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

The Protestant Episcopal Church In The Diocese Of South Carolina; The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body; All Saints Protestant Episcopal Church, Inc.; Christ St. Paul's Episcopal Church; Christ The King, Waccamaw; Church Of The Cross, Inc. and Church Of The Cross Declaration Of Trust; Church Of The Holy Comforter; Church of the Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; Saint Matthews Church; St. Andrews Church-Mt. Pleasant and The St. Andrews Church-Mt. Pleasant Land Trust; St. Bartholomews Episcopal Church; St. Davids Church; St. James' Church, James Island, S.C.; St. John's Episcopal Church of Florence, S.C.; St. Matthias Episcopal Church, Inc.; St. Paul's Episcopal Church of Bennettsville, Inc.; St. Paul's Episcopal Church of Conway; The Church Of St. Luke and St. Paul, Radcliffeboro; The Church Of Our Saviour Of The Diocese of South Carolina; The Church Of The Epiphany (Episcopal); The Church Of The Good Shepherd, Charleston, S.C.; The Church Of The Holy Cross; The Church Of The Resurrection, Surfside; The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston In The State Of South Carolina; The Protestant Episcopal Church, The Parish Of Saint Michael, In Charleston, In The State Of South Carolina and St. Michael's Church Declaration Of Trust; The Vestry and Church Wardens Of St. Jude's Church Of Walterboro; The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of Prince George Winyah; The Vestry and Church Wardens Of The Episcopal Church Of The Parish of St. Helena and The Parish Church Of St. Helena)	Civil Action No.: 2:13-00893-CWH **ORDER**

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Trust; The Vestry and Church Wardens Of The Episcopal Church Of The Parish of St. Matthew; The Vestry and Wardens of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry And Church-Wardens Of the Episcopal Church Of The Parish Of Christ Church; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County,

Plaintiffs,

vs.

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

Defendants.

This matter is before the Court on the plaintiffs' motion to remand. (ECF No. 9). For the reasons set forth in this Order, the Court grants the plaintiffs' motion.

I. BACKGROUND

This case arises out of a dispute concerning South Carolina real and personal property, predicated upon The Protestant Episcopal Church in the Diocese of South Carolina's (the "Diocese's") purported membership withdrawal and disaffiliation from The Episcopal Church ("TEC"). (Second Am. Compl. ¶ 27; TEC's Answer & Countercls. 49, ¶¶ 42-43). The Diocese, along with The Trustees of The Protestant Episcopal Church in South Carolina (the "Trustees"), and thirty-five plaintiff parishes (collectively "the plaintiffs") claim that TEC and The Episcopal Church in South Carolina ("ECSC") (collectively "the defendants") have no "legal, beneficial or equitable interest in[,]" or "authority to possess, divert, encumber, alienate, transfer, or use" any

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of the Diocese's real and personal property[1] presently disputed. (Second Am. Compl. ¶¶ 505(g)-(i)). All parties contend they are the lawful and rightful possessors/users of the real and personal property at issue. (Second Am. Compl. ¶ 494(c); TEC's Answer & Countercls. 51, ¶¶ 51-52).

A. THE PARTIES

1. The Plaintiffs

The Diocese is a non-profit, charitable corporation, incorporated in 1973, with its headquarters in Charleston, South Carolina. (Second Am. Compl. ¶ 1; TEC's Answer & Countercls. 39, ¶ 2). The Diocese was one of the participating entities that voluntarily coalesced to form TEC in 1789. (Second Am. Compl. ¶¶ 9-10). The Diocese is currently under the management, direction, and control of persons who have disaffiliated, and been removed from, the communion of TEC. (ECSC's Answer, Affirmative Defenses, & Countercls. ¶¶ 526-27).

The Trustees is a South Carolina non-profit corporation, incorporated in 1902. (Second Am. Compl. ¶ 29; TEC's Answer & Countercls. 39, ¶ 3). The Trustees' purpose is to receive, hold, and devise real and personal property voluntarily surrendered or gifted to it. (Second Am. Compl. ¶ 31). The Board of Directors of the Trustees consists of eight members meeting at least quarterly; Bishop Mark J. Lawrence is an ex officio member with a seat and voice but no vote. (Second Am. Compl. ¶ 30).

The plaintiff parishes amount to thirty-five South Carolina non-profit corporations located throughout the state; a number of the plaintiff parishes not only preexisted the Diocese and TEC, but also the formation of the United States. (Pls.' Reply to ECSC Resp. to Mot. to

[1] On November 8, 2010, the Diocese registered four service marks pursuant to S.C. Code §§ 39-15-1105 et seq.. The Diocese-owned marks are "The Diocese of South Carolina", "The Episcopal Diocese of South Carolina", "The Protestant Episcopal Church in the Diocese of South Carolina", and the seal of the Diocese of South Carolina. (Second Am. Compl. ¶ 19).

Remand 7; Second Am. Compl. ¶ 6). All of the plaintiff parishes claim to own their respective real property in fee simple. (Second Am. Compl. ¶¶ 35-468).

2. The Defendants

TEC is an unincorporated association headquartered in New York, New York, at least one of its members is a citizen of South Carolina, and it does business within the State of South Carolina. (TEC's Answer & Countercls. 39, ¶ 1; Second Am. Compl. ¶ 472). The plaintiffs allege, but defendants deny, that TEC is a voluntary association of corporately independent dioceses. (Second Am. Compl. ¶ 473; TEC's Answer & Countercls. 37, ¶ 329; ECSC's Answer, Affirmative Defenses, & Countercls. ¶ 473).

TEC is a hierarchical religious denomination,[2] comprised of 111 geographically-defined, subordinate units known as "dioceses" and more than 7,600 congregations, mainly "parishes" or "missions," in the United States and other countries. (TEC's Answer & Countercls. 39-40, ¶¶ 1, 6). Each diocese is a subordinate unit of TEC and is bound by the provisions established in its Constitution, Canons, and Prayer Book—which, altogether, govern both temporal and spiritual matters. (ECSC's Answer, Affirmative Defenses, & Countercls. ¶ 568).

ECSC officially formed as an unincorporated association in South Carolina on or about January 26, 2013. (Second Am. Compl. ¶ 483). ECSC is one of the 111 geographically-defined subordinate units of TEC and is comprised of parishes that chose to remain affiliated with TEC post-Diocese-schism. (Second Am. Compl. ¶¶ 481; ECSC's Answer, Affirmative Defenses, & Countercls. ¶ 525).

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[2] "[T]he Canons of the Episcopal Church clearly establish that it is a hierarchy." Dixon v. Edwards, 290 F.3d 699, 716 (4th Cir. 2002) (citing Hiles v. Episcopal Diocese of Mass., 744 N.E.2d 1116, 1121 (Mass. Ct. App. 2001) ("It is undisputed that the Episcopal Church is hierarchical in structure; there are no judicial holdings to the contrary.")).

B. THE FACTS

As stated above, save a war time sabbatical from 1861-1866, the Diocese has been voluntarily associated with TEC since on or about 1789. (Second Am. Compl. ¶¶ 9-10, 12, 15). However, in November 2012, the plaintiffs, through a majority of voting delegates led by Bishop Lawrence, voted to disaffiliate from TEC; according to the defendants, this unilateral action violated TEC's Constitution, Canons, and polity. (Second Am. Compl. ¶¶ 26-27; Def.'s Resp. to Pls.' Mot. to Remand 8; ECSC's Answer, Affirmative Defenses, & Countercls. ¶ 580). The defendants maintain that such diocesan disaffiliations are null and void, and that, for all purposes, the Diocese and the plaintiff parishes remain subordinate units of TEC and ECSC (the continuing diocese), respectively. (Def.'s Resp. to Pls.' Mot. to Remand 8).

After the plaintiffs withdrew from TEC, the defendants removed Bishop Lawrence in accordance with Church Canons and installed Provisional Bishop Charles G. vonRosenberg. (Def.'s Resp. to Pls.' Mot. to Remand 8-9). Further, the purported withdrawal rendered vacant all other offices in the Diocese and those as Trustees. (TEC's Answer & Countercls. 49, ¶ 45).

In January 2013, the defendants held a special meeting to elect persons to fill the vacancies created by the Diocese's purported withdrawal, including positions on the Diocese's Board of Directors and Standing Committee. (TEC's Answer & Countercls. 49-50, ¶ 46). TEC recognizes this elected leadership body as the rightful directors of its South Carolina diocese within the church's hierarchical structure; in effect, the defendants have supplanted the Diocese through creation of the ECSC. (TEC's Answer & Countercls. 49-50, ¶ 46).

The plaintiffs allege that ECSC, through the defendants' reformation of the Diocese and the Trustees, has attempted to assume the corporate identity of the Diocese by holding itself out as South Carolina's enduring diocese, and not as a newly christened religious association.

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(Second Am. Compl. ¶¶ 487-88). ECSC counters that the Diocese's business and affairs have been, and continue to be, wrongfully conducted in open and direct contravention of TEC's Constitution, Canons, Prayer Book, and polity. (ECSC's Answer, Affirmative Defenses, & Countercls. ¶ 528).

C. PROCEDURAL HISTORY

On January 4, 2013, the Diocese, the Trustees, and sixteen other South Carolina non-profit corporations filed this action against TEC for declaratory and injunctive relief in the Court of Common Pleas for the First Judicial Circuit in Dorchester County, South Carolina. (ECF No. 1-2). On January 22, 2013, the plaintiffs filed a first amended verified complaint for declaratory and injunctive relief, adding additional South Carolina non-profit corporations as plaintiffs. (ECF No. 1-5). That same day, the Diocese and the Trustees filed a motion for the entry of a temporary restraining order. (ECF No. 1-3). On January 23, 2013, Judge Goodstein granted the plaintiffs' motion and issued a temporary restraining order holding "[n]o individual, organization, association or entity . . . may use, assume, or adopt . . . the registered names and the seal or mark of [the Diocese] . . ." except Bishop Lawrence and those under his control or acting in concert with him. (ECF No. 1-6, at 6). On January 31, 2013, based upon the parties' consent, Judge Goodstein issued a preliminary injunction, which incorporated the terms of the January 23, 2013 temporary restraining order. (ECF No. 1-9).

On February 19, 2013, the plaintiffs filed a motion to amend their complaint to add three South Carolina non-profit corporations as plaintiffs and ECSC as a defendant. (ECF No. 1-10). On February 28, 2013, Judge Goodstein signed an Order granting the plaintiffs' motion to amend their complaint. On March 5, 2013, the plaintiffs served the defendants with the second amended complaint. (ECF No. 1-11). The plaintiffs' second amended complaint advances three

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causes of action: (1) Declaratory Judgment for Interest in Real and Personal Property, pursuant to S.C. Code §§ 15-53-10, et seq. (Second Am. Compl. ¶¶ 490-94); (2) Service Mark Infringement, pursuant to S.C. Code §§ 39-15-1105, et seq. (Second Am. Compl. ¶¶ 495-99); and (3) Improper Use of Names, Styles and Emblems, pursuant to S.C. Code §§ 16-17-310 & 320 (Second Am. Compl. ¶¶ 500-05). On this same date, Bishop vonRosenberg, an agent of ECSC and a member of TEC, filed a parallel action in the United States District Court for the District of South Carolina.[3] No. 2:13-cv-537-CWH. On March 28, 2013 and April 3, 2013, ECSC and TEC filed their answers and counterclaims to the second amended complaint, respectively. (ECF Nos. 1-24 & 1-23).

On April 3, 2013, ECSC removed this action to federal court pursuant to 28 U.S.C. § 1441(a). (ECF No. 1). ECSC claims this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1121, and 28 U.S.C. § 1367 because this matter raises federal questions under the First Amendment of the United States Constitution and the Lanham Act. (ECF No. 1, at 3). On April 10, 2013, the plaintiffs filed a motion to remand this action to the Court of Common Pleas for the First Judicial Circuit. (ECF No. 9). The plaintiffs claim remand is proper because this Court lacks the requisite jurisdictional basis to adjudicate their state law claims. (ECF No. 9). On April 29, 2013, ECSC filed its response to the plaintiffs' motion to remand. (ECF No. 110). On May 9, 2013, the plaintiffs filed their reply. (ECF No. 112). On June 6, 2013, this matter came before the Court for a hearing.

II. STANDARD OF REVIEW

"Federal courts are courts of limited jurisdiction." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994); Strawn v. AT&T Mobility LLC, 530 F.3d 293, 296 (4th Cir.

[3] A motion for preliminary injunction and a motion to dismiss this action are pending.

2008) (citation omitted); Lever v. Jackson Nat'l Life Ins. Co., No. 3:12-cv-03108-MBS, 2013 WL 436210, at *1 (D.S.C. Feb. 5, 2013) (stating "[b]ecause federal courts are courts of limited jurisdiction, removal raises federalism concerns and must be strictly construed in favor of state court jurisdiction") (citation omitted). A defendant removing a case to federal court bears the burden of demonstrating that federal jurisdiction is proper. Strawn, 530 F.3d at 296 (citation omitted); see Lever, 2013 WL 436210, at *1 (stating "[i]f removal is challenged, the defendant has the burden of establishing federal jurisdiction") (citing Mulcahey v. Columbia Organic Chem. Co., 29 F.3d 148, 151 (4th Cir. 1994)). The existence of federal jurisdiction should be determined as of the time the defendant files his notice of removal. See Pullman Co. v. Jenkins, 305 U.S. 534, 537 (1939).

A case may be removed from state to federal court pursuant to 28 U.S.C. § 1441(a), which provides:

> [A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a). The district courts' original jurisdiction includes jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

A defendant may remove a case to federal court if a federal question is raised on the face of the complaint.[4] "The presence or absence of [federal question] jurisdiction is governed by the 'well-pleaded complaint rule,' under which 'federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint.'" Rivet v.

[4] Three circumstances exist that allow a defendant to remove a case to federal court: (1) if the parties are diverse and the amount in controversy for diversity jurisdiction is met pursuant to 28 U.S.C. § 1332; (2) if a federal question is raised on the face of the complaint; and (3) if there is complete preemption. This Order focuses only on the second circumstance as it is the only one that applies.

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Regions Bank of La., 522 U.S. 470, 470 (1998) (quoting Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987)). In other words, "[t]his rule directs the Court . . . 'to look no farther than the plaintiff's complaint in determining whether a lawsuit raises issues of federal law capable of creating federal-question jurisdiction under 28 U.S.C. § 1331.'" Pigott v. Ostulano, No. 2:07-cv-90, 2007 WL 1448718, at *2 (E.D. Va. May 9, 2007) (quoting Custer v. Sweeney, 89 F.3d 1156, 1165 (4th Cir. 1996)). The well-pleaded complaint rule "makes the plaintiff the master of the claim[,]" thereby allowing him to "avoid federal jurisdiction by exclusive reliance on state law." Caterpillar, 482 U.S. at 392 (citing The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25 (1913) ("Of course, the party who brings a suit is master to decide what law he will rely upon . . . ."); Merrell Dow Pharm., Inc. v. Thompson, 478 U.S. 804, 809, n.6 (1986) ("Jurisdiction may not be sustained on a theory that the plaintiff has not advanced."); Great N. R. Co. v. Alexander, 246 U.S. 276, 282 (1918) ("[T]he plaintiff may by the allegations of his complaint determine the status with respect to removability of a case . . . .")).

The first step in determining whether the complaint raises issues of federal law capable of creating federal-question jurisdiction is to "discern whether federal or state law creates the cause of action." Pigott, 2007 WL 1448718, at *2 (quoting Mulcahey, 29 F.3d at 151). Clearly, federal subject matter jurisdiction exists in cases where federal law forms the cause of action. Id. "However, a federal court may find that a plaintiff's claim arises under federal law even though the plaintiff has not characterized it as a federal claim." Carrollton Presbyterian Church v. Presbytery of S. La., No. 09-138-RET-SCR, 2009 WL 1605005, at *2 (M.D. La. June 4, 2009) (citations omitted). In this "small class of cases," in which only state law creates the claims, a federal court may have subject matter jurisdiction if "the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law, in that federal law is a necessary

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element of one of the well-pleaded . . . claims." Pinney v. Nokia, Inc., 402 F.3d 430, 442 (4th Cir. 2005) (quoting Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 808 (1988) (internal quotation marks omitted)); see also Dixon v. Coburg Dairy, Inc., 369 F.3d 811, 816 (4th Cir. 2004) (en banc) (stating "[a] plaintiff's right to relief for a given claim necessarily depends on a question of federal law only when every legal theory supporting the claim requires the resolution of a federal issue") (citation omitted); Carrollton Presbyterian Church, 2009 WL 1605005, at *2 (stating "a complaint creates federal question jurisdiction when it states a cause of action created by state law and (1) a federal right is an essential element of the state claim, (2) interpretation of the federal right is necessary to resolve the case, and (3) the question of federal law is substantial") (citation omitted). Thus, "[i]f a plaintiff can establish, without the resolution of an issue of federal law, all of the essential elements of his state law claim, then the claim does not necessarily depend on a question of federal law." Pinney, 402 F.3d at 442 (citing Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal., 463 U.S. 1, 13-14 (1983)). In Gunn v. Minton, the United States Supreme Court stated that the Court must analyze the substantial federal question doctrine when a defendant seeks to remove a case in which state law creates the plaintiff's cause of action. 133 S. Ct. 1059, 1065 (2013). Under the substantial federal question doctrine, "federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." Id. If the defendant fails to demonstrate all four of these elements, removal is improper under this doctrine. Id.

As stated above, removal must be based on the plaintiff's complaint. "[R]emoval of a case to federal court may not be predicated on the presence of a federal defense." Rivet, 522

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U.S. at 471 (citing Franchise Tax Bd., 463 U.S. at 14); see also Pinney, 402 F.3d at 443 (stating "a case may not be removed to federal court on the basis of a federal defense . . . even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case") (citation omitted); Grace Chapel Presbyterian Church (USA) v. Presbytery of Miss., No. 3:07-cv-552, 2007 WL 4557866, at *3 (S.D. Miss. Dec. 21, 2007) (stating the "[d]efendant's reliance on First Amendment safeguards against state interference with religious doctrine or polity does not create a federal question"). Nor may a counterclaim establish federal question jurisdiction. Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 831 (2002) (citation omitted). Additionally, "[a] cause cannot be removed from a state court simply because, in the progress of the litigation, it may become necessary to give a construction to the constitution or laws of the United States." Tennessee v. Union & Planters' Bank, 152 U.S. 454, 460 (1894) (citation omitted). "[T]he question whether a party claims a right under the constitution or laws of the United States is to be ascertained by the legal construction of its own allegations, and not by the effect attributed to those allegations by the adverse party." Id. (citation omitted). Further, "the mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction." Merrell Dow Pharm., 478 U.S. at 813 (citing Gully v. First Nat'l Bank, 299 U.S. 109, 115 (1936) ("Not every question of federal law emerging in a suit is proof that a federal law is the basis of the suit")). It is well-settled that federal-question jurisdiction is much more limited than allowing defendants to remove cases to federal court where a federal question is simply "an ingredient" in the plaintiff's case. Id. at 807.

"On a motion to remand, the court must strictly construe the removal statute and resolve all doubts in favor of remanding the case to state court, indicative of the reluctance of federal

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courts to interfere with matters properly before a state court." Gallagher v. Fed. Signal Corp., 524 F. Supp. 2d 724, 726 (D. Md. 2007) (internal quotation marks and citation omitted). If there is any doubt regarding the existence of federal jurisdiction, the case should be remanded. Md. Stadium Auth. v. Ellerbe Becket Inc., 407 F.3d 255, 260 (4th Cir. 2005) (citation omitted); see also Lever, 2013 WL 436210, at *1 (stating "[i]f federal jurisdiction is doubtful, a remand is necessary") (quoting Mulcahey, 29 F.3d at 151).

III. DISCUSSION

The plaintiffs assert three causes of action—all of which are based on South Carolina statutes. The plaintiffs, exclusively relying on state law, though federal claims were available, chose to file their case in state court, a strategy recognized and accepted by federal courts. See, e.g., Carrollton Presbyterian Church, 2009 WL 1605005, at *3 (stating "[a] plaintiff with a choice between federal and state law claims may elect to proceed in state court on the exclusive basis of state law, thus defeating the defendant's opportunity to remove . . .") (quoting Carpenter v. Wichita Falls Ind. Sch. Dist., 44 F.3d 362, 366 (5th Cir. 1995)).

First, the Court considers the defendant's Lanham Act argument. The plaintiffs elected to proceed on state law claims concerning service mark infringement and improper use of names, styles and emblems. (See Second Am. Compl. ¶¶ 495-505). It is well settled the plaintiffs may choose to assert only state law claims even when federal claims are available. Based on the well-pleaded complaint rule and the fact that the Lanham Act does not preempt South Carolina law, the defendant may not remove this action based on its argument that this matter raises federal questions under the Lanham Act. Thus, the remainder of this Order focuses on ECSC's First Amendment argument.

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As stated above, federal courts may have jurisdiction even if the plaintiffs only assert state law claims. In determining whether to remand the action, this Court must first determine whether federal or state law creates the causes of action in the complaint. See Pigott, 2007 WL 1448718, at *2 (citation omitted).

A. THE FIRST AMENDMENT IS PROPERLY VIEWED AS A LIMITATION

ECSC claims this Court has jurisdiction over this matter because the central issue, "whether . . . the Diocese could and did sever its ties with [TEC] so that corporate control was vested in its current leadership," implicates the First Amendment. (Def.'s Resp. to Pls.' Mot. to Remand 6). The First Amendment, which is applicable to the states through the Fourteenth Amendment, provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]" U.S. Const. amend. I. Similarly, civil courts are restricted when they consider issues pertaining to religious organizations or doctrines. "[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes[]" and "prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." Jones v. Wolf, 443 U.S. 595, 602 (1979) (citations omitted). "Generally, courts may not interpret church laws, policies or practices in a manner that will limit the churches [sic] ability to fully practice its religion or be guided by its religious principles." JC2 v. Grammond, 232 F. Supp. 2d 1166, 1168 (D. Or. 2002) (citing Cantwell v. Connecticut, 310 U.S. 296, 303 (1940)); see also Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 369 (1970) (per curiam) (stating "[t]o permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine"). However,

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in Jones, the United States Supreme Court held that the First Amendment allows civil courts to adjudicate disputes within religious organizations so long as resolution refrains from determining matters of ecclesiastical doctrine or polity. 443 U.S. at 610; see also Serbian E. Orthodox Diocese for the United States & Canada v. Milivojevich, 426 U.S. 696, 710 (1976) (stating "[t]he First Amendment . . . commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine") (quoting Presbyterian Church v. Hull Church, 393 U.S. 440, 449 (1969)); Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A.), 291 P.3d 711, 720 (Or. 2012) (finding "[a]lthough courts must decide . . . property disputes . . . in which churches or other religious organizations are parties, First Amendment principles require that they do so without becoming involved in matters of church doctrine"); Pearson v. Church of God, 478 S.E.2d 849, 851 (S.C. 1996) (stating "where resolution of the [religious] disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity . . .") (quoting Milivojevich, 426 U.S. at 709).

Courts facing similar facts and issues as those presented here have found First Amendment principles are properly viewed as limitations upon a civil court's authority. See, e.g., Grace Chapel Presbyterian Church, 2007 WL 4557866, at *3 (stating the "[d]efendant's reliance on First Amendment safeguards against state interference with religious doctrine or polity does not create a federal question") (emphasis added). In First Presbyterian Church of Corinth, Miss. v. Presbytery of Saint Andrew, the plaintiff filed an action in state court seeking a determination of certain property rights held by the church. No. 1:07-cv-31, 2007 WL 571338, at *1 (N.D. Miss. Feb. 20, 2007). The defendant removed the case on the grounds of federal

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question jurisdiction. Id. The court remanded the case to state court, finding "the First Amendment issues in this case are properly viewed as limitations upon the authority of the Circuit Court of Alcorn County, rather than as the basis for any private right of action such as might implicate the substantial federal question doctrine." Id. at *1, *3. The court further stated that it "trusts that the Circuit Court of Alcorn County will heed the limitations upon its authority in deciding the instant property dispute . . . [;]" however, "if either party is of the view that the trial court has overstepped its Constitutional bounds in that regard, than [sic] it may appeal to the [state] Supreme Court, and, if necessary to the U.S. Supreme Court." Id. at *2.

Here, the First Amendment is not alleged to have been violated. It appears that one of the underlying issues may be ecclesiastical; however, that alone does not necessitate inquiry into, or resolution under, the First Amendment. See e.g., All Saints Parish v. Waccamaw v. Protestant Episcopal Church in the Diocese of S.C., 685 S.E.2d 163, 171 (S.C. 2009) (holding the court could resolve church control issues solely "through the application of neutral principles of [state] property, trust, and corporate law[]" without implicating the First Amendment). In fact, South Carolina state courts employ a legal standard for resolving church disputes that abstains from inquiry into religious doctrine and, thus, comports with the limitations dictated by First Amendment principles. Id. The First Amendment issues attributed to the plaintiffs' causes of action are properly viewed as a limitation upon the authority of the state court rather than as the basis for any private right of action such as might implicate the substantial federal question doctrine.[5]

[5] It is important to note that there are no allegations that the defendants are state actors or that the defendants have engaged in any form of state action. See Goldstein v. Chestnut Ridge Volunteer Fire Co., 218 F.3d 337, 341 (4th Cir. 2000) (stating "[w]ith few exceptions, constitutional guarantees . . . do not apply to the actions of private entities") (quoting Edmonson v. Leesville Concrete Co., 500 U.S. 614, 619 (1991) (internal quotation marks omitted)). In addition, none of

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B. THE SUBSTANTIAL FEDERAL QUESTION DOCTRINE

Notwithstanding the discussion supra, the Court does not find it has jurisdiction under the substantial federal question doctrine. The doctrine applies where the federal issue is "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." Gunn, 133 S. Ct. at 1065. As shown below, the requisite elements are not satisfied; thus, federal question jurisdiction does not lie over the state law claims under this doctrine.

1. The First Amendment Issue Is Not Necessarily Raised

ECSC argues that the First Amendment issue is "necessarily raised." (Def.'s Resp. to Pls.' Mot. to Remand 11-14). Specifically, ECSC states, "[b]ecause [p]laintiffs' causes of action all are premised on their assertion that [p]laintiffs validly were withdrawn from [TEC], and because establishing that premise unavoidably requires the Court to resolve whether the First Amendment requires it to defer to [TEC's] determination on the issue, each of the [p]laintiffs['] causes of action 'requires resolution of a federal issue.'" (Id. at 14 (quoting Dixon, 369 F.3d at 816).

In the present case, ECSC failed to show that the First Amendment is an essential element to the plaintiffs' causes of action. See Gully, 299 U.S. at 112 (stating a defendant must show that a federal right is "an element, and an essential one, of the plaintiff's cause of action") (citations omitted). The United States Supreme Court has expressly approved two methods for these types of disputes, and has granted the states the power to choose the method it will apply. All Saints Parish, 685 S.E.2d at 171. The First Amendment provides guidance for methods of constitutionally consistent legal application, not a basis for a direct claim or a direct cause of

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the relief sought by the plaintiffs requires a finding that the defendants violated the plaintiffs' First or Fourteenth Amendment rights.

action arising under federal law. The plaintiffs' state-based causes of action neither advance, nor require the resolution of an essential federal issue, thereby establishing that the First Amendment issue is not necessarily raised.

2. The First Amendment Issue Is Not Actually Disputed

The plaintiffs and ECSC make arguments as to which approach the Court should apply in settling this dispute. The First Amendment, however, is not a contested issue. Neither party argues that the First Amendment, in and of itself, defeats or vindicates a right to relief; the central dispute concerns the judicially adopted means of analyses that have been held to be in accordance with the First Amendment, and provide the framework for church property dispute resolution.[6] Thus, the First Amendment is not actually disputed.

3. The First Amendment Issue Is Not Substantial

The substantiality inquiry "looks . . . to the importance of the issue to the federal system as a whole." Gunn, 133 S. Ct. at 1066. Specifically, the United States Supreme Court defined the substantiality standard as an issue "indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum." Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 313 (2005) (citations omitted).

ECSC argues that whether the First Amendment permits the plaintiffs "to employ the power of the judiciary to abnegate the determinations of Church authorities on matters of Church governance and doctrine" is "a matter of immeasurable importance [n]ot merely to millions of Episcopalians across the country but to the free exercise of religion in general." (Def.'s Resp. to Pls.' Mot. to Remand 16) (emphasis omitted).

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[6] The United States Supreme Court has expressly approved the deference approach and the neutral principles of law approach as methods for a civil court's resolution of church disputes. All Saints Parish, 685 S.E.2d at 171.

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Again, "the mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction." Merrell Dow Pharm., 478 U.S. at 813. The United States Supreme Court in Jones, 443 U.S. 595, and Milivojevich, 426 U.S. 696, has defined approaches that state courts may apply in determining religious disputes without violating the First Amendment. The argument that it is substantial to the federal system is undone by the United States Supreme Court yielding the right to choose an approved approach to church dispute resolution to the states. Courts have interpreted the First Amendment to serve as a safeguard or a limitation on a civil court's authority to ensure the "free exercise of religion" is not violated by undue consideration of ecclesiastical matters. Therefore, the issue raised by ECSC is inapplicable as the "serious federal interests" have already been addressed by state and federal systems. Thus, the First Amendment issue does not meet the substantiality standard.

4. Removal Of This Case Would Disrupt The Federal-State Balance Approved By Congress

ECSC argues that a federal court's exercise of jurisdiction in this case will not result in a substantial number of state trademark cases being removed to federal court because this case implicates a First Amendment issue that simply does not arise in the vast majority of cases presenting similar claims. (Def.'s Resp. to Pls.' Mot. to Remand 19).

If this Court determined that a case may be removed based on federal question jurisdiction whenever a defendant attributed a federal constitutional issue not alleged or advanced in a well-pleaded complaint, federal question jurisdiction could potentially be expanded to all cases containing tacit First Amendment issues. Federal courts require strict construction against removal. Lever, 2013 WL 436210, at *1. Therefore, allowing ECSC to remove this case would seriously disrupt the federal-state balance.

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C. Removal May Not Be Predicated On A Defense

ECSC relies on the First Amendment as a basis of its defense. In essence, ECSC claims the First Amendment prohibits a civil court from considering the underlying issue because it is purely ecclesiastical in nature. Similarly, in Burcaw v. Allegheny Wesleyan Methodist, Connection, the defendants removed an action seeking a declaratory judgment regarding the control and disposition of church property. No. 1:07-cv-1531, 2007 WL 2254722, at *1 (N.D. Ohio Aug. 3, 2007). The defendants claimed the complaint raised purely ecclesiastical issues and, pursuant to the First Amendment, the court could not interfere in the dispute. Id. at *2. Judge Gaughan of the Northern District of Ohio found the defendants' First Amendment argument "tantamount to a defense to the action." Id. The court held that it lacked jurisdiction because the "plaintiffs' complaint [did] not rest on any federal or constitutional claim . . . ." Id. Thus, the action was remanded. Id.

In the present action, the defendant's First Amendment argument is similarly "tantamount to a defense." The First Amendment was not pled in the complaint nor was it addressed in the answers or counterclaims. The First Amendment was initially raised in ECSC's notice of removal as an anticipatory dispute between the parties. As stated above, a defense cannot be used as a basis for federal question jurisdiction. Merrell Dow Pharm., 478 U.S. at 808 (citation omitted); see also Pinney, 402 F.3d at 443 (stating "a case may not be removed to federal court on the basis of a federal defense . . . even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case") (citation omitted). Thus, the Court lacks jurisdiction over this matter.

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IV. CONCLUSION

For the foregoing reasons, the plaintiffs' motion to remand (ECF No. 9) is granted.

AND IT IS SO ORDERED.

C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

June 10, 2013
Charleston, South Carolina

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