

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

11 CERTIFICATE OF REPORTER 1486

12

13

14

15 E X H I B I T S

16

17 PLAINTIFF DIOCESE EXHIBITS

18 NO. DESCRIPTION ID EVD

19 DSC-64 DECLARATION AND PETITION FOR 1461 1477

20 INCORPORATION, 11/5/1973

21 DSC-65 IRS APPLICATION FOR 501(C)(3) - 1472 1476

22 6/22/1977

23 DSC-66 3/23/1977 LETTER FROM T. 1475 1476

24 TISDALE TO A. BLACKMON

25 THE COURT'S EXHIBITS

NO. DESCRIPTION ID EVD

C-4 M. MCWILLIAMS REPORT 1404

C-5 M. MCWILLIAMS DEPOSITION 1406

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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

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