organizations and institutions within the diocese
5 organized for religious and charitable purposes."

6 Q. Thank you, Professor. Just a few more questions.

7 A. Yes, sir.

8 Q. The 1973 charter incorporates by reference the
9 fundamental governing rules of the corporation, correct?

10 A. Yes, sir.

11 Q. Bylaws can supplement but not contradict governing rules
12 incorporated into a charter, correct?

13 A. Correct.

14 Q. And then, lastly, before getting on the stand today, did
15 you remind me to ask you if you were an Episcopal?

16 MS. GOLDING: Your Honor, that's improper. That is
17 absolutely improper. He has already testified in that area,
18 and that's an improper way --

19 MR. SMITH: It's not improper.

20 MS. GOLDING: And you cannot ask the witness to say what
21 did I tell you before you testified.

22 MR. SMITH: Your Honor, she brought it up and made a
23 show of it, accusing him of holding something back. And I'm
24 just trying to make it clear that it was my fault. I forgot
25 to ask him. He asked me to ask him. And there's nothing

1 trying to be hidden here.

2 THE COURT: For what it's worth, you certainly may ask.

3 MR. SMITH: Okay. Thank you.

4 Q. Did you ask me to remind --

5 A. I asked you to ask me the question, yes, sir. And I
6 apologize for making you take the bullet.

7 Q. That's okay. And did I indicate that I would ask you
8 that question?

9 A. Yes, you did.

10 Q. Okay. Thank you. And does it appear as if I had
11 forgotten to ask you that question?

12 THE COURT: Yes, it does.

13 THE WITNESS: I'm sure you didn't do it on purpose.

14 THE COURT: Mr. Beers?

15 MR. BEERS: I have no further questions, but I have
16 something to request.

17 THE COURT: Certainly.

18 MR. BEERS: We didn't take a break this afternoon and --

19 THE COURT: You'd like to take a little break?

20 MR. BEERS: -- everybody was so nice to me at the break
21 this morning for asking for the break, on both sides.

22 THE COURT: So shall we end a little bit early today?

23 MR. BEERS: Why not?

24 THE COURT: I think that's brilliant, because it's 20
25 until 5:00. And by the time we got folks going -- you're

1 exactly correct. We will break at this time.

2 Now, again, I'm looking for the certified copy whenever
3 you are able to find it.

4 MR. RUNYAN: I have it, Your Honor.

5 THE COURT: All right.

6 MR. RUNYAN: It is being printed.

7 THE COURT: Wonderful.

8 MR. RUNYAN: It is a certified copy of everything at the
9 Secretary of State, so it will include this document and some
10 we already had. But I would like to substitute it for this
11 exhibit.

12 THE COURT: If they're already in evidence, you do not
13 need to do that. That's not necessary if it's already in.
14 But this one, there was a question, so I think it is
15 appropriate that the certified copy be placed into evidence.
16 So if you would be so kind as to do that, that would be
17 great. Thank you.

18 Of course, I should ask, is there any other recross
19 based on the questions of Mr. Smith? No. Very well. Run.
20 All right.

21 Now, I know that the defense was kind enough to give, if
22 you will, the order of battle to the plaintiffs. You were to
23 give the next five witnesses. We've not proceeded very far
24 with that list. Maybe give them one more, if you can.

25 And without further ado, anything from the plaintiffs

1 before we take our leave?

2 MR. RUNYAN: Nothing, Your Honor, except I will
3 substitute this (indicating).

4 THE COURT: Thank you. Thank you so much.

5 Anything from the defendants?

6 MR. HOLMES: Nothing, Your Honor.

7 THE COURT: Nos all around. Very well. Thank you,
8 Mr. Beers, for your brilliant scheduling suggestion. I will
9 see everyone in the morning at 9:30. Have a good evening.

10 (Trial of the case adjourned for the day.)

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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the First Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 16th of July, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 August 15, 2014

16
17 Ruth L. Mott

18 Official Court Reporter
19
20
21
22
23
24
25

VOLUME VIII

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

CASE NO. 2013-CP-18-00013

THE PROTESTANT EPISCOPAL)
CHURCH IN THE DIOCESE OF)
SOUTH CAROLINA, THE TRUSTEES)
OF THE PROTESTANT EPISCOPAL)
CHURCH IN SOUTH CAROLINA,)
A SOUTH CAROLINA CORPORATE)
BODY, ET AL.,)

PLAINTIFFS,)

vs.)

TRANSCRIPT OF RECORD

THE EPISCOPAL CHURCH, (A/K/A)
THE PROTESTANT EPISCOPAL)
CHURCH IN THE UNITED STATES)
OF AMERICA); THE EPISCOPAL)
CHURCH IN SOUTH CAROLINA,)

DEFENDANTS.)

JULY 17, 2014
ST. GEORGE, SC

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

Ruth L. Mott, RPR, CRR
Official Court Reporter

I N D E X

	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
4	REBECCA LOVELACE				
	MR. TISDALE	1490			
5	MS. GOLDING		1502		
	MR. SHELTON		1506		
6	LESLIE JEAN LOTT				
7	MR. SMITH-VOIR DIRE	1538			
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11	ELEANOR BROWNLEE KOETS				
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12	MR. SHELBOURNE		1659		
13	FRANCES LUCILLE ELMORE				
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NO.	DESCRIPTION	ID	EVD
PLAINTIFF DIOCESE EXHIBITS			
S-DSC67	10/22/12 LETTER	1503	
DEFENDANTS EXHIBITS			
D-13	NEWSPAPER	1658	1658
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1 THE COURT: Are the plaintiffs ready to proceed.

2 MR. RUNYAN: Yes, Your Honor.

3 THE COURT: Defense?

4 MR. TISDALE: Ready, Your Honor.

5 THE COURT: Wonderful.

6 MR. TISDALE: Your Honor, we would like to call the next
7 witness, if we may.

8 THE COURT: I'd be excited.

9 MR. TISDALE: Rebecca Lovelace.

10 REBECCA LOVELACE,
11 being first duly sworn, testified as follows:

12 THE COURT: If you would state your full name for the
13 record and spell your last name.

14 THE WITNESS: Rebecca Lovelace, L-O-V-E-L-A-C-E.

15 THE COURT: Thank you so much. Your witness,
16 Mr. Tisdale.

17 MR. TISDALE: Thank you very much, Your Honor.

18 DIRECT EXAMINATION BY MR. TISDALE:

19 Q. Ms. Lovelace, where do you live?

20 A. Conway, South Carolina.

21 Q. And how long have you lived in Conway?

22 A. All of my life, except for I left for education and so
23 forth, but all of my life.

24 Q. All right. And in Conway, are you connected with a --
25 let me say, before the fall of 2012, were you connected, were

1 you a member or communicant of a parish in Conway?

2 A. St. Paul's Episcopal Church, all of my life, yes.

3 Q. All right. Ms. Lovelace, in addition to your
4 involvement at St. Paul's in Conway and subsequent to that,
5 have you been involved in the affairs of the Diocese of
6 South Carolina since leading up to the departure of
7 Bishop Lawrence?

8 A. I'm not sure.

9 MS. GOLDING: I object to the question. I don't know
10 what he's talking about "departure." I think that's a
11 confusing question.

12 MR. TISDALE: I don't think the witness is confused,
13 Your Honor.

14 MS. GOLDING: I think she's --

15 THE WITNESS: No, I am confused.

16 THE COURT: Well, there you have it. Sustained.

17 THE WITNESS: I was involved with diocesan conventions
18 from St. Paul's Episcopal Church as a delegate to quite a few
19 conventions, and then since that time, I've been involved
20 with the Episcopal Church in South Carolina.

21 Q. South Carolina.

22 A. Yes.

23 Q. Okay. Well, thank you for clarifying that. Now, were
24 you a member of a steering committee to reorganize the
25 Diocese of South Carolina in the fall of 2012?

1 A. Yes.

2 Q. All right. And what was the purpose of that group?

3 A. Our purpose was, since we were left without an
4 ecclesiastical authority, to reorganize, get a new bishop and
5 move on.

6 Q. Right. And was that achieved?

7 A. Yes.

8 Q. All right. And, Ms. Lovelace, since the Episcopal
9 Church in South Carolina got a new bishop, have you been
10 involved in the organization of that body?

11 A. Yes. I am on the standing committee.

12 Q. Standing committee of the Episcopal Church in South
13 Carolina?

14 A. Yes. Since January 2013 I have served on the standing
15 committee.

16 Q. And are still serving?

17 A. Yes.

18 Q. Now, with respect to St. Paul's in Conway, I think you
19 said you had been a communicant there and grew up there?

20 A. Yes.

21 Q. Pretty much all your life?

22 A. Yes.

23 Q. And were any other members in your family connected with
24 that parish?

25 A. My parents, my four -- my three siblings, my husband, my

1 children, yes.

2 Q. All right. How did it happen that you discovered that
3 it would not, beyond a certain point, be an Episcopal Church?

4 A. On the Sunday after it was made -- it was revealed that
5 the standing committee had passed a resolution that they
6 would -- that they would separate from the Episcopal Church,
7 on that Sunday when I went to church, the priest announced
8 that we were no longer in the Episcopal Church, and that's
9 how.

10 Q. Who was the priest?

11 A. Tripp Jeffords.

12 Q. And is he, just for identification purposes, the same
13 priest from St. Paul's who testified, I think, perhaps last
14 week?

15 A. Yes.

16 Q. All right. And he simply announced that you were no
17 longer an Episcopal Church?

18 A. Yes. And then we had -- he had a meeting, he had two
19 meetings after, the one that evening, and then at my request,
20 because I couldn't be there that evening, he met a second
21 time on Tuesday for questions and explanation; and, yeah, the
22 gist of it was we are no longer part of the Episcopal Church.

23 Q. Did the parish ever consider and take action on that
24 issue, or was it simply only the announcement made by the
25 priest?

1 A. The parish, that parish never had a congregational vote.

2 My assumption is but I don't understand --

3 MS. GOLDING: Your Honor, I would make an objection to
4 the assumptions.

5 THE WITNESS: I don't know if anybody ever voted. I
6 know the congregation did not vote.

7 Q. You did not vote?

8 A. No.

9 Q. Did anyone in your family know anything about a vote?

10 A. There wasn't one.

11 Q. There wasn't one.

12 A. Not a congregational vote.

13 Q. So, Ms. Lovelace, what did you do and others like you do
14 to continue if you wished to be an Episcopalian in Conway?

15 A. Organized a new church by -- within -- within five days
16 of the announcement -- well, actually within three days of
17 the priest's announcement, I had already lined up a priest to
18 do services for the group that wanted to remain aligned with
19 the national church.

20 Q. All right. And where did you begin to have such worship
21 services or meetings?

22 A. The first service that we held we held at St. Paul's in
23 the chapel. I had asked the priest if we could use that
24 chapel. And he -- and I met with the vestry, and they
25 approved the use of the chapel. But it came with so many

1 written conditions that we worshiped there once, and then we
2 left there and found space to worship in on the campus of
3 Coastal Carolina University. And that's where we still are.

4 Q. Now, without going into a lot of detail, what sort of
5 restrictions were placed on the use of the chapel?

6 A. Well, number one, it --

7 Q. At St. Paul's, excuse me.

8 A. It stated in the conditions that the vestry would review
9 the --

10 MS. GOLDING: Your Honor, if she's referring to anything
11 that was ever in writing, I think that that needs to be
12 presented to the Court. We haven't seen that, and obviously,
13 that would be the best evidence.

14 MR. TISDALE: Well, I certainly haven't seen it.

15 THE COURT: I understand. But the best evidence rule
16 would certainly dictate, if there is a writing, that that
17 writing be produced.

18 Q. Do you have such a writing, Ms. Lovelace?

19 A. I don't have it in my hand, but I see Mr. Shelton
20 passing something up. Is that it?

21 MR. TISDALE: Mr. Shelton, do you have a copy of it?

22 MR. SHELTON: A copy of what? I'm sorry.

23 MR. TISDALE: The writing she's talking about putting
24 restrictions on the use of the chapel at St. Paul's.

25 MR. SHELTON: Not in my possession.

1 MR. TISDALE: I'm simply trying to ask her to tell us a
2 couple of the restrictions that she remembers were put on
3 them for the use of the chapel.

4 THE WITNESS: Well, I will tell you that --

5 THE COURT: No, ma'am, when I'm handling an objection,
6 I've got to do my work, and you just relax.

7 If there is a writing and if there is a reference to a
8 writing and there is an objection with regards to the best
9 evidence rule, obviously -- it really is two. It really is
10 best evidence as well as hearsay because, obviously, it's at
11 least double if not triple hearsay.

12 MR. TISDALE: I understand, Your Honor.

13 THE COURT: Yes.

14 MR. TISDALE: Thank you.

15 MR. HOLMES: May I speak to that just very briefly?

16 THE COURT: Okay.

17 MR. HOLMES: Under Rule 801 --

18 THE COURT: Yes.

19 MR. HOLMES: -- she's testifying this was a document
20 that was created by a party and that the content --
21 therefore, the content of it is a statement by a party.
22 Under 801, it's not hearsay. At least that would be -- I
23 believe that's the rule.

24 THE COURT: Sure, it is. It's hearsay because it is in
25 a writing. That's the first level of hearsay. And as you

1 know, you must admit evidence, and you must satisfy each and
2 every level of hearsay. Minimally, minimally, it's double
3 hearsay. It very well may be triple hearsay, depending on
4 what is in the content of the letter. Number one, it's
5 hearsay because it's in a writing. Number two, you're
6 exactly correct, if we had the writing, it very well may be
7 admissible because it's an admission by a party opponent,
8 therefore, nonhearsay. But the first level is, it's hearsay.

9 MR. HOLMES: I understand.

10 THE COURT: Thank you.

11 MR. HOLMES: It was handed to her by a representative of
12 the party, so I think that takes it out of the rule.

13 THE COURT: I don't think so.

14 MR. TISDALE: Thank you very much. May I proceed, Your
15 Honor?

16 THE COURT: Yes, sir. Thank you, Mr. Tisdale.

17 Q. Ms. Lovelace, as a result of the restrictions -- without
18 saying what they are, but as a result of restrictions that
19 were placed upon your use of the chapel at St. Paul's, did
20 you move your worship activities to another location?

21 A. We did.

22 Q. And I think you testified earlier that was to -- where
23 were they moved to?

24 A. Lackey Chapel on the campus of Coastal Carolina
25 University, and that's where we still are today.

1 Q. All right. And approximately when did the new
2 organization begin using Lackey Chapel?

3 A. Early November.

4 Q. Of?

5 A. 2012.

6 Q. 2012?

7 A. Yes.

8 Q. And that's where you are today?

9 A. Yes.

10 Q. Now, approximately how many Episcopalians are connected
11 with that organization at Lackey Chapel?

12 A. I don't have an exact number but more than 100.

13 Q. All right. Ms. Lovelace, does the new organization of
14 continuing Episcopalians have a name?

15 A. St. Anne's Episcopal Church.

16 Q. And does it have a status in the Episcopal Church in
17 South Carolina?

18 A. Yes. We are a mission church admitted at the last
19 convention.

20 Q. Is St. Anne's Church in Conway in union with the
21 convention of the diocese of the Episcopal Church in South
22 Carolina?

23 A. Yes. And we're also in union with the national church,
24 yes.

25 Q. All right. Ms. Lovelace, before becoming and accepted

1 as a mission church at the convention, as you testified, what
2 was the organization, the form of the organization called?

3 A. Early on, we were the Conway worshiping group.

4 Q. That's what I -- worshiping group?

5 A. Correct.

6 Q. All right. And about when did it become St. Anne's,
7 growing out of the worshiping group?

8 A. I think maybe by April. I filed articles of
9 incorporation and by the time I did that, we were already --
10 we had adopted the name St. Anne's Episcopal. We were
11 incorporated as St. Anne's Episcopal Church.

12 Q. Okay. And who is the leadership of St. Anne's Church?

13 A. Dan Ennis is the senior warden, I am junior warden and
14 we have a vestry.

15 Q. Okay.

16 THE COURT: Mr. Tisdale, could she spell Ennis just for
17 our court reporter.

18 MR. TISDALE: E-N-N-I-S.

19 THE COURT: Is that it?

20 MR. TISDALE: Is that correct?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 Q. Is he a professor at the Coastal Carolina University?

24 A. He is the professor and dean of humanities.

25 Q. Okay. Dan Ennis. Thank you.

1 Ms. Lovelace, before Father Jeffords announced that you
2 were no longer Episcopalians or in the Episcopal Church, was
3 there any, were any presentations made or anything of that
4 nature to the congregation leading up to that event to
5 educate the congregation about what was going on?

6 A. We had many conversations over the years about the
7 national church and many representations that they were never
8 planning to leave the national church, because that's a
9 question I asked frequently, and the answer I always got was,
10 "We are never leaving."

11 Q. Right. Did your family, through the years and in
12 history, contribute financially to the parish of St. Paul's
13 Conway?

14 A. Significant contributions, yes.

15 Q. And did your parents, upon their demise --

16 MS. GOLDING: Your Honor, I'm going to make an
17 objection. That clearly is hearsay, what her parents did or
18 may have been bequeathed. I don't think that's appropriate.

19 THE COURT: If she knows of her own knowledge, and I
20 don't know at this point what relevance it may have, but it
21 may have some.

22 MR. TISDALE: Thank you very much.

23 Q. Did your parents, upon their demise, and their estates
24 make bequests to St. Paul's Conway?

25 A. \$358,000 was bequeathed to St. Paul's Episcopal Church

1 in my mother's will.

2 Q. Thank you.

3 Before it was announced that you were no longer going to
4 be an Episcopal Church, did you have any conversations with
5 Father Jeffords and perhaps Bishop Lawrence, if you did,
6 about fund-raising activities in the parish that they were
7 undertaking?

8 A. Well, there was a major capital campaign to build.

9 Q. When was that?

10 A. I'd say it was 1999, 2000, somewhere in there. 1999 --
11 we started a new church, building a new church, 2000, so yes.

12 Q. And were you involved in at least the solicitation for
13 that campaign, or your family?

14 A. Oh, yes.

15 Q. And who did you confer with from the parish management
16 about that?

17 A. I mean --

18 Q. I mean --

19 A. -- my husband was one of the major leaders of the
20 campaign.

21 Q. Okay. Were you given any assurances, in connection with
22 considering your contribution to that fund, as to what the
23 future of the parish would be with respect to the Episcopal
24 Church?

25 A. We had numerous discussions over the years, and always I

1 was told --

2 Q. By whom?

3 A. By the priest. And I've heard Bishop Lawrence also
4 assure the congregation on his visits to St. Paul's, and also
5 before him, Bishop Salmon's visits to St. Paul's, always, "We
6 are not leaving the Episcopal Church." In fact, one time the
7 statement was made, "We will never leave them. They might
8 leave us, but we're not going to leave them."

9 Q. Okay. And did your family make contributions to
10 whatever fund-raising campaigns were undertaken, including
11 the capital campaign?

12 A. Yes. Significant. They asked for sacrificial giving
13 and I gave sacrificially, yes.

14 MR. TISDALE: Okay. Thank you very much, Ms. Lovelace.
15 Answer any questions --

16 MS. GOLDING: I just have a few, Your Honor.

17 THE COURT: Yes, ma'am. Cross-examination. I should
18 first ask, national church, do you all have any?

19 MS. KOSTEL: No, Your Honor.

20 THE COURT: Very well. Yes, ma'am. Ms. Golding.

21 MS. GOLDING: Thank you.

22 CROSS-EXAMINATION BY MS. GOLDING:

23 Q. Now, Ms. Lovelace, isn't it a fact that in October 2012,
24 you and some other members in your worship group sent a
25 letter to the presiding bishop, to the national church

1 saying, "We don't want St. Paul's property. It's got too
2 much debt"?

3 A. I didn't send that letter, no.

4 Q. Well, didn't you sign that letter?

5 A. I don't believe I did.

6 Q. You don't think you did?

7 But isn't it a fact that in your group, your St. Anne's
8 group, your worship group, many sent a letter saying, "We
9 don't want St. Paul's."

10 MS. KOSTEL: Objection, Your Honor.

11 Q. "It's got too much debt"?

12 MS. KOSTEL: Objection, Your Honor. We're talking about
13 the best evidence rule. If there's a letter, let the letter
14 speak for itself if they want to put it into evidence.

15 THE COURT: In other words, I'm with you completely.
16 Yes, ma'am.

17 Q. Okay. Take a look.

18 A. Is my signature on that letter?

19 Q. Guess what, I get to ask you the questions.

20 MS. GOLDING: Can you please mark that as an exhibit?

21 (Plaintiff's Exhibit DSC67 marked for identification.)

22 Q. Let me give you Plaintiffs' 67 for identification
23 purposes, and you will see that this is a letter to the
24 presiding bishop of the defendant, national church, which
25 contains no signatures; is that correct?

1 A. That's correct. There are no signatures.

2 Q. And that's not the first time -- today is not the first
3 time you've seen that letter, is it, Ms. Lovelace?

4 A. First time I've seen it in this form.

5 Q. You've seen this type of letter before; have you not
6 seen this letter before?

7 A. I'm aware of the letter.

8 Q. Okay. Good.

9 A. I think you said something that I signed the letter. I
10 don't believe I ever did sign the letter.

11 Q. Okay. But you're not -- but there are a number of your
12 associates at St. Anne's that signed that letter?

13 A. I don't know who signed the letter. I've never seen the
14 letter with the signatures, so no.

15 Q. I'm not asking you --

16 A. I'm not through.

17 MR. TISDALE: Your Honor, please ask the witness to -- I
18 mean Ms. Golding not to interrupt the witness.

19 THE COURT: Let me just lay down some rules. If you
20 hear "objection" --

21 THE WITNESS: Shut my mouth. Okay.

22 THE COURT: No. I would just simply do like this
23 (indicating).

24 THE WITNESS: I can have a sip of water while I wait.

25 THE COURT: Indeed. And the reason for that is there

1 are matters of law that I have to handle.

2 THE WITNESS: I'm sorry.

3 THE COURT: That is absolutely not a problem.

4 MR. TISDALE: My objection was simply that I would -- I
5 object to her interrupting the witness while the witness was
6 answering a question.

7 THE COURT: I'm with you.

8 And, Ms. Golding, if you believe that she's being
9 nonresponsive, if you will direct that to me.

10 MS. GOLDING: I will, Your Honor.

11 THE COURT: I will handle that.

12 MS. GOLDING: I will. Thank you, Your Honor.

13 THE COURT: Very well. Absolutely. Now back to it.

14 Q. Okay. So what you're telling this Court is that even
15 though you were on the steering committee to form the
16 defendant diocese, right?

17 A. Yes, ma'am, I was.

18 Q. Okay. And even though you were the active member of
19 St. Anne's in putting it all together, right?

20 A. Correct.

21 Q. Okay. You did not sign this letter to the presiding
22 judge [sic] which said we don't want St. Paul's property?

23 A. I don't think I did sign it. I know that Dan Ennis
24 signed it, and I can't tell you who else signed it because I
25 never saw the signed copy; so I don't know who signed it.

1 MS. GOLDING: Okay. Thank you.

2 THE WITNESS: You're welcome.

3 THE COURT: And may I, for clarification purposes, since
4 this is a nonjury matter, Ms. Golding, you said "Did you send
5 it to the presiding judge?"

6 MS. GOLDING: Excuse me. Presiding bishop of the
7 defendant national church.

8 THE COURT: I just --

9 MS. GOLDING: I apologize.

10 THE COURT: I mean, ecclesiastically, there may be an
11 ecclesiastic judge. I don't know. Thank you. All right.
12 And that would conclude your cross?

13 MS. GOLDING: Yes, that is my cross. Thank you, Your
14 Honor.

15 THE COURT: Thank you.

16 MR. SHELTON: Your Honor, if it may please the Court,
17 Rob Shelton for St. Paul's Conway.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION BY MR. SHELTON:

20 Q. Good morning, Ms. Lovelace.

21 A. Good morning.

22 Q. You testified a moment ago that there was no
23 congregational meeting at St. Paul's?

24 A. I said not that I was ever made aware of.

25 Q. Okay. Are you aware of the meeting that took place

1 January 6, 2013?

2 A. No.

3 Q. So --

4 A. I was never sent a notice to be at the meeting.

5 Q. Are you aware -- are you familiar with the bylaws of
6 St. Paul's?

7 A. Yes.

8 Q. Is it not true the bylaws require notice be posted in
9 the narthex for two weeks prior to a parish meeting?

10 A. That I don't know.

11 Q. So you wouldn't know whether notice was properly posted
12 in the narthex during those two weeks. Then?

13 A. No, I would not.

14 Q. And, therefore, you wouldn't have been made aware of the
15 meeting?

16 A. No.

17 Q. Did you attend St. Paul's during the two weeks preceding
18 January 6?

19 A. Did I go to church there then?

20 Q. Yes.

21 A. No.

22 MR. SHELTON: Thank you, Ms. Lovelace. I have no
23 further questions.

24 THE COURT: Very well. Anyone else on behalf of the
25 plaintiffs? Cross-examination? No. Redirect.

1 MR. TISDALE: None, Your Honor.

2 THE COURT: Very well.

3 MR. TISDALE: Thank you, Ms. Lovelace.

4 THE COURT: Thank you so much, and you can come down.

5 If you could call your next witness.

6 MR. BEERS: Your Honor, the defendants call

7 Robert Klein.

8 MR. RUNYAN: Your Honor, before this witness comes and
9 probably the next one, we probably need to take a matter up
10 with the Court --

11 THE COURT: Okay.

12 MR. RUNYAN: -- to save some time.

13 THE COURT: Sure.

14 MR. RUNYAN: And I would ask, with the defendants'
15 consent, that Ms. Klein and Mrs. Lott, if she is in the
16 courtroom, be excused from the courtroom while we have this
17 discussion.

18 THE COURT: Be sequestered?

19 MR. RUNYAN: Sequestered.

20 THE COURT: You'd ask that they be sequestered? Okay.
21 I don't know. Any objection to the sequestration, first of
22 all?

23 MR. TISDALE: We don't know anything about the reason
24 for it, but I don't know any particular reason to object to
25 it.

1 THE COURT: Okay. All right.

2 MR. RUNYAN: It's just about the subject matter.

3 THE COURT: I understand.

4 MR. RUNYAN: Their anticipated testimony.

5 THE COURT: Okay. Any objection on behalf of the
6 national church?

7 MS. KOSTEL: No objection.

8 THE COURT: Okay. Very well.

9 (Witnesses exit the courtroom.)

10 THE COURT: I tell you what, Mr. Tisdale, if somebody
11 can maybe just walk out and help them know that, don't go
12 far -- we've got a conference room. Just let them know,
13 don't go far. We don't want to lose them.

14 MR. TISDALE: I'm certain they won't, Your Honor.

15 THE COURT: They won't. Great.

16 All right. Now, the two witnesses -- let me catch up
17 now. Mr. Runyan, the two witnesses' names again?

18 MR. RUNYAN: Bob or Robert Klein.

19 THE COURT: Mr. Klein.

20 MR. RUNYAN: And I cannot remember Ms. Lott's first
21 name.

22 THE COURT: That's okay.

23 MR. TISDALE: Leslie.

24 MR. RUNYAN: Leslie.

25 THE COURT: Ms. Lott is fine.

1 All right. Now. Tell me what your concern is.

2 MR. RUNYAN: Well, there are multiple issues here.

3 THE COURT: Okay.

4 MR. RUNYAN: But I'm going to let Ms. -- since Mr. Klein
5 was listed first I'm going to let Ms. Golding speak to that
6 issue. I'm more prepared on the broader issues, but I think
7 there's a simpler issue with Mr. Klein.

8 THE COURT: Okay.

9 MS. GOLDING: With respect to Mr. Klein, Your Honor, as
10 the Court knows, the defendants never responded to the
11 plaintiffs' expert witness questions. And as a result of
12 that, we moved to exclude any potential expert witnesses.

13 The Court denied that motion but did set parameters of
14 disclosure of experts, with the Court stating that the
15 experts needed to be disclosed and that the disclosures need
16 to be made -- and after the disclosures, then the reports
17 need to be made within certain time periods, 72 hours before
18 each deposition.

19 The Court's order of June 9, 2014, identified the expert
20 witnesses on the part of the defendants, and Mr. Klein was
21 never identified as an expert witness prior to the court
22 order of June 9, 2014.

23 Further, Your Honor, there was a parameter as to when
24 depositions can be taken. Let me back up.

25 He was identified as an expert after June 9, 2014, but

1 because he was not timely identified, not within the order,
2 he should not be permitted.

3 Then when they did identify him, they presented -- they
4 said he's available for a deposition, but the date of his
5 availability was beyond the time period permitted by the
6 court order for depositions. We did not take his deposition
7 because he was never identified in answers to
8 interrogatories, not identified pursuant to the court order
9 and not made available pursuant to the court order for any
10 deposition. Therefore, on those bases, we would move to
11 exclude his testimony today.

12 MR. RUNYAN: I have an issue that covers him as well.

13 THE COURT: Okay.

14 MR. RUNYAN: But maybe we should speak to this first.

15 THE COURT: Okay.

16 MR. RUNYAN: And I will just address one point: Your
17 Honor's court order was June the 9th. Mr. Klein was working
18 busily on June 6th on his work. So he was in the midst of
19 his work, and he was not mentioned to the Court, and he was
20 not included in the court order.

21 THE COURT: Okay. Mr. Smith.

22 MR. SMITH: Thank you, Your Honor. I'll start by saying
23 that when they sent discovery requests back in the beginning
24 of this case, we did not yet know who our experts would be
25 and, therefore, could not answer that question. As soon as

1 we knew that Mr. Klein was going to be an expert in the case
2 we identified him.

3 On June 4th we identified that we would have a survey
4 expert. We didn't yet know who exactly that would be. Your
5 Honor ruled on June 5th that their motion to exclude our
6 experts should be denied.

7 Thereafter, we met and conferred about how we would go
8 about taking the depositions of the experts that have been --
9 that were going to testify, and Your Honor had denied their
10 motion. They suggested a very tight schedule in which they
11 would be within a Monday-to-Thursday range of a week in June.

12 We told them at the time that Mr. Klein was out of the
13 country. He'd be returning early the following week, and we
14 said we could make him available that Tuesday. We also
15 offered them his expert report at the same time we gave them
16 all the other expert reports. And I would add that his
17 expert report is very detailed. It's a very thick document.

18 The other point, Your Honor, is that we have
19 accommodated scheduling of depositions of their witnesses.
20 They've had a few folks that have been out of the country and
21 we've taken depositions as late as last weekend. So we made
22 him available as soon as we could. He's been available since
23 then, and, Your Honor, we think that this is intentional,
24 that their plan all along is to try to exclude him, knowing
25 that they've had plenty of time to take his deposition.

1 THE COURT: Let me ask you this question, Mr. Smith: As
2 an officer of the Court, please tell me when, when, the date,
3 that Mr. Klein was retained as an expert. What is the date?

4 MR. SMITH: I can tell you that I personally spoke with
5 Mr. Klein and a number of other survey experts. We did not
6 decide who we were going to use until the day that we let
7 them know.

8 THE COURT: Okay. Because you realize that counsel just
9 made a representation that he was actually at work on the 6th
10 of June -- or, yes, doing his work on the 6th of June.

11 MR. SMITH: Your Honor, can I just say that, yes, we
12 spoke with him, and, yes, he may have been doing work, but at
13 that point, we didn't know whether we were going to name him
14 at trial. And there's a big difference between a consulting
15 expert and a trial witness -- or a trial expert.

16 THE COURT: Yes, there is. Okay. I need to see that
17 order. Who's got it handy? Thank you.

18 (Brief pause.)

19 THE COURT: Anything you want to add? Because I have a
20 couple questions.

21 MR. SMITH: Yes, Your Honor, I'll just add that prior to
22 the June 5th hearing, we had supplemented defendants'
23 supplemental answers to interrogatories.

24 THE COURT: Okay.

25 MR. SMITH: And in those -- it might be helpful for me

1 just to read a short paragraph.

2 THE COURT: May I see them.

3 MR. SMITH: Yes.

4 THE COURT: Let me just -- for your purposes, I am
5 reviewing what is defendants' supplemental answers to
6 interrogatories, it is dated June the 4th, 2014. So you
7 would have probably not received it until after the hearing
8 that was on the 5th, I would think.

9 MR. SMITH: Your Honor, I believe we would have emailed
10 that to them.

11 THE COURT: Oh, did you email it? Okay.

12 MR. SMITH: Or did we hand deliver it?

13 THE COURT: Or hand delivered?

14 MR. SMITH: Before the hearing.

15 THE COURT: Okay. I'll ask that in a moment. Okay.
16 Now, yes, I've got this.

17 MR. SMITH: Okay.

18 THE COURT: Let me ask you this question: Tell me what
19 sort of expert Mr. Klein -- what sort of expert is Mr. Klein?

20 MR. SMITH: He's an expert in survey research. He
21 conducts surveys, in particular in this case, a trademark
22 survey where he assesses the likelihood of confusion among
23 the public by conducting a scientific survey. And these
24 types of surveys are highly probative in trademark cases,
25 Your Honor.

1 THE COURT: Okay. May I ask this question, because
2 during the hearing -- I didn't make up the names of the
3 experts. Can you tell me why I wasn't provided the name of
4 this particular expert during the hearing? Because you all
5 were -- you know, you gave me the list of experts so that I
6 could deal with the issue.

7 MR. SMITH: Right. Again, Your Honor, we hadn't picked
8 one yet.

9 THE COURT: But you had, see.

10 MR. SMITH: Your Honor, I was talking with numerous
11 people on the phone.

12 THE COURT: Yes.

13 MR. SMITH: And he was one of those, and I would say he
14 was a consulting expert -- to the extent he was working with
15 us, he was a consulting expert at the time. We weren't sure
16 if we wanted to identify him for trial.

17 THE COURT: Let's hold on a minute. You just handed me
18 the defendants' supplemental answers to interrogatories --

19 MR. SMITH: Right.

20 THE COURT: -- dated June the 4th.

21 MR. SMITH: Right.

22 THE COURT: The hearing was June the 5th.

23 MR. SMITH: That's right.

24 THE COURT: Okay. And in your answers -- okay. So
25 you're saying -- what you're telling me is that on June the

1 4th, with the supplemental interrogatories, when you say, "We
2 reserve the right to designate an expert."

3 MR. SMITH: That's right.

4 THE COURT: I gotcha. And you hadn't decided on --
5 gotcha.

6 MR. SMITH: Right.

7 THE COURT: Okay. So when you came to Court, and I was
8 dealing with the issue of the experts and the issue -- and
9 what we were going to be doing regarding the experts, you
10 just hadn't made up your mind at that point?

11 MR. SMITH: That's right.

12 THE COURT: Okay. So you couldn't tell me.

13 MR. SMITH: Right.

14 THE COURT: And you didn't tell me.

15 MR. SMITH: We knew we were going to name a survey
16 expert, but we didn't know who.

17 THE COURT: Can I ask this question?

18 MR. SMITH: Sure.

19 THE COURT: Why didn't you all tell me that?

20 MR. SMITH: Your Honor, I'd have to look back at the
21 transcript. I don't remember.

22 THE COURT: I gotcha. Yes. You've got the transcript?

23 MR. RUNYAN: We do. The word "survey" is not in there.
24 It was not mentioned. It was not brought up at all. In
25 fact, just to add some additional facts to this, we had, as

1 Your Honor will recall, an extensive discussion about
2 experts. That evening I sent out a list of the persons named
3 in that order with dates and times and places.

4 The next day we discussed those names, times and places.
5 And at 3 p.m. we had a conference call with the Court where
6 we again discussed it. Still no survey expert. And it
7 wasn't -- and that afternoon --

8 MR. SMITH: Your Honor, I would say that that's not
9 true.

10 MR. RUNYAN: Well, pull the record out that shows that.

11 MR. SMITH: Of our meeting --

12 THE COURT: Stop. Let him speak and then you respond.

13 MR. RUNYAN: That afternoon we got, I think, at least
14 one, maybe two emails complaining about the order.

15 THE COURT: Right.

16 MR. RUNYAN: But not saying why and not mentioning a
17 survey expert. The first time that we -- I want to make sure
18 I get this right. We had two email objections, June 8 and
19 June 9, neither of which mentioned a survey expert. June the
20 10th --

21 THE COURT: I'm on the phone --

22 MR. RUNYAN: -- we got the name of --

23 THE COURT: No. I'm on the phone when?

24 MR. RUNYAN: You're on the phone on June 6th.

25 THE COURT: Okay.

1 MR. RUNYAN: June 10, we get a name.

2 MR. SMITH: Your Honor, that's when we decided we would
3 use him at trial.

4 MR. RUNYAN: And the expert received his first Internet
5 survey response on June 6.

6 MR. SMITH: But, I mean, still at that point, he's a
7 consultant, Your Honor.

8 THE COURT: I'm going to take a little break. I'll see
9 you all in 15 minutes.

10 (Recess held.)

11 THE COURT: All right. I'm going to, first of all, deal
12 with the issue of Mr. Klein, who I understand now is being
13 offered as a witness. And let me say that our law says that
14 the exclusion of a witness is a severe sanction under our
15 law. And the Court should not enter into that kind of
16 determination lightly, and that is precisely why I just took
17 the break that I took.

18 Our case law is a little bit like baseball in this
19 regard. If you review our case law, you will find that the
20 decisions where a witness has been excluded, there has been
21 multiple, multiple violations of a court order prior to the
22 Court excluding a witness.

23 That has occurred in this instance. And let me be
24 clear, there have been two scheduling orders in this case,
25 and those scheduling orders have failed to be complied with

1 by the defendants with regards to the provision of the expert
2 witnesses' names.

3 Most importantly to me, because I took the time, the
4 energy and the effort to have an extensive hearing on the
5 issue of the exclusion of witnesses, which I denied. And in
6 doing so, did two things: I formulated a process by which I
7 wouldn't need to exclude the expert witnesses of the
8 defendants because, quite frankly, I didn't want to do that,
9 knowing that that is an extraordinary sanction. I didn't
10 want to do it. I didn't want to do that to the defendants;
11 so I did a couple of things.

12 I, first of all, wanted to know who their experts were.
13 That's the first thing I wanted to know. I didn't come up
14 with this list on my own. They were represented to me to be
15 the experts of the defense.

16 And then I went on and made some other provisions,
17 knowing full well the burden that that places on the other
18 side to prepare to depose expert witnesses. I gave them 72
19 hours to prepare. That's not a lot of time. And I did that.
20 I put that burden on the plaintiffs because I didn't want to
21 exclude the expert witnesses; so I burdened the plaintiffs
22 and basically said, "Deal with it." And they did.

23 But that wasn't sufficient, this order that I've signed
24 on June the 9th, 2014. I held a telephone conference to
25 assist counsel in coming up with the times and the dates that

1 these experts would be deposed.

2 It is to me unbelievably remarkable that the defendants
3 chose not to give me the names of all of their experts, if,
4 in fact, they had them out there on the hearing date, which
5 was June the 5th, or, as an absolute outside time, when I had
6 the telephone conference.

7 Defendants, you did that to your own peril, because
8 that's the third -- it's like baseball. That was your third
9 order that you violated by adding an additional expert. So
10 if there are any experts other than the ones that you gave
11 me, to which I included in this order, they're excluded.

12 Now, talk to me about the other person.

13 MR. RUNYAN: Your Honor, the other witness is an
14 attorney from Florida. Broadly stated, her expertise is in
15 the area of trademarks. Our objection to her, broadly
16 stated, is a relevance ground. And I'll speak to the
17 elements of that.

18 I think there is one area where her testimony might be
19 relevant, but on that area, I would contend that it's not
20 useful to the Court because of the limited area that it is
21 relevant to.

22 We'll start with the Episcopal Church's complaint --
23 answer, amended answer and counterclaim. There is, as far as
24 I can tell, no allegation in here relating to marks or
25 service marks and allegations that the Episcopal Church's

1 marks have been misused, that the national church's marks
2 have been misused by the diocese or by the parishes.

3 The allegations are they set this complaint up to sue
4 individuals whom they allege were in control of the plaintiff
5 entities. And so all of their allegations on trademark are
6 made against individuals who are not parties to this case.
7 Count 2, 3, 4, 5, 6 are their trademark counts. Every one of
8 them are against individuals who are not parties to this
9 lawsuit.

10 Their declaratory judgment count, which is Count 7, and
11 I'll just read this, Page 61 states, Paragraph 29, "An actual
12 controversy, therefore, exists between the church and the
13 individual counterclaim defendants as to the interests of the
14 church and the Episcopal Church Diocese in the real and
15 personal property of the parish."

16 So the parish claims are likewise declaratory judgment
17 claims made against individuals who are not parties to the
18 lawsuit. We have covered this issue a bit before, not quite
19 at the depth that I just went into, and I have that portion
20 of the transcript in rough draft to hand to the Court in just
21 a moment.

22 As to the defendant, the Episcopal Church in South
23 Carolina, and this goes to what the Court indicated on
24 July the 9th, there is a defense, No. 14, and I'm sort of
25 paraphrasing, but it essentially says that the rights and

1 interests claimed by the plaintiffs in the marks, that is our
2 service marks, were derived wholly from and through the
3 defendants and, therefore, are invalid.

4 The Court confronted this issue on July the 9th, and
5 I'll hand this up, if the Court desires, in which when that
6 paragraph was read, the Court responded, "Okay. That's it.
7 That claim would encompass it. Okay. Yes."

8 The Court essentially found that there was relevance to
9 the claim with respect to the defense, but that is a defense
10 of -- that is related to our service marks and their origin.
11 It's not related to the Episcopal Church proving we've
12 misused their marks. It's not related to anything requiring
13 technical testimony. It's something that can be factually
14 dealt with. And the -- I think the issue's really quite
15 simple, and that is did we take or get something of their
16 marks and use it in ours.

17 Now, there are only two marks that they've even
18 mentioned: One is the Episcopal Church. Well, it wasn't
19 registered until 1967. The second mark, the Protestant
20 Episcopal Church in the United States of America, according
21 to their registration, was in 1836. Our mark, Protestant
22 Episcopal Church in the Diocese of South Carolina, has a
23 first-use date of 1821, 15 years before that.

24 So just on the face of the paper, I think there's a
25 basis to say there's a lack of relevance. But supposing that

1 there might be some more relevance to that, A, I don't think
2 that expert testimony is needed from a lawyer on that point,
3 and B, I will turn this over to Ms. Golding to talk about the
4 scope of her disclosure and her testimony. She admitted in
5 her deposition she was not an expert in linguistics. She was
6 not a historian. And my impression, although I plead
7 somewhat lacking in federal trademark issues, was that that
8 was her strength. Well, there are no federal trademark
9 claims in this case against the parties.

10 MS. GOLDING: With respect to Ms. Lott, the scope of her
11 opinions, she sets forth essentially 12 opinions in her
12 report, but those opinions are based upon the Lanham Act,
13 which, of course, is not against any of the defendants in
14 this lawsuit. And, therefore, as a result, you know, she has
15 no basis to testify. But more important than that is she is
16 testifying as to legal matters which are only within the
17 providence of the Court, Your Honor.

18 And I note that Ms. Lott had prepared an expert report
19 at a seminar in 2006. In this seminar material that she had
20 prepared she stated (reading): Trademark law experts are
21 subject to unique challenges that do not affect other types
22 of experts, as they are called to testify as to the law and
23 thus risk invading the providence of the Court. Such an
24 objection may be overcome by limiting testimony to areas
25 which are not strictly questions of law.

1 And they are, one, Patent and Trademark Office practices
2 and procedures in the prosecution of a trademark application.
3 That's not within her scope. She did not give any opinions
4 on that matter.

5 Two, trademark trial and appeal board practices and
6 procedures in opposition and cancellation matters. That's
7 not before this Court in any issue, nor in her report.

8 Three, Patent and Trademark Office policies, training,
9 personnel, structure, departments. Also not within her
10 report.

11 Four, standard practices in licensing, settlement or
12 other transactional matters.

13 THE COURT: Say that one more time.

14 MS. GOLDING: Certainly. Standard practices in
15 licensing, settlement or other transactional matters. Also
16 not within her report.

17 And the fifth, foreign law and procedural issues or
18 other matters that would not normally be within the knowledge
19 and experience of a sitting judge. Again, not part of these
20 matters.

21 So by Ms. Lott's own seminar material that she published
22 in -- that was at a seminar in October 19, 20, 2006, she
23 stated that she's not -- she's not competent to testify,
24 because what she will testify will only be as to legal issues
25 which are solely within the province of the Court.

1 I would like to hand this seminar material to the Court.

2 THE COURT: Has counsel seen it?

3 MS. GOLDING: Page 11, I'll be glad to provide counsel a
4 copy. I'll have to give him my copy. I only have one, Your
5 Honor. I apologize. I will give them mine. And it's on
6 Page 11 of this document, Your Honor.

7 THE COURT: Okay.

8 MS. GOLDING: Thank you, Your Honor.

9 MR. HOLMES: Your Honor, just curious to the basis for
10 the admissibility of that document.

11 THE COURT: I think that, as I understand it, it would
12 simply be a statement by the witness, by the witness's own
13 voice, in another -- obviously, clearly in another place,
14 that she has concerns about the admissibility of her own
15 testimony in these particular matters.

16 MR. HOLMES: To be available for impeachment, I gather.

17 THE COURT: Well, as I understand it, their position,
18 there is a statement -- she's given a statement, which I've
19 not seen yet, of what her expert opinion would be, her
20 report. And as I understand what Ms. Golding is saying, if
21 you take her report and what she says in her report, it flies
22 in the face of what she has lectured about in terms of her
23 ability to testify. Now, you understand I'm just -- that's
24 what I heard.

25 MR. HOLMES: I appreciate it. Thank you.

1 THE COURT: That's what I heard. I don't know. I just
2 got here.

3 MR. TISDALE: Your Honor, it certainly wouldn't be
4 related to this case in any way, shape or form, and it was
5 eight years ago in some seminar, apparently.

6 THE COURT: I understand.

7 MR. HOLMES: I appreciate what Your Honor says. It
8 seems to me it's just a -- you know, it's impeachment.

9 THE COURT REPORTER: I'm sorry, sir, I can't hear you.

10 MR. TISDALE: The court reporter couldn't hear you,
11 Allan.

12 MR. HOLMES: She didn't miss anything.

13 THE COURT: I think she did.

14 All right. Now, I'd like to see the expert -- her
15 report. Let me look at the report.

16 MS. GOLDING: I'll present that to the Court, Your
17 Honor.

18 THE COURT: Thank you.

19 MR. SMITH: Your Honor, the one she handed you looked a
20 little bit thinner than the one that we submitted.

21 THE COURT: Wow, yeah.

22 MR. RUNYAN: I think the difference is that that has
23 Mr. Klein's report attached to it.

24 THE COURT: It does.

25 MR. SMITH: Your Honor, here's her CV. Thank you.

1 THE COURT: Okay. Hold on, because Mr. Runyan is
2 correct that Mr. Klein -- it looks like Mr. Klein's report is
3 attached, because it's -- I'm looking at, like, Appendix C,
4 "Survey Data Listing." Is that his stuff?

5 MR. SMITH: Your Honor, that -- Bob Klein's report is
6 part of the materials that she relied upon as an expert. I
7 think she's allowed to do that regardless of whether
8 Mr. Klein testifies.

9 MR. RUNYAN: Well, I think the factual problem with that
10 is in the deposition, she said she formulated her opinion
11 before getting the report.

12 MR. SMITH: Your Honor, at her deposition, she said that
13 the report further supported her opinion; so they've been
14 aware of that for a long time. And, Your Honor, she did rely
15 on it in her report. That's why it's attached to the report.

16 Your Honor, Paragraph No. 11 of Section A of her report
17 states "Surveys have been conducted in this case that
18 resulted in substantial confusion of the public in highly
19 significant percentages, and it's attached as an appendix to
20 this report."

21 MR. RUNYAN: The substantive problem, Your Honor, with
22 that is confusion is not an issue in this case on their side.

23 MR. SMITH: Your Honor, I'm happy to --

24 MR. RUNYAN: The Lanham Act claims are --

25 THE COURT: Let me be real -- I don't know how to be any

1 clearer, Mr. Smith. I'm going to try once more. When you
2 violate the Court's order three times, and a witness is
3 excluded, they're excluded. Their testimony is excluded.
4 Their work product is excluded. Do you understand me?

5 MR. SMITH: Yes, Your Honor.

6 THE COURT: Do you understand that this witness's
7 testimony, this witness's work product will not be brought
8 into this Court?

9 MR. SMITH: Yes, Your Honor.

10 THE COURT: Why are you having difficulty with that,
11 Mr. Smith? I told you just a moment ago that the defendants
12 have violated this Court's order three times with regards to
13 experts. I excluded him, and now you think you're going to
14 bring in his testimony through the back door; is that what
15 you think?

16 MR. SMITH: Your Honor, that was not my intent.

17 THE COURT: Apparently it was, Mr. Smith, because you
18 testified that Ms. Lott would use it because she relied on
19 it, as experts are entitled to rely on that sort of
20 testimony. Let me be clear: He's excluded, Mr. Smith,
21 because the defendants failed to comply with three of this
22 Court's orders, three, with regards to expert testimony.

23 This is not a game. Court orders, sir, are to be
24 followed. You are an officer of the Court. I trust we'll
25 not have any more discussion about this expert witness and

1 anything he might have to do with these proceedings. Do you
2 understand?

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: Very well.

5 MR. SMITH: Your Honor, if I could address some of the
6 other points that Mr. Runyan and Ms. Golding --

7 THE COURT: I will ask you a very, very simple question,
8 and I want you to focus with me, because relevance, you see,
9 is really a simple issue. I'm going to read the rule:
10 "Evidence is relevant if it has a tendency to make a fact
11 more or less probable than it would have been without the
12 evidence and the fact is of consequence in determining the
13 action."

14 Clearly the marks are an issue in this case, right?
15 Yes?

16 MR. SMITH: Yes, Your Honor.

17 THE COURT: And you would offer Ms. Lott for the purpose
18 of having some discussion regarding those marks; is that
19 correct?

20 MR. SMITH: That's correct. I can elaborate if you
21 wish.

22 THE COURT: You don't need to, because I think,
23 Mr. Smith, it's better to take it as it comes. In other
24 words, I don't believe that I can function in a vacuum. And
25 I think I'm going to have to -- we'll begin the testimony,

1 and if there's an objection, I'll take it from there.

2 MR. SMITH: Okay.

3 THE COURT: Yes?

4 MR. SMITH: Very good, Your Honor.

5 THE COURT: Very well. Thank you, Mr. Smith.

6 Now, you do understand, and before she testifies, I want
7 you to get real clear with her that the Judge doesn't take
8 blood pressure medicine yet, but I might have to resort to
9 taking blood pressure medicine if I hear anything about the
10 excluded witness, okay? So you all might want to have a
11 little time to do that.

12 MR. TISDALE: Your Honor, may I?

13 THE COURT: Yes.

14 MR. TISDALE: Given the Court's ruling to exclude
15 Mr. Klein --

16 THE COURT: Yes.

17 MR. TISDALE: -- and given the severity of the order as
18 you have yourself articulated --

19 THE COURT: Yes.

20 MR. TISDALE: -- we believe that we need to proffer his
21 testimony for preservation purposes.

22 THE COURT: You don't, and let me tell you why you
23 don't: Because it doesn't matter whether or not it makes any
24 difference because I am excluding his testimony. Not for
25 relevance. I'm excluding his testimony because of the

1 defendants' failure to comply with three of this Court's
2 orders. So what he has to say, you can presume that it is
3 earth shattering. It's huge. Because I don't care.

4 MR. TISDALE: Well, Your Honor, given your ruling that
5 we -- which, of course, we disagree with, respectfully, that
6 we cannot proffer his testimony, we offer his report as an
7 offer of proof in this case, and we would like to file it
8 accordingly.

9 THE COURT: Yes, sir. Here's the problem with that:
10 It's excluded. The testimony is excluded. If I have
11 committed an abuse of discretion, then I have committed an
12 abuse of discretion in excluding the witness. I don't
13 believe, for appellate purposes, that the Court would even
14 get into the discussion about whether or not the testimony
15 mattered or not.

16 In other words, for your protection, I would want the
17 Court to presume it would have been helpful. Do you see what
18 I'm saying?

19 MR. TISDALE: Yes, Your Honor.

20 THE COURT: If you make that proffer, Mr. Tisdale, then
21 the Court perhaps would be inclined to go into that secondary
22 analysis. I don't want that for you. I want the Court to
23 presume that I have done what I have done for the reasons
24 that I have done it. Not that it isn't relevant, not that it
25 wouldn't be important, but for the mere fact that the

1 defendants failed to comply with not one, not two, but three
2 of this Court's orders, and that is the reason for the
3 exclusion.

4 My concern is that that's the reason. And in fairness
5 to the defendants, I want it to stand that way. And I'm
6 afraid -- and if you want to proffer it, I will allow you to
7 do that, but my concern is that I want it to be what it is.
8 And if it's an abuse of discretion, I want the Court to
9 consider it was a big deal.

10 MR. TISDALE: Well, I will take you up on your offer to
11 be allowed to proffer it, Your Honor.

12 THE COURT: Sure. Absolutely. Put in his report.

13 MR. TISDALE: Well, to do what?

14 THE COURT: You can put in his report as a proffer.

15 MR. TISDALE: In the report?

16 THE COURT: Yes, just put his report in as a proffer.

17 MR. TISDALE: Offer of proof, not as a witness on the
18 stand.

19 THE COURT: Right.

20 MR. TISDALE: Okay. I misunderstood. I'm sorry.

21 THE COURT: Absolutely.

22 MR. TISDALE: So we certainly will file the report.

23 THE COURT: Sure.

24 MR. TISDALE: As a proffer, offer of proof.

25 THE COURT: Absolutely.

1 MR. TISDALE: Thank you.

2 THE COURT: But, again, I want the record to be clear.

3 In other words, I don't want -- it would be my intention that
4 if there's error, that whether or not it would have helped or
5 not helped --

6 MR. TISDALE: I understand your ruling. We feel like,
7 given the nature of the matter, that we need to make an offer
8 of proof --

9 THE COURT: Sure.

10 MR. TISDALE: -- so that another Court, if it ever looks
11 at it, will have it.

12 THE COURT: Sure. That's fine with me.

13 MR. TISDALE: Thank you very much.

14 MS. KOSTEL: Your Honor, if I could just read one --
15 just to protect our position on appeal.

16 THE COURT: Sure.

17 MS. KOSTEL: Just make note of the Teseniar case,
18 T-E-S-E-N-I-A-R, handed down by the South Carolina Court of
19 Appeals in January of this year, discussing exclusion of
20 expert testimony.

21 THE COURT: Yes.

22 MS. KOSTEL: And just a couple of notes that the Court
23 said (reading): A failure to weigh the required factors
24 demonstrates a failure to exercise discretion and amounts to
25 an abuse of discretion. And the Court goes on to set out

1 five factors the trial court is required to consider. I'm
2 certain Your Honor is familiar with those factors. We want
3 to just put into the record --

4 THE COURT: Put them on the record and let me be sure
5 I've covered them all. Go right ahead.

6 MS. KOSTEL: Okay. The type of witness involved.

7 THE COURT: Yes.

8 MS. KOSTEL: The content of the evidence emanating from
9 the proffered witness.

10 THE COURT: Yes.

11 MS. KOSTEL: The nature of the failure or neglect or
12 refusal to furnish the witness's name.

13 THE COURT: Yes.

14 MS. KOSTEL: The degree of surprise to the other party,
15 including the prior knowledge of the name of the witness.

16 THE COURT: Okay.

17 MS. KOSTEL: And the prejudice to the opposing party.

18 THE COURT: Very well.

19 MS. KOSTEL: And let's just remind the Court that the
20 other side has had that report for over a month. The witness
21 has been available for deposition for that month, that, at
22 the Court's direction, we deposed 34 plaintiffs' 30(b)(6)
23 witnesses -- actually 32 on last Monday, and then two of them
24 were not available; so we deposed the remaining two this past
25 weekend, just to get that in the record. Thank you.

1 THE COURT: Thank you so much. Yes. And just to be
2 absolutely certain with regards to that decision, as a
3 general observation, it has been most difficult to obtain
4 compliance with court orders by the defendants in this case,
5 in general, as a general observation.

6 I feel that the plaintiffs were well grounded in their
7 motion to exclude expert witnesses. And as a general
8 observation -- and I think I've made it before, as a general
9 observation, defendants have spent much effort in what I
10 believe to be an attempt to postpone and delay these
11 proceedings, to include an email that I've had privy to in
12 April of this year, which I am satisfied indicates that delay
13 of this trial has been a tactical decision on behalf of the
14 defendants, which continued, I might note, I believe, up to
15 Friday before the trial was to begin on Monday.

16 Therefore, when the plaintiffs came to the Court in
17 June, hat in hand, begging for assistance from the Court to
18 obtain compliance with two schedule orders which had been
19 entered into by consent and after meeting and conference and
20 they found themselves up against the wall with trying to, A,
21 just give me the names, please, of the experts, and let me
22 know what they're going to say, it fell on deaf ears so far
23 as the Court was concerned. I told them "no," wouldn't do
24 it, wouldn't exclude the witnesses, wasn't going to exclude
25 the witnesses.

1 It was at that point that I believe that the case law
2 was complied with, because it was at that moment, again, on
3 the backs of the plaintiffs that I allowed the expert
4 testimony to be taken. I put in the order every expert that
5 you all mentioned. All you had to do was give me another
6 name. Give me five more names. You could have given me ten
7 more names, and I would still have caused the plaintiffs to
8 have accomplished the work, and you chose not to.

9 This is the consequence to that act. Because, you see,
10 at some point, if we're going to have an ordered society,
11 there must be order. There must be compliance with the
12 Court's orders. There must be. And that was the reason,
13 that was the reasoning behind my order directing that the
14 expert depositions and expert reports be given.

15 It is an extraordinary thing to give counsel a mere 72
16 hours to prepare to depose an expert and to do them all
17 within the course of a matter of days. That was the -- if
18 there was an abuse of discretion, I must tell you I think
19 that is wherein it lies in this case is to have burdened them
20 and put it on their backs.

21 But, yet, I did that, and I did that for the purpose of
22 not excluding experts that the defendants told me that they
23 wanted, despite the fact that they have repeatedly failed to
24 comply with this Court's orders. And all you had to do, all
25 you had to do was just give me the names.

1 You know, and it really comes so close to Rule 3.3. If
2 you had a name and you thought you were going to need that
3 expert, to withhold that information at that time
4 approximates a violation, in my mind, of Rule 3.3. And then
5 to come now and to complain is most disturbing to me.

6 So the only remedy that is left to the Court, in order
7 for this Court to have any ability to control these
8 proceedings and to control this trial, the Court has to, in
9 its humble opinion, take the extraordinary action to exclude
10 a witness, which I have no desire to do, and you leave me no
11 choice.

12 I'm finished with that issue. I would like to move on.
13 All right. Call your next witness.

14 MR. HOLMES: Thank you, Your Honor.

15 MR. TISDALE: Your Honor, just give us five minutes to
16 advise the witnesses what your ruling is.

17 THE COURT: Sure. Absolutely.

18 (Recess held.)

19 MR. TISDALE: Your Honor, we would call Leslie Lott.

20 LESLIE JEAN LOTT,
21 being first duly sworn, testified as follows:

22 THE COURT: If you would state your name again please
23 and spell your last name.

24 THE WITNESS: Leslie Jean Lott, L-O-T-T.

25 THE COURT: Your witness.

1 MR. SMITH: Thank you, Your Honor.

2 DIRECT EXAMINATION BY MR. SMITH - VOIR DIRE:

3 Q. Ms. Lott, can you start by giving us basic personal
4 information: When you were born, where you grew up.

5 A. Okay. I was born in Louisville, Kentucky. Grew up in
6 north Florida and currently reside in Miami.

7 Q. Can you take us through your educational years?

8 A. Sure. I went to school at -- went to school in a small
9 town in north Florida, Perry, Florida; went to college at the
10 University of Florida; went to law school at the University
11 of Florida; and then attended some post graduate courses at
12 Georgetown in Washington, D.C. after law school.

13 Q. Can you give us the dates of graduation from each of
14 those?

15 A. I'm not sure. Graduation from high school was '68;
16 undergrad, '72; law school, '74; and post grad courses would
17 have been '75.

18 Q. And what were those? What was that post grad work?

19 A. I don't even remember, but they were courses on
20 trademark law. I was working with the Patent and Trademark
21 Office in Washington at the time.

22 Q. Okay.

23 A. And they were advanced courses on trademark law issues.

24 Q. Okay. So you started your career after those post
25 graduate courses. Can you take us through the early years of

1 your career?

2 A. Sure. After graduation my first job out of law school
3 was with the United States Patent and Trademark Office as a
4 trademark examiner. And there were -- there was a training
5 program there on the practices and procedures of the Patent
6 and Trademark Office and the examination of trademarks and
7 the evaluation of likelihood of confusion and things like
8 that; so there was training within the Patent and Trademark
9 Office.

10 Q. And how long were you there?

11 A. I was there for two years.

12 Q. Okay.

13 A. In 1976 I went to New York to an international
14 intellectual property firm, Pennie & Edmonds, and worked
15 there for several years during which I took a leave of
16 absence and worked overseas in the Kingdom of Saudi Arabia
17 for almost two years, just under two years, and then returned
18 to New York in 1980 for the calendar year of 1980 and then to
19 the same firm, to Pennie & Edmonds, and then moved to Miami
20 at the end of 1980.

21 Q. Can you describe your practice while at Pennie &
22 Edmonds?

23 A. Sure. It was trademark prosecution, which means filing
24 and obtaining trademark registrations throughout the world.
25 It involved inter partes proceedings within various patent