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

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

Case No. 2:13-cv-00893-CWH

PLAINTIFFS' MOTION TO REMAND

Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Vestry and Church-Wardens Of The Episcopal Church Of The Parish Of Christ Church; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County Plaintiffs, v. The Episcopal Church (a/k/a The Protestant Episcopal Church in the United States of America) & The Episcopal Church in South Carolina Defendants.	)

The above-named 37 South Carolina non-profit corporation Plaintiffs ("Plaintiffs") respectfully move this Court to remand this case back to the state court from which it was removed. Remand is appropriate because there is no basis for this Court to exercise jurisdiction over the state law claims alleged by Plaintiffs in their Complaint. Diversity jurisdiction is not alleged, and there is no basis for federal question jurisdiction obvious on the face of the Complaint, nor does the resolution of Plaintiffs' claims necessarily involve a federal issue. The Defendants have also waived their right of removal by actions taken in state court. In support of their Motion, the Defendant incorporates herein his Memorandum in Support.

-signature to follow-

April 10, 2013

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

The Protestant Episcopal Church In The Diocese Of South Carolina; The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body; All Saints Protestant Episcopal Church, Inc.; Christ St. Paul's Episcopal Church; Christ The King, Waccamaw; Church Of The Cross, Inc. and Church Of The Cross Declaration Of Trust; Church Of The Holy Comforter: Church Of The Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; Saint Matthews Church; St. Bartholomews Episcopal Church; St. Davids Church; St. James' Church, James Island, S.C.; St. John's Episcopal Church of Florence, S.C.; St. Matthias Episcopal Church, Inc.; St. Paul's Episcopal Church of Bennettsville, Inc.; St. Paul's Episcopal Church of Conway; The Church Of St. Luke and St. Paul, Radcliffeboro; The Church Of Our Saviour Of The Diocese of South Carolina; The Church Of The Epiphany (Episcopal); The Church Of The Good Shepherd, Charleston, SC; The Church Of The Resurrection, Surfside; The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston In The State of South Carolina; The Protestant Episcopal Church, The Parish Of Saint Michael, In Charleston, In the State of South Carolina and St. Michael's Church Declaration Of Trust; The Vestry and Church Wardens Of The Episcopal Church Of The Parish of Prince George Winyah; The Vestry And Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Matthew; The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of	Case No. 2:13-cv-00893-CWH **PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO REMAND**

St. Andrew's Church, Mount Pleasant; The Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Vestry and Church-Wardens Of The Episcopal Church Of The Parish Of Christ Church; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County	)
Plaintiffs,	)
v.	)
The Episcopal Church (a/k/a The Protestant Episcopal Church in the United States of America) & The Episcopal Church in South Carolina	)
Defendants.	)

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I. INTRODUCTION

Defendants' removal of this case is improper because there is no legal basis whatsoever supporting removal. In its Notice of Removal, Defendants claim removal is proper under 28 U.S.C. §1331 and 15 U.S.C. §1121. However, Plaintiffs' well pleaded complaint includes only three causes of action, all of which are clearly based on state law, and, therefore, this case should be remanded because no federal question is at issue.

II. FACTUAL BACKGROUND

A. State Court Proceedings

This case involves a dispute over South Carolina real and personal property including certain marks registered with the South Carolina Secretary of State. On January 4, 2013, The Protestant Episcopal Church in the Diocese of South Carolina ("Diocese"), The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body ("Trustees") and 16 other South Carolina non-profit corporations filed suit against The Episcopal Church ("TEC") in Dorchester County, South Carolina.[1] A First Amended Complaint was subsequently filed on January 22, 2013 adding an additional 17 South Carolina non-profit corporations as Plaintiffs to the lawsuit. The Diocese and the Trustees also filed a motion for a Temporary Restraining Order.[2]

A Temporary Restraining Order ("TRO") was issued by Circuit Court Judge Diane S. Goodstein at 5:11PM on January 23, 2013 conditioned upon the posting of a $50,000 bond. A cash bond was posted at that time and is still being held by the Dorchester County Clerk of

[1] The case was designated complex and assigned to Judge Goodstein on January 29, 2013. *See* Or. Designating Case Complex (Jan. 29, 2013).
[2] *See* T.R.O. (January 23, 2013).
[3] In Civil Action No. 2:13-cv-537-CWH, the Plaintiff vonRosenberg has alleged that this was a convention of the

Court. Judge Goodstein set a hearing for February 1, 2013 at 9AM to determine whether an injunction should be issued.

On January 26, 2013, six days before that hearing was to be held and two days after Charles G. vonRosenberg ("vonRosenberg") and TEC were served with the TRO, a convention was held by the "Episcopal Church in South Carolina" ("ECSC") and the Presiding Bishop of TEC then installed Charles G. vonRosenberg as its Bishop.[3]

The hearing was not held because on January 31, 2013, TEC *consented* to the entry of a preliminary injunction which was then issued by the Court and filed at 5:29PM. The Restraining Order and the Preliminary Injunction provide that:

> No individual, organization, association or entity, whether incorporated or not, may use, assume, or adopt in any way, directly or indirectly, the registered names and the seal or mark of The Protestant Episcopal Church in the Diocese of South Carolina as are set out below or any names or seal that may be perceived to be those names and seal or mark.
>
> The registered marks that are subject to this order are: the seal of the Diocese of South Carolina as described in its registration with the South Carolina Secretary of State; the name "The Protestant Episcopal Church in the Diocese of South Carolina", as registered with the South Carolina Secretary of State; the name "The Diocese of South Carolina", as registered with the South Carolina Secretary of State; and the name "The Episcopal Diocese of South Carolina," as registered with the South Carolina Secretary of State. Again, this seal and these names are those registered by this Plaintiff corporation with the South Carolina Secretary of State.
>
> The following persons employed by, or serving as the officers or directors of the Diocese of South Carolina or of the Trustees are not subject to this order:
>
> • **Diocese of South Carolina:** Mark J. Lawrence, Chief Operating Officer; James B. Lewis, Registered Agent; John Wallace, Treasurer; Nancy J. Armstrong, Assistant Treasurer; Joy Hunter, Director of Communications; Paul C. Fuener, President and Director; John M. Barr, III, Director; J. Reid Boylston, III, Director; Ann Hester Willis, Director and Secretary; Julian Jeffords, III, Director;

[3] In Civil Action No. 2:13-cv-537-CWH, the Plaintiff vonRosenberg has alleged that this was a convention of the "Diocese." Yet five days after this convention, the "Diocese" obtained the Injunction consented to by TEC. The ECSC admitted that he is its agent. *See* Def. ECSC Ans., Affirmative Defenses, and Counterclaims to Second Amended Compl. (March 28, 2013).

> William G. Lyles, III, Director; Ed Mitman, Director; Andrew O'Dell, Director; Elizabeth Pennewill, Director; Suzanne Schwank, Director; Gregory A. Snyder, Director; A. Kenneth Weldon, Director;
>
> • **Trustees**: Mark J. Lawrence, President; Craige Borrett, Trustee and Secretary; Jeffrey Miller, Trustee; Robert Horn, Trustee; Robert Kilgo, Trustee; Robert Kunes, Trustee; Glynn Watson,Trustee; and Ivan Anderson, Trustee.

See Temp. Inj. (consent). (Jan. 31, 2013).

> The Injunction concluded by stating:
>
> "Any party may move this Court upon written notice served at least fourteen days before the time specified for a hearing, unless the parties consent to a shortened period, for an Order modifying or dissolving this temporary injunction. This temporary injunction will remain in effect until further Order of the Court."

Id. at 7.

On February 19, 2013, the now 33 Plaintiffs filed a motion to amend their complaint to add three additional South Carolina non-profit corporations as Plaintiffs and to add the ECSC as a Defendant. TEC consented, through its attorney Thomas Tisdale, to the amendment, and Judge Goodstein signed an Order allowing it on February 28, 2013. *See* Or. Granting Leave to File Second Amended Compl. (Feb. 28, 2013).

On February 26, 2013, Defendants requested additional time to answer the state court action, which Plaintiffs granted. Exhibit 1 – Affidavit of C. Alan Runyan. On March 5, 2013, prior to answering the state court case, vonRosenberg, an agent of ECSC and a member of TEC, filed a parallel action in the United States District Court for the District of South Carolina, Civil Action No. 2:13-cv-537-CWH. A motion to dismiss that action is pending.[4]

[4] In fact, in that action, vonRosenberg, arguing for the issuance of an injunction by the federal court, states: "[h]ere, virtually no state court proceedings have taken place. No defendant has filed a responsive pleading; discovery has not yet begun; and no dispositive motions have been filed." *See* vonRosenberg's Motion for Preliminary Inj., p. 30. (March 7, 2013). However, at the time of this removal, *all* of these events had occurred.

Finally, on March 28, 2013, both TEC and the ECSC filed an Answer, Affirmative Defenses, and Counterclaims to the Second Amended Complaint for Declaratory and Injunctive Relief, 84 and 99 pages respectively. These documents include multiple counterclaims seeking relief in state court and joining all issues including the use and control of the names and marks and the control of the Diocese. The ECSC also served discovery on all Plaintiffs (and filed in the state court): First Set of Interrogatories, Request for Production of Documents, and Request for Admissions. The ECSC waited seven days after answering, counterclaiming, and commencing discovery then removed the case with TEC's consent.

B. Plaintiffs' State Court Causes of Action

The state court action in the original, First Amended and Second Amended Complaints asserts causes of action against TEC and the ECSC (the latter only in the Second Amended Complaint) under three South Carolina statutes: §§ 15-53-10 *et. seq.* ("Uniform Declaratory Judgments Act"), §§ 39-15-1105 *et. seq.* ("Trademarks and Service Marks"), and §§ 16-17-310 & 320 ("Improper Use of Names").

The action asks the South Carolina Circuit Court to declare that the ownership of real and personal property (including intellectual) is, in the respective 37 Plaintiffs; that the 37 Plaintiffs are the only South Carolina entities entitled to the use and control of their respective corporate identities, names, emblems, styles, seals and assets; that the only authorized representatives of the 37 respective Plaintiffs are their existing boards, duly elected successors and employees; that the Diocese has withdrawn from TEC; and that TEC and the ECSC and those in concert with or under their control:

- may not hold out any other entities as the respective real Plaintiffs;
- do not have the legal capacity to act in the respective Plaintiffs' names;

- have no legal, beneficial or equitable interest in any of the respective Plaintiffs' real or personal (including intellectual);
- have no right or authority to possess, transfer, etc. any of the respective Plaintiffs' real or personal property; and
- may not use in any way the marks of the respective Plaintiffs.

Injunctive relief is also sought against TEC and the ECSC and those controlled by or in concert or participation with them from using Plaintiffs' names, seals, marks and intellectual property, and enjoining their officers, agents, servants, employees, members, attorneys and any person in concert or participation with or under the direction and control from holding themselves out as officers or other leaders of the Plaintiffs.

III. LEGAL ANALYSIS

"Only state-court actions that *originally* could have been filed in federal court may be removed to federal court by the defendant." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987) (emphasis added) (affirming remand to state court). The Fourth Circuit Court of Appeals has observed that 28 U.S.C. § 1441 "generally makes removal appropriate in three circumstances, demonstration of which is the burden of the party seeking removal." *Lontz v. Tharp*, 413 F.3d 435, 439 (4th Cir. 2005); *see Mulcahey v. Columbia Organic Chems. Co.,* 29 F.3d 148, 151 (4th Cir. 1994). These are: (1) "if the parties are diverse and meet the statutory requirements for diversity jurisdiction;" *Id.*; *see* 28 U.S.C. §§ 1332, 1441(b) (2000); (2) "if the *face* of [*plaintiff's*] complaint raises a federal question;" *Id.*; *see* § 1441(b); *King v. Marriott Int'l, Inc.,* 337 F.3d 421, 424 (4th Cir. 2003); or (3) if there is complete preemption. *Lontz*, 413 F.3d at 439-40 (quoting *Caterpillar Inc. v. Williams,* 482 U.S. 386, 393, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987)) ("if the subject matter of a putative state law claim has

been totally subsumed by federal law-such that state law cannot even treat on the subject matter-then removal is appropriate."); *see Aetna Health Inc. v. Davila,* 542 U.S. 200, 124 S.Ct. 2488, 2494-95, 159 L.Ed.2d 312 (2004); *Franchise Tax Bd. v. Constr. Laborers Vacation Trust for S. Cal.,* 463 U.S. 1, 23-24, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983); *King,* 337 F.3d at 424-25.

Neither "a federal defense to a state law claim," *see Louisville & Nashville R.R. v. Mottley,* 211 U.S. 149, 152, 29 S.Ct. 42, 53 L.Ed. 126 (1908), nor a counterclaim can serve as the basis for "arising under" jurisdiction. *Holmes Group, Inc. v. Vornado Air Circulation Sys, Inc*., 535 U.S. 826, 122 S.Ct. 1889 (2002); *Lontz*, 413 F.3d at 439 (quoting *Gully v. First Nat'l Bank,* 299 U.S. 109, 112, 57 S.Ct. 96, 81 L.Ed. 70 (1936) ("Thus, the Supreme Court unwaveringly has maintained that '[t]o bring a case within [§ 1441], a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action.' ")); *King,* 337 F.3d at 424.

Here, where there is no "diversity of citizenship, federal-question jurisdiction is required." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987) (emphasis added) (affirming remand to state court). The burden of establishing federal question jurisdiction lies with the removing party, and the removal statute must be strictly construed against removal. Removal is not appropriate and remand is required where a plaintiff's well-pleaded complaint relies solely on state law, and the resolution of a substantial federal question is not required. *Franchise Tax Bd.*, 463 U.S. 1 (when the law that creates the cause of action is state law and original federal jurisdiction is unavailable because the lack of a substantial federal question, remand to state court required); *Columbia Gas Transmission Corp. v. Drain*, 191 F.3d 552, 558 (4th Cir. 1999) (Federal courts do not have jurisdiction when

"plaintiff's right to relief does not, as the Supreme Court precedents require, necessarily depend upon resolution of any question of federal law, substantial or otherwise.").

A. Burden on Removing Party and Statute Construed In Favor of Remand

In *Stevens Aviation Inc. v. DynCorp Intl., LLC,* 2009 WL 2997413, (D.S.C. Sept. 15, 2009), this Court addressed the burden in a removal case:

> The burden of establishing federal jurisdiction is upon the party seeking removal. *Wilson v. Republic Iron & Steel Co*., 257 U.S. 92, 97, 42 S.Ct. 35, 66 L.Ed. 144 (1921). If there are doubts as to the court's jurisdiction, remand of the case is required pursuant to 28 U.S.C. § 1447(c). "Any ambiguities are construed against removal because the removal statute should be strictly construed in favor of remand." *Manguno v. Prudential Prop. & Cas. Ins. Co*., 276 F.3d 720, 723 (5th Cir. 2002).

Stevens Aviation, 2009 WL 2997413, *3 (granting plaintiff's motion to remand); *see also Able v. Upjohn Co. Inc.*, 829 F.2d 1330, 1332 (4th Cir. 1987) (The removal statutes are to be strictly construed, and must be applied in light of the "clear congressional intention to restrict removal") *overruled on other grounds by Caterpillar v. Lewis,* 519 U.S. 61, 74 n. 11, 117 S.Ct. 467, 136 L.E.2d (1996); *Spann v. Style Crest Products, Inc.,* 171 F.Supp.2d 605, 607 (D.S.C. 2001); *Clipper Air Cargo, Inc. v. Aviation Prods. Intl., Inc.*, 981 F.Supp. 956, 958 (D.S.C. 1997). Strict construction is appropriate because removal implicates "significant federalism concerns." *Dixon v. Coburg Dairy, Inc.,* 369 F.3d 811, 816 (4th Cir. 2004) (ordering case remanded).

B. The Well-pleaded Complaint Rule

Whether federal question jurisdiction exists is determined by the well-pleaded complaint rule "which provides that federal jurisdiction exists only when a federal question is presented on the *face* of the *plaintiff's* properly pleaded complaint." *Caterpillar,* 482 U.S. at 392 (emphasis added); *see also Vaden v. Discover Bank*, 556 U.S. 49, 129 S.Ct. 1262, 1272, 173 L.Ed.2d 206 (2009); *Owen v. Carpenters' Dist. Council*, 161 F.3d 767, 772 (4th Cir. 1998); *Cook v.*

Georgetown Steel Corp., 770 F.2d 1272, 1275-76 (4th Cir. 1985) ("if a well-pleaded complaint does not invoke federal law, jurisdiction does not exist even in the stronger case where the only real issue in the case is a federal one"). "This rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar Inc.*, 482 U.S. at 392; *see also Childers v. Chesapeake & Potomac Tel. Co.*, 881 F.2d 1259, 1261 (4th Cir. 1989) ("[P]laintiff may avoid federal jurisdiction by relying exclusively on state law").

"A cause cannot be removed from a state court simply because, in the progress of the litigation, it may become necessary to give a construction to the constitution or laws of the United States." *State of Tennessee v. Union & Planters' Bank*, 152 U.S. 454, 460, 14 S. Ct. 654, 656, 38 L. Ed. 511 (1894) (quoting *Little York Gold Washing & Water Co. v. Keyes*, 96 U.S. 199, 203, 24 L. Ed. 656 (1877)). The plaintiff's complaint is "to be ascertained by the legal construction of its own allegations, and not by the effect attributed to those allegations by the adverse party." *Union & Planters' Bank*, 152 U.S. at 460 (quoting *Cent. R. Co. of New Jersey v. Mills*, 113 U.S. 249, 257, 5 S. Ct. 456, 459, 28 L. Ed. 949 (1885)).

Significantly, the removing party cannot manufacture federal question jurisdiction by alleging federal defenses or counterclaims.

> [T]he presence of a federal question … in a defensive argument does not overcome the paramount policies embodied in the well-pleaded complaint rule – that the plaintiff is the master of the complaint, that a federal question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court …

Caterpillar, 482 U.S. at 398-99; *Oklahoma Tax Comm'n v. Graham*, 489 U.S. 838, 840-41, 109 S. Ct. 1519, 1521, 103 L. Ed. 2d 924 (1989) ("[W]hether a case is one arising under [federal law], in the sense of the jurisdictional statute, ... must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, unaided by

anything alleged in anticipation of avoidance of defenses which it is thought the defendant may interpose."); *see also Cook v. Georgetown Steel Corp*., 770 F.2d 1272, 1275 (4th Cir. 1985).

Likewise, in *Holmes Group, Inc. v. Vornado Air Circulation Sys, Inc*., 535 U.S. 826, 122 S.Ct. 1889 (2002), the Supreme Court confirmed that a defendant may not make a case removable by asserting a federal counterclaim: "we decline to transform the longstanding well-pleaded-complaint rule into the 'well-pleaded-complaint-or-counterclaim rule.' " *Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc*., 535 U.S. 826, 832, 122 S.Ct. 1889, 1894 (2002).

"[T]he controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal." *Gully v. First Nat. Bank*, 299 U.S. 109, 112-13, 57 S. Ct. 96, 97-98, 81 L. Ed. 70 (1936) (citing *Tennessee v. Union & Planters' Bank*, 152 U.S. 454, 14 S.Ct. 654, 38 L.Ed. 511; *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 29 S.Ct. 42, 53 L.Ed. 126; *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25, 33 S.Ct. 410, 57 L.Ed. 716; *Taylor v. Anderson*, 234 U.S. 74, 34 S.Ct. 724, 58 L.Ed. 1218). "Indeed, the complaint itself will not avail as a basis of jurisdiction in so far as it goes beyond a statement of the plaintiff's cause of action and anticipates or replies to a probable defense." *Gully*, 299 U.S. at 113 (citing *Devine v. Los Angeles*, 202 U.S. 313, 334, 26 S.Ct. 652, 50 L.Ed. 1046; *Kohler Die & Specialty Co.*, 228 U.S. 22). Otherwise, a defendant,

> merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law, thereby selecting the forum in which the claim shall be litigated. If a defendant could do so, the plaintiff would be master of nothing. Congress has long since decided that federal defenses do not provide a basis for removal.

Caterpillar, 482 U.S. at 398-99.

The court cannot imply or anticipate potential defense by the Plaintiff in applying the well-pled complaint rule. *Oklahoma Tax Comm'n v. Graham*, 489 U.S. 838, 839-41, 109 S. Ct. 1519, 1520, 103 L. Ed. 2d 924 (1989) (Reversing the Tenth Circuit Court of Appeals twice and ordering the case remanded when "there was no independent basis for original federal jurisdiction to support removal" after the court of appeals "majority concluded that removal had been proper because the State's complaint, although facially based on state law, contained the 'implicit federal question' of tribal immunity."); *Pinney v. Nokia, Inc*., 402 F.3d 430, 445-46 (4th Cir. 2005) (Remanding case to state court since "[t]he district court went beyond this restricted inquiry and in effect anticipated (1) that [defendant] would raise the affirmative defense that the state law claims are preempted … and (2) that the … plaintiffs would be called upon to rebut that defense. The cases could be decided, the court concluded, only by resolving whether the claims are preempted by [federal law or standards]. Even if that is so, a preemption defense 'that raises a federal question is inadequate to confer federal jurisdiction.' " *Merrell Dow Pharms., Inc. v. Thompson,* 478 U.S. 804, 808, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986)). Further, even "[t]he fact that a defendant might ultimately prove that a plaintiff's claims are pre-empted ... does *not* establish that they are removable to federal court." *Lontz*, 413 F.3d at 443 (quoting *Caterpillar*, 482 U.S. at 398) (emphasis added). "Again, 'a case may not be removed to federal court on the basis of a federal defense, including the defense of preemption,' even if the complaint begs the assertion of the defense, and even if 'the defense is the only question truly at issue in the case.' " *Pinney*, 402 F.3d at 446 (quoting *Franchise Tax Bd.,* 463 U.S. at 14).

Following this rule, this Court remanded a case where the plaintiff alleged state law causes of action which did "not raise a disputed and substantial federal issue" finding that "the federal issue [arose] only as a potential defense to the plaintiff's claims, and 'a defendant may

not defend his way into federal court because a federal defense does not create a federal question under 1331.'" *Weiters v. Bon-Secours St. Francis Xavier Hospital, et al.,* Civil Action No. 2:10-cv-0499-CWH, March 18, 2010 Order, p. 7 (remanding case) (attached as Exhibit 2) (quoting *In re Blackwater Security Consulting, LLC,* 460 F.3d 576, 584 (4th Cir. 2006)). In *Weiters,* this Court found remand proper even where the plaintiff cited a federal statute in his pre-trial brief, in his memorandum in opposition to defendants' motion for summary judgment, and in a jury charge. *Id.*

Pursuant to the well-pleaded complaint rule, this case must be remanded to state court. In their Notice of Removal, Defendants claim that "this matter raises federal questions under the First Amendment of the United States Constitution and the Lanham Act." However, this court may only rely on the claims pleaded in the Complaint, which are state law claims. In particular, Plaintiffs seek relief under three separate sections of the South Carolina Code. *Gully*, 299 U.S. at 116; *Franchise Tax Bd.*, 463 U.S. at 12. Plaintiffs do not rely on or even mention any federal statutes or rights in their Complaint. The first time the Lanham Act was mentioned in the pleadings in this case was in the Defendant TEC's Answer. The First Amendment is not raised in either Defendants' Answers or Counterclaims. As set forth above, the well-pleaded complaint rule requires that complaint alone controls the removability of the case and not the express, implied, or potential defenses or counterclaims raised or not raised by Defendants. *Caterpillar*, 482 U.S. 386; *Gully*, 299 U.S. 109; *Oklahoma Tax Comm'n*, 489 U.S. 838; *Pinney*, 402 F.3d 430

Further, remand is required where the plaintiff alleges state law trademark claims and has chosen not to invoke the Lanham Act. 6 McCarthy on Trademarks and Unfair Competition § 32:13 (4th ed.). Removal of a trademark case is not appropriate where plaintiff takes care to plead only state law claims and does not clearly allege he is seeking relief under the Lanham Act.

Id. (citing *In re Hot-Hed Inc*., 477 F.3d 320 (5th Cir. 2007)). Therefore, to the extent Defendants rely on their defenses and counterclaims in support removal or unplead inferences on federal issues, this case must be remanded.

C. Narrow Exception to the Well-Pleaded Complaint Rule.

It is only in rare cases that a court can exercise federal question jurisdiction when only state law claims are pleaded in a complaint. *See e.g. Empire HealthChoice Assurance, Inc. v. McVeigh,* 547 U.S. 677, 699 (2006) (characterizing it as a "special and small category" of case); *Gunn,* 133 S.Ct. at 1065 (characterizing it as a "slim category" of cases). When the claims alleged by a plaintiff are based on state, as opposed to federal law, the only time removal is proper is when "the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law, in that federal law is a *necessary element* of one of the well-pleaded … claims." *Pinney*, 402 F.3d at 442 (emphasis added) (quoting *Christianson v. Colt. Indus. Operating Corp*., 486 U.S. 800, 808, 108 S. Ct. 2166, 100 L. Ed. 2d 811 (1988)); *see also Masey v. Gibson*, 2008 WL 2704977, *2 (D.S.C. 2008) ("federal law must be among the necessary elements of the non-federal claims"). "If a plaintiff can establish, without the resolution of an issue of federal law, all of the essential elements of his state law claim, then the claim does not necessarily depend on a question of federal law." *Pinney*, 402 F.3d at 442; *see also Dixon*, 369 F.3d at 816 ("A plaintiff's right to relief for a given claim necessarily depends on a question of federal law only when *every* legal theory supporting the claim requires the resolution of a federal issue"); *Mulcahey v. Columbia Organic Chem. Co*., 29 F.3d 148, 153 (4th Cir. 1994) ("If a claim is supported not only by a theory establishing federal subject matter jurisdiction but also by an alternative theory which would not establish such jurisdiction, then federal subject matter jurisdiction does not exist").

The "substantial question of federal law" doctrine applies if a four-part test is met:

> federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress. Where all four of these requirements are met … jurisdiction is proper because there is a "serious federal interest in claiming the advantages thought to be inherent in a federal forum," which can be vindicated without disrupting Congress's intended division of labor between state and federal courts.

Gunn v. Minton, 133 S.Ct. at 1065 (quoting *Grable & Sons,* 125 S.Ct. at 313-14). If the removing party is unable to establish any one of these four elements, the case must be remanded.

Here, Defendants reference *Grable & Sons* in their notice of removal. However, Defendants' reliance on *Grable & Sons* as the key to the door of federal court is misplaced. To begin with, *Grable & Sons* should not be read to expand the "small class of cases" to which the substantial question of federal law doctrine applies. In fact, such an argument was "squelched" by the Supreme Court one year later in the case of *Empire Healthchoice Assurance, Inc. v. McVeigh,* 547 U.S. 677, 701, 126 S. Ct. 2121, 165 L. Ed. 2d 131 (2006). *Morgan County War Mem. Hosp. v. Baker,* 314 Fed. Appx. 529, 535 (4th Cir. 2008) (quoting *Bennett v. Southwest Airlines Co*., 484 F.3d 907, 910 (7th Cir. 2007)).

Empire involved a lawsuit by a health insurance carrier who insured federal employees against the estate of a deceased employee seeking reimbursement of benefits based on a settlement received by the employee in connection with a personal injury action in state court. It was urged that *Grable* supported federal jurisdiction because federal law was a necessary element of Empire's claims. However, the Supreme Court disagreed. The Court explained that the facts in *Empire* were readily distinguishable from those supporting jurisdiction in *Grable* and stated that Grable "exemplifies" a "slim category" of cases which *Empire* could not "be squeezed into." The Court stressed that *Grable* "centered on the action of a federal agency (IRS) and its compatibility with a federal statute, the question qualified as 'substantial,' and its resolution was

both dispositive of the case and would be controlling in numerous other cases" whereas *Empire* involved a "non-statutory issue" which was "fact-bound and situation-specific" and which was not triggered by "the action of any federal department, agency, or service, but by the settlement of a personal-injury action launched in state court." The Court warned that "it takes more than a federal element 'to open the 'arising under' door.'" *Empire Health Choice, 547. U.S.* at 700-01 (quoting *Gable,* 545 U.S. at 313.)

As the Supreme Court stated in *Empire,* "this case is poles apart from *Grable*." *Id*. at 700. *Grable & Sons* was a quiet title action brought under state law, but "the only legal or factual issue contested in the case" was whether the federal government had given proper notice before seizing and selling property to satisfy a tax lien. *Id.* at 315. The court determined that the federal government had an "interest in the availability of a federal forum to vindicate its own administrative action" and that "the meaning of the federal tax provision [was] an important issue of federal law that sensibly belong[ed] in a federal court." *Id.*; *see also Gunn*, 133 S.Ct. at 1066 (explaining that "[t]he substantiality inquiry under *Grable* looks … to the importance of the issue to the federal system as a whole.").

The Fourth Circuit Court of Appeals in *Dixon v. Coburg Dairy, Inc.*, 369 F.3d 811 (4th Cir. 2004) found that even if the plaintiff's state law claim had "relied exclusively on the First Amendment to establish a violation [South Carolina statutory law] and thus necessarily depended on a question of federal law, the question of federal law raised by his complaint is not substantial." *Dixon v. Coburg Dairy, Inc.*, 369 F.3d 811, 818 (4th Cir. 2004); s*ee Merrell Dow Pharm., Inc. v. Thompson,* 478 U.S. 804, 813, 817, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986) ("[T]he mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction.").

D. Plaintiff's State Court Complaint

Here, Plaintiffs' state court complaint alleges three causes of action, each of which is based on either a violation of the South Carolina Code or will require the court to apply South Carolina statutes. There is no allegation, nor can Defendants show, that a federal issue is "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn,* 133 S.Ct. at 1065. In fact, the State of South Carolina's interests in determining the property rights of 37 *South Carolina corporations* which have real and personal property and some have registered marks with the *South Carolina Secretary of State* pursuant to the *South Carolina Trademark and Service Mark Statute* are significant, and the exercise of federal jurisdiction would certainly "[disrupt] Congress's intended division of labor between state and federal courts." *Id.*

Indicative of the absence of any federal question is the conduct of TEC in other cases. This appears to be the first case that TEC or its putative Diocese has removed from a state court. Since 2000, when TEC or the putative Diocese has been the principle author of the litigation, it has invoked the jurisdiction of 18 state courts more than 33 times, including South Carolina. Exhibit 3. In addition, a Diocese or Parish who withdrew from TEC in three additional states has sued TEC or a putative Diocese. In none of those cases did TEC or the putative Diocese ever remove these state cases because they felt the issue of determining church property rights depended on the resolution of a substantial federal question that should be the exclusive jurisdiction of the federal courts. *Franchise Tax Bd.* 463 U.S. at 27–28 (a case "arises under" federal law in "only those cases [where a] plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law").

E. Waiver

1. Actions of Unincorporated Associations Bind Its Members

Service of a Complaint upon an unincorporated association makes the unincorporated association *and* its members parties to the action. *Elliott v. Greer Presbyterian Church*, 181 S.C. 84, 186 S.E. 651 (1936); *accord, Crocker v. Barr*, 305 S.C. 406, 409, 409 S.E.2d 368, 370 (1991). Once the association is before the court, the rights of its members will be determined in the state court action. *Graham v. Lloyd's of London,* 296 S.C. 249, 371 S.E. 2d 801 (1988). Neither TEC nor the ECSC are legal entities "separate from the persons who compose [them]." *Graham*, 296 S.C. at 255, 371 S.C. 2d at 804; *Medlin v. Ebenezer Methodist Church,* 132 S.C. 498, 129 S.E. 830 (1925). Once the ECSC was formed and TEC recognized them as a Diocese, they became a party when the Complaint was served on the unincorporated association. Judgment in the state court action can now be entered against the ECSC *as a member of TEC*. *Crocker*, 305 S.C. at 409, 409 S.E.2d at 370; *Elliott,* 181 S.C.84, 186 S.E.651.

South Carolina, like many states, has altered the common law by allowing unincorporated associations to be "proceeded against when the name and style of which they are usually known without naming the individual members of the association." S.C. Code of Laws § 15-5-160 (1976). The statute is:

> a convenient procedure by which a Plaintiff can bring the members of an association before the court without naming and serving process upon them individually. Once they are before the court, the liability of the members of the association, if any, is determined by the applicable substantive law.

Graham, 296 S.C. at 255-56, 371 S.E. 2d at 804-05.[5]

[5] The principal that an unincorporated association is not a jural person has been applied in federal court to determine that the association's citizenship is determined by the citizenship of its members. *Clephas v. Fagelson, Shonberger, Payne & Arthur* 719 F.2d 92 (4th Cir. 1983) ("The rule enunciated in *Chapman v. Barney*, 129 U.S. 677, 682, 9 S.Ct. 426, 428, 32 L. Ed. 800 (1881) remains the law today."); *accord Brown v. Protestant Episcopal Church in the United States of America,* 8 F.2d 149, 150 (E.D. La. 1925). A member of an unincorporated association would be

2. TEC Waived its Right to Removal

Defendants have waived any right to dispute questions respecting the control and use of real and personal property and the marks at issue in federal court, and have specifically agreed to resolve their issues in state court. The state court consent injunction is an order, agreed upon, that effectively concludes that: (1) Only certain "persons employed by, or serving as the officers or directors of the Diocese of South Carolina or the Trustees are not subject to this order" and may use the names, marks, and seals of the Diocese of South Carolina; (2) any request to lift or dissolve or change the consent order will be made to the state court; and (3) until the ***state court*** dissolves or modifies the consent injunction order, the order stands. *See* Temp. Inj. (consent). This is a waiver by Defendants of the right to seek to litigate such issues in federal court. *Eason v. Eason,* 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009) ("Waiver is a voluntary and intentional abandonment or relinquishment of a known right."). Parties may waive rights to litigate in a certain venue or forum. *See e.g. Landvest Associates v. Owens,* 274 S.C. 334, 263 S.E.2d 646 (1980) (A defendant's right, in a civil action, to have the case heard in his home county is a substantial one, but one which may be waived). A consent order may operate as a waiver. *Richland County v. Lowman*, 307 S.C. 422, 415 S.E.2d 433 (Ct.App. 1992) (consent order of reference constituted waiver of right to jury trial). Finally, a consent order is a form of agreement, and "[i]t is settled ... that parties to a contract may agree in advance to submit to the jurisdiction of a given court…" *Nat'l Equip. Rental, Ltd. v. Szukhent,* 375 U.S. 311, 315–16, 84 S.Ct. 411, 11 L.Ed.2d 354 (1964). Also, the Defendants consented to the filing of a second amended complaint.

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bound by a judgment against the unincorporated association. Restatement (Second) of Judgments. §§ 43-61 (1982); *See, e.g., Brooks v. Trustees of Dartmouth College*, 161 N.H. 690 20 A.3d 890, 894-895 (2011).

Defendant TEC was originally served with the Summons and Complaint on January 7, 2013.[6] TEC chose not to remove the case during the 30 days the statute permits them. They then took the affirmative step of invoking the jurisdiction of the state court by seeking a consent Temporary Injunction from the court to avoid a contested hearing on merits. They have agreed, by the terms of the consent order, to litigate the mark claims in the state court, where they are currently bound by the consent injunction. The consent injunction also states that the order would stay in place until further order of the state court.[7] By consenting to the state court's jurisdiction and by agreement, the Defendants have waived their right to litigate any issues regarding the control and use of the real and personal property and the marks at issue in federal court.

3. Through its Membership in TEC, ECSC Has Consented to State Court Jurisdiction

Defendant ECSC is a member of Defendant TEC, an unincorporated voluntary association. When the ECSC formed on January 26 as a Diocese in TEC, it became a member of the unincorporated voluntary association. Before the February 1, 2013 state court hearing, TEC consented to the entry of a temporary injunction. Under the laws of South Carolina, ECSC through its membership in TEC, is bound by the actions of this unincorporated association. *Crocker*, 305 S.C. at 409, 409 S.E.2d at 370; *Elliott,* 181 S.C.84, 186 S.E.651. TEC took the affirmative step of invoking the jurisdiction of the state court by consenting to a temporary injunction binding it and its members. *See* Temp. Inj. (consent); *Aqualon Co. v. Mac Equip., Inc.*, 149 F.3d 262, 264 (4th Cir. 1998) ("A defendant may waive the right to remove by taking

[6] Service was accomplished on TEC by personal service on Tom Tisdale on January 4, 2013, personal service on two agents of TEC on January 7, 2013 and service by mail on Katherine Jefferts Schori and Kurt Barnes, Treasurer on January 7, 2013. Exhibit 4.

[7] Indeed, there is currently pending in the state court a Motion for Contempt for certain violations of the injunction order by the Defendants. The state court's continuing jurisdiction over its Order is active.

some such substantial defensive action in the state court *before* petitioning for removal"). A month later, on February 28, 2013, TEC again consented to a state court order allowing the Plaintiffs to file a second amended complaint. *See* Or. Granting Leave to File Second Amended Compl. TEC waived its right to remove the case to federal court through their actions with the state court. Since the "association is before the court, the rights of its members will be determined in the state court action." *Graham*, 296 S.C. at 255. Through ECSC's membership in TEC, ECSC has waived its right to remove this action to federal court.

Still later on March 28, 2013, the ECSC invoked the jurisdiction of the state court by filing its answer, affirmative defenses, and seeking relief on its counterclaims. It also commenced discovery by serving Requests for Admission, Interrogatories, and Request for Production. The ECSC then waited seven additional days, on the eve of its 30-day deadline to remove, before deciding to remove this action. *Compare Virginia Beach Resort & Conference Ctr. Hotel Ass'n Condo. v. Certain Interested Underwriters at Lloyd's, London Subscribing to Certificate No. AS65009VAP00047*, 812 F. Supp. 2d 762, 767 (E.D. Va. 2011) (defendant filed its Notice of Removal eight days after filing its Answer and Counterclaim in state court, court found defendant waived his right to removal); *with McWilliams v. Broderick*, 2011 WL 2669969 (E.D. Va. July 7, 2011) ("There is no serious argument that Defendant forum shopped here. Defendant removed this case *90 minutes* after filing responsive pleadings in state court, well before she could have known the water temperature, so to speak.")

IV. CONCLUSION

The implications of the well established, "well-pleaded complaint rule" are crystal clear: there is no federal question jurisdiction supporting removal. The Defendants are also barred by the doctrine of waiver from removing the case to federal court based on their actions in directly

invoking the state court's jurisdiction. In light of the foregoing, Plaintiffs respectfully request that this Court remand this case to the state court from where it was removed, and that this Court award Plaintiffs the fees and costs incurred as a result of Defendants' improvident removal, as permitted by 28 U.S.C.A. § 1447(c) (2012).

Respectfully submitted,

April 10, 2013

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Exhibit 1

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

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

Case No. 2:13-cv-00893-CWH

AFFIDAVIT OF C. ALAN RUNYAN

Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Vestry and Church-Wardens Of The Episcopal Church Of The Parish Of Christ Church; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County Plaintiffs, v. The Episcopal Church (a/k/a The Protestant Episcopal Church in the United States of America) & The Episcopal Church in South Carolina Defendants.	)

Personally appeared before me, C. Alan Runyan, who being duly sworn deposes and says:

1. He is counsel for Mark J. Lawrence together with Howell V. Bellamy, Jr., The Bellamy Law Firm; Henrietta U. Golding, McNair Law Firm; Charles H. Williams, Williams & Williams; David Cox, Womble, Carlyle, Sandridge & Rice; and Thomas C. Davis, Harvey & Battey. The last five are also counsel for "The Protestant Episcopal Church in the Diocese of South Carolina" and "The Trustees of the Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body" who are Plaintiffs, together with 35 other non-profit corporations, in a state action filed on January 4, 2013 in the Circuit Court of South Carolina and assigned, as a complex case, to the Honorable Diane S. Goodstein. *The Protestant Episcopal Church in the Diocese of South Carolina, et al. v. The Episcopal Church (a/k/a, The Protestant Episcopal Church in the United States of America), and the Episcopal Church in South Carolina*, South Carolina Court of Common Pleas, First Judicial Circuit Court, Case No. 2013-CP-18-00013 and removed to this Court on April 4, 2013.

2. On February 5, 2013, David Beers, Chancellor to the Presiding Bishop of the Episcopal Church, and a partner with Goodwin Proctor, and counsel for the Episcopal Church in the state action, requested a 15 day extension to be added to the 15 days extension provided by the South Carolina rules after service of an amended complaint. That request was granted. After service of the Second Amended complaint, Mr. Beers again requested on behalf of The Episcopal Church an extension of time to answer the Second Amended Complaint to correspond with that of The Episcopal Church in South Carolina in order that they might coordinate their responses.

3. On February 26, 2013, Plaintiffs agreed to extend the time for The Episcopal Church to respond to the Second Amended Complaint from the 15 days under South Carolina Rule of Civil Procedure, Rule 15(a) to the same date as for "The Episcopal Church in South Carolina", and agreed that the date for both responses would be April 4, 2013.

FURTHER, THE AFFIANT SAYETH NOT.

April 10, 2013

C. Alan Runyan

Sworn to before me this 10 day of April, 2013

Janice Proffitt

Notary Public for the State of South Carolina
My Commission expires: 12/15/21

JANICE PROFFITT
Notary Public, South Carolina
My Commission Expires
December 15, 2021

Exhibit 2

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

Thomas R. Wieters, M.D., Plaintiff, vs. Bon Secours-St. Francis Xavier Hospital, Inc., Allen P. Carroll, William B. Ellison, Jr., Jeffrey M. Deal, M.D., Sharron C. Kelley, and Esther Lerman Freeman, Psy. D., Defendants.	)	C.A. No.: 2:10-cv-0499-CWH **ORDER**

I. Background Facts and Procedural History

The plaintiff, Thomas R. Wieters, M.D., filed this action on November 15, 2004 in state court, alleging that he had been defamed by Bon Secours-St. Francis Xavier Hospital, Inc., Allen P. Carroll, William B. Ellison, Jr., Jeffrey M. Deal, M.D., and Sharron C. Kelley (the "Hospital defendants"), and that the Hospital defendants and Esther Lerman Freeman, Psy. D. had engaged in a civil conspiracy against him. On December 22, 2004, the defendants joined in filing a notice of removal to the United States District Court.[1] The notice of removal alleged that the Court had jurisdiction pursuant to (1) 28 U.S.C. § 1331, because the plaintiff's claims arose under the constitution and laws of the United States and the plaintiff's right to relief depended on resolution of a substantial question of federal law; and (2) 28 U.S.C. § 1441(b), because the

[1] Wieters v. Bon Secours-St. Francis Xavier Hospital, Inc., Allen P. Carroll, William B. Ellison, Jr., Jeffrey M. Deal, M.D., Pennie Peralta, Sharron C. Kelley, and Esther Lerman Freeman, Psy. D., C.A. No. 2:04-cv-23381-CWH.

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"vindication of a right under state law necessarily turned on construction of federal law." (2004 Docket Entry # 1 at ¶ 1). On January 21, 2005, the plaintiff filed a motion to remand the case, arguing in his supporting memorandum:

> [T]he complaint alleges causes of action for defamation and civil conspiracy, each of which arises from State law, not from Federal law. Both are common law causes of action. The causes of action contain no Federal issues or elements, let alone an essential or substantial element. No Federal issue appears on the face of the Complaint or is required by any theory of the plaintiff's case.
>
> . . . .
>
> [N]o Federal issue forms any element of the claim, and no Federal issue is at all involved, let alone "necessarily involved." The case is properly remanded.

(2004 Docket Entry # 8 at 3; 5).

After the matter had been fully briefed, the Court held a hearing on April 14, 2005, and granted the plaintiff's motion to remand the case to state court. A minute order was entered to that effect on April 19, 2005. Thereafter, the litigation continued in the Court of Common Pleas for Charleston County. The state court complaint was never amended to assert any additional causes of action beyond the causes of action for defamation and conspiracy initially asserted by the plaintiff.[2]

On March 2, 2010, the defendants again removed this case to the United States District Court, pursuant to 28 U.S.C. § 1331 and 1446(b).[3] The defendants argued:

---

[2] "The complaint has not been amended since that 2005 order [remanding the case to state court]. No new cause of action is stated." (2010 Docket Entry # 6). "The present complaint is the same one on which removal was denied in 2005." (2010 Docket Entry # 8 at 1).

[3] Section 1446(b) states in pertinent part:

> If the case stated by the initial pleading is not removable, a notice

#2 cont.

Within the past thirty (30) days, the plaintiff has submitted writings to the State court including the attached plaintiff's pretrial brief, which was served electronically at 11:48 p.m. on March 1, 2010. The pretrial brief at page 2, states "the case is brought under the explicit authority of 42 U.S.C. §§ 11111(a)(2) and 11137(c), each of which explicitly permits suit when knowingly false statements are made in the 'peer review' process, 'notwithstanding any other provision of law.' 42 U.S.C. § 11137(c) also prohibits knowingly false statements made in reports made to the National Practitioner Data Bank." At page 6 of the pretrial brief, plaintiff states: "Damages suits for false statements made in the 'peer review' process are explicitly authorized by the [Health Care Quality Improvement Act] in the plain language of 42 U.S.C. §11111(a)(2), which states, in pertinent part (emphasis added):

> *Notwithstanding any other provision of law*, no person (whether as a witness or otherwise) providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the United States or of any State (or political subdivision thereof) *unless such information is false and the person providing it knew that such information was false*.

See also, 42 U.S.C. § 11137(c) providing for liability for reports made to the [National Practitioner Data Bank] if made with 'knowledge of falsity of the information contained in the report'), precisely the claim made in this case."

. . . .

On page 7 of the Pretrial Brief, plaintiff states: "this suit for defamation is explicitly authorized by Federal law, and overrides by preemption, the liability limits of State law that would otherwise apply. Because of the Federal statute, the charitable immunity statute is inapplicable. In any event, there is no damage limit in the [South Carolina] Tort Claims Act for gross negligence, which is defined to include willful and wanton conduct.

> of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable[.] (Emphasis added).

The "other papers" are the plaintiff's pre-trial brief, a jury charge proposed by the plaintiff, and the plaintiff's brief in opposition to the defendants' motion for summary judgment.

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(2010 Docket Entry # 1 at 2-3). In addition to statements contained in the plaintiff's pre-trial brief and in the plaintiff's memorandum in opposition to the defendants' motion for summary judgment, the defendants also based their removal on one of the plaintiff's jury instructions, which referred to 42 U.S.C. § 11111(a)(2). (2010 Docket Entry # 1 at ¶ 6); (2010 Docket Entry # 4 at 4-5).

II. Standard of Review

The party seeking to remove a case to federal court bears the burden of establishing federal jurisdiction. Mulcahey v. Columbia Organic Chems. Co., 29 F.3d 148, 151 (4th Cir. 1994). "Because removal jurisdiction raises significant federalism concerns, [the Court] must strictly construe removal jurisdiction." Id. (citing Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100 (1941)). "If federal jurisdiction is doubtful, a remand is necessary." Mulcahey, 29 F.3d at 151.

III. Analysis

Removal jurisdiction may be based on diversity of citizenship or on the existence of a federal question. 28 U.S.C. § 1441(b); id. at § 1331. In this case, the defendants state that the plaintiff and all remaining defendants in this case are citizens and residents of the State of South Carolina. (2010 Docket Entry # 1 at ¶ 6). Thus, the propriety of removal depends on whether this case falls within the provisions of Section 1331, which grants district courts "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Dixon v. Coburg Dairy, 369 F.3d 811, 816 (4th Cir. 2004); Mulcahey, 29 F.3d at 151. Whether removal jurisdiction exists must be determined by reference to the well-pleaded complaint. Merrell Dow Pharm. Inc. v. Thompson, 478 U.S. 804, 808 (1986). Under the

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well-pleaded complaint rule, Section 1331 federal question jurisdiction is limited to actions in which the plaintiff's well-pleaded complaint raises an issue of federal law; "actions in which defendants merely claim a substantive federal defense to a state-law claim do not raise a federal question." In re Blackwater Sec. Consulting, LLC, 460 F.3d 576, 584 (4th Cir. 2006) (internal citation omitted).

The Court first must determine whether federal or state law creates the cause of action. "In cases where federal law *creates* the cause of action, the courts of the United States unquestionably have federal subject matter jurisdiction." Dixon, 369 F.3d at 816 (citing Mulcahey, 29 F.3d at 151) (emphasis in original). Here, the plaintiff's causes of action for defamation and conspiracy are unquestionably created by South Carolina law, not federal law. If state law creates the cause of action, as in the present case, then "federal question jurisdiction depends on whether the plaintiff's demand 'necessarily depends on resolution of a *substantial* question of federal law.'" Mulcahey, 29 F.3d at 151 (quoting Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 28 (1983) and adding emphasis). Put another way, the Court must determine whether this case is within the "small class of cases where, even though the cause of action is not created by federal law, the case's resolution depends on resolution of a federal question sufficiently substantial to arise under federal law within the meaning of 28 U.S.C. § 1331." Dixon, 369 F.3d at 816 (citing Ormet Corp. v. Ohio Power Co., 98 F.3d 799, 806 (4th Cir. 1996)). As Dixon teaches:

> [I]n the absence of another jurisdictional ground, a defendant seeking to remove a case in which state law creates the plaintiff's cause of action must establish two things: (1) that the plaintiff's right to relief necessarily depends on a question of federal law, and (2) that the question of federal law is substantial. If either of

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> these two elements is lacking, removal is improper and the case should be remanded to state court.

Dixon, 369 F.3d at 816.

As mentioned previously, the 2004 complaint is the operative complaint in this action. The complaint refers to a report concerning the plaintiff that was caused to be made by the Hospital to the National Practitioner Data Bank. However, there is no federal question that appears on the face of the complaint. Furthermore, the plaintiff's complaint cannot be construed to imply a federal claim based on the Health Care Quality Improvement Act ("HCQIA"). Although the Fourth Circuit Court of Appeals has not addressed this issue, other Courts of Appeal have held that the HCQIA does not create an express or an implied right of action in favor of a physician. See, e.g., Singh v. Blue Cross/Blue Shield of Mass., Inc., 308 F.3d 25, 45 n.18 (1st Cir. 2002) (citing Wayne v. Genesis Med. Ctr., 140 F.3d 1145, 1148 (8th Cir. 1998) (joining "the Tenth and Eleventh Circuits in concluding that the HCQIA does not explicitly or implicitly afford aggrieved physicians a cause of action when a hospital fails to follow" the HCQIA standards)); Hancock v. Blue Cross-Blue Shield of Kan., Inc., 21 F.3d 373, 374-75 (10th Cir. 1994) (holding that the HCQIA does not explicitly or implicitly create a private cause of action for physicians subjected to peer review; Congress did not intend to create a cause of action for the benefit of physicians); Bok v. Mut. Assurance, Inc., 119 F.3d 927, 928-29 (11th Cir. 1997) (per curiam) (agreeing with Hancock that the HCQIA does not provide for a private cause of action to a physician aggrieved by a peer review proceeding)). It follows that federal subject matter jurisdiction cannot rest on an implied claim under the HCQIA. Indeed, a plaintiff-physician's federal claim which rests on alleged violations of the HCQIA will be dismissed for

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lack of subject matter jurisdiction. See, e.g., Tirado-Menendez v. Hosp. Interamericano de Medicina Avanzada, 476 F. Supp. 2d 79, 82 (D.P.R. 2007) (dismissing action for lack of subject matter jurisdiction where physician's claim regarding revocation of his medical privileges violated the HCQIA); Held v. Decatur Mem'l Hosp., 16 F. Supp. 2d 975 (C.D. Ill. 1998) (dismissing action for lack of subject matter jurisdiction where plaintiff-physician's federal claim rested on alleged violations of the HCQIA); Goldsmith v. Harding Hosp., Inc., 762 F. Supp. 187, 190 (S.D. Ohio 1991) (dismissing action for lack of subject matter jurisdiction where plaintiff-physician alleged that defendant violated his rights under the HCQIA in suspending his participation in a residency program).

In the present case, the plaintiff's state law causes of action do not raise a disputed and substantial federal issue. Instead, the federal issue arises only as a potential defense to the plaintiff's claim, and "a defendant may not defend his way into federal court because a federal defense does not create a federal question under § 1331." Blackwater, 460 F.3d at 584. Because a potential defense will not support federal question jurisdiction under Section 1331, it follows that federal question jurisdiction will not obtain by a mere reference to the HCQIA in the plaintiff's pre-trial brief, or by reference to the HCQIA in his opposition to the defendants' motion for summary judgment, or by reference to the HCQIA in one of his jury charges. The plaintiff's statements, taken alone or in combination, are not sufficient to create federal question jurisdiction under Section 1331. Therefore, the Court lacks subject matter jurisdiction over this action. The plaintiff's motion to remand (Docket # 6) is granted, and this case is remanded to the Court of Common Pleas for Charleston County.

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AND IT IS SO ORDERED.

C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

March 18, 2010
Charleston, South Carolina

#8 CWH.

Exhibit 3

Historical Litigation by The Episcopal Church (including church property litigation)

CASE	*CITE*	*YEAR*	*STATE*	*Level of Court*	*Removed to Federal Court / Basis for Jurisdiction?*
FEDERAL CASES					
vonRosenberg v. Lawrence	2:13-cv-00587-CWH	2013	SC	D.S.C.	Pending
Episcopal Diocese of Fort Worth v. The Rt. Rev. Jack Leo Iker	4:10-CV-700-Y	2010	TX	N.D.TX	Stayed
All Saint's Episcopal Church v Iker	4:10-CV-783-Y	2010	TX	N.D.TX	Stayed
Dixon v. Edwards	290 F. 3d 699	2002	MD	4th Circuit	Sitting in diversity jurisdiction
Brown v. Protestant Episcopal Church in U.S. of America	8 F. 2d 149	1925	LA	E.D. La.	Dismiss, no diversity jurisdiction
STATE CASES					
TEC V. DIOCESE					
Diocese of San Joaquin v. Schofield	190 Cal.App.4th 154	2010	CA	Ct.App.5th	No
Diocese of Quincy v. The Episcopal Church	2009-MR-31	2011	IL	Trial Court	No
Diocese of East Carolina v. Diocese of North Carolina	102 N.C. 442	1889	NC	S.Ct.	No
The Episcopal Diocese of Pittsburgh v. Calvary Episcopal Church	30 A.3d 1193 (Table)	2011	PA	S.Ct.	No
The Episcopal Diocese of Fort Worth, et al. v The Episcopal Church, et al.	No. 11-0265 (pending decision on appeal)	2011	TX	S.Ct.	No
Diocese of South Carolina v. The Episcopal Church	2:13-cv-00893-CWH	2013	SC	D.S.C.	**Yes**
DIOCESE V. PARISH					
Mason v. Muncaster	22 U.S. 445	1824	US	S.Ct.	Appeal Circuit Court for the District of Columbia
Diocese of the Central Gulf Coast v. Christ Anglican Church in Mobile		2001	AL	Trial Court	No
Diocese of Los Angeles v. St. James Anglican Church	51 Cal. 4th 804	2011	CA	S.Ct.	No
In Re Episcopal Church Cases	198 P.3d 66	2009	CA	S.Ct.	No
Diocese of San Diego v. St. Johns Episcopal Church		2008	CA	S.Ct.	No
Diocese of San Diego v. The Rev. Donald L. Kroeger		2008	CA	S.Ct.	No
Protestant Episcopal Church v. Barker	115 Cal. App. 3d 599	1981	CA	Ct.App.2nd	No
Diocese of Northern California v. St. John's Anglican Church			CA	S.Ct.	No
Grace Church v. Diocese of Colorado	07-CV-1971	2009	CO	Dist. Ct.	No
Moses v. Diocese of Colorado	863 P. 2d 310	1993	CO	S.Ct.	No
Bishop and Diocese of Colorado v. Mote	716 P.2d 85	1986	CO	S.Ct.	No
St. Paul's v. Diocese of Connecticut		2012	CT	Trial Court	No
Episcopal Church in Diocese of Connecticut v. Gauss	28 A. 3d 302, 302 Conn. 408	2011	CT	S.Ct.	No

Historical Litigation by The Episcopal Church (including church property litigation)

Rector, Wardens and Vestrymen of Trinity-Saint Michael's Parish, Inc. v. ...in Diocese of Connecticut	620 A.2d 1280, 224 Conn. 797	1993	CT	S.Ct.	No
Diocese of Connecticut v. Trinity Anglican Church		2008	CT		No
State v. Stewart	6 Houst. 359	1881	DE	Superior Ct.	No
The Episcopal Diocese in the Diocese of Florida v. Lebhar, et. al.	16-2006-CA-002361	2007	FL	Cir. Ct.	No
Rectors, Wardens and Vestrymen of Christ Church in Savannah v. Bishop of the Diocese of Georgia, Inc.	718 S.E.2d 237	2011	GA	S.Ct.	No
Diocese of Atlanta v. St. Andrew's in the Pines Anglican Church	No. 2007-V0272C	2007	GA	Superior Ct.	No
Calkins v. Cheney	92 Ill. 463	1879	IL	S.Ct.	No
Bjorkman v. Protestant Episcopal Church in U.S. of America of Diocese of Lexington	759 S.W. 2d 583	1988	KY	S.Ct.	No
Merriweather v. Petit	1878 WL 7605	1878	KY	Ct.App.	No
Petrell v. Shaw	902 N.E.2d 401	2009	MA	S.Ct.	No
Diocese of Massachusetts v. All Saints Church		2007	MA	Trial Court	No
Episcopal Diocese of Massachusetts v. Devine	59 Mass.App. Ct. 722	2003	MA	Ct.App.	No
Hiles v. Episcopal Diocese of Massachusetts	773 N.E.2d 923, 437 Mass. 505	2002	MA	S.Ct.	No
Parish of the Advent v. Protestant Episcopal Diocese of Massachusetts	426 Mass. 268	1997	MA	S.Ct.	No
Sohier v Trinity Church	109 Mass. 1	1871	MA	S.Ct.	No
The Rector and Wardens of King's Chapel v. Pelham	9. Mass. 501	1813	MA	S.Ct.	No
Jackson v. Hopkins	113 Md. 557	1910	MD	Ct.App.	No
Bartlett v. Hipkins	76 Md. 5	1892	MD	S.Ct.	No
Bennison v. Sharp	121 Mich.App. 705	1982	MI	Ct.App.	No
Diocese of Missouri v. Church of Good Shepherd		2004	MO	Trial Court	No
Daniel v. Wray	580 S.E.2d 711, 158 N.C. App. 161	2003	NC	Ct.App.	No
Diocese of Nebraska v. St. Barnabas Anglican Church			NE	Trial Court	No
Diocese of Newark v. Burns	83 N.J. 594	1980	NJ	S.Ct.	No
Protestant Episcopal Church in Diocese of New Jersey v. Graves	83 N.J. 572	1980	NJ	S.Ct.	No

Historical Litigation by The Episcopal Church (including church property litigation)

Tea v. Protestant Episcopal Church in Diocese of Nevada	96 Nev. 399	1980	NV	S.Ct.	No
Diocese of Central N.Y. v. Church of the Good Shepherd	22 Misc.3d 1106(A), 23 Misc.3d 1117(A), unreported	2009	NY	S.Ct.	No
Diocese of Long Island v. St. James Anglican Church		2008	NY		No
Diocese of Central N.Y. v. St. Andrew's Episcopal Church		2007	NY	Superior Ct.	No
Trustees of Diocese of Albany v. Trinity Episcopal Church of Gloversville	684 N.Y.S.2d 76, 250 A.D. 2d 282	1999	NY	S.Ct. Appellate	No
Board of Managers of the Diocesan Missionary v. Church of the Holy Comforter	628 N.Y.S.2d 471	1993	NY	S.Ct.	No
Diocese of Long Island v. St. Joseph's Anglican Church		1977	NY		No
Rector, Churchwardens and Vestreymen of the Church of the Holy Trinity v. Melish	3 N.Y.2d 476	1957	NY	Ct.App.	No
Fiske v Beaty	144 N.E. 907, 238 N.Y. 598	1924	NY	Ct.App.	No
Diocese of New York v. Church of the Good Shepherd	2008-0980(N.Y. Sup. Ct. Broome Cnty)	2008	NY	S.Ct.	No
Diocese of Ohio v. Anglican Church of the Transconfiguration	CV-08-654973	2011	OH	Comm. Pleas	No
In Re Church of St. James The Less	888 A.2d 795, 585 Pa. 428	2005	PA	S.Ct.	No
Gundlach v. Laister	625 A.2d 706	1993	PA	Comm. Ct.	No
Rhinelander v. Ballentine	30 Montg. 45	1914	PA	Comm. Pleas	No
All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina	385 S.C. 428	2009	SC	S.Ct.	No
The Convention of the Protestant Episcopal Church in the Diocese of Tennessee v. Guill	2012 WL 1454846	2009	TN	Ct.App.	No
Diocese of Northwest Texas v. Church of the Good Shepherd	335 S.W. 3d 880	2011	TX	Ct.App. Austin	No
St. Francis on the Hill v. Diocese of Rio Grande	2011 WL 4398499	2011	TX	Ct.App. El Paso	No
Protestant Episcopal Church in Diocese of Virginia v. Truro Church (and 10 parishes)	280 Va. 6	2010	VA	S.Ct.	No
In Re Multi-Circuit Episcopal Church Property Litigation	76 Va. Cir. 786	2008	VA	Cir. Ct.	No
Diocese of Southwestern Virginia of Protestant Episcopal Church v. Buhrman	5 Va. Cir. 497, Not Reported in S.E. 2d	1977	VA	Cir. Ct	No
Turpin v. Locket	6 Call 113	1804	VA	S.Ct.	No

Historical Litigation by The Episcopal Church (including church property litigation)

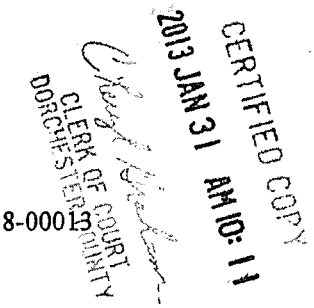
Diocese of Mllwaukee v. St. Edmunds Anglican Church		2011	WI	Trial Court	No
Episcopal Diocese of Milwaukee v. Marsha Ohlgart, et. al.	2009CV000635	2009	WI	Trial Court	No
Olston v. Hallock	2010 N.W.2d 35, 55 Wis. 2d 687	1972	WI	S.Ct.	No

Exhibit 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

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



Case No. 2013-CP-18-00013

FILING OF AFFIDAVITS
OF SERVICE OF THE
SUMMONS AND COMPLAINT

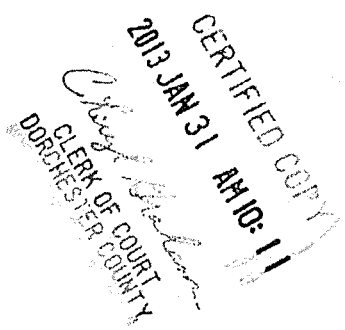
and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County

PLAINTIFFS,

v.

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

DEFENDANT.



I, Janice Proffitt, hereby certify that I am an employee in the office of Speights & Runyan, attorneys for the Plaintiff in the above-referenced action. On January 7, 2013, I did cause to be served, The Most Rev. Katharine Jefferts Schori and N. Kurt Barnes at The Episcopal Church, 815 Second Avenue, New York, New York the Summons and Complaint via U.S. Mail and Certified Mail. See attachment of signed Certified Return Receipt.

Janice Proffitt

Subscribed and sworn to before me this 30th day of January, 2013.

Notary Public for South Carolina
My Commission Expires: 12/28/16

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

The Most Rev. Dr. Katharine Jefferts Schori
The Episcopal Church
815 Second Avenue
New York, New York 10017

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☑ Addressee

B. Received by (Printed Name) M R C Shea C. Date of Delivery 1/7/13

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

JAN 7 2013 NEW YORK NY 10017 USPS

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

2. Article Number (Transfer from service label) 7011 2970 0002 6464 2258

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

CERTIFIED COPY
JAN 31 AM 10:11
CLERK OF COURT
DORCHESTER COUNTY

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

N. Kurt Barnes
The Episcopal Church
815 Second Avenue
New York, New York 10017

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) M R C Shea C. Date of Delivery 1/7/13

D. Is delivery address different from item 1? ☑ Yes
If YES, enter delivery address below: ☐ No

JAN 7 2013 NEW YORK NY 10017 USPS

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

2. Article Number (Transfer from service label) 7011 2970 0002 6464 2342

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

STATE OF SOUTH CAROLINA
COUNTY OF NEW DORCHESTER

IN THE COURT OF THE COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
Case No: 2013-cp-18-13

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA; ET AL
PLAINTIFF

V.

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

AFFIDAVIT OF SERVICE

OF A CIVIL ACTION COVERSHEET, SUMMONS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

CERTIFIED COPY
2013 JAN 31 AM 10:11
CLERK OF COURT
DORCHESTER COUNTY

STATE OF NEW YORK, COUNTY OF NEW YORK:SS:

The Undersigned being duly sworn, deposes and says: deponent is not a party herein, is over 18 years of age and resides in the State of New York

That on January 7, 2013 at 6:20pm at the address
201 WEST 70TH STREET, APT 11J
NEW YORK, NY 10023

deponent served the within Civil Action Coversheet, Summons and Complaint for Declaratory and Injunctive Relief

UPON: **NORMAN KURT BARNES**

By personally delivering a true copy of the Civil Action Coversheet, Summons and Complaint for Declaratory and Injunctive Relief

Deponent knew the person so served to be the defendant described therein.

Deponent describes the person actually served as follows:

SEX: Male
SKIN: White
HAIR: Brown
AGE: 36-50
HEIGHT: 5'4"-5'8"
WEIGHT: 161-200
OTHER FEATURES:

__X__ I asked the person spoken to whether said served was in active military service of the United States of the State of New York in any capacity whatsoever and received a negative response. Said served wore ordinary civilian clothing and no military uniform. The grounds of this belief and the source of my information in this regard are the observations and conversations accounted above. Hence, upon information and belief, I assert that the recipient is not in military service of the United States or of New York State as the term is defined in the state or in the Federal Statutes.

Caswell Bryan
CASWELL J. BRYAN
LIC. NO.: 0846846

Sworn to before me this 9th day of January 2013

REGENIA L. HYMAN
Notary Public, State of New York
No. 01HY6045811
Qualified in Bronx County
Commission Expires July 31, 2014

NICOLETTI & HARRIS, INC. 132 NASSAU STREET, NEW YORK, NY 10038 (212) 267-6448 FAX:267-5942

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF
COMMON PLEAS
2013-CP-18-13

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

VS

THE EPISCOPAL CHURCH,
DEFENDANT

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me the undersigned deponent, who being duly sworn, says that he served the

CIVIL ACTION COVERSHEET, SUMMONS AND COMPLAINT FOR DECLARATORY AND INJUNTIVE RELIEF in this action on

THOMAS S. TISDALE, ESQ. (AGENT)

XX by delivering to THOMAS S. TISDALE personally,

____ by delivering to _____ a person of age and discretion,

at his place of business, leaving with THOMAS S. TISDALE him/her copies

of the same at 205 KING ST, SUITE 400, in CHARLESTON, SC on the

4TH day of JANUARY, 2013 and that the deponent is not a party to the action, and has no interest

therein or connection therewith.

MILAN R. SCHULER
P.O. Box 1216
Charleston, SC 29402

Sworn to before me this 4TH day

of JANUARY, 2013

Notary Public of South Carolina
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires December 3RD 2018

My commission expires

AFFIDAVIT OF SERVICE

State of SOUTH CAROLINA **County of COMMON PLEAS** **Dorchester Court**

Case Number: 2013-CP-18-13

Plaintiff:
THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA, ET AL

vs.

Defendant:
THE EPISCOPAL CHURCH

CERTIFIED COPY
2013 JAN 31 AM 10: 11
CLERK OF COURT
DORCHESTER COUNTY

For:
Andrew Platte
SPEIGHTS & RUNYAN
2015 Boundary St, Ste 239
Beaufort, SC 29902

Received by Cleveland Service Agency on the 5th day of January, 2013 at 10:11 am to be served on **GAY C JENNINGS, 168 HIRAM COLLEGE DR, NORTHFIELD, OH 44067**.

I, Mark Berus, being duly sworn, depose and say that on the **7th day of January, 2013** at **11:24 am, I:**

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the **CIVIL ACTION COVERSHEET, SUMMONS, COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** to: **GAY C JENNINGS** at the address of: **168 HIRAM COLLEGE DR, NORTHFIELD, OH 44067**, and informed said person of the contents therein, in compliance with state statutes.

Military Status: Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

Marital Status: Based upon inquiry of party served, they refused to state whether or not the Defendant is married.

Description of Person Served: Age: 55, Sex: F, Race/Skin Color: WHITE, Height: 5:6, Weight: 160, Hair: BLONDE, Glasses: N

I am over the age of 18, and not a party to this action, that within the boundaries of the State of Ohio, I was authorized by law to perform said service. In Ohio, process servers are not licensed and no license number is available.

State of Ohio, County of Cuyahoga

Subscribed and Sworn to before me on 1-8-2013 by the affiant who is personally known to me.

NOTARY PUBLIC

IRIS IMAMI, NOTARY PUBLIC
EXPIRES 9/24/2017
STATE OF OHIO
CUYAHOGA COUNTY

Mark Berus
Process Server

Cleveland Service Agency
Member Ohio Process Service Network
P.O. Box 93447
Cleveland, OH 44101-5447
(888) 737-8320
Our Job Serial Number: CSA-2013000012

AFFIDAVIT OF SERVICE

State of SOUTH CAROLINA **County of COMMON PLEAS** **Dorchester Court**

Case Number: 2013-CP-18-13

Plaintiff:
THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA, ET AL

vs.

Defendant:
THE EPISCOPAL CHURCH

CERTIFIED COPY
2013 JAN 31 AM 10: 11
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State of Ohio, County of Cuyahoga

Subscribed and Sworn to before me on 1-8-2013 by the affiant who is personally known to me.

NOTARY PUBLIC

IRIS IMAMI NOTARY PUBLIC STATE OF OHIO CUYAHOGA COUNTY EXPIRES 9/24/2017

Mark Berus
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