

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

The Right Reverend Charles G. vonRosenberg)	Case No. 2:13-cv-00587-RMG
et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
The Right Reverend Mark J. Lawrence et al.,)	
)	
Defendants.)	
_____)	

**MEMORANDUM OF LAW IN SUPPORT OF BISHOP VONROSENBERG,
BISHOP ADAMS, AND THE EPISCOPAL CHURCH IN SOUTH CAROLINA’S
MOTION FOR SUMMARY JUDGMENT**

Thomas S. Tisdale, Jr.
Jason S. Smith
HELLMAN YATES & TISDALE
105 Broad Street, Third Floor
Charleston, South Carolina 29401
Telephone: (843) 266-9099
tst@hellmanyates.com
js@hellmanyates.com

*Counsel for Bishop vonRosenberg,
Bishop Adams, and The Episcopal
Church in South Carolina*

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

ARGUMENT 3

I. The Diocesan Names and Marks 3

 i. TECSC Is The Continuation Of And Successor
 To The One And Only Historic Diocese 3

 a. According To The South Carolina Supreme Court 3

 b. According To First Amendment Jurisprudence 4

 ii. Because TECSC Is The Continuation Of And Successor To The
 One And Only Historic Diocese, It Used The Names And Marks
 And Registered The State Trademark Registrations 7

 iii. TECSC Has A Trust Interest In All Diocesan Property, Including
 The Diocesan Names And Marks 8

 iv. The Diocesan Names And Marks, And Registrations
 Thereof, Are Either Owned By TECSC, Or Held In Trust For
 TECSC, Or The Registrations Must Be Cancelled 11

 v. The Diocesan Names And Marks Cannot Be Divvied Up
 Among The Competing Dioceses; The Goodwill Belongs To TECSC 13

II. The Parish Names And Marks 16

 i. Former Episcopal Churches Cannot Keep Using The Same
 Names And Marks 16

 ii. The Episcopal Church And TECSC Have Trust Interests In All
 Property Of At Least 29 Parishes, Including Names And Marks 17

III. TECSC’s And Its Bishop’s Claims Have Been Established As A Matter Of Law 19

 i. Established Facts Applicable To All Of TECSC’s
 And Its Bishop’s Claims 19

 ii. Trademark Infringement 20

iii.	False Advertising	21
iv.	Declaratory Judgment	22
v.	Transfer or Cancellation of Registrations	22
vi.	Counterclaims	22
	CONCLUSION	23

TABLE OF AUTHORITIES

Cases

<i>Avon Shoe Co. v. David Crystal, Inc.</i> , 171 F.Supp. 293, 301, <i>aff'd</i> 279 F.2d 607, <i>cert. denied</i> , 364 U.S. 909, 81 S.Ct. 271, 5 L.Ed.2d 224 (1960)	15
<i>Ayers v. Cont'l Cas. Co.</i> , 2007 WL 1960613 (N.D.W.Va. 2007)	4
<i>Barna Conshipping, S.L. v. 2,000 Metric Tons, More or Less, of Abandoned Steel</i> , 410 Fed. App'x 716 (4th Cir. 2011).....	4
<i>Carolina Renewal, Inc. v. S.C. Dep't of Transp.</i> , 385 S.C. 550, 684 S.E.2d 779 (Ct. App. 2009)	4
<i>Dixon v. Edwards</i> , 290 F.3d 699 (4th Cir. 2002)	5, 6, 10
<i>Flying Pigs, LLC v. RRAJ Franchising, LLC</i> , 757 F.3d 177 (4th Cir. 2014)	7, 11, 12, 18
<i>Georgia Pac. Consumer Prods. v. Von Drehle Corp.</i> , 618 F.3d 441 (4th Cir. 2010)	21
<i>Griggs v. Driggers</i> , 94 S.E.2d 225, 230 S.C. 97 (1956)	13
<i>Hiles v. Episcopal Diocese of Mass.</i> , 744 N.E.2d 1116, 1121 (Mass. App. Ct. 2001)	6
<i>Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC</i> , 132 S. Ct. 694 (2012)	5, 10
<i>In re CC & Co., Inc.</i> , 86 BR 485 (Bankr. E.D. Va. 1988)	9, 18
<i>Informix Software, Inc. v. Oracle Corp.</i> , 927 F.Supp. 1283 (N.D. Cal. 1996)	22
<i>Inwood Laboratories, Inc v. Ives Laboratories, Inc Darby Drug Co Inc v. Ives Laboratories, Inc</i> , 456 U.S. 844 (1982)	21
<i>Lacoste Alligator, SA v. Bluestein's Men's Wear, Inc.</i> , 569 F. Supp. 491 (D.S.C. 1983)	21

Little Tavern Shops v. Davis,
116 F.2d 903 (4th Cir. 1941) 9, 18

Marshak v. Green,
746 F.2d 927 (2nd Cir. 1984) 15

Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church,
806 S.E.2d 82 (2017) *reh’g denied* (Nov. 17, 2017), *cert. denied* (June 11, 2018) *passim*

The Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church,
No. 2013-CP-18-00013 (Cir Ct., County of Dorchester) *passim*

Pepsico, Inc. v. Grapette Company,
416 F.2d 285 (8th Cir. 1969) 15

Prestonettes, Inc. v. Coty,
264 U.S. 359, 44 S.Ct. 350, 68 L.Ed. 731 (1924) 15

Serbian E. Orthodox Diocese v. Milivojevich,
426 U.S. 696 (1976) 5, 10

Skil Corp. v. Rockwell Int’l Corp.,
375 F.Supp. 777 (N.D. Ill. 1974) 21

Volkswagenwerk Ag v. Hoffman,
489 F.Supp. 678 (D.S.C. 1980) 20

Watson v. Jones,
80 U.S. (13 Wall.) 679 (1872) 5, 6, 10

Statutes

15 U.S.C. §1116 21, 22

15 U.S.C. § 1125(a)(1)(A) 21

15 U.S.C. § 1125(a)(1)(B) 21

28 U.S.C. § 2201 22

S.C. Code Ann. § 39-15-1170 21

S.C. Code Ann. §§ 39-15-1145 13, 22

S.C. Code Ann. §§ 39-15-1175 22

Other Authorities

1 McCarthy on Trademark and Unfair Competition § 18.1 (2d ed. 1984) 15
2 McCarthy on Trademarks and Unfair Competition § 16:18 (4th ed. 2013) 7, 11, 12

INTRODUCTION

Plaintiffs Bishop vonRosenberg, Bishop Adams, and The Episcopal Church in South Carolina (“TECSC”) (referred to herein as “TECSC and its Bishops”) submit this Memorandum of Law in Support of their Motion For Summary Judgment.

The claims made by TECSC and its Bishops are largely the same as those made by The Episcopal Church.¹ TECSC and its Bishops are authorized users of The Episcopal Church’s national brand and federal trademark registrations, giving them the right to hold themselves out to the public as an “Episcopal” diocese made up of “Episcopal” parishes led by an “Episcopal” bishop. To avoid unnecessary duplication, TECSC and its Bishops accordingly rely upon and incorporate by reference the Statement of Facts and Argument contained in The Episcopal Church’s Memorandum in support of its Motion for Summary Judgment.

TECSC and its Bishops are also entitled to summary judgment on all of their claims for the basic reason that they, and not the Lawrence Diocese, own and/or hold trust interests in, and are therefore entitled to exclusively use, the historic diocese’s names and marks, namely, “Diocese of South Carolina,” “Protestant Episcopal Church in the Diocese of South Carolina,” “Episcopal Diocese of South Carolina,” the diocesan seal, and variants thereof. The South Carolina Supreme Court has already decided that TECSC is the historic diocese of The Episcopal Church in eastern South Carolina, and the Lawrence Diocese is not. A straightforward application of that ruling, which is further supported by First Amendment jurisprudence, compels

¹ TECSC and its Bishops have made claims in this action for trademark infringement, false advertising, and declaratory relief regarding the ownership of and rights to use the diocesan and parish names and marks, and any registrations of the same, or the transfer of or cancellation of the registrations. (Dkt. 146).

the conclusion that the Lawrence Diocese, which claims to have left The Episcopal Church, may not continue to use TECSC's names and marks.

Further, all of the Defendant parishes and missions (along with Bishop Lawrence) hold themselves out as being part of the "Diocese of South Carolina" and/or part of an "Episcopal" diocese led by an "Episcopal" bishop. These statements of their affiliations are inaccurate, misleading, and confusing, and the Court should declare that these Defendants must cease these activities. Moreover, under the South Carolina Supreme Court's ruling, at least 29 of the Defendant parishes hold their names and marks in trust for The Episcopal Church and TECSC, which is an independent ground for a legal ruling that they may not continue using those names and marks after leaving The Episcopal Church.

For the foregoing reasons, as further detailed herein, this Court should grant TECSC and its Bishops' Motion for Summary Judgment.

ARGUMENT

I. The Diocesan Names And Marks

i. TECSC Is The Continuation Of And Successor To The One And Only Historic Diocese

TECSC is, and the seceding group led by Bishop Lawrence is not, the continuation of and successor to the one and only diocese at issue formed in the eighteenth century.

a. According To The South Carolina Supreme Court

This issue was squarely before and expressly decided by the South Carolina Supreme Court.² Chief Justice Beatty, who authored the controlling opinion for the 3-2 majority, held as follows: “In my view, the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.” *Protestant Episcopal Church in the Diocese of South Carolina*, 421 S.C. at 252, n.29, 806 S.E.2d at 103, n.29. Justice Pleicones and Justice Hearn held the same. 421 S.C. at 231, 806 S.E.2d at 92 (Pleicones, J., “...accept TEC’s recognition of the Associated Diocese as the true Lower Diocese of South Carolina...”); 421 S.C. at 232, 806 S.E.2d at 93 (Hearn, J., “The primary issue before the Court is which of two competing dioceses is the true Episcopal diocese in the lower half of South Carolina and thus has the right to control the property at issue...”); 421 S.C. at 248, 806 S.E.2d at 101 (Hearn, J., “...the Appellants represent the true Lower Diocese of the Protestant Episcopal Church in South Carolina...”).

² *Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church*, 421 S.C. 211, 229, 806 S.E.2d 82, 91 (Aug. 2, 2017), *reh’g denied* (Nov. 17, 2017), *cert. denied* (June 11, 2018) (“On January 4, 2013, the Respondents filed this suit for a declaratory judgment seeking a declaration that respondent Disassociated Diocese was the true Diocese in the lower part of South Carolina, that all property at issue belonged to that faction, and for injunctive relief against the Appellants.”).

Defendants are collaterally estopped from challenging the South Carolina Supreme Court's decision on this issue in this action. Collateral estoppel "works to ensure that parties get one full and fair opportunity to litigate a particular issue, while preventing needless relitigation of that issue." *Barna Conshipping, S.L. v. 2,000 Metric Tons, More or Less, of Abandoned Steel*, 410 Fed. App'x 716, 720 (4th Cir. 2011) (citation omitted). "Where the prior proceeding that may make issue preclusion applicable is a state court proceeding, as here, the federal courts use the law of the state to determine if preclusion applies." *Ayers v. Cont'l Cas. Co.*, 2007 WL 1960613, *4 (N.D.W.Va. 2007) (citation omitted). Under South Carolina state law, the party asserting collateral estoppel must show that the issue of fact or law in the present lawsuit was: "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." *Id.* (citation omitted).

As provided above, this issue was actually litigated, directly determined, and necessary to support the South Carolina Supreme Court's decision. *Carolina Renewal*, 385 S.C. at 554, 684 S.E.2d at 782. Most of the Defendants in this action were parties to the state action and they adequately represented the interests of those Defendants who were not, namely Bishop Lawrence, who leads the Lawrence Diocese, and some of the Defendant Parishes that claim to be a part of the Lawrence Diocese. *Id.*

b. According To First Amendment Jurisprudence

Notwithstanding the South Carolina Supreme Court’s correct and binding decision on this issue, First Amendment jurisprudence further dictates that TECSC is the continuation of and successor to the one and only diocese at issue formed in the eighteenth century.

The principal cases that apply here include three landmark decisions by the United States Supreme Court and one by the Fourth Circuit Court of Appeals. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 704 (2012); *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 729 (1872); *Dixon v. Edwards*, 290 F.3d 699, 716 (4th Cir. 2002).

These cases establish that the First Amendment requires civil courts to defer to the decisions of hierarchical churches in applying religious law regarding the identity and authority of church leaders, namely bishops and priests, and the government and direction of subordinate church bodies, namely regional dioceses. *Serbian E. Orthodox*, 426 U.S. at 725 (holding that the “reorganization of the Diocese involves a matter of internal church government, an issue at the core of ecclesiastical affairs” as to which civil courts must “accept ... as binding upon them” the decisions of the highest ecclesiastical tribunal); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 704 (2012) (“[I]t is impermissible for the government to contradict a church’s determination of who can act as its ministers.”); *Watson*, 80 U.S. (13 Wall.) at 727 (“[W]henver the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them”); *Dixon*, 290 F.3d at 714 (“It is axiomatic that the civil courts lack any authority to resolve disputes arising under religious law and polity, and they must defer to the highest ecclesiastical tribunal within a hierarchical church applying its religious law.”); *see also Kedroff v. St. Nicholas Cathedral*, 344

U.S. 94, 116 (1952) (holding that hierarchical churches have “power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine”); *see also Schofield*, 118 Cal. Rptr. 3d at 162 (“The continuity of the diocese as an entity within the Episcopal Church is likewise a matter of ecclesiastical law, finally resolved, for civil law purposes, by the Episcopal Church’s recognition of Lamb as the bishop of that continuing entity.”).

Two of these cases, *Watson* and *Dixon*, specifically recognize that The Episcopal Church is a hierarchical church. *Watson*, 80 U.S. (13 Wall.) at 729; *Dixon*, 290 F.3d at 716 (“The Episcopal Church is hierarchical.”).

The South Carolina Supreme Court held the same. *Protestant Episcopal Church in the Diocese of South Carolina*, 806 S.E.2d at 86 (“TEC is a hierarchical church”) (Pleicones, J.); *id.* at 93 (same) (Hearn, J.); *id.* at 102 (same) (Beatty, C.J.).

This Court already held the same as well, which is the law of the case. Order dated Aug. 23, 2013 (Dkt. 30 at 3) (“...TEC, as a hierarchical organization...”); *id.* at 3 n.5 (“[T]he Canons of the Episcopal Church clearly establish that it is a hierarchy.”) (quoting *Dixon*) (citing *Hiles v. Episcopal Diocese of Mass.*, 744 N.E.2d 1116, 1121 (Mass. App. Ct. 2001) (“It is undisputed that the Episcopal Church is hierarchical in structure; there are no judicial holdings to the contrary.”)).

Applying this First Amendment jurisprudence, it follows that because The Episcopal Church is hierarchical, its decisions regarding the identity and authority of its bishops and the identity and control of its dioceses must be given deference as a matter of law. Therefore, this Court must defer to The Episcopal Church’s indisputable decisions that TECSC is the one and

only historic diocese at issue, not the Lawrence Diocese, and that Bishop Adams currently serves as its Provisional Bishop, not Bishop Lawrence. *See* TEC Mem. (Statement of Facts).

ii. **Because TECSC Is The Continuation Of And Successor To The One And Only Historic Diocese, It Used The Names And Marks And Registered The State Trademark Registrations**

Because TECSC is, and the seceding group led by Bishop Lawrence is not, the continuation of and successor to the one and only diocese at issue formed in the eighteenth century, *it follows* that TECSC is the one who has been using³ the marks throughout the diocese's history,⁴ and that TECSC is the one who registered the state trademark registrations

³ “Trademark ownership is not acquired by federal or state registration. Ownership rights flow only from prior use.” *Flying Pigs, LLC v. RRAJ Franchising, LLC*, 757 F.3d 177, 182 (4th Cir. 2014) (quoting 2 J. Thomas McCarthy, *McCarthy On Trademarks and Unfair Competition* § 16:18 (4th ed.2013) (collecting cases).

⁴ The Lawrence Diocese's pleading in the state action alleges as follows:

Throughout its 227-year history, the Diocese of South Carolina has done business under a variety of names. These include ‘The Protestant Episcopal Church in South Carolina’ (or ‘in the State of’) (1785-1819, 1838-1868); ‘The Protestant Episcopal Church in the Diocese of South Carolina’ (since 1821); ‘The Protestant Episcopal Diocese of South Carolina’ (since 1997); ‘The Diocese of South Carolina’ (since 1869); and ‘The Episcopal Diocese of South Carolina’ (since 1979).

Protestant Episcopal Church in the Diocese of South Carolina, 2013-CP-18-00013 (Dorchester County) (Plaintiffs' Second Amended Complaint, ¶17) (Ex. A, attached hereto).

Likewise, in this action, the Lawrence Diocese has made similar allegations:

When The Diocese was formed, it was named the ‘Protestant Episcopal Church in the State of South Carolina.’ Since its formation, it has used the following names at various times in its history: ‘The Protestant Episcopal Church in South Carolina,’ ‘The Protestant Episcopal Church in the Diocese of South Carolina,’ ‘The Protestant Episcopal Diocese of South Carolina,’ ‘The Diocese of South Carolina,’ and ‘The Episcopal Diocese of South Carolina.’

prior to the purported disassociation of the seceding group led by Bishop Lawrence.⁵ In other words, Defendants cannot claim the historic use of the diocesan marks as their own, nor can they claim the state trademark registrations registered in the name of the historic diocese as their own.⁶

iii. TECSC Has A Trust Interest In All Diocesan Property, Including The Diocesan Names And Marks

In addition to being the one and only diocese at issue formed in the eighteenth century, TECSC is also the beneficiary of a trust that holds all of the diocesan property, real and personal. That trust was established by the 1880 Act of the General Assembly of South Carolina (the “Act”), as amended by the 1902 Act. It provides, in pertinent part, as follows:

. . . Section 1 . . . That the Bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church

Answer and Counterclaims (Dkt. 196 at ¶69).

⁵ The diocesan state trademark registrations were registered in 2010 in the name of the historic diocese, “The Protestant Episcopal Church in the Diocese of South Carolina.” *See* Diocesan Registrations (Ex. B, attached hereto). Those registrations are based on historic “first use” dates, with one going back as far as 1821. *Id.* The seceding group led by Bishop Lawrence purported to disassociate in 2012. *See* Answer and Counterclaims (Dkt. 196 at ¶¶95, 101) (admitting diocesan names and marks registered in 2010 in the name of the historic diocese, prior to its purported disassociation from The Episcopal Church in 2012).

⁶ As set forth above, the South Carolina Supreme Court clearly held that “the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.” *Protestant Episcopal Church in the Diocese of South Carolina*, 421 S.C. at 252, n.29, 806 S.E.2d at 103, n.29 (Beatty, C.J.); 421 S.C. at 231, 806 S.E.2d at 92 (Pleicones, J.); 421 S.C. at 232, 248, 806 S.E.2d at 93, 101 (Hearn, J.). However, assuming *arguendo*, that the seceding group led by Bishop Lawrence, as they allege, still legally exercises corporate control over the Defendant named in this action as the “Corporation formed in 1973 that is currently calling itself the Protestant Episcopal Church in the Diocese of South Carolina,” that corporation is not operating as the historic diocese; rather, it is something else entirely, which is essentially a repurposed corporate shell, confusingly and improperly named. Control of that corporation should be relinquished to TECSC or otherwise it cannot claim any property rights belonging to the historic diocese and it must amend its corporate name.

for the Diocese of South Carolina . . . are hereby appointed trustees for the purpose of holding in trust any property heretofore given or acquired, or hereafter to be given or acquired, for objects connected with said Church, in said Diocese . . .

. . . Sec. 3 The title to the real and personal property described in the first Section shall become vested in the said trustees by operation of law without further deed or conveyance other than that which is therein specified, and the trustees shall report annually to the Convention of the Diocese of the said Church.

1880 Act (Ex. C, attached hereto).

. . . Sec. 3. That the Trustees herein provided for and incorporated and their successors in office are hereby constituted such Trustees for the purpose of holding any and all property . . .

1902 Act (Ex. C, attached hereto).

This trust over diocesan property includes, but is not limited to, Camp St. Christopher, the diocesan offices, the Bishop’s residence, diocesan funds and accounts, *and the diocesan names and marks*.

The diocesan names and marks are part of this trust property because they are intellectual property, which is a form of personal property. *See In re CC & Co., Inc.*, 86 BR 485, 486 (Bankr. E.D. Va. 1988) (“[B]y definition, a ‘trademark’ includes a trade name used by a merchant to identify goods sold, and by implication a trade name is a general intangible and, thus, personal property . . . Therefore, it is the decision of this Court that the collateral term ‘personal property’ includes the trade name ‘Pete Smith’s Surf Shop’ and the good will inherent in it. This Court also holds that Pete Smith’s Surf Shop, Inc., had a perfected security interest in the trade name and goodwill and that it acquired all rights in the same when it purchased them at public auction. This Court, therefore, orders the Trustee to execute all documents necessary to complete the transfer as required by 15 U.S.C. § 1060 (1982).”); *Little Tavern Shops v. Davis*, 116 F.2d 903, 905 (4th Cir. 1941) (“The courts recognize a right of property in a trade name

which has been adopted by a person to denominate his business, and has been so used by him in association therewith as to acquire a special significance as the name thereof.”).

The South Carolina Supreme Court recognized that the beneficiary of the Trustees, referred to in the Act as “the Protestant Episcopal Church for the Diocese of South Carolina,” and as “said Diocese” in “said Church,” is the associated diocese, TECSC; and is not the dissociated diocese led by Bishop Lawrence. Using Camp St. Christopher (the most valuable diocesan property) as an example, Chief Justice Beatty explained that the Trustees *should retain title* to the property for TECSC, not the Lawrence Diocese.

Additionally, I would find ‘The Trustees of the Protestant Episcopal Church’ in the Diocese of South Carolina should retain title to Camp St. Christopher as my decision in no way alters the clear language of the 1951 deed conveying ownership of this property. The conveyance of Camp St. Christopher was for the explicit purpose of furthering ‘the welfare of the Protestant Episcopal Diocese of South Carolina.’ In my view, the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 252, n.29, 806 S.E.2d at 103, n.29 (Beatty, C.J.).

Furthermore, again, in addition to the South Carolina Supreme Court’s decision, the answer to the question of who is the beneficiary of the trust, namely “the Protestant Episcopal Church for the Diocese of South Carolina,” otherwise described as “said Diocese” in “said Church” in the 1880 Act, as amended in 1902, is further dictated by the First Amendment jurisprudence. The answer, which this Court must accept, is TECSC. *Serbian*, 426 U.S. 696; *Hosanna-Tabor*, 132 S. Ct. 694; *Watson*, 80 U.S. (13 Wall.) 679; *Dixon*, 290 F.3d 699.⁷

⁷ See *supra* note 6. Again, the South Carolina Supreme Court clearly held that “the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.” *Protestant Episcopal Church in the Diocese of South*

iv. **The Diocesan Names And Marks, And Registrations Thereof, Are Either Owned By TECSC, Held In Trust For TECSC, Or The Registrations Must Be Cancelled**

As explained above, in addition to being the one and only diocese at issue formed in the eighteenth century that used and registered the marks, TECSC is also the beneficiary of a trust that holds all of the diocesan property, real and personal, which includes the diocesan names and marks. The net consequence of this is that TECSC's claims in this action regarding the diocesan names and marks, and registrations thereof, are supported on alternative grounds, either by direct ownership or by a beneficial trust interest.

Ownership of the names and marks first vested in TECSC based on its historic use of the same (subject to the superiority of The Episcopal Church's national brand and federal trademark registrations). *Flying Pigs*, 757 F.3d at 182 (“Ownership rights flow only from prior use.”) (quoting 2 J. Thomas McCarthy, *McCarthy On Trademarks and Unfair Competition* § 16:18 (4th ed.2013) (collecting cases)).

When the diocesan trust was created in 1880, title to the names and marks then vested in the Trustees to be held in trust for TECSC. 1880 Act (Ex. C, attached hereto) (“The title to the real and personal property described in the first Section shall become vested in the said trustees by operation of law without further deed or conveyance other than that which is therein specified...”).

Carolina, 421 S.C. at 252, n.29, 806 S.E.2d at 103, n.29 (Beatty, C.J.); 421 S.C. at 231, 806 S.E.2d at 92 (Pleicones, J.); 421 S.C. at 232, 248, 806 S.E.2d at 93, 101 (Hearn, J.). Assuming *arguendo* that the seceding group led by Bishop Lawrence, as they allege, still legally exercises corporate control over the Defendant named in this action as the “Corporation formed in 1973 that is currently calling itself the Protestant Episcopal Church in the Diocese of South Carolina,” such control of a repurposed corporation that did not even exist until 1973 – nearly a century after the diocesan trust was created and its beneficiary was named – cannot possibly be determinative of who is the beneficiary named in the 1880 Act, as amended in 1902. The beneficiary is the one and only historic diocese that existed at that time, TECSC.

The state trademarks registered in 2010 (at the direction of Bishop Lawrence and others before their purported disassociation in 2012) in the name of the historic diocese did not affect ownership of the names and marks.⁸ *Flying Pigs*, 757 F.3d at 182 (“[I]t is a settled proposition that ‘[t]rademark ownership is not acquired by federal or state registration.’”) (quoting 2 J. Thomas McCarthy, *McCarthy On Trademarks and Unfair Competition* § 16:18 (4th ed.2013) (collecting cases)).

To the extent those registrations should have been registered in the name of the Trustees instead of the historic diocese, that defect is one of form over substance and is of no consequence with respect to the injunctive relief sought in this action. *See* S.C. Code Ann. 39-15-1180 (“Nothing in this article may adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.”).

Assuming *arguendo*, however, that the Lawrence Diocese is somehow the registrant of the registrations (it is not),⁹ then the registrations would nevertheless have to be cancelled because the Lawrence Diocese is clearly not the owner of the names and marks. S.C. Code Ann. §39-15-1145(3)(b) (“The secretary shall cancel from the register, in whole or in part . . . (3) a registration concerning which a court of competent jurisdiction finds that the . . . (b) registrant is not the owner of the mark . . .”). Additionally, the registrations would have to be canceled because of the superiority of The Episcopal Church’s federal registrations, and because they would have necessarily been obtained fraudulently by Bishop Lawrence and his followers and

⁸ *See supra* note 5.

⁹ *See supra* notes 6 and 7. Again, the South Carolina Supreme Court clearly held that “the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.” *Protestant Episcopal Church in the Diocese of South Carolina*, 421 S.C. at 252, n.29, 806 S.E.2d at 103, n.29 (Beatty, C.J.); 421 S.C. at 231, 806 S.E.2d at 92 (Pleicones, J.); 421 S.C. at 232, 248, 806 S.E.2d at 93, 101 (Hearn, J.).

granted improperly to the Lawrence Diocese. S.C. Code Ann. §39-15-1145(3)(c) & (d) & (f) (“The secretary shall cancel from the register, in whole or in part . . . (3) a registration concerning which a court of competent jurisdiction finds that the . . . (c) registration was granted improperly; (d) registration was obtained fraudulently . . . (f) registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office . . .”).¹⁰

v. **The Diocesan Names And Marks Cannot Be Divvied Up Among The Competing Dioceses; The Goodwill Belongs To TECSC**

Two of the diocesan marks at issue include the dominant identifier “Episcopal,” namely the “Protestant *Episcopal* Church in the Diocese of South Carolina” and “*Episcopal* Diocese of South Carolina.” The other two diocesan marks do not, namely “Diocese of South Carolina” and the diocesan seal.

This distinction does not warrant any kind of division of the diocesan marks among the competing dioceses. The seceding group led by Bishop Lawrence cannot claim to own “Diocese of South Carolina” and the diocesan seal, while yielding that TECSC owns “Protestant Episcopal Church in the Diocese of South Carolina” and “Episcopal Diocese of South Carolina.” Many of the Defendants seem to have come to believe that such a line has been or could be drawn, as

¹⁰ Unlike a federal trademark registration granted by the United States Patent & Trademark Office, a South Carolina state trademark registration does not raise a presumption or create prima facie evidence of ownership or validity of a trademark; it merely provides the registrant with certain ancillary benefits under the South Carolina Trademark Act, including the ability to bring a claim for infringement of the registered mark, and the registration certificate itself is admissible as evidence that the South Carolina Secretary of State registered the trademark. 15 U.S.C. § 1115(a); S.C. Code Ann. § 39-15-1125(b); S.C. Code Ann. § 39-15-1180; *Griggs v. Driggers*, 94 S.E.2d 225, 230 S.C. 97 (1956). When a party files a trademark application with the South Carolina Secretary of State, the Secretary does not scrutinize the application to determine whether the mark conflicts with a prior federal trademark registration or any entity’s common-law rights. Instead, the Secretary of State relies only on a form declaration by the applicant as confirmation that the mark meets the State trademark filing requirements.

demonstrated, for example, in the following deposition testimony of one of the Defendant

Parishes:

Q: We're going to move to Topic 5, which includes a list of trademarks: The manner and extent to which you have used or referred to any of the following marks. And I'm just going to take these one by one. Diocese of South Carolina, can you first identify who -- what that is, the Diocese of South Carolina?

A: The Diocese of South Carolina that I -- that I see is the one that we have with the Anglican -- associated with the Anglican Church with the Diocese of South Carolina under Bishop Lawrence. That's the one that I see on our website . . .

Q: And what about the next one, Episcopal Diocese of South Carolina, who is that?

A: I think that that's associated with The Episcopal Church.

Q: Why do you think that?

A: Because it says "Episcopal."

Q: What about the next one, Protestant Episcopal Church in the Diocese of South Carolina, who is that?

A: I think that that is, to the best of my knowledge, associated with The Episcopal Church, the TEC.

Q: And why is that?

A: Because it says, "Episcopal." It references Episcopal.

Q: What about the seal of the Diocese of South Carolina, are you familiar with that?

A: The Anglican seal under Bishop Lawrence, I am.

Q: And does your church use that seal?

A: Yes.

Q: How does it use that seal?

A: I think it's on our website, to the best of my knowledge.

Deposition of Defendant Holy Cross, 30:1-31:22 (Ex. D, attached hereto).

The use of all of the diocesan names and marks, and the goodwill that arose from such use over many years, inured to the one and only historic diocese at issue. That goodwill in the diocesan names and marks cannot be divvied up, pursuant to the following well-established principles of trademark law:

A trade name or mark is merely a symbol of goodwill; it has no independent significance apart from the goodwill it symbolizes. “A trademark only gives the right to prohibit the use of it so far as to protect the owner’s goodwill.” *Prestonettes, Inc. v. Coty* (1924) 264 U.S. 359, 44 S.Ct. 350, 68 L.Ed. 731; a trademark cannot be sold or assigned apart from to goodwill it symbolizes, Lanham Act, Sec. 10, 15 U.S.C.S. Sec. 1060. There are no rights in a trademark apart from the business with which the mark has been associated; they are inseparable, *Pepsico, Inc. v. Grapette Company*, 416 F.2d 285 (8th Cir. 1969); *Avon Shoe Co. v. David Crystal, Inc.*, 171 F.Supp. 293, 301, *aff’d* 279 F.2d 607, *cert. denied*, 364 U.S. 909, 81 S.Ct. 271, 5 L.Ed.2d 224 (1960). Use of the mark by the assignee in connection with a different goodwill and different product would result in a fraud on the purchasing public who reasonably assume that the mark signifies the same thing, whether used by one person or another. “[T]he consumers might buy a product thinking it to be of one quality or having certain characteristics and could find only too late to be another. To say that this would be remedied by the public soon losing faith in the product fails to give the consumer the protection it initially deserves.” *Pepsico, Inc. v. Grapette Co.*, 416 F.2d 285, 289 (8th Cir.1969). See Page 930 also, 1 J. McCarthy, *Trademark and Unfair Competition*, Sec. 18.1, p. 794 (2d ed. 1984).

Marshak v. Green, 746 F.2d 927, 929-30 (2nd Cir. 1984).

Moreover, the fact that the goodwill in the diocesan marks cannot be divvied up, combined with the fact that two of the diocesan marks are based on the dominant identifier “Episcopal,” make it all the more obvious that The Episcopal Church’s diocese, TECSC, is the rightful owner of *all* of the diocesan marks and the goodwill embodied therein.

Defendants would furthermore be estopped from arguing that “Diocese of South Carolina” and the diocesan seal could be distinguished as names and marks that are not protectable. Defendants have alleged and admitted the protectability (and even the fame) of those names and marks in this action and in the state action, wrongly believing those names and marks to be theirs, and seeking to enforce property rights in them against The Episcopal Church and TECSC.¹¹

II. The Parish Names And Marks

i. Former Episcopal Churches Cannot Keep Using The Same Names And Marks

As set forth in the Memorandum of The Episcopal Church, all but a few of the Defendant Parishes were Episcopal churches that were part of its historic diocese, TECSC, prior to the schism in 2012. They cannot continue to use the same names and marks they used when they were affiliated with The Episcopal Church and its historic diocese, TECSC, or confusion as to their affiliation with The Episcopal Church and its historic diocese, TECSC, is inevitable.

¹¹ The Lawrence Diocese’s pleading in the state action alleges as follows:

The seal of the Diocese of South Carolina is inherently distinctive in this state, has been used by the Diocese of South Carolina since the late 1800’s, has been used in the course of business of the Diocese of South Carolina, including on its correspondence, at its Conventions, in its Convention journals, on its website, in its releases to the public, in newspapers and in its periodicals as well as in other uses. It is highly recognized as the seal of the Diocese and until on or about November 7, 2012, it was exclusively so used by the Diocese of South Carolina.

Protestant Episcopal Church in the Diocese of South Carolina, 2013-CP-18-00013 (Dorchester County) (Plaintiffs’ Second Amended Complaint, ¶18) (Ex. A, attached hereto). Likewise, in this action, the Lawrence Diocese has alleged and admitted the historic use and protectability of “Diocese of South Carolina” and the diocesan seal. Answer and Counterclaim (Dkt. 196 at ¶¶69, 95, 106).

ii. The Episcopal Church And TECSC Have Trust Interests In All Property Of At Least 29 Parishes, Including Names And Marks

The South Carolina Supreme Court held that 29 of the Defendant Parishes¹² hold all real and personal property in trust for The Episcopal Church and TECSC, pursuant to their accession to the Dennis Canon, which provides as follows:

¹² The 29 Defendant Parishes that, according to the South Carolina Supreme Court, hold all real and personal property in trust for The Episcopal Church and TECSC, pursuant to their accession to the Dennis Canon, are as follows: All Saints Protestant Episcopal Church, Inc.; Christ St. Paul's Episcopal Church; Church of The Cross, Inc. and Church of the Cross Declaration of Trust; Church of The Holy Comforter; Church of the Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; St. Bartholomew's Episcopal Church; St. David's Church; St. James' Church, James Island, S.C.; St. Paul's Episcopal Church of Bennettsville, Inc.; The Church of St. Luke and St. Paul, Radcliffeboro; The Church of Our Saviour of the Diocese of South Carolina; The Church of the Epiphany (Episcopal); The Church of the Good Shepherd, Charleston, SC; The Church of The Holy Cross; The Church of The Resurrection, Surfside; The Protestant Episcopal Church of The Parish of Saint Philip, in Charleston, in the State of South Carolina; The Protestant Episcopal Church, The Parish of Saint Michael, in Charleston, in the State of South Carolina and St. Michael's Church Declaration of Trust; The Vestry and Church Wardens of St. Jude's Church of Walterboro; The Vestry and Church Wardens of The Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens of The Parish of St. Matthew; The Vestry and Wardens of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church Wardens of the Episcopal Church of The Parish of Christ Church; Vestry and Church Wardens of The Episcopal Church of the Parish of St. John's, Charleston County. The 7 Defendant Parishes that do not are as follows: Christ the King, Waccamaw; St. Matthews Church; St. Andrews Church-Mt. Pleasant Land Trust (which was dismissed from this action); St. John's Episcopal Church of Florence, S.C.; St. Matthias Episcopal Church, Inc.; St. Paul's Episcopal Church of Conway; The Vestry and Church Wardens of The Episcopal Church of The Parish of Prince George Winyah; The Vestries and Churchwardens of The Parish of St. Andrews. The Defendant Parishes that were not parties to the state case, and for which it has not yet been determined whether they hold all real and personal property in trust for The Episcopal Church and TECSC, pursuant to their accession to the Dennis Canon, are as follows: Holy Apostles, Barnwell; St. James Anglican, Blackville; Berkeley County Strawberry Chapel (which was never served in this action); St. Alban's Chapel, The Citadel; St. Andrew's Mission; St. John's Episcopal, Charleston; St. Barnabas, Dillon; Christ Church, Florence; St. James, Goose Creek; Holy Trinity, Grahamville; Ascension, Hagood; Church of the Advent, Marion; The Well by the Sea, Myrtle Beach; Church of the Resurrection, Myrtle Beach; Grace Parish, North Myrtle Beach; St. Paul's, Orangeburg; St. Timothy's, Cane Bay; Atonement, Walterboro; Church of the Holy Cross, Sullivan's Island.

All real and personal property held by or for the benefit of any Parish, Mission, or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 221, 806 S.E.2d at 87 (reciting the Dennis Canon); 421 S.C. at 251, 806 S.E.2d at 103 (Beatty, C.J) (“However, I agree with the majority as to the disposition of the remaining parishes because their express accession to the Dennis Canon was sufficient to create an irrevocable trust.”); 421 S.C. at 248 n. 27, 806 S.E.2 102 n. 27 (Hearn, J., concurring) (“To clarify the dissent’s summary of this case’s resolution, I join Acting Justice Pleicones and Chief Justice Beatty in reversing the trial court as to the twenty-nine parishes that documented their reaffirmation to the National Church, but Chief Justice Beatty joins Acting Justice Toal and Justice Kittredge with respect to the remaining seven parishes.”).

Collateral estoppel again applies to bar those 29 Defendant Parishes from arguing otherwise in this action.

As already explained above with respect to the diocesan trust, trademarks are part of the trust property because they are intellectual property, which is a form of personal property. *See In re CC & Co., Inc.*, 86 BR at 486; *Little Tavern Shops*, 116 F.2d at 905.

It does not matter whether or which of the names and marks used by the 29 Parish Defendants were registered as trademarks. *Flying Pigs*, 757 F.3d at 182 (“[I]t is a settled proposition that ‘[t]rademark ownership is not acquired by federal or state registration.’”). All of the names and marks, whether registered or unregistered, constitute intellectual property, which is personal property subject to The Episcopal Church’s and TECSC’s trust interests.

Like the Lawrence Diocese, the 29 Defendant Parishes are also estopped from taking the position that their names and marks are not protectable intellectual property.¹³

III. TECSC's And Its Bishops' Claims Have Been Established As A Matter Of Law

It is clear from the foregoing that TECSC's and its Bishops' claims have been established as a matter of law, without any factual disputes.

i. Established Facts Applicable To All Of TECSC's And Its Bishops' Claims

Applicable to all of TECSC's and its Bishops' claims, it has been established above and in the Memorandum of The Episcopal Church that TECSC and its Bishops have rights, as authorized by The Episcopal Church, to use the national brand and federally registered trademarks of The Episcopal Church, and names and marks similar thereto, in holding

¹³ In the state action, the 29 Defendant Parishes pled that the names and marks they have used throughout their respective histories are their protectable intellectual property and they sought to enforce such intellectual property rights against The Episcopal Church and TECSC. To illustrate, their pleading begins with the following introduction, which precedes nearly 100 pages of detailed allegations pertaining to the property of each parish, including their names and marks:

Plaintiffs, through their respective undersigned counsel, bring this action against Defendant seeking a declaratory judgment pursuant to §§15-53-10 *et. seq.* of the South Carolina Code of Laws (1976) that they are the sole owners of their respective real and personal property in which the Defendant, The Episcopal Church ('TEC') has no legal, beneficial, or equitable interest. The Plaintiffs (except for St. Andrew's Church, Mount Pleasant) also seek a declaratory judgment that the Defendants and those under their control have improperly used and may not continue to use any of the names, styles, seals and emblems of any of the Plaintiffs or any imitations or substantially similar names, styles, seals and emblems and that the Court enter injunctions prohibiting the Defendants and those under their control from such uses pursuant to §§39-15-1105 and §§16-17-310 and 320 of the South Carolina Code of Laws (1976). In support of these claims, Plaintiffs allege as follows: . . .

Protestant Episcopal Church in the Diocese of South Carolina, 2013-CP-18-00013 (Dorchester County) (Plaintiffs' Second Amended Complaint, at 2) (Ex. A, attached hereto).

themselves out to the public as an “Episcopal” diocese made up of “Episcopal” parishes led by an “Episcopal” bishop; and that TECSC is the historic diocese at issue formed in the eighteenth century and Bishop Adams is its Bishop; and that TECSC owns or has trust interests in the names and marks of the diocese and at least 29 of the parishes, and any registrations of the same.

Further analysis of each claim, based upon these established facts, is as follows:

ii. Trademark Infringement

Based upon the foregoing, Defendants’ use of the same names and marks owned by or held in trust for TECSC constitutes *per se* infringement. *See Volkswagenwerk Ag v. Hoffman*, 489 F.Supp. 678, 681 (D.S.C. 1980) (“Thus, any use of VWAG’s registered service mark or any colorable imitation thereof, to describe defendant, his services or his business is a *per se* **infringement** of VWAG’s rights.”) (emphasis added).

It has further been established, both herein and in the Memorandum of The Episcopal Church (analyzing the nine likelihood of confusion factors), that Defendants’ use of those names and marks, as a schismatic group holding themselves out to the public as an “Episcopal” diocese made up of “Episcopal” parishes led by an “Episcopal” bishop providing similar religious services in the same “Episcopal” buildings, is likely to cause confusion, and in fact is causing pervasive actual confusion.

The Memorandum of The Episcopal Church attaches several charts showing the various contributions of every Defendant to this group conduct.¹⁴ At a minimum, all of the Defendant parishes and missions (along with Bishop Lawrence) hold themselves out as being part of the “Diocese of South Carolina” and/or part of an “Episcopal” diocese led by an “Episcopal” bishop. Furthermore, they all voluntarily associate and participate in this group with knowledge of these

¹⁴ See TEC Memo. Ex. 71, 72, 73, 74, 75, 76, and 77.

very public infringing activities. *See Inwood Laboratories, Inc v. Ives Laboratories, Inc Darby Drug Co Inc v. Ives Laboratories, Inc*, 456 U.S. 844, 853 (1982) (“liability for trademark infringement can extend beyond those who actually mislabel goods with the mark of another”); *Georgia Pac. Consumer Prods. v. Von Drehle Corp.*, 618 F.3d 441, 449 (4th Cir. 2010) (discussing *Inwood* and the “judicially created doctrine of contributory trademark infringement, derived from the common law of torts.”).

Accordingly, *all* Defendants are engaging in trademark infringement under the Lanham Act, pursuant to 15 U.S.C. § 1125(a)(1)(A), and South Carolina law, pursuant to S.C. Code Ann. § 39-15-1170. TECSC and its Bishops are therefore entitled to an injunction, pursuant to 15 U.S.C. § 1116, and South Carolina law, pursuant to S.C. Code Ann. § 39-15-1170.

iii. False Advertising

Based upon the foregoing, Defendants’ representations, as detailed in the Memorandum of The Episcopal Church, holding themselves out to be – the historic diocese, or parishes of the historic diocese, or the bishop (or 14th bishop) of the historic diocese, or to otherwise be an “Episcopal” diocese, an “Episcopal” parish, or an “Episcopal” bishop¹⁵ – are literally false, deceptive, material, made in commerce, and diverting goodwill from TECSC and its Bishops to themselves. Accordingly, Defendants are engaging in false advertising under the Lanham Act, pursuant to 15 U.S.C. § 1125(a)(1)(B). *See Skil Corp. v. Rockwell Int’l Corp.*, 375 F.Supp. 777, 782-83 (N.D. Ill. 1974) (providing the *Skil* test, commonly used across the circuits); *Lacoste*

¹⁵ *See* TEC Memo. (Argument Sections I.C. and I.D.) (summarizing voluminous evidence and attaching charts and other exhibits showing such representations). *See also* Exhibits and Affidavits already in the record filed in support of Motion for Preliminary Injunction (which was not considered because of the initial stay of this litigation) and which are hereby incorporated by reference as Exhibits and Affidavits in support of the instant Motion (Dkt. 6).

Alligator, SA v. Bluestein's Men's Wear, Inc., 569 F. Supp. 491, 499 (D.S.C. 1983) (citing *Skil*).
TECSC and its Bishops are therefore entitled to an injunction, pursuant to 15 U.S.C. § 1116.

iv. Declaratory Judgment

Based upon the foregoing, the Court should issue such a declaratory judgment, pursuant to 28 U.S.C. § 2201, declaring TECSC and its Bishops' rights in the names and marks, and prohibiting Defendants from using such names and marks and making such representations, and ensuring that any registrations of such names and marks are properly registered.

v. Transfer or Cancellation

Based upon the foregoing, TECSC is entitled to the transfer of all such state trademark registrations, or the cancellation of the same, pursuant to S.C. Code Ann. §§ 39-15-1145 and 1175.

vi. Counterclaims

Defendants' reciprocal counterclaim for a declaratory judgment against TECSC and its Bishops should be dismissed for the same reasons that their own claims should be granted.

Defendants' counterclaim for cancellation of The Episcopal Church's federal trademark registrations is not properly asserted against TECSC and its Bishops and should otherwise be dismissed as provided in the Memorandum of The Episcopal Church. *Informix Software, Inc. v. Oracle Corp.*, 927 F.Supp. 1283, 1286 (N.D. Cal. 1996) ("Thus, the Court finds that an exclusive licensee of a trademark is not a proper defendant in a suit for cancellation of that trademark. Indeed, the owner of the trademark is the only proper defendant. In this action, the proper party to sue for cancellation is Melita. Thus, the Court dismisses with prejudice Informix's second claim against Oracle for cancellation of trademark.").

CONCLUSION

The public confusion resulting from Defendants' conduct is pervasive. It is undeniably causing irreparable harm to The Episcopal Church, and more locally, to TECSC and its Bishops. All that the Plaintiffs seek in this action is declaratory and injunctive relief, not damages (for which they could easily make a case). They have been asking for such relief since this action was initiated in 2013. Respectfully, this Court should grant their Motion for Summary Judgment and award them the relief to which they are entitled.

(Signature page to follow)

Dated: December 7, 2018

Respectfully submitted

/s/Thomas S. Tisdale, Jr.

Thomas S. Tisdale, Jr.

Jason S. Smith

HELLMAN YATES & TISDALE

105 Broad Street, Third Floor

Charleston, South Carolina 29401

Telephone: (843) 266-9099

tst@hellmanyates.com

js@hellmanyates.com

*Counsel for Bishop vonRosenberg, Bishop
Adams, and The Episcopal Church in South
Carolina*