

sponsorship, approval, nature, characteristics, and/or qualities of Bishop Lawrence's activities;
and

3. continuing to disseminate commercial advertising and/or promotions that make use of the Diocese's marks or that otherwise make false representations that Bishop Lawrence is associated with the Diocese, or that Bishop vonRosenberg is not affiliated with the Diocese or Provisional Bishop of the Diocese.

Dated: March 7, 2013

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

The Right Reverend Charles G. vonRosenberg,)
individually and in his capacity as Provisional)
Bishop of the Protestant Episcopal Church in)
the Diocese of South Carolina,)

Plaintiff,)

v.)

The Right Reverend Mark J. Lawrence and)
John Does numbers 1-10, being fictitious de-)
fendants whose names presently are unknown)
to Plaintiff and will be added by amendment)
when ascertained,)

Defendants.)

CIVIL ACTION NUMBER:

2:13-cv-00587-CWH

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

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Plaintiff, The Right Reverend Charles G. vonRosenberg, respectfully submits this memorandum of law in support of his Motion for a Preliminary Injunction.

INTRODUCTION

This case arises out of the knowingly unauthorized use of certain service marks of The Protestant Episcopal Church in the Diocese of South Carolina (the “Diocese”) by the Defendant, the Right Reverend Mark J. Lawrence. Bishop Lawrence is a former Bishop of the Diocese; he was removed from his position in the fall of 2012 after he renounced the Protestant Episcopal Church in the United States of America (“The Episcopal Church” or “TEC” or the “Church”) and left the Church. Bishop Lawrence nevertheless continues to use the Diocese’s marks, to claim unto himself and his followers the exclusive right to use those marks, and to make false representations of fact through and in conjunction with those marks.

Bishop Lawrence’s unauthorized use of the Diocese’s marks plainly violates Section 43(a) of the Lanham Act. 15 U.S.C. § 1125(a). His use of the marks falsely suggests to consumers of religious services and charitable donors that he is affiliated with—indeed, the ecclesiastical authority of—the Diocese. It falsely communicates to consumers and donors that the Diocese approves of Bishop Lawrence’s activities, misappropriating to his sect goodwill and credibility that the Diocese has husbanded over more than 200 years. And it causes confusion among those consumers and donors as to the values for which the Diocese stands and its status within The Episcopal Church. Bishop Lawrence and his separatist sect profit from the obvious association of “The Protestant Episcopal Church in the Diocese of South Carolina” with The Episcopal Church, yet at the same time impede and impair the Diocese’s ability to communicate to its followers its message, which accords with the faith and dictates of The Episcopal Church, by associating with the Diocese’s marks Bishop Lawrence’s message of renunciation of that Church.

Bishop Lawrence's misuse of the Diocese's marks is causing irreparable harm to the Plaintiff, the Right Reverend Charles G. vonRosenberg. After Bishop Lawrence renounced The Episcopal Church, Bishop vonRosenberg was elected to be the Provisional Bishop of the Diocese; he is recognized by The Episcopal Church as the ecclesiastical authority within the Diocese, and as such, under Church Canon III.13.1, is "authorized to exercise all the duties and offices of the Bishop of the Diocese." Bishop Lawrence's ongoing unauthorized use of the Diocese's marks deeply undermines Bishop vonRosenberg's ability to carry out his pastoral mission. Bishop Lawrence's misappropriation of the Diocese's marks disrupts Bishop vonRosenberg's ability to communicate on behalf of the Diocese and calls into doubt who is the ecclesiastical authority within the Diocese. As the Fourth Circuit held in a similar case long ago, "[t]hat the use of the name . . . by the seceding members as the name of the new and rival organization they are creating will result in injury and damage to the united church . . . seems so clear . . . as hardly to admit of argument." *Purcell v. Summers*, 145 F.2d 979, 983 (4th Cir. 1944). Immediate injunctive relief is necessary to stop Bishop Lawrence from further undermining Bishop vonRosenberg's leadership of the Diocese.

Bishop Lawrence's only defense to these claims is his contention that he is the Bishop of the Diocese and Bishop vonRosenberg is not. But this argument is completely foreclosed by controlling decisions of the Supreme Court and the Fourth Circuit. The Supreme Court has held that, at least where a hierarchical church is concerned, the First Amendment requires that civil courts defer to the determinations of ecclesiastical authorities on questions relating to matters of internal governance, including questions relating to the leadership of church units. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724-25 (1976). For more than 140 years, the Supreme Court has recognized that The Episcopal Church is a hierarchical church. *Watson v.*

Jones, 80 U.S. (13 Wall.) 679, 729 (1872). The Fourth Circuit accordingly has held that civil courts must defer to The Episcopal Church’s hierarchical determinations concerning leadership of church units. *Dixon v. Edwards*, 290 F.3d 699, 717 (4th Cir. 2002).

Bishop Lawrence’s contention that the Diocese somehow has withdrawn or seceded from The Episcopal Church and its hierarchical governance changes nothing. The question whether, under the Constitution and Canons of The Episcopal Church, a diocese can secede from the Church manifestly is “a matter of internal church government, an issue at the core of ecclesiastical affairs” as to which civil courts must defer to the determinations of the pertinent ecclesiastical authorities. *Serbian E. Orthodox*, 426 U.S. at 721; *see also Schofield v. Superior Ct. of Fresno Cnty.*, 118 Cal. Rptr. 3d 160, 162 (Cal. Ct. App. 2010) (“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.”). And, within the hierarchical Episcopal Church, there can be no dispute as to what the pertinent ecclesiastical authorities are, and that they have determined that the Diocese remains a sub-unit of The Episcopal Church, that Bishop Lawrence renounced his position as Bishop of the Diocese, and that Bishop vonRosenberg now is the Provisional Bishop of the Diocese.

Accordingly, just as the Fourth Circuit ordered in *Purcell*, this Court should enjoin Bishop Lawrence from further misappropriation of the marks of the Diocese that he left and from continuing to make false representations of fact regarding the Diocese’s approval and sponsorship of his activities. Bishop Lawrence indisputably has the right to leave the Diocese and form a new sect, but he has “no right to use the name of the organization from which [he] ha[s] withdrawn and thus hold [himself] out to the community as a continuation of or as connected with

that organization.” *Purcell*, 145 F.2d at 991. Bishop vonRosenberg’s motion for a preliminary injunction against Bishop Lawrence’s continuing use of the Diocese’s marks should be granted.

STATEMENT OF FACTS

I. The Episcopal Church, The Diocese, And The Diocese’s Marks

The Protestant Episcopal Church in the United States of America is a religious denomination and a constituent member of the Anglican Communion, a name generally used to describe the worldwide fellowship of those churches in communion with the See (or seat) of the Archbishop of Canterbury. *See* Statement of Robert Bruce Mullin (“Mullin Statement”) ¶ 38. The Episcopal Church, like the other “Provinces” of the Anglican Communion, is self-governing, has its own constituent units, and exercises jurisdiction within its geographic territory. *Id.* ¶¶ 39, 41. The Episcopal Church’s constituent units are regional dioceses as well as parishes within those dioceses. *See id.* ¶¶ 29, 35.

From its inception, The Episcopal Church has been a hierarchical church. *Id.* ¶ 43; *Aff. of the Right Reverend John C. Buchanan* (“Buchanan Aff.”) ¶ 5; *see also Dixon v. Edwards*, 290 F.3d 699, 716 (4th Cir. 2002) (“The Episcopal Church is hierarchical.”). Its Constitution, Canons, and Book of Common Prayer provide its governing law and are binding on every unit and member of the Church. Mullin Statement ¶ 25. Those documents have been adopted and are amended by the highest authority within the Church, the Church’s General Convention, which consists of two houses: the House of Bishops, comprising the Bishops of the Church, and the House of Deputies, comprising clergy and lay members elected by and from the dioceses of the Church. *Id.* ¶ 24. The General Convention cannot be limited by the actions of other entities within the Church. Mullin Statement ¶ 26. The General Convention elects the Presiding Bishop, who is the Chief Pastor and Primate of the Church. *Id.* at ¶ 27. The Presiding Bishop is charged

with, among other duties, initiating and developing the Church's policy and strategy and speaking about the Church's policies, strategies, and programs. *Id.*

Over one hundred geographically defined dioceses are at the next level within the Church's hierarchy. A diocese may be formed only with the consent of the General Convention and only after, among other things, the proposed diocese has affirmatively given its unqualified accession to The Episcopal Church's Constitution and Canons. *Id.* ¶¶ 29-30. The Episcopal Church's Constitution and Canons do not provide for or permit the unilateral release, withdrawal, or transfer of any diocese. *Id.* ¶ 153.

Each diocese is governed by its own Diocesan Convention, which adopts and may occasionally amend the diocesan constitution and canons. *Id.* ¶¶ 32-33. The diocesan constitution and canons cannot be inconsistent with The Episcopal Church's Constitution and Canons. *Id.* ¶ 33. Parishes, the units at the next level within the Church's hierarchy, are subject to the rules of both The Episcopal Church and their respective Diocese. *Id.*

Each diocese elects its own bishop, who may be installed only after receiving the consent of a majority of the leadership of the other dioceses. Mullin Statement ¶ 34. An individual ordained as bishop must promise to "guard the faith, unity, and discipline of the Church" and to "share with [his or her] fellow bishops in the government of the whole Church." *Id.* ¶ 31. A bishop is also charged with "exercising [his or her] . . . ministry in accordance with applicable provisions of the Constitution and Canons of the church and of the Diocese." Aff. of the Right Reverend Dorsey F. Henderson, Jr. ("Henderson Aff.") ¶ 9. In addition, bishops, like all Church clergy, must affirm that they will "conform to the Doctrine, Discipline, and Worship of the Episcopal Church." Mullin Statement ¶ 30.

The bishop serves as the “Ecclesiastical Authority” and chief executive officer of the diocese and manages the diocese’s spiritual and temporal affairs. *Id.* ¶ 34. He or she is advised by, and shares authority over certain matters with, the diocesan Standing Committee, a body of clergy and laity elected by the diocesan convention. *Id.* Pursuant to The Episcopal Church’s Constitution, a bishop may not resign his or her office and remain a bishop in good standing in the Church without the consent of a majority of the House of Bishops. *Id.* ¶¶ 101-02. A bishop may be removed on grounds specified in The Episcopal Church’s Canons. Mullin Statement ¶ 106. One such ground is a bishop’s “abandonment” of The Episcopal Church. *Id.*

The Protestant Episcopal Church in the Diocese of South Carolina (the “Diocese”) has been a diocese of The Episcopal Church, and thus a subordinate unit of the Church, since at least 1790, when the Diocese acknowledged the authority of the Constitution and Canons of The Episcopal Church. Aff. of Walter Edgar (“Edgar Aff.”) ¶ 8-9. The Diocese is a nonprofit corporation under South Carolina law.

The Diocese is the owner of four service marks (the “Diocese’s marks”):

- “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 (reproduced below).



Each was registered pursuant to South Carolina law on November 5, 2010, and each was used by the Diocese for many years prior to registration—some since the nineteenth century. These marks have been consistently used by the Diocese in all facets of its ecclesiastical and business affairs. The Diocese employs these marks to communicate to its followers, potential charitable donors, and other persons and entities, both religious and secular. These marks incorporate the Diocese’s long history as well as the reputation and goodwill that the Diocese has accumulated over its two-century existence. *Buchanan Aff.* ¶ 20. Because of their longstanding use by the Diocese, the marks are obviously associated with the Diocese and understood to represent an entity that is a sub-unit of The Episcopal Church and an entity that adheres to The Episcopal Church’s teachings, values, and governing laws. *Id.*

II. Bishop Lawrence’s Renunciation Of The Episcopal Church And His Ministry

Bishop Lawrence was the XIV Bishop of the Diocese. Like the Diocese’s bishops before him, he was elected, ordained, and installed pursuant to the requirements of The Episcopal Church’s Constitution, Canons, and Book of Common Prayer. *E.g.*, *Buchanan Aff.* ¶ 9.

Since as early as 2010, however, Bishop Lawrence has encouraged and participated in a variety of actions on behalf of the Diocese that violated The Episcopal Church’s Constitution and Canons (and, as such, are null and void). *Henderson Aff.* ¶ 8. In 2010 and 2011, Bishop Lawrence approved the purported addition of qualifications to the clause of the South Carolina Diocesan Constitution stating that the Diocese accedes to the Constitution of The Episcopal Church. *Henderson Aff.*, Attach. In addition, Bishop Lawrence approved the Diocesan Convention’s purported amendments of the corporate charter to remove various references to The Episcopal Church. *Id.*

As a result of these actions, a group of laity and clergy submitted a complaint to The Episcopal Church’s Bishop for Pastoral Development, who then forwarded the complaint to The

Episcopal Church's Disciplinary Board for Bishops (the "Board"). Henderson Aff. ¶ 7. As its name implies, the Board has jurisdiction over the discipline of Bishops. *Id.* ¶ 4. The complaint alleged that Bishop Lawrence had "abandoned The Episcopal Church by an open renunciation of the Discipline of the Church." *Id.* ¶ 7.

The Board, pursuant to its authority under The Episcopal Church's Canons and after consideration of evidence submitted in support of the complaint, concluded that Bishop Lawrence had engaged in a series of acts that constituted abandonment. *Id.* ¶¶ 5, 8. In accordance with The Episcopal Church's Canons, the Board then transmitted a "Certificate of Abandonment of The Episcopal Church and Statement of the Acts or Declarations Which Show Such Abandonment" to the Presiding Bishop. *Id.* ¶ 11.

On October 15, 2012, The Episcopal Church's Presiding Bishop, as required by the Church's Canons and pending an investigation by the House of Bishops, placed a restriction on Bishop Lawrence's exercise of office. Buchanan Aff. ¶ 13. This restriction, of which Bishop Lawrence was informed, precluded him from performing "any Episcopal, ministerial, or canonical acts." *Id.* ¶ 13-14.

On October 20, 2012, an announcement appeared on the website of the purported Diocese, stating that the "leadership" of the Diocese "had in place resolutions which would become effective upon any action by TEC." Compl. ¶ 42. The statement continued, "As a result of TEC's attack against our Bishop, the Diocese of South Carolina is disassociated from TEC, that is, its accession to the TEC Constitution and its membership in TEC have been withdrawn." *Id.* And in an address on November 17, 2012, Bishop Lawrence stated, "We have withdrawn from [The Episcopal] Church." "Bishop Lawrence's Address to the Special Convention" (Ex. A).

On December 5, 2012, The Episcopal Church's Presiding Bishop, acting pursuant to the Church's Canons and with the consent of her Council of Advice, accepted Bishop Lawrence's renunciation. Buchanan Aff. ¶ 17. As a result, Bishop Lawrence was removed from the ordained ministry of the Church, released from the obligations of all ministerial offices, and no longer permitted to exercise the authority conferred on him as Bishop. *Id.* ¶ 18.

In accordance with The Episcopal Church's Constitution and Canons, the Presiding Bishop then called a special meeting of the Diocesan Convention at which a new bishop would be elected. *Id.* ¶ 19. On January 26, 2013, the Diocesan Convention convened, and Bishop vonRosenberg was elected and installed as Provisional Bishop of the Diocese, pursuant to Church Canon III.13.1. *Id.* The Secretary of the Church's House of Bishops has entered Bishop vonRosenberg's name on the roll of Bishops as Provisional Bishop of the Diocese. *Id.* The Episcopal Church recognizes only Bishop vonRosenberg as the Bishop of the Diocese.

III. Bishop Lawrence's Continuing Misappropriation Of The Diocese's Marks

Despite his renunciation and removal from office, Bishop Lawrence continues to use the Diocese's marks, continues to hold himself out as the Bishop of the Diocese, and continues to make other false representations of fact regarding the Diocese's authorization and support of his activities. Examples of such conduct abound. Bishop Lawrence's biography on the website of the purported Diocese continues to identify him as the "XIV Bishop of the Episcopal Diocese of South Carolina." "XIV Bishop of the Episcopal Diocese of South Carolina" (Ex. B). In a letter issued on the same day the Presiding Bishop accepted his renunciation, Bishop Lawrence stated that he "remain[s] the Bishop of the Diocese of South Carolina." "A Letter from Bishop Lawrence Regarding Renunciation" (Ex. C). The letter includes an image of the Diocesan Seal. *Id.*; *see also* "Letter from Bishop Lawrence, Dated 1.4.2013" (Ex. M). In an announcement on the website of the purported Diocese, Bishop Lawrence is quoted as saying, "We continue to be the

Diocese of South Carolina—also known, legally as the Protestant Episcopal Church in the Diocese of South Carolina and as the Episcopal Diocese of South Carolina, of which I remain the Bishop.” “Diocese Responds to Announcement of January TEC Meeting” (Ex. D). Again, an image of the Diocesan Seal appears alongside the announcement. *Id.* In addition, Bishop Lawrence and his followers have purported to convene the “222nd Annual Convention of the Diocese of South Carolina,” to be held on March 8-9, 2013. “222nd Annual Diocesan Convention” (Ex. K). The announcement of the Convention employs the Diocese’s marks. *Id.*

Bishop Lawrence’s continued use of the Diocese’s marks and repeated misrepresentations about his association with the Diocese have created insurmountable impediments to Bishop vonRosenberg’s ability to carry out his spiritual and temporal duties. *See generally* Aff. of the Right Reverend Charles G. vonRosenberg (“vonRosenberg Aff.”) ¶¶ 9-21. Bishop Lawrence’s conduct confuses and misleads followers, potential followers, and charitable donors regarding the leadership of the Diocese, Bishop Lawrence’s association with the Diocese, and the values and principles to which the Diocese adheres. *Id.* As a result, Bishop Lawrence has undermined Bishop vonRosenberg’s ability to garner support for the Diocese and to maintain and control the Diocese’s credibility and reputation. *Id.*

ARGUMENT

Bishop vonRosenberg has met the standard for a preliminary injunction. A plaintiff is entitled to a preliminary injunction upon establishing that (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of hardships tips in his favor; and (4) an injunction is in the public interest. *See Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 271 (4th Cir. 2002). Here, Bishop vonRosenberg easily satisfies this standard and is entitled to an order enjoining the unlawful behavior of Bishop Lawrence and others.

I. Bishop vonRosenberg Is Likely To Succeed On The Merits Of His Lanham Act Claims.

Bishop Lawrence has violated section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), by committing trademark infringement and false advertising. He has committed trademark infringement by (1) using the Diocese's marks; (2) using the marks in commerce; (3) using the marks in connection with goods or services; (4) using the marks in a manner likely to confuse consumers; and (5) damaging Bishop vonRosenberg as a result. 15 U.S.C. § 1125(a)(1)(A); *see also Lamparello v. Falwell*, 420 F.3d 309, 313 (4th Cir. 2005) (listing the elements of an infringement claim under 15 U.S.C. § 1125(a)). In addition, Bishop Lawrence has committed false advertising by (1) making repeated false and misleading descriptions or representations of fact in commercial advertisements about the services and activities he offers; (2) making misrepresentations that are material, in that they are likely to influence the decisions of consumers of religious services and charitable donors (3); making misrepresentations that actually deceive or have the tendency to deceive a substantial segment of their audience; (4) placing those misrepresentations in commerce; and (5) damaging Bishop vonRosenberg as a result. 15 U.S.C. § 1125(a)(1)(B); *Scotts*, 315 F.3d at 272 (listing the elements of a false-advertising claim under 15 U.S.C. § 1125(a)).

Bishop Lawrence's continuing use of the Diocese's marks despite his renunciation of The Episcopal Church and his removal as Bishop of the Diocese is undeniably "likely to cause confusion, or to cause mistake, or to deceive" as to his "affiliation, connection, or association" with the Diocese. 15 U.S.C. § 1125(a)(1)(A). For example, his continued use in official correspondence of the Diocese's marks and his former title as Bishop of the Diocese creates the false impressions that he represents the Diocese and that the Diocese stands behind his activities. His continuing use of the Diocese's marks likewise misleads consumers of religious services and charitable do-

nors into believing that the Diocese “sponsors[]” and “approv[es]” his ministry and activities antagonistic to The Episcopal Church. *Id.*

In addition, Bishop Lawrence, through commercial advertising and promotions, has made repeated “false or misleading description[s] of fact [and] false or misleading representation[s] of fact” regarding his activities and association with the Diocese. 15 U.S.C. § 1125(a)(1). By falsely asserting that the Diocese withdrew from The Episcopal Church, that he continues to be Bishop of the Diocese, and that his activities are authorized and sponsored by the Diocese, Bishop Lawrence plainly “misrepresents the nature, characteristics, [and] qualities” of his “services [and] commercial activities.” *Id.* § 1125(a)(1)(B).

All of this conduct causes immense and irreparable harm to Bishop vonRosenberg, the actual ecclesiastical head of the Diocese. Bishop Lawrence’s infringing use of the Diocese’s marks and his unrelenting misrepresentations deeply undermine Bishop vonRosenberg’s ability to lead and to control the Diocese and to communicate on behalf of the Diocese. His conduct misappropriates the Diocese’s goodwill and reputation for the benefit of his activities, and, in turn, deprives Bishop vonRosenberg of the benefit of and control over the Diocese’s credibility and reputation. This enables Bishop Lawrence to divert to himself followers and charitable contributions that otherwise would flow to the diocese now led by Bishop vonRosenberg. These consequences irreparably impede Bishop vonRosenberg’s ability to carry out his pastoral mission. That injury cannot be compensated with monetary damages; it can be remedied only with injunctive relief. Such relief is plainly warranted here.

A. Bishop Lawrence’s Ongoing Statements That He Is The Bishop Of The Diocese Are False Representations Of Fact.

Bishop Lawrence continues to represent to the public that he is the Bishop of the Diocese. *See, e.g.*, “Diocese Responds to Announcement of January TEC Meeting” (Ex. D) (“We continue

to be the Diocese of South Carolina—also known, legally as the Protestant Episcopal Church in the Diocese of South Carolina and as the Episcopal Diocese of South Carolina, of which I remain the Bishop.”). He makes such representations despite the fact that he renounced The Episcopal Church and was subsequently removed as Bishop of the Diocese on December 5, 2012. His contention that he remains the Bishop of the Diocese because the Diocese left The Episcopal Church must be rejected as contrary to well-established First Amendment principles.

As previously described, The Episcopal Church is a hierarchical church. The Supreme Court recognized this fact as early as 1872. *See Watson v. Jones*, 80 U.S. (13 Wall.) 679, 729 (1872). And this fact has been reaffirmed by numerous courts, including the Fourth Circuit, through the present day. *See, e.g., Dixon v. Edwards*, 290 F.3d 699, 716 (4th Cir. 2002) (“The Episcopal Church is hierarchical.”); *Rector, Wardens & Vestrymen of Christ Church in Savannah v. Bishop of Episcopal Diocese of Ga., Inc.*, 699 S.E.2d 45, 48 (Ga. Ct. App. 2010) (same); *Episcopal Diocese of Mass. v. DeVine*, 797 N.E.2d 916, 921 (Mass. 2003) (same); *Daniel v. Wray*, 580 S.E.2d 711, 714 (N.C. Ct. App. 2003) (same); *Protestant Episcopal Church in the Diocese of N.J. v. Graves*, 417 A.2d 19, 21 (N.J. 1980) (same). The Episcopal Church’s hierarchical nature is apparent from, among other things, its three-tiered structure, that dioceses are subordinate to the national Church, that parishes are in turn subordinate to dioceses, that the Diocese and all other dioceses are subject to the Constitution and Canons of The Episcopal Church, and that all clergy are required to take an oath to “conform to the Doctrine, Discipline, and Worship of the Episcopal Church,” Mullin Statement ¶ 30. It cannot be plausibly disputed that The Episcopal Church is a hierarchical church. Buchanan Aff. ¶ 5.

Given The Episcopal Church’s status as a hierarchical church, the First Amendment demands that civil courts defer to the decisions of church authorities regarding the identity of

church leaders and the government and direction of subordinate bodies. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724-25 (1976); *see also 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.”); *cf. 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 . . .”).

In *Dixon*, the Fourth Circuit applied this principle to circumstances analogous to those present here. The Episcopal Bishop for the Diocese of Washington sought a declaratory judgment that the defendant was not the rector of a parish within the bishop’s diocese. 290 F.3d at 703. Although the parish’s vestry had selected the defendant as pastor, the bishop declined to approve that selection. *Id.* The district court ruled for the bishop, and the Fourth Circuit affirmed. Because the bishop was the highest ecclesiastical body that exercised authority over the hiring, the First Amendment required that the civil courts defer to her decision. *Id.* at 717.

As in *Dixon*, the decision of the Church’s ecclesiastical authorities controls. On December 5, 2012, the Presiding Bishop, with the advice and consent of her Council of Advice and pursuant to her authority under The Episcopal Church’s Canons, accepted Bishop Lawrence’s renunciation of The Episcopal Church and removed him from the ordained ministry of the Church. As a result, Bishop Lawrence is no longer a representative of The Episcopal Church or the Diocese. Thereafter, the Diocesan Convention, in consultation with the Presiding Bishop, selected

Bishop vonRosenberg as Provisional Bishop of the Diocese. The Episcopal Church accordingly recognizes Bishop vonRosenberg as the sole Bishop of the Diocese. It is that decision that must control. The First Amendment does not permit the federal courts to supplant that decision with Bishop Lawrence's claim that he represents the Diocese. "Under the constraints of the First Amendment, when a subordinate in a church hierarchy disputes a decision of the highest ecclesiastical tribunal, the civil courts may not constitutionally intervene." *Dixon*, 290 F.3d at 715. Bishop vonRosenberg thus must be regarded as the legitimate and sole Bishop of the Diocese. Accordingly, Bishop Lawrence's continuing representations that he is the Bishop of the Diocese and that his activities are associated with and sponsored by the Diocese are patently false.

Bishop Lawrence cannot escape this conclusion by arguing that the Diocese has withdrawn from The Episcopal Church and that the Church's determination as to who is Bishop of the Diocese therefore has no effect. The same basic facts were present in *Serbian Eastern Orthodox*. There, too, the dissident Bishop asserted that "he no longer recognized" the decisions of the central church, and the Diocese's governing council declared itself "autonomous" from the central church. 426 U.S. at 704, 705. Yet this did not change the result because the First Amendment's protection of the autonomy of hierarchical churches "applies with equal force to church disputes over church polity and church administration." *Serbian E. Orthodox*, 426 U.S. at 710. Thus, on the question of whether the Diocese was autonomous from the central church the Court recognized that courts were required to defer to the interpretations of "the highest ecclesiastical tribunals in which the church law vests authority to make that interpretation." *Id.* at 721; *see also Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) (hierarchical churches have "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine"); *Watson*, 80 U.S. (13 Wall.) at 728-29 (observing that the

right of hierarchical churches “to create tribunals . . . for the ecclesiastical government of all the individual members, congregations, and officers within the general association[] is unquestioned. *All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.*”) (emphasis added).¹ The Court accordingly held that “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. *Serbian E. Orthodox*, 426 U.S. at 721, 725; *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.”). So, too, here.

Finally, it does not matter that The Episcopal Church’s determination that Bishop vonRosenberg is the Bishop of the Diocese potentially impacts the *control* of property owned by the Diocese. Again, the same was true in *Serbian Eastern Orthodox*: there the Court recognized the case “affects the control of church property” because “the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property-holding corporations.” 426 U.S. at 709. Yet, even though the *religious* dispute over the Bishop’s defrockment “determines control of the property,” it still was properly regarded “not [as] a church property dispute” but “a religious dispute the resolution of which under our cases is for ecclesiastical and not for civil tribunals.” *Id.* So-called “neutral principles of law” that states may use to resolve

¹ Of course, here, the Diocese’s consent to The Episcopal Church’s hierarchical governance was not implied, but express, written into its constitution in its accession clause.

disputes over “ownership of church property,” *Jones v. Wolf*, 443 U.S. 595, 603, 604 (1979) (emphasis added), have no bearing on the fundamentally religious disputes at issue here.²

B. Bishop Lawrence Has Committed Trademark Infringement In Violation Of The Lanham Act.

By continuing to use the Diocese’s marks even though he is no longer the Bishop of the Diocese, Bishop Lawrence has committed trademark infringement in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A). Bishop Lawrence’s intentional copying of the Diocese’s marks undeniably confuses consumers of religious services and charitable donors by expressly representing that Bishop Lawrence’s activities are “affiliat[ed], connect[ed], [and] associate[ed]” with the Diocese,” and that the Diocese “sponsors[] [and] approv[es]” of his commercial activities and services. 15 U.S.C. § 1125(a)(1)(A).

Because Bishop Lawrence is falsely representing that he is the Bishop of the Diocese and is using the Diocese’s exact marks, the Court need not undertake a factor-by-factor analysis of whether Bishop Lawrence’s use creates a likelihood of confusion. Bishop Lawrence is essentially employing counterfeit devices so that consumers of religious services and charitable donors will regard him as a representative of the Diocese. Accordingly, the Court can presume that a likelihood of confusion exists. *See Polo Fashions, Inc. v. Craftex, Inc.*, 816 F.2d 145, 148 (4th Cir. 1987) (“In this case, the two symbols are substantially identical. They are used in the same manner Where, as here, one produces counterfeit goods in an apparent attempt to capitalize upon the popularity of, and demand for, another’s product, there is a presumption of a likelihood of confusion.”); *Gucci Am., Inc. v. Duty Free Apparel, Ltd.*, 286 F. Supp. 2d 284, 287 (S.D.N.Y. 2003) (“[C]onfusing the customer is the whole purpose of creating counterfeit goods.”). Bishop

² Indeed, *Jones v. Wolf* itself recognizes that even in the context of a dispute over the ownership of church property, if “the interpretation of the instruments of ownership would require the civil courts to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.” 443 U.S. at 604.

Lawrence's intentional use of the Diocese's exact marks equates to intentional misrepresentations of fact, which, by their very nature, confuse and deceive.

In addition, the Fourth Circuit determined that a likelihood of confusion existed in a case markedly similar to the present one. In *Purcell v. Summers*, 145 F.2d 979 (4th Cir. 1944), the court considered a dispute arising from the merger of the Methodist Episcopal Church South ("MECS") with other religious organizations to form the Methodist Episcopal Church. Bishops of the united church brought an action against former members of the MECS, who had left the church as a result of the merger. *Id.* at 981. The dissident members continued to claim they represented the MECS and continued to use the MECS's name. *Id.* The Fourth Circuit ruled for the plaintiffs and enjoined the dissident members from using the name. *Id.* at 991. The court was direct in its conclusion: "That the use of the name . . . by the seceding members as the name of the new and rival organization that they are creating will result in injury and damage to the united church . . . seems so clear to our minds as hardly to admit of argument." *Id.* at 983. The court did not doubt that the dissident members' use of the name would create confusion among the faithful and those seeking to commit their time, talent, and treasure to the Methodist Church. *See id.* at 985. So too here. Bishop Lawrence "unquestionably ha[s] the right to withdraw from [the Diocese] and form a new organization, calling it by any name that will not lead to confusion or enable it to appropriate the standing and good will of [the Diocese]; but [he] ha[s] no right to use the name of the organization from which [he] ha[s] withdrawn and thus hold [himself] out to the community as a continuation of or as connected with that organization." *Id.* at 991; *see also Nat'l Bd. of Young Women's Christian Ass'n of U.S.A. v. Young Women's Christian Ass'n of Charleston, S.C.*, 335 F. Supp. 615, 628-29 (D.S.C. 1971) (enjoining former affiliate from using

the name of the national organization on the ground that such use was likely to cause confusion for trademark infringement purposes).

Even without the presumption of confusion that arises from Bishop Lawrence's use of the Diocese's exact marks, a straightforward application of the likelihood-of-confusion factors also demonstrates that the likelihood of confusion is extremely high and that consumers of religious services and charitable donors are likely to believe that Bishop Lawrence is affiliated with the Diocese and that the Diocese sponsors his agenda. The Fourth Circuit has articulated nine factors that may be relevant to whether a likelihood of confusion exists: (1) the strength or distinctiveness of the mark; (2) the similarity of the two marks; (3) the similarity of the goods or services that the marks identify; (4) the similarity of the facilities used by the markholders; (5) the similarity of advertising used by the markholders; (6) the defendant's intent; (7) actual confusion; (8) the quality of the defendant's product; and (9) the sophistication of the consuming public. *See Rosetta Stone Ltd. v. Google, Inc.*, 676 F.3d 144, 153 (4th Cir. 2012).

First, the Diocese's marks are strong and distinctive. The marks are undeniably closely associated with the Diocese. Buchanan Aff. ¶ 20. The Diocesan Seal, for example, has been used by the Diocese since the late 1800's. It has regularly appeared on the Diocese's correspondence, Convention journals, website, and releases to the public. *See* Complaint for Declaratory and Injunctive Relief ¶¶ 18, 265, *The Protestant Episcopal Church In The Diocese of South Carolina v. The Episcopal Church*, No. 2013-CP-18-13 (S.C. Ct. Com. Pl., 1st Jud. Cir.) (Ex. E).

Second, Bishop Lawrence employs the actual marks. For example, in a letter issued following the Presiding Bishop's acceptance of his renunciation, Bishop Lawrence continued to maintain that he was the Bishop of the Diocese, and he employed the Diocesan seal. "A Letter from Bishop Lawrence Regarding Renunciation" (Ex. C); *see also, e.g.*, "Our Diocesan Seal"

(Ex. F). In addition, Bishop Lawrence and his followers have purported to summon a Diocesan Convention on March 8-9, 2013. Communications relating to that meeting use the Diocese's exact marks. *See, e.g.*, "222nd Annual Diocesan Convention" (Ex. K).

Third, Bishop Lawrence purports to represent the Diocese. Thus, he purports to provide the very same services that the Diocese, through Bishop vonRosenberg, actually provides.

Fourth, Bishop Lawrence, Bishop vonRosenberg, and the Diocese use like facilities, namely houses of worship in the Diocese.

Fifth, Bishop Lawrence, Bishop vonRosenberg, and the Diocese use similar methods and styles of communication in order to reach consumers of religious services and charitable donors. Thus, it would be very difficult for a recipient of such a communication to determine whether the Diocese, through its legitimate representatives, sent the communication.

Sixth, as discussed, where an entity *intentionally* copies a mark, for the purpose of exploiting the goodwill created by the mark, a likelihood of confusion is presumed. *See Osem Food Indus. Ltd. v. Sherwood Foods, Inc.*, 917 F.2d 161, 164-65 (4th Cir. 1990); *Rosetta Stone*, 676 F.3d at 160 n.5. Here, exact copies of the Diocese's marks have been employed by Bishop Lawrence so that consumers of religious services and charitable donors view him as a representative of the Diocese in order to exploit the goodwill of the Diocese. Why else would the website with which he is associated include a page entitled "Our Diocesan Seal" (Ex. F), which includes an image of the seal and documents the history of the seal, other than to appropriate the reputation and goodwill of the Diocese? Bishop Lawrence no doubt wants consumers of religious services and charitable donors to believe that he is affiliated with the Diocese and that his activities are sponsored by the Diocese. This Court can presume that he has succeeded in doing so.

Seventh, Bishop Lawrence's overt use of the Diocese's marks and his continued false assertions that he represents the Diocese have caused demonstrable actual confusion among consumers of religious services and charitable donors as to: (1) the leadership of the Diocese; (2) whether the Diocese is affiliated with The Episcopal Church; and (3) the values for which the Diocese stands. *See, e.g.*, Adam Parker, Finding the Current: Small Episcopal worship groups form in wake of theological storm, *The Post & Courier* (Mar. 3, 2013) (Ex. L); Buchanan Aff. ¶ 22; vonRosenberg Aff. ¶¶ 9-16.

Eighth, although it is not possible to compare the relative quality of religious services, Bishop Lawrence cannot provide the quality of services he purports to provide (those provided by the Diocese), because he has renounced the Episcopal faith and thereby left the Diocese.

Ninth, due to Bishop Lawrence's repeated misrepresentations and use of the Diocese's actual marks, it is extremely difficult for any member of the public, no matter how knowledgeable, to discern that Bishop Lawrence is not a true representative of the Diocese, particularly given that Bishop Lawrence claims *exclusive* rights to use the Diocese's marks. In addition, even if it were possible to make that determination, many consumers and donors likely lack the information necessary to do so. *See Purcell*, 145 F.2d at 983 ("A large portion of any community is not well informed about ecclesiastical matters; and for the dissident members to use the name of the old church will enable them to appear in the eyes of the community as the continuation of that church, and to make the united church, which is in reality the continuation of the old church, appear as an intruder.").

Bishop vonRosenberg also satisfies the other elements of an infringement claim under § 1125(a): use in commerce; use in connection with goods or services; and a likelihood of being damaged. *See* 15 U.S.C. § 1125(a)(1).

Bishop Lawrence has used the channels and instrumentalities of interstate commerce—the Internet, for example—in his communications to consumers of religious services and charitable donors. See *United States v. Horne*, 474 F.3d 1004, 1006 (7th Cir. 2007) (noting that an online-auction site is an “avenue of interstate commerce”).

Bishop Lawrence has also used the marks in connection with the provision of religious and charitable services. It is axiomatic that infringement that occurs in connection with charitable and religious services is actionable under the Lanham Act. See, e.g., *United We Stand Am., Inc. v. United We Stand, Am. N.Y., Inc.*, 128 F.3d 86, 89-90 (2d Cir. 1997) (explaining that “[t]he protection of the trademark or service mark of non-profit and public service organizations requires that use of the mark by competing organizations be prohibited” and collecting cases); *Purcell*, 145 F.2d at 985 (“The fact that a corporation is an eleemosynary or charitable one and has no goods to sell, and does not make money, does not take it out of the protection of the law of unfair competition.” (internal quotation marks omitted)).

Finally, Bishop vonRosenberg has been, and likely will continue to be, damaged by Bishop Lawrence’s infringing use. The confusion created by Bishop Lawrence’s use interferes with Bishop vonRosenberg’s ability to carry out his pastoral mission and to communicate with the followers of his faith. vonRosenberg Aff. ¶¶ 9-21. For example, Bishop Lawrence and his followers have called for a purported Diocesan Convention to occur on March 8 and 9, 2013, the same days that the legitimate Convention of the Diocese had already been scheduled to occur. *Id.* ¶ 15. This purported convention and similar events by Bishop Lawrence create immense confusion and undermine Bishop vonRosenberg’s ability to lead the Diocese. *Id.* Further, Bishop Lawrence’s infringing use diverts to Bishop Lawrence followers and charitable contributions intended for a religious organization that is part of The Episcopal Church. *Id.* ¶¶ 9, 14. Bishop

Lawrence's conduct restricts Bishop vonRosenberg's ability to garner support for the activities actually supported by the Diocese. In addition, Bishop Lawrence's unauthorized use deprives Bishop vonRosenberg and the Diocese of control over the Diocese's goodwill and reputation. *Id.*

¶ 19. Without such control, Bishop vonRosenberg will be unable to ensure that the Diocese and its marks continue to be associated with those teachings, values, and traditions that consumers of religious services and charitable donors have come to expect from the Diocese. *See Purcell*, 145 F.3d at 938 ("The united church, furthermore, will be hurt by any reproach that might be brought on the name of one of the merged churches by the faith and practices of those allowed to use that name; and it is not fair to it that such name be used by persons over whose professions of faith and practices it can exercise no control."). As long as Bishop Lawrence continues to use the Diocese's marks, Bishop vonRosenberg will be impeded in the performance of his spiritual and temporal duties as ecclesiastical authority of the Diocese.

Bishop vonRosenberg is clearly likely to succeed on his trademark infringement claim.

C. Bishop Lawrence Has Committed False Advertising In Violation Of the Lanham Act.

Likewise, Bishop vonRosenberg is likely to succeed on his false-advertising claim under section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B). *See Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 272-73 (4th Cir. 2002) (listing elements of the claim). Bishop Lawrence has falsely represented to consumers of religious services and charitable donors that he continues to be the Bishop of the Diocese and that the Diocese authorizes and sponsors his activities.

Bishop Lawrence has made repeated statements and representations regarding "the nature, characteristics, [and] qualities," 15 U.S.C. § 1125(a)(1)(B), of his services and activities that are false on their face. As explained, Church authorities have determined that Bishop vonRosenberg, and not Bishop Lawrence, is the legitimate Bishop of the Diocese. The law of

The Episcopal Church requires that this decision control for ecclesiastical purposes; and the First Amendment requires that this decision control in civil courts. Bishop Lawrence nonetheless continues to maintain in communications to consumers of religious services and charitable donors that he represents the Diocese and that his activities are sponsored and authorized by the Diocese. For example, a donation solicitation letter on the website of the purported Diocese states that Bishop Lawrence is the “XIV Bishop of South Carolina.” “Building for Christ” (Ex. G). In addition, Bishop Lawrence and his followers have called for a Convention that they represent to be the actual official Convention of the Diocese and to include activities and programs of importance to the Diocese. “222nd Annual Diocesan Convention” (Ex. K) (“This year’s convention workshops are designed to equip the Diocese’s lay members and clergy for the work of ministry. Bishop Lawrence promised that such workshops would be key parts of future annual Diocesan Conventions.”). Those representations are patently false, as are the many other similar statements made by Bishop Lawrence. *See, e.g.*, “A Letter from Bishop Lawrence Regarding Renunciation” (Ex. C) (“[T]he Diocese of South Carolina has canonically and legally disassociated from the Episcopal Church. . . . I remain the Bishop of the Diocese of South Carolina. We shall continue to preach the Good News of Jesus Christ in Word and Deed . . .”).

From this, it follows inexorably that Bishop Lawrence’s false statements and representations actually deceive a substantial segment of their audience. Where, as here, “the advertisement is literally false, a violation may be established without evidence of consumer deception.” *Scotts Co.*, 315 F.3d at 273 (internal quotation marks omitted); *see also Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm., Co.*, 290 F.3d 578, 586 (3d Cir. 2002) (“If a plaintiff proves that the challenged commercial claims are ‘literally false,’ a court may grant relief without considering whether the buying public was actually misled.”). Indeed,

the tendency of Bishop Lawrence's false statements to deceive is obvious. An individual seeking to make a donation to the Protestant Episcopal Church in the Diocese of South Carolina could arrive at the website of the purported Diocese, make a donation, and, based on Bishop Lawrence's representations, believe that her donation would further the mission and values of the Diocese. Bishop Lawrence's misrepresentations are intended to make consumers of religious services and charitable donors believe that Bishop Lawrence's activities are authorized and sponsored by the Diocese, and they no doubt have that effect.

Bishop Lawrence's misrepresentations are also material, in that they are likely to influence the decisions of consumers of religious services and charitable donors. This fact is apparent from the website mentioned above, in which Bishop Lawrence solicits donations alongside representations that he continues to represent the Diocese. *See, e.g.*, "Building for Christ" (Ex. G) (donation solicitation letter and "donate now" link alongside the name "The Diocese of South Carolina" and the Diocesan Seal). Further, that the website has dedicated a page to "frequently asked questions" "About the Assault on the Diocese of South Carolina," (Ex. H), demonstrates that issues pertaining to the status of the Diocese are of immense importance to a significant number of consumers of religious services and charitable donors. Bishop Lawrence's repeated false representations that he is the Bishop of the Diocese and that the Diocese authorizes and supports his activities make it far more likely that persons will support his activities, financially or otherwise.

Bishop Lawrence has also placed his misleading statements in commerce. As the preceding discussion documents, Bishop Lawrence has made countless false statements and representations on the Internet. *Horne*, 474 F.3d at 1006.

Finally, as explained above, Bishop Lawrence's misrepresentations regarding his status as Bishop and the Diocese's authorization and sponsorship of his activities have damaged and will continue to damage Bishop vonRosenberg. Those representations are significant obstacles to Bishop vonRosenberg's achievement of his pastoral mission. vonRosenberg Aff. ¶¶ 9-21. They are designed to attract to Bishop Lawrence's activities support that is intended for the Diocese led by Bishop vonRosenberg, and they, in turn, undermine Bishop vonRosenberg's ability to garner support for the activities actually supported by the Diocese. Bishop Lawrence's false statements have diverted and will continue to divert followers and charitable donors from the Diocese and to Bishop Lawrence, and they will continue to severely limit Bishop vonRosenberg's ability to utilize and control the reputation and goodwill of the Diocese.

Bishop Lawrence has plainly committed false advertising in violation of section 43(a) of the Lanham Act.

D. The Pending State Proceeding Presents No Obstacle To This Court's Adjudication Of This Case.

On January 4, 2013, at the behest of Bishop Lawrence and his followers, the purported "Protestant Episcopal Church in the Diocese of South Carolina," the purported "Trustees of The Protestant Episcopal Church in South Carolina," and numerous diocesan parishes filed a complaint in South Carolina state court against The Episcopal Church. *See* Complaint for Declaratory and Injunctive Relief, *The Protestant Episcopal Church In The Diocese of South Carolina v. The Episcopal Church*, No. 2013-CP-18-13 (S.C. Ct. Com. Pl., 1st Jud. Cir.) (Ex. E). The state court plaintiffs sought a declaratory judgment that "they are the sole owners of their respective real and personal property" and that The Episcopal Church has "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." *Id.* at 2. The state court plain-

tiffs also sought an injunction prohibiting The Episcopal Church from such uses. *Id.* On January 31, 2013, the state court issued a temporary consent injunction.

Should Bishop Lawrence raise the issue, this Court can easily reject the argument that the Court should abstain in light of the pending state court proceeding. The federal courts have a “virtually unflagging obligation . . . to exercise the jurisdiction given them.” *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Accordingly, in almost all events, “the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction.” *Id.* (internal quotation marks omitted). In *Colorado River*, the Supreme Court recognized that limited circumstances may, at times, warrant abstention in a federal action in light of a parallel state proceeding. *Id.* at 818. But the Court cautioned that “[o]nly the clearest of justifications will warrant dismissal.” *Id.* at 819. “[T]he decision whether to dismiss a federal action because of parallel state-court litigation” rests “on a careful balancing of the important factors as they apply in a given case, with the balance heavily weighted in favor of the exercise of jurisdiction.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983). Only “exceptional circumstances” and the “clearest of justifications” warrant a federal court’s surrendering jurisdiction. *Id.* at 25-26 (internal quotation marks omitted). Abstention under *Colorado River* is the narrow exception, not the rule, and this case cannot be made to fit within that narrow exception.

At the threshold, this suit cannot be characterized as parallel to the state proceeding. The Fourth Circuit has “strictly construed” the parallelism requirement, holding that “the parties involved must be almost identical,” *Chase Brexton Health Servs, Inc. v. Maryland*, 411 F.3d 457, 464 (4th Cir. 2005), and that the cases must involve “totally duplicative” claims, *McLaughlin v. United Va. Bank*, 955 F.2d 930, 935 (4th Cir. 1992). *See New Beckley Mining Corp. v. Int’l Un-*

ion, *United Mine Workers of Am.*, 946 F.2d 1072, 1073 (4th Cir. 1991) (“Suits are parallel if *substantially the same parties* litigate *substantially the same issues* in different forums.” (emphases added)). Neither is true here. The parties in the two actions are not the same: Bishop Lawrence is not a party in the state court action, and none of the plaintiffs in the state action are in the federal action. And far from totally duplicative, the five claims asserted in the two actions overlap little. Indeed, most of the claims are distinct. As for the two claims that are arguably similar—the state and federal infringement claims—they are grounded in different substantive laws. Given these incongruities, the state and federal cases are certainly not “totally duplicative,” and thus not parallel. See *McLaughlin*, 955 F.2d at 935 (explaining that cases are not parallel if they merely “have similar claims and draw on common events”); *Purcell v. Summers*, 126 F.2d 390, 395 (4th Cir. 1942) (rejecting abstention argument in case brought by church against dissident members and explaining that “it is no objection to [the] exercise of jurisdiction that it may result in the determination of questions which are involved in the state court litigation”).

Yet even if the suits were parallel, the “exceptional circumstances” that sometimes warrant abstention plainly do not exist in this case. *Colorado River*’s exceptional-circumstances test is generally expressed as a series of factors. See *Chase Brexton Health Servs., Inc. v. Maryland*, 411 F.3d 457, 463-64 (4th Cir. 2005). None of those factors weighs in favor of applying the narrow exception.

Critically, “the presence of federal-law issues must always be a major consideration weighing against” a federal court’s surrender of jurisdiction. *Moses H. Cone*, 460 U.S. at 26. Federal-law issues are not only present in this case, they provide the exclusive rules of decision. Bishop vonRosenberg’s claims arise solely under Section 43 of the Lanham Act. 15 U.S.C. § 1125. And the subsidiary questions relating to the falsity of Bishop Lawrence’s representa-

tions concerning his status as Bishop of the Diocese and his affiliation with the Diocese are controlled by the First Amendment, as interpreted in controlling decisions of the Supreme Court. That these federal-law issues provide the rules of decision for Bishop vonRosenberg's claims, and the absence of significant issues of state law, weigh strongly against abstention.

The other factors likewise support this Court's exercise of its jurisdiction:

First, the subject matters do not involve property over which the state court may assume in rem jurisdiction. As a result, this factor weighs against abstention. *Gannett Co. v. Clark Constr. Grp., Inc.*, 286 F.3d 737, 747 (4th Cir. 2002).

Second, there can be no plausible contention that this forum is any less convenient to the parties than the state forum. Bishop Lawrence resides in Charleston County, in the State of South Carolina, and much of the relevant conduct had its genesis in the State.

Third, the prospect of piecemeal litigation does not support abstention. As explained, this action and the state action are separate litigations, with entirely different parties and different claims and issues. Thus, there is little concern that this Court and the state court would reach different results on the same issues. Even assuming the contrary, moreover, "the mere potential for conflict in the results of adjudications, does not, without more, warrant staying exercise of federal jurisdiction." *Colo. River*, 424 U.S. at 816. There is absolutely no indication that the requisite "more" exists in this case. Indeed, the Fourth Circuit has held, on virtually identical facts, that "it is no objection to [the] exercise of jurisdiction that it may result in the determination of questions which are involved in the state court litigation." *Purcell*, 126 F.2d at 395.

Fourth, although the state court action was filed first, the Supreme Court has instructed that the progress made in each action is more important than the sequence of the filings. *Moses H. Cone*, 460 U.S. at 21. Here, virtually no state court proceedings have taken place. No de-

fendant has filed a responsive pleading; discovery has not yet begun; and no dispositive motion has been filed. In addition, Bishop vonRosenberg was not elected as Bishop of the Diocese until January 26, 2013—approximately three weeks after the state court action was filed. Bishop vonRosenberg simply had no opportunity to file his federal action prior to the filing of the state action. Thus, this factor also provides no ground for abstention.

This case quite simply does not present the “exceptional circumstances” necessary to justify a federal court’s surrendering its jurisdiction.

II. Absent An Injunction Bishop vonRosenberg Will Continue To Suffer Irreparable Harm.

If this Court does not issue an injunction, Bishop vonRosenberg will continue to suffer very real and very substantial harm. Bishop Lawrence’s use of the marks will continue to divert to Bishop Lawrence’s organization consumers of religious services and charitable contributions that otherwise would flow to the Diocese led by Bishop vonRosenberg. Bishop vonRosenberg will also be unable to control the reputation of the Diocese and the message that is communicated, on behalf of the Diocese, to followers, donors, and the public.

The Fourth Circuit has recognized that “irreparable injury regularly follows from trademark infringement.” *Lone Star Steakhouse & Saloon, Inc. v. Alpha of Va., Inc.*, 43 F.3d 922, 939 (4th Cir. 1995). This Court has explained that the irreparable harm suffered due to trademark infringement “is enormous, immediate, and presumed in law.” *Augusta Nat’l, Inc. v. Exec. Golf Mgmt., Inc.*, 996 F. Supp. 492, 496 (D.S.C. 1998); *see also Wonder Works v. Cranium, Inc.*, 455 F. Supp. 2d 453, 457 (D.S.C. 2006); *Englert, Inc. v. LeafGuard USA, Inc.*, No. 4:09-cv-00253, 2009 WL 5031309, at *5 (D.S.C. Dec. 14, 2009). Here, even without this presumption, both the evidence before the Court and the undisputed allegations of the Complaint demonstrate that

Bishop Lawrence's ongoing infringement and false advertising are causing Bishop vonRosenberg irreparable damage.

Bishop Lawrence, although no longer a representative of the Diocese, continues to hold himself out as such and continues to use the Diocese's exact marks. Bishop Lawrence, therefore, falsely represents to consumers of religious services and charitable donors that his activities are authorized and sponsored by the Diocese. *See, e.g.*, "Diocese Responds to Announcement of January TEC Meeting" (Ex. D) (reporting a statement from Bishop Lawrence: "We continue to be the Diocese of South Carolina—also known, legally as the Protestant Episcopal Church in the Diocese of South Carolina and as the Episcopal Diocese of South Carolina, of which I remain the Bishop.").

Without immediate injunctive relief, Bishop vonRosenberg will continue to suffer significant spiritual and financial losses. vonRosenberg Aff. ¶¶ 9-21. Such losses, in turn, significantly obstruct Bishop vonRosenberg's ability to perform his spiritual and temporal duties. *See id.* Bishop Lawrence's conduct is diverting to him individuals who otherwise would join or support the Diocese as led by Bishop vonRosenberg. *Id.* ¶ 9. Many individuals, moreover, have left the Episcopal faith altogether due to the confusion and conflict that have resulted from Bishop Lawrence's activities. *Id.* ¶ 17. In the absence of immediate relief, Bishop vonRosenberg will continue to be deprived of the spiritual and financial support that is critical to his ministry. In addition, Bishop Lawrence's unlawful use of the Diocese's marks and repeated misrepresentations create confusion as to the leadership of the Diocese and Bishop vonRosenberg's authority and control over the Diocese. For instance, multiple individuals have expressed confusion about whether Bishop Lawrence or Bishop vonRosenberg has the authority to speak on behalf of the Diocese. *Id.* ¶ 12; *see also id.* ¶ 11. Such continued impediments to the exercise of his leader-

ship authority entitle Bishop vonRosenberg to immediate relief. *See Wash. Teachers' Union, Local #6 v. Am. Fed'n of Teachers*, 751 F. Supp. 2d 38, 57 (D.D.C. 2010) (holding that “undermining the [state union’s leadership] in the eyes of its members” constituted irreparable harm). As long as Bishop Lawrence is permitted to engage in his unlawful conduct, Bishop vonRosenberg will continue to be irreparably harmed. *See Purcell*, 145 F.3d at 983 (finding irreparable injury and noting that “the old church, notwithstanding the merger, will still continue to be thought of under the old name in the minds of many of the members who have joined in the union, and gifts intended for it will be made in that name and may be lost or held only through expensive litigation, if the new organization of dissident members is allowed to use the name”).

Bishop Lawrence’s continued unauthorized use and misrepresentations, moreover, damage the reputation and goodwill of the Diocese. Bishop Lawrence’s activities are fundamentally different from those of the Diocese. For example, Bishop Lawrence’s activities are not affiliated with The Episcopal Church. Bishop Lawrence’s organization is also not bound by the Church’s Constitution and Canons. Thus, Bishop Lawrence offers religious services that are markedly distinct from those offered by the Diocese and Bishop vonRosenberg. *vonRosenberg Aff.* ¶¶ 16, 20. Bishop Lawrence’s unauthorized use and misrepresentations nevertheless make it impossible for Bishop vonRosenberg to distinguish the Diocese from Bishop Lawrence’s activities and to exercise control over the reputation and goodwill that the Diocese has garnered. *Id.* ¶ 19. At the core of the Lanham Act is the protection of the right to control the reputation of the goods sold or the services provided under the trademark. *See Park ‘N Fly v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 198 (1985) (“The Lanham Act provides national protection of trademarks in order to secure to the owner of the mark the goodwill of his business and to protect the ability of consumers to distinguish among competing producers.”). This Court has previously recognized that

harm suffered due to loss of control over reputation is worthy of injunctive relief. See *BMW of N.A., LLC v. FPI MB Entm't, LLC*, No. 4:10-82, 2010 WL 4365838, at *2-3 (D.S.C. Sept. 13, 2010), *report and recommendation adopted by* 2010 WL 4340929. Indeed, “it is well-established that harm to a company’s goodwill is considered irreparable.” *Id.* at *2. It is equally well-established that Bishop vonRosenberg has no adequate remedy at law. “One of the harsh realities of trademark infringement is that monetary damages are always inadequate to compensate for a trademark owner’s loss of control over the quality of products and services that are marketed under its proprietary mark.” *Augusta Nat’l*, 996 F. Supp. at 496.

In addition, Bishop Lawrence offers no suggestion that he plans to cease his unlawful conduct. Quite the contrary, there is every indication that Bishop Lawrence’s current practices will only increase in frequency and severity. Bishop Lawrence and his followers have publicized, for example, a purported meeting of the Diocesan Convention on March 8 and 9—the precise days that the legitimate Convention of the Diocese was already scheduled to occur. vonRosenberg Aff. ¶ 15; “Convention Information” (Ex. I). At this meeting, Bishop Lawrence has proposed amendments to the Diocesan Constitution, which, among other things, will purportedly eliminate the clause that states the Diocese accedes to the Constitution of The Episcopal Church. See “Proposed Resolution R-1” (Ex. J). Without immediate injunctive relief, Bishop Lawrence will continue to pursue this and similar actions, which will only continue to confuse the public and irreparably harm Bishop vonRosenberg. vonRosenberg Aff. ¶ 15.

III. The Balance Of Hardships Heavily Favors Immediate Injunctive Relief.

The balance of hardships tilts decidedly in Bishop vonRosenberg’s favor. The only hardship that will befall Bishop Lawrence as a result of an immediate injunction is the requirement that he comply with the law. As a result of The Episcopal Church’s acceptance of Bishop Lawrence’s renunciation and the Church’s installation of new Diocesan leadership, Bishop Lawrence

is not permitted to hold himself out as a representative of the Diocese, and he does not have any right to use the Diocese's marks. The injunction would simply prohibit Bishop Lawrence from confusing the public and unjustly profiting on the Diocese's reputation and goodwill. Further, the injunction will not require Bishop Lawrence to incur any real cost. Unlike a manufacturer of goods, he will not be required to rebrand any products, alter any manufacturing processes, or the like. And Bishop Lawrence, of course, is free to continue his activities; he simply cannot claim to be a representative of the Diocese and to use the Diocese's marks. Thus, Bishop Lawrence will not suffer any measurable hardship. *Cf. Augusta Nat'l*, 996 F. Supp. at 496-97 (finding defendants would sustain only minimal harm since injunction would not put them out of business).

Bishop vonRosenberg, on the other hand, has suffered and will continue to suffer significant, irreparable hardship since he does not have control over the marks that the Diocese has historically used to communicate to consumers of religious services and charitable donors. Moreover, countless consumers and potential donors will continue to be misled by Bishop Lawrence's conduct and misrepresentations, and no later action by this Court could retrieve that lost goodwill. Injunctive relief is therefore necessary and appropriate. *See BMW of N.A.*, 2010 WL 4365838, at *3 (concluding that balance of hardships tipped in plaintiff's favor because Defendants had no right to their infringing use and such use posed a threat to plaintiff's goodwill).

IV. The Public Interest Favors A Preliminary Injunction.

Finally, issuing an injunction in this case would protect not only Bishop vonRosenberg, but also the public. As the Fourth Circuit has observed, "there is a strong public interest in the prevention of misleading advertisements." *Scotts*, 315 F.3d at 286 (internal quotation marks omitted). And as this Court has explained, "The right of the public to be free from the deception that results from a defendant's use of a plaintiff's trademark is transcendent." *Augusta Nat'l*, 996 F. Supp. at 499; *see also BMW of N.A.*, 2010 WL 4365838, at *3 ("[T]he public interest

would not be disserved by a permanent injunction, as there is greater public benefit in securing the integrity of [Plaintiff's] marks than in allowing Defendants to continue to use the marks in violation of [Plaintiff's] rights. Further, preventing confusion is in the public interest.” (internal quotation marks and alterations omitted)). In holding himself out as the representative of the Diocese and in using the Diocese's exact marks, there is no doubt that Bishop Lawrence has endeavored to create the very public confusion that the Lanham Act was designed to prohibit. “[A]n injunction in this case would serve the public interest by preventing future consumers from being misled.” *Lone Star*, 43 F.3d at 939.

CONCLUSION

For the foregoing reasons, Bishop vonRosenberg's motion for a preliminary injunction should be granted.

Dated: March 7, 2013

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2013, a true and correct copy of the foregoing was served upon the following via overnight mail:

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EXHIBIT A



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Bishop Lawrence's Address to the Special Convention



Bishop's Address—Special Convention November 17, 2012

The following address was given by the Rt. Rev. Mark J. Lawrence, XIV Bishop of South Carolina, at St. Philip's Church, Charleston, on Saturday, November 17.

[Click here to watch the video.](#) You may thank Anglican TV for producing this for us [here](#). The [audio version](#) is also available.

"Therefore, since we are surrounded by so great a cloud of witnesses, let us also lay aside every weight, and sin which clings so closely, and let us run with perseverance the race that is set before us, looking to Jesus the founder and perfecter of our faith...." Hebrews 12:1—2a

When this Diocese last met in a convention at St. Philip's, it was September 16th, 2006. I was one of three candidates for the XIV Bishop of South Carolina. In my opening address the week before, I spoke these words to the assembled clergy and laity: *"We meet this morning in this lovely city of Charleston. Inside the walls of this great old historic edifice—we can only hope the wisdom of the years might seep into our minds that we might rightly appreciate the present, and more importantly imagine an even greater future for tomorrow."* I purposely referenced the past, present and future in this opening sentence. So too we meet here today, our hands reaching back to bring the rich heritage of the past with us and with our feet firmly placed in the present, and with our hearts seeking God's grace for an even greater future for tomorrow—we are facing reality as it is, not as it was nor as we wish it were, but as it is. Before, however, turning our minds to consider the future, I need to say word about what, in recent years, we have come through. For since that day on September 16th this Diocese and I have passed through two consent processes for Bishop, and two Disciplinary Board procedures for Abandonment of the Communion of the Episcopal Church—the last without our even knowing it and while we were seeking a peaceable way through this crisis. I have not done the research but I suppose two consent processes and two disciplinary board procedures is and may well remain unique in the annals of the Episcopal Church. You may remember that during that stormy first consent process I stated that: "I have lashed myself to the mast of Jesus Christ and will ride out this storm wherever the ship of faith will take me." Well it brought me two years later here to the marshes and cypress swamps of the Low Country. Where many of your relatives landed centuries before—some searching for wealth and others herded like cattle in the hulls of ships. During these past years I have grown to love this land, set down roots in your history and, even more to our purpose, become one with you in a common allegiance to Jesus Christ, his Gospel, and his Church.

Consequently, I trust you will understand that I have strived in these past five years, contrary to what some may believe or assert, to keep us from this day; from what I have referred to in numerous deanery and parish gatherings as the Valley of Decision. There is little need to rehearse the events that have brought us to this moment other than to say—it is a convergence of Theology, Morality, and Church Polity that has led to our collision with the leadership of the Episcopal Church. I hope most of our delegates and clergy who have heard me address these matters know in their hearts and minds that this is no attempt to build gated communities around our churches as some have piously suggested or to keep the hungry seeking hearts of a needy world from our doors. Rather, let the doors of our churches be open not only that seekers may come in but more importantly so we may go out to engage the unbelieving with the hope of the gospel and serve our communities, disdaining any tendency to stand daintily aloof in self-righteousness. Indeed, let us greet every visitor at our porch with Christ and while some of our members stand at open doors to welcome, still others will go out as our Lord has directed into the highways and byways of the world—across seas and across the street—with the Good News of a loving Father, a crucified-yet-living Savior and a community of wounded-healers learning, however falteringly, to walk in step with His Spirit. Let not God's feast go unattended. This is our calling and our mission.

But I must say this again and again. This has never been about who is welcome or not welcome in our church. It's about what we shall tell them about Jesus Christ, his mercy, his grace and his truth – it is about , what we shall tell them when they come and what we shall share when we go out.

We have spent far too many hours and days and years in a dubious and fruitless resistance to the relentless path of the Episcopal Church. And while some of us still struggle in grief at what has happened and where these extraordinary days have brought us, I believe it is time to turn the page. The

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leaders of the Episcopal Church have made their positions known—our theological and creedal commitments regarding the trustworthiness of Scripture, the uniqueness and universality of Jesus Christ, and other precious truths, while tolerated, are just opinions among others; our understanding of human nature, the given-ness of gender as male and female, woven by God into the natural and created order, is now declared by canon law to be unacceptable; our understanding of marriage as proclaimed in the Book of Common Prayer “established by God in creation” and espoused by Anglicans around the world hangs precariously in the life of the Episcopal Church by a thin and fraying thread; and our understanding of the church’s polity, which until the legal strategy of the present Presiding Bishop’s litigation team framed their legal arguments, was a widely held and respected position in this church; now to hold it and express it is tantamount to misconduct or worse, to act upon it – is ruled as abandonment of this church. While one might wish the theological and moral concerns had seized center stage, it is the Disciplinary Board for Bishops misuse of the church’s polity that has finally left us no place to stand within the Episcopal Church. So be it. They have spoken. We have acted. We have withdrawn from that Church that we along with six other dioceses help to organize centuries ago.

While I have strived to keep us from this Valley of Decision, having walked so long in its gloom myself—once forced to decide—my allegiances are firm. The doctrine, discipline and worship of Christ as this church has received them and the solemn declaration “that I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary for salvation” cannot be surrendered. Nor can we embrace the new revisions to the doctrine, discipline and worship so wrongly adopted. Whether we could or could not have stayed longer, or continued to resist in the face of these recent innovations need not detain us further. An unconstitutional process has weighed us in a faulty canonical balance and found us wanting. The Presiding Bishop’s legal team having entered with coy excuses and without canonical authority into this diocese some three or more years ago, now emerges from the shadows, stepping boldly into the light of day. We must of course address them and their actions; but should they look to reconciliation and not litigation, changing from their prior practice of speaking peace, peace while waging canonical and legal war, we shall meet with them in openness to seek new and creative solutions. Yet let this be known, they will not detract us from Christ’s mission. We move on. Those who are not with us, you may go in peace; your properties intact. Those who have yet to decide we give you what time you need. Persuasion is almost always the preferable policy, not coercion. By God’s grace we will bear you no ill. We have many friends among the bishops, priests and laity of the Episcopal Church, and we wish you well. Furthermore, I bear no ill toward the Episcopal Church. She has been the incubator for an Anglican Christianity where God placed me many years ago. Rich is her heritage and regal her beauty. When I have quarreled with her it has been a lover’s quarrel. For many of the precious gifts she has received from prior generations she has not maintained. And she has left no place for many of us to maintain them either. So I say free from malice and with abiding charity we must turn the page. And I say this as well: to all who will continue with us: “Let us rend our hearts and not our garments.” Let us be careful not to poison the waters of our communities with our differences with the Episcopal Church. Rarely have the spiritually hungry, the seeker, the unconverted or the unchurched been won for Jesus Christ through church conflicts, denominational discord, or ecclesiastical excesses. If we are to have the aroma of Christ we must live in his grace with faith, hope, and charity. The apostle has described it well the fruit of the spirit is love, joy, peace, patience, kindness, goodness, gentleness (long-suffering) and self control. Therefore, we cannot allow either personally or corporately any root of bitterness, resentment, un-forgiveness, anger or fear to take us like untied and forgotten buoys in an outgoing tide, burying our hearts and mission in some muddy marsh or to float adrift in some backwater slough. No, we shall turn the page with hearts wide open and love abounding for the chief of sinners – which is always us. We shall move on. Actually, let me state it more accurately. We have moved on. With the Standing Committee’s resolution of disassociation the fact is accomplished: legally and canonically. The resolutions before you this day are affirmations of that fact. You have only to decide if that is your will and your emotions will follow.

Following Christ the Pioneer and Perfecter of our Future

So turning the page let us take a brief look at this next chapter of the Diocese of South Carolina. We shall need, of course, the promises and exhortations of the apostolic word. I began this address with verses from the Letter to the Hebrews. After surveying in the 11th Chapter of his letter the luminaries of past generations who walked by faith and not by sight—Abel, Noah, Abraham, Sarah, Moses, David and many lesser known men and women— the writer turns the page for his readers to the present and the future. Surrounded by these witnesses or martyrs from the past these early Christians must take their place in this great narrative of salvation history. Shedding themselves of every hindrance and clinging sins and (may I suggest perhaps things they cannot take with them) they are to press on looking to Jesus the founder and perfecter of their faith. And so must we.

Challenges and Opportunities within the Diocese

Much speculation has arisen now that we are out of the Episcopal Church as to where the Diocese of South Carolina is going? I have repeatedly said at gatherings around the diocese that this question has not been a topic of serious discussion among the changing members of the Standing Committee over the years, or for that matter among the deans, or within the Council. It needs to be stated again that our time has been taken up with keeping the diocese protected, while being intact and in the Episcopal Church. And knowing that should push come to shove we would need to be prepared for numerous contingencies, we put in place various protections. These are now profoundly helpful: we have a pension plan for clergy and laity; insurance possibilities for our congregations; a diocesan health insurance program. These do not allay every sacrifice or concern by any means, but they do at least fill a void that would otherwise be unnerving and almost unmanageable for many of our clergy and congregations. Yet work remains to be done in these areas, and will be done in a timely manner. Our challenges in this new landscape are many. Some rather small, and others quite enormous—but so are

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the advantages.

Having chosen to persuade rather than coerce we have a great meeting place—the Cross and Resurrection of Jesus Christ! He is the one who opens the great doors or closes them. You may recall that the risen and glorified Christ spoke to the Philadelphian church in the Revelation of St. John the Divine: "Look, behold I set before you an open door, which no one is able to shut." I believe he has opened a door for us as well. We know how to do mission. We know how to preach the gospel; to make disciples; to share our faith with others; to do effective youth ministry; to hold on to the essential doctrines of Christ while being innovative in reaching emerging generations; We know how to plant and grow congregations. Do we have much to learn? You bet. Will we learn it? We will. I ask you to imagine if this might be true that perhaps the greatest congregations in this Diocese of South Carolina have yet to be grown, Maybe they haven't even been planted. Some of us are getting long in the tooth and need to learn from and make way for younger leaders. As for me I realize how quickly it has happened: those words of the Psalmist that once caused me to think of retired priests and elder statesmen I now apply to myself: *"O God, you have taught me since I was young, /and to this day I tell of your wonderful works. /And now that I am old and gray-headed, O God, do not forsake me, /till I make known your strength to this generation and your power to all who are to come."* (Psalm 71:17-18) When did that come to be about me and not someone else? The LORD spoke to Servant-Israel regarding her witness to the world saying: *"Behold, I do a new thing—before it breaks forth I tell you of it."* It is a time for the old to dream dreams and the young to see visions. If we can combine prudence and dynamism we can get somewhere. So even while we keep the richness of a residential seminary clergy track, we need to explore new ways of preparing young men and women and even middle-age ones for ministry; especially those who know how to travel light. It is a new day and new ways of proclaiming the old truths need to be adopted.

I stated at our recent Clergy Conference that I hoped we will maintain a comprehensive Anglicanism. Should we lose an African-American congregation we shall look at planting another. If we lose an Anglo-Catholic parish we will pray for what God will have us do; there are those from whom we can learn from here in this area. As for multi-racial congregations surely that is a gift whose time has come – or perhaps is past time. Imagine what this Diocese of South Carolina can accomplish for the Kingdom of God and the Gospel if so much of our common life is no longer siphoned off in a resistance movement. What can our diocesan and deanery gatherings become when our focus is first and foremost on our ministry at home and Christ's mission in the world? If we can move beyond our parish silos and into relationships that foster mutual growth and mission a new day of possibilities awaits us. I will be calling together a task force to link stronger parishes with congregations and missions in the diocese that may suffer the loss of members due to this departure from the Episcopal Church. If a smaller parish has lost 10, 20 or 30 percent of its membership it may not be able to afford a full time priest. So while continuing to keep the door ajar for disaffected parishioners to return, we need to find ways to enable that congregation to continue to support their rector or vicar; and not merely in order to keep ply wood from the windows but in order to reach their community for Christ and to grow his Church. That is what it is about. Let's get on with it. This will be one of our first priorities. We also need to re-configure some of our deaneries. Some are functioning well and others are almost defunct, offering little, if any, real support for clergy or for drafting cooperative work for ministry and mission. There is room for exciting developments and opportunities here.

Let me turn to the challenges and opportunities in North American Anglicanism for a minute. South Carolina has been and continues to be a microcosm of North American Anglicanism—with all that is good and vital, and all that is most troubling. In an address at the Mere Anglicanism Conference last January I noted that there were some six overlapping jurisdictions within the boundaries of our diocese all making claims one way or another to being Anglican. With the exception of this Diocese of South Carolina, the oldest of these Churches is the Reformed Episcopal Church. There are many Reformed Episcopal Church congregations throughout South Carolina. They reach a good number of people with a vital faith and a strong Anglican tradition. They have a goodly heritage and a seminary just up the road in Summerville. Then there's the Anglican Mission in America (AMiA) which has until recently been the mother church of their movement at Pawleys Island. Recently the All Saints' Pawleys Island congregation voted to associate with the Anglican Church in North America (ACNA). But AMiA has still other congregations scattered across the Low Country—some with bishops and some with rectors. Then, just this year ACNA ordained a former rector of this diocese, The Rt. Rev. Steve Wood, of St. Andrew's, Mt. Pleasant as the first bishop of their new Diocese of the Carolinas, which includes North and South Carolina. St. Andrew's offers dynamic ministry and many within this diocese have kept bridges of relationships with these brothers and sisters in Christ and for this I give thanks. There are other Anglican bodies as well, some of whose bishops I know and some I do not. As I have stated before this is all rather un-Anglican! All these bishops overlapping one another - but to reflect on a more positive note we ought to at least acknowledge that South Carolina may well be the most "Anglicanized" turf in North America! Everybody's talking about Anglicans. You know what happens when everyone's talking about Baptists? They grow churches. Everyones' talking about Anglicans. It's our moment!

All this might be what lies behind the question often raised at the deanery and parish forums I've been addressing—"Bishop, with whom will we affiliate?" My answer has been quite simply, "For now—no one." As any wise pastor will tell you, if you've been in a troubling, painful or dysfunctional relationship for a long period of time and then the marriage or relationship ends, you would be wise not to jump right away into the first one that comes along and tie the knot. You'd be wise to take your time. Nevertheless, I hope we can work with and for a greater unity among the Anglican Churches within our local region and also within North America. We have many friends and bonds of affection that unite us and along with this—a common mission, Christ's Mission and unity will deeply assist it. A century ago a son of this diocese, William Porcher DuBose, wrote these helpful words: *"The question, How to restore and*

conserve *Unity must go back to a prior one,—What is the Unity in question? Let us recall and repeat in our Lord's own words: 'I will not leave you orphans; yet a little while and the world will see me no more, but ye shall see me; because I live, ye shall live also.'....If then, in all our differences we are thus able to concentrate and agree upon the one necessity of being in Christ and of being one in Him, we must not despair of some ultimate Way to it. If we will cultivate and prepare the disposition, the will, and the purpose—God will make the Way....let us, I say, once begin on that line, and the differences that do not eliminate themselves will be turned into the higher service of deepening, broadening, and heightening the resultant Unity.*" To this end I will appoint a task force to begin contacting, praying and working with these other Anglican bodies as they are willing and as God gives us the grace we will together seek a greater Anglican Unity within South Carolina or at least within our jurisdiction.

I recall some other challenging words from the past. Those sardonic and haunting words of William Reed Huntington, whose genius over a century ago shaped the Chicago-Lambeth Quadrilateral: *"If our whole ambition as Anglicans in America be to continue a small, but eminently respectable body of Christians, and to offer refuge to people of refinement and sensibility, who are shocked by the irreverences they are apt to encounter elsewhere; in a word, if we care to be only a countercheck and not a force in society then let us say as much in plain terms, and frankly renounce any claim to Catholicity. We have only, in such a case, to wrap the robe of our dignity about us, and walk quietly along in a seclusion no one will take much trouble to disturb. Thus may we be a Church in name and a sect in deed."* I mention these cutting words for two reasons. I believe we need to work in two directions at the same time. First we need to allow ourselves to draw near to the throbbing needs of the world around us. And while maintaining the four pillars of the Chicago-Lambeth Quadrilateral, we need to creatively engage our culture not with the tired arguments of the past, answering questions no one is asking, but answering those questions in the sorrowing and aspiring heart of our society.

Some years ago actually after the General Convention 2009 I went with a group of conservative Bishops to meet with the Archbishop of Canterbury. But not wanting to put all my eggs in one basket, I also made an appointment with the Bishop of London. His offices are near St. Paul's Cathedral. And not wanting to be late for an appointment with the Bishop of London I got there a little early. Since it was raining, as it often is in England, I took cover under the portico of the steps of St. Paul's Cathedral. If you've been there you know it is a conjunction of many streets coming in various directions. I watched the bustling crowd. I watched the people coming and going - cars and taxis and buses – the heartbeat of a city. And I thought to myself, "How did it happen that I'm spending all my time with these ecclesiastical problems and meetings when for most of my life my heart has been to engage the culture with the Good News of Jesus Christ?" We cannot let this happen. Christ said to go out into the hurting world. When Jesus said the gates of hell will not prevail he didn't mean the church would stand in Alamo-like fashion before the world beating down at the doors of the church, he meant his disciples would go out into every place where people were shackled behind prison doors of pain and suffering, dysfunction and brokenness and those gates of hell that are holding them in to a place of death and suffering will not stand - against God's people going out into the world. That's our call. Because it's Christ's call.

Finally, I turn to our place in the worldwide Anglican Communion. Our vision since 2009 has been to Make Biblical Anglicans for a Global Age: Helping by God's grace to help shape emerging Anglicanism in the 21st Century. Just this week I mentioned in my recent Open Letter to the Diocese that we have heard from Archbishops, Presiding Bishops, and diocesan bishops from Kenya to Singapore, England to Egypt, Ireland to the Indian Ocean, Canada to Australia. They represent the overwhelmingly vast majority of members of the Anglican Communion and they consider me as a faithful Anglican Bishop in good standing and they consider this diocese as part of the One, Holy, Catholic and Apostolic Church. Ah friends, this has got to comfort us as we await further guidance from God regarding future affiliation. And we need to continue conversation with the Provinces and Dioceses with whom we have missional relationships. Just yesterday I received emails from bishops in Egypt, North Africa and Ethiopia assuring us of their prayers. I thought my gosh if those in such hard pressed environments should take an interest and intercede on our behalf? How humbling that is for us. I woke this morning to find an email from Ireland, from Bishop Kenneth Clarke saying we are in his prayers. We are not alone. Greater are those with us than any who may be against us.

Nevertheless, this I assure you, there shall be lengthy and thorough conversation among the clergy of this diocese—our bishops, priests, and deacons—and our lay leaders before any decision will be presented before this Convention that would ask you to associate with any Province. I remind you of an historical fact—this diocese existed after the American Revolution for four years before it helped to fully form the Protestant Episcopal Church in these United States and before that organization was completed. It was a fifth year before this diocese ratified that relationship at our Diocesan Convention in 1790. So for now and the foreseeable future, having withdrawn from our association with the Episcopal Church, we remain an extra-provincial Diocese within the larger Anglican Communion; buttressed by the knowledge we are recognized as a legitimate diocese by the vast majority of Anglicans around the world. Truly, we are surrounded by a great cloud of witnesses.

What then in conclusion? Having turned the page, having gazed however briefly at the next chapter, the path begins to open up before us, *"... let us run with perseverance the race that is set before us, looking to Jesus the Founder and Perfecter of our faith who for the joy that was set before him endured the cross, despising the shame, and is seated at the right hand of the throne of God."* These resolutions you will soon have before you are first and foremost a way for you to affirm the action of disaffiliation which the Standing Committee has legally and canonically taken. Many of you have already decided in your heart and mind how you will vote. Others will need more time. But I invite you for just a moment to stand on the steps of St. Paul's Cathedral at the heart of the bustling city with the needs of the world; or if you prefer stand at the corner of Meeting and Broad here in Charleston; or outside the Walmart in

Goose Creek or Moncks Corner; or sit in a vestry meeting after having been at a Rotary luncheon in Florence and lean yourself into a throbbing and hurting world. Ask yourself how long do I want to spend my time, my energy and my soul in a resistance movement that has proven so fruitless. Is it not time to get on with a ministry of Jesus Christ to a broken world? So in keeping with your understanding of God's Word, the historic teachings of Christ's Church, the leading of the Holy Spirit, and Jesus' call to make disciples, it is time to take stock of what you think, and in harmony with your heart and conscience to act. May God guide us all.

"Now to him who is able to keep you from falling and to present you without blemish before the presence of his glory with rejoicing, to the only God, our Savior through Jesus Christ our Lord, be glory, majesty, dominion, and authority, before all time and now and for ever. Amen." Jude24

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Faith Formation

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Marriage Ministry

Kairos Prison Ministry

Men's Ministry

Order of Saint Vincent

St. Luke - Physician

XIV Bishop of the Episcopal Diocese of South Carolina



On January 26, 2008 at a festive service in the Cathedral of Saint Luke and Saint Paul in Charleston, Mark Joseph Lawrence was consecrated the 14th Episcopal Bishop of the Diocese of South Carolina.

Bishop Lawrence was born in Bakersfield, California, on March 19, 1950. A fifth generation Californian he was educated at California State University, Bakersfield (BA, 1976) and Trinity Episcopal School for Ministry (M. Div. 1980). He has also received honorary degrees from Nashotah House (D.D. 2008) and Sewanee (D.D. 2009). He has ministered in a wide variety of parish settings from suburban church plant, rural mission, inner city church, to downtown parish in California and Pennsylvania. These include Holy Family, Fresno, CA; Saint Mark's, Shafter, California (1981-1984); Saint Stephen's, McKeesport, Pennsylvania (1984-1997) where he also established on Mon Valley Tri-Church Ministry taking two smaller

congregations under a multi-staff network; and Saint Paul's, Bakersfield, California (1997-2007). Known for being a dedicated pastor-teacher, Mark also served, among many other capacities, Commission on Ministry, the Standing Committee, and the Board of Examining Chaplains, and Rural Dean. He also served as a deputy to the General Conventions of 2003 and 2006. He has published articles on devotional and ecclesial concerns in various periodicals.

Mark has been married to Allison Kathleen Taylor since 1973. They have five children: Chadwick, an Episcopal priest and headmaster in Beaufort, SC, married to Wendy; they have three children; eldest daughter Adelia, married to Stephen Matson who is planting an Anglican congregation in Southern California and also parents of three children; middle daughter, Emily, married to Jacob Jefferis, parents of two children; Joseph, a postulant for Holy Orders attending Trinity School for Ministry, married to Joette, they have two children; and Chelsea, married to Jason Hamshaw, a youth minister at Prince George Episcopal Parish in Georgetown, SC. They have one child.

Mark enjoys reading on various subjects, particularly literature, biography, and history; out-of- door activities such as hiking, backpacking, canoeing, fishing, and jogging.

Download a photograph of [Bishop Lawrence](#).

View messages from [Bishop Lawrence](#).

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Charleston...December 20, 2012...The Presiding Bishop of the Episcopal Church, Katharine Jefferts Schori, publicly released an announcement yesterday [...]

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EXHIBIT C

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A note from
The Rt Rev Mark J Lawrence
Bishop of South Carolina
www.dioceseofsc.org

December 5, 2012

Dear Friends in Christ,

"For what we preach is not ourselves, but Jesus Christ as Lord, with ourselves as your servants for Jesus' sake." 2 Corinthians 4:5

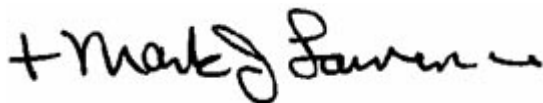
The Presiding Bishop called me this afternoon to inform me that she and her council of advice have accepted my renunciation of ordained ministry. I listened quietly, asked a question or two and then told her it was good to hear her voice. I did not feel any need to argue or rebut. It is the Presiding Bishop's crossing of the T and doting of the I—for their paper work, not my life. I could bring up the canonical problems with what they have done contrary to the canons of The Episcopal Church but to what avail? They will do what they will do regardless of canonical limitations. That is already [well documented by others](#) and hardly needs further documentation by me. She and her advisers will say I have said what I have not said in ways that I have not said them even while they cite words from my Bishop's Address of November 17, 2012.

Quite simply I have not renounced my orders as a deacon, priest or bishop any more than I have abandoned the Church of Jesus Christ—But as I am sure you are aware, the Diocese of South Carolina has canonically and legally disassociated from The Episcopal Church. We took this action long before today's attempt at renunciation of orders, therein making it superfluous.

So we move on—onward and upward. I write these words in the vesper light of this first Wednesday of Advent, the bells of the Cathedral of St. Luke and St. Paul ring in the steeple beside the diocesan office, I remain the Bishop of the Diocese of South Carolina. We shall continue to preach the Good News of Jesus Christ in Word and Deed to a needy world and of course to ourselves who also need to experience afresh its power to set us free from sin, death, guilt, shame and judgment and to transform our lives to be like Christ's from one degree of glory to another for as the Apostle has written: "The Lord is the Spirit and where the Spirit of the Lord is, there is freedom."

I am heartened by the support of the vast majority of those within this Diocese as well as the majority of Anglicans around the world as well as many in North America who have expressed in so many ways that they consider me an Anglican Bishop in good standing and consider this Diocese of South Carolina to be part of the One, Holy, Catholic and Apostolic Church.

My prayers for a wakeful and watchful Advent,



The Right Reverend Mark Joseph Lawrence
XIV Bishop of South Carolina

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St. Luke - Physician

Diocese Responds to Announcement of January TEC Meeting



Following the announcement that the Presiding Bishop of the Episcopal Church plans a trip to Charleston for a January 25-26 convention of those wishing to re-associate with the Episcopal Church, the Diocese of South Carolina released the following statements:

"They are certainly free to gather and meet, but they are not free to assume our identity. The Diocese of South Carolina has disassociated from the Episcopal Church, we've not ceased to exist. We continue to be the Diocese of South Carolina – also known, legally as the Protestant Episcopal Church in the Diocese of South Carolina and as the Episcopal Diocese of South Carolina, of which I remain the Bishop. We are eager to get on with the ministry of Jesus Christ to a broken world! I suggest that the Steering Committee of this new group will want to do the same. A good first step for them would be to select a new name or choose another Diocese with which to associate."

The Rt. Rev. Mark J. Lawrence
XIV Bishop, Diocese of South Carolina

"I would like to make a point of clarification for those who think we became a new entity upon our disassociation. A brief history lesson seems in order. We were founded in 1785 (prior to the founding of the Episcopal Church). We were incorporated in 1973; adopted our current legal name, "The Protestant Episcopal Church in the Diocese of South Carolina," in 1987; and we disassociated from the Episcopal Church in October of 2012. We did not become a new entity upon our disassociation. A new entity will need to be created by those who choose to leave the Diocese and re-associate with the Episcopal Church."

The Rev. Canon Jim Lewis
Canon to the Ordinary, Diocese of South Carolina

"They insist on what others must do yet there is no written standard to support them, and at the same time they run roughshod over their own constitution and canons. They have created a tails we win, heads you lose world where the rules are adjusted according to their desired outcomes--no wonder we dissociated from a community like that."

The Rev. Dr. Kendall S. Harmon
Canon Theologian, Diocese of South Carolina

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Diocese of South Carolina
Only Authority to Convene
Convention in the Diocese
20/12/2012

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EXHIBIT E

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IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

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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)
Wardens Of St. Paul's Church,)
Summerville; Trinity Church of Myrtle)
Beach)

PLAINTIFFS,)

v.)

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

DEFENDANT.)

Case No.

2013-CP-18-

13

SUMMONS

FILED - RECORD
2013 JAN -4 AM 11:52
CHERYL L. BROWN
CLERK OF COURT
DORCHESTER COUNTY

TO THE ABOVE-NAMED DEFENDANT AND YOUR ATTORNEY(S):

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscriber at his office and the other counsel at their offices, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for the relief demanded in the Complaint.

January 4, 2013
Beaufort, South Carolina

*The Protestant Episcopal Church In The
Diocese of South Carolina; and
The Trustees of the Protestant Episcopal
Church of South Carolina, a South Carolina
Corporate Body*

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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;)
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;)
Saint Luke's Church, Hilton Head;)
St. John's Episcopal Church of)
Florence, S.C.; St. Matthias)
Episcopal Church, 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 Good Shepherd,)
Charleston, SC; 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 Wardens)
Of St. Paul's Church, Summerville;)
Trinity Church of Myrtle Beach)

PLAINTIFFS,

v.

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

DEFENDANT.

Case No.

2013-CP-18-

13

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

FILED - RECORD
2013 JAN -4 AM 11:52
CLERK OF COURT
DORCHESTER COUNTY

Plaintiffs, through their respective undersigned counsel, bring this action against the 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 has no legal, beneficial or equitable interest. The Plaintiffs also seek a declaratory judgment that the Defendant and those under its 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 Defendant and those under its control from such uses pursuant to §§ 39-15-1105 *et. seq.* and §§ 16-17-310 and 320 of the South Carolina Code of Laws (1976).

In support of these claims, Plaintiffs allege as follows:

PLAINTIFFS

The Protestant Episcopal Church in The Diocese of South Carolina ("Diocese of South Carolina")

1. The Diocese of South Carolina is a South Carolina non-profit, charitable, corporation. It was incorporated on November 14, 1973 as "The Protestant Episcopal Diocese of South Carolina." Its Articles of Incorporation were amended on February 19, 1987 to change its name to "The Protestant Episcopal Church in the Diocese of South Carolina."

2. The Diocese's Board of Directors has 12 members, who generally meet on a monthly basis. Each Board Member presently is also a member of the Diocesan Standing Committee.

3. The Protestant Episcopal Church In The Diocese of South Carolina has 44 employees (excluding seasonal employees) and an annual budget of ~ \$5.5MM (\$2.3MM for Diocesan operations and ~ \$3.25 MM for Camp St. Christopher operations). Among its

employees is Mark J. Lawrence who is its Chief Operating Officer. He is also its 14th Bishop. Mark J. Lawrence is an *ex officio* member of the Board of Directors with seat and voice but with no vote.

4. Prior to its incorporation, the Diocese of South Carolina was organized and operated as an unincorporated association holding its first convention on May 12, 1785 at The State House in Charleston, South Carolina. Between May 1785 and October 1789, the Diocese of South Carolina held seven conventions attended by twenty different parishes.

5. The Diocese of South Carolina has met in convention at least annually since 1785, except for the 6 years between 1798 and 1804. The last annual convention of the Diocese of South Carolina was on March 9th and 10th, 2012. The last Special Convention was on November 17, 2012.

6. Eight of the parishes in which Plaintiff churches are located, preexisted the formation of the United States of America, the Diocese of South Carolina and the Defendant, one by more than 100 years and all by more than 20 years: St. Philip's (1681), Christ Church (1706), St. Paul's (1706), St. Helena's (1712), Prince George (1721), St. John's (1734), St. Michael's (1757), Church of the Cross and St. Luke's (1767).

7. These churches as well as the Diocese of South Carolina were called "episcopal" before the formation of the Defendant.

8. The first constitution of the Diocese of South Carolina was adopted at its 4th convention on May 31, 1786. It was signed, among others, by St. Philip's, St. Michael's, St. Helena's, and Prince George. Articles 1, 2 and 6 provided:

Art. 1. That the Protestant Episcopal Church in these states is, and ought to be, independent of any foreign authority, Ecclesiastical or Civil.

Art. 2. That it hath, and ought to have, in common with all other religious societies, full and exclusive powers to regulate the concerns of its own communion.

Art. 6. That no power be delegated to a General ecclesiastical Government except such, as cannot be exercised by the clergy and vestries, in their respective congregations.

9. The Diocese of South Carolina was one of the participating entities that joined together to form the Defendant. It voluntarily joined the Defendant.

10. The first constitution of the Defendant was considered and revised in August through October 1789 and adopted in final form on October 2, 1789. The Diocese of South Carolina, through its delegates, subscribed to the constitution.

11. At its 19th Convention in 1806, the Diocese of South Carolina adopted "Rules and Regulations for the Government of the Protestant Episcopal Church in the State of South Carolina." Rule 14 provided that:

No Article, canon, rule or other regulation of any general in State Convention, shall be obligatory on any Episcopal Church within this state, where the same shall be found to infringe on its chartered rights.

12. In 1861, the Diocese of South Carolina withdrew its association with the Defendant, immediately declaring "null and void" any constitutional or canonical provisions inconsistent with that disassociation.

13. In 1862, the Diocese of South Carolina together with other dioceses who were formerly associated with the Defendant formed and voluntarily joined an unincorporated association called "The Protestant Episcopal Church in The Confederate States of America."

14. In 1865, the Standing Committee of the Diocese of South Carolina, upon being asked to consent to the election of the bishop of the Diocese of Pittsburgh, refused because the Diocese of South Carolina was not associated with the Defendant.

15. In 1866, the Diocese of South Carolina withdrew its association with The Protestant Episcopal Church in The Confederate States of America and voluntarily re-associated with the Defendant immediately declaring any inconsistent provisions of its Constitutions and Canons "to be henceforth of no force" and "be changed" immediately "to conform to the legislation adopted at this Council."

16. On May 12, 1920 the Diocese of South Carolina voted to divide the diocese into two dioceses. The new diocese was established in the upper part of South Carolina and was called "The Diocese of Upper South Carolina". The plans for this division were adopted at the Diocesan Convention on May 17, 1922.

17. 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).

18. 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.

19. The Diocese of South Carolina is the owner of four service marks registered on November 8, 2010 pursuant to §§39-15-1105 *et. seq* of the South Carolina Code of Laws (1976). These 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.

20. On September 9, 2010, the Diocese of South Carolina amended its articles of incorporation to restate its purpose to “continue operations under the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina.”

21. On October 15, 2010, the Diocese of South Carolina amended its Constitution removing its accession to the Canons of the Defendant and providing that “In the event that any provision of the Constitution of the General Convention of the Protestant Episcopal Church in the United States of America is inconsistent with, or contradictory to, the Constitution and Canons of the Protestant Episcopal Diocese of South Carolina, the Constitution and Canons of this Diocese shall prevail.”

22. On October 15, 2010, the Diocese of South Carolina amended its canons to conform to the actions taken in paragraph 21.

23. On November 1, 2011, the Board of Directors of the Diocese of South Carolina unanimously passed a resolution that automatically called a convention of the Diocese of South

Carolina within 30 days after any attempted action being taken by the Defendant against Mark J. Lawrence.

24. On October 2, 2012, the Board of Directors of the Diocese of South Carolina unanimously passed a resolution that stated:

“The Protestant Episcopal Church in the Diocese of South Carolina, through its Board of Directors and its Standing Committee, hereby withdraws its accession to the Constitution of the Episcopal Church and disaffiliates with the Episcopal Church by withdrawing its membership from the Episcopal Church. This decision shall be effective immediately upon the taking of any action of any kind by any representative of the Episcopal Church against The Bishop, the Standing Committee or any of its members or the Convention of this Diocese or any of its members including purporting to discipline, impair, restrict, direct, place on administrative leave, charge, derecognize or any other action asserting or claiming any supervisory, disciplinary or other alleged hierarchical authority over this Diocese, its leaders or members.”

25. The Diocese of South Carolina withdrew its accession to the Constitution of the Defendant and withdrew its membership in the association comprising the Defendant.

26. A Special Convention of the Diocese of South Carolina was called for November 17, 2012 at St. Philip’s Church, Charleston, South Carolina.

27. At the Special Convention of November 17, 2012, the delegates overwhelmingly affirmed the Diocese of South Carolina’s disaffiliation from the Defendant and made conforming changes to its Constitution and Canons.

28. The Defendant has no legal, beneficial or equitable interest in any of the real or personal property of the Diocese of South Carolina.

The Trustees of the Protestant Episcopal Church in South Carolina (“Trustees”)

29. The Trustees were incorporated by the General Assembly on February 20, 1902. The Trustees were successors to the “Bishop and Standing Committee” incorporated by the General Assembly on February 20, 1880.

30. The Board of Directors of the Trustees consists of 8 members meeting at least quarterly. Mark J. Lawrence is an *ex officio* member with seat and voice but with no vote.

31. The Trustees purpose is to “receive and hold any property, currently or formerly, held by any other corporation which may desire to surrender same and shall voluntarily do so” and to “receive and hold any and all property which may come into their hands under this Act upon the terms, conditions and trusts, and for the exclusive purpose of the gift, donation, contribution, or testamentary devise upon which each such piece of property was originally given, contributed, bequeathed or donated.”

32. The Trustees have “all the power of a corporate body, and may from time to time make such rules and bylaws for their government and for the management of the property under their charge as shall be approved by a majority of said Trustees.”

33. As of December 31, 2011, the assets of the Trustees totaled approximately \$12MM of which \$4.4MM consists of cash and investments and \$7.7MM consists of real property and other non-liquid assets.

34. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of the real or personal property of the Trustees.

Christ St. Paul's Episcopal Church ("Christ St. Paul's")

35. Christ St. Paul's is a South Carolina non-profit corporation. Its business address is 4981 Chapel Road, Yorges Island, South Carolina. It was incorporated on December 3, 1997.

36. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

37. In 1706 the Church Act passed by the Colonial Assembly created the nine original parishes in South Carolina. In 1708 the Act defined St. Paul's Parish as one of the Parishes making up Colleton County, (now Charleston County).

38. Christ Church, Wilton was established in 1835 and a church built in 1836. In 1886 a new church was completed in Adam's Run (Christ Church) using materials from the former church on Willtown Bluff. Christ Church, Wilton voluntarily associated with the Diocese of South Carolina.

39. In 1848, a Chapel of Ease was built in what is present day Adams Run that is in close proximity to the present church and was called the "Meggett Chapel."

40. The churches in St. Paul's Parish left the Defendant in 1861 along with the rest of the Diocese. They returned with the Diocese of South Carolina when it voluntarily reassociated with the Defendant in 1866.

41. In February 1925, St. Paul's Church was recognized as a separate and independent parish known as St. Paul's Meggett. St. Paul's Church voluntarily associated with the Diocese of South Carolina.

42. In 1962 St. Paul's Meggett merged with Christ Church Wilton becoming known then by its present name.

43. As of December 2011, Christ St. Paul's had 380 baptized members and an annual operating income of \$467,191.

44. In addition to its votes at the Special Convention of The Protestant Episcopal Church In The Diocese of South Carolina held on November 17, 2012, Christ St. Paul's reaffirmed its disaffiliation from the Defendant by a vote of its Board of Directors on December 2, 2012.

45. Christ St. Paul's is the fee simple owner of all its real property.

46. During its 178-year history, the acquisition of Christ St. Paul's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Christ St. Paul's without any assistance or contributions from the Defendant.

47. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of Christ St. Paul's real or personal property.

48. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted Christ St. Paul's name and emblems by:

- i. Posting Christ St. Paul's name or a name substantially similar on a website and improperly asserting that Christ St. Paul's is "in union with" the Defendant.
- ii. Using Christ St. Paul's name or a name substantially similar to it to send email and other correspondence improperly asserting that Christ St. Paul's is "in union with" the Defendant.

Church Of The Cross, Inc. and Church Of The Cross Declaration Of Trust ("The Cross")

49. The Church of the Cross is a South Carolina non-profit corporation. Its business address is 110 Calhoun Street, Bluffton, South Carolina 29910. The Cross was incorporated as a separate entity from St. Luke's Parish on July 3, 1979.

50. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

51. St. Luke's Parish, within which The Cross is located, was created by an act of the Colonial Assembly on May 23, 1767.

52. By 1842, a chapel stood near the current location of the present church building (completed in 1857) and worship services commenced.

53. The churches in St. Luke's parish left the Defendant in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant in 1866.

54. The Cross voluntarily associated with the Diocese of South Carolina.

55. Between 1863 and 1870, services were interrupted starting because of the presence of union troops.

56. As of December 2011, The Cross had 1,702 baptized members and an annual operating income of \$1,996,117.

57. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, The Cross reaffirmed its disaffiliation from the Defendant by a vote of its Board of Directors on December 8, 2012.

58. The Cross is the fee simple owner of all its real property.

59. During its 170-year history, the acquisition of The Cross's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of The Cross without any assistance or contributions from the Defendant.

60. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in the real or personal property of The Cross.

61. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted The Cross' name and emblems by:

- i. Posting The Cross' name or a name substantially similar on a website and improperly asserting that The Cross is "in union with" the Defendant.
- ii. Using The Cross' name or a name substantially similar to it to send email and other correspondence improperly asserting that The Cross is "in union with" the Defendant.

Church Of The Holy Comforter ("Holy Comforter")

62. Holy Comforter is a South Carolina non-profit corporation incorporated by an act of the General Assembly on December 21, 1857. Its business address is 213 N. Main Street, Sumter, South Carolina.

63. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

64. Holy Comforter began worship services in Sumter, South Carolina in 1844 and constructed its first church building in 1859. Thereafter, Holy Comforter acquired its current

location and constructed the present church building in 1909 where the parish has continually conducted services to the present.

65. Upon becoming a Parish, Holy Comforter voluntarily associated with the Diocese of South Carolina.

66. Holy Comforter left the Defendant in 1861 along with the rest of the Diocese of South Carolina. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant in 1866.

67. As of December 2011, Holy Comforter had 727 baptized members and an annual operating income of \$684,692.

68. Holy Comforter is the fee simple owner of all its real property.

69. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, Holy Comforter affirmed its disaffiliation with the Defendant by a vote of its Board of Directors on October 23, 2012.

70. During its 168-year history, the acquisition of Holy Comforter's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Holy Comforter without any assistance or contributions from the Defendant.

71. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of Holy Comforter's real or personal property.

72. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted Holy Comforter's name and emblems by:

- i. Posting Holy Comforter's name or a name substantially similar on a website and improperly asserting that Holy Comforter is "in union with" the Defendant.
- ii. Using Holy Comforter's name or a name substantially similar to it to send email and other correspondence improperly asserting that Holy Comforter is "in union with" the Defendant.

Church Of The Redeemer ("Redeemer")

73. Redeemer is a South Carolina non-profit corporation. Its business address is 1606 Russell Street, Orangeburg, South Carolina. It was incorporated on May 27, 1922.

74. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation in 1922.

75. Redeemer is a part of St. Matthews Parish, which was established, by an Act of the Colonial Assembly on August 12, 1768. This Act provided that a chapel was to be built in "Orangeburgh Territory."

76. Prior to its incorporation, Redeemer began worship services in Orangeburg, South Carolina in 1851. Its church building was occupied in 1857. It was moved and renovated at its current location in 1895.

77. Upon becoming a Parish, Redeemer voluntarily associated with the Diocese of South Carolina.

78. Redeemer left the Defendant in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant in 1866.

79. As of December 2011, Redeemer had 292 baptized members and an annual operating income of \$273,038.

80. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, Redeemer reaffirmed its disaffiliation with the Defendant by a vote of its Board of Directors on December 23, 2012.

81. Redeemer is the fee simple owner of all its real property.

82. During its 161-year history, the acquisition of Redeemer's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Redeemer without any assistance or contributions from the Defendant.

83. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of Redeemer's real or personal property.

84. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted Redeemer's name and emblems by:

- i. Posting Redeemer's name or a name substantially similar on a website and improperly asserting that Redeemer is "in union with" the Defendant.
- ii. Using Redeemer's name or a name substantially similar to it to send email and other correspondence improperly asserting that Redeemer is "in union with" the Defendant.

Saint Luke's Church, Hilton Head ("St. Luke's")

85. St. Luke's is a South Carolina non-profit corporation incorporated on March 4, 1969. Its business address is 50 Pope Avenue, Hilton Head Island, South Carolina.

86. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

87. St. Luke's Parish was established by an act of The Colonial Assembly on May 23, 1767.

88. In 1788 parishioners built a wooden chapel known as Zion Chapel of Ease on Hilton Head Island. The chapel was abandoned in 1862 because of the island's occupation by union troops.

89. On February 29, 1788 the General Assembly incorporated "The Vestries and Church Wardens of the Episcopal Church in the Parish of St. Luke's."

90. On December 21, 1964, worship services resumed as a mission under the name "St. Luke's". It was expanded in 1970 and became a parish, voluntarily associating with the Diocese of South Carolina. These additional expansions were completed in 1978, 1989 and 2000.

91. As of December 2011, St. Luke's had 1,173 baptized members and an annual operating income of \$974,681.

92. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. Luke's reaffirmed its disaffiliation with the Defendant by a vote of its Board of Directors on December 11, 2012.

93. St. Luke's is the fee simple owner of all its real property.

94. During its 224-year history, the acquisition of St. Luke's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Luke's without any assistance or contributions from the Defendant.

95. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of St. Luke's real or personal property.

96. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted Saint Luke's name and emblems by:

- i. Posting Saint Luke's name or a name substantially similar on a website and improperly asserting that Saint Luke's is "in union with" the Defendant.
- ii. Using St. Luke's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Luke's is "in union with" the Defendant.

St. John's Episcopal Church of Florence, S.C. ("St. John's Florence")

97. St. John's Florence is a South Carolina non-profit corporation. Its business address is 252 S. Dargan Street, Florence, South Carolina. It was originally chartered December 3, 1875 and was thereafter incorporated by the Secretary of State on November 26, 1915.

98. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

99. St. John's Florence was established in 1866, beginning worship in 1867. Construction began on its first church building in 1868 and it was completed in 1871. This church was badly damaged by the earthquake of 1886 and the cornerstone for the present church was laid in 1889.

100. Upon becoming a Parish, St. John's Florence voluntarily associated with the Diocese of South Carolina.

101. As of December 2011, St. John's Florence had 680 baptized members and an annual operating income of \$724,473.

102. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. John's Florence reaffirmed its disaffiliation with the Defendant by a vote of its Board of Directors on December 3, 2012.

103. St. John's Florence is the fee simple owner of all its real property.

104. During its 146-year history, the acquisition of St. John's Florence's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. John's Florence without any assistance or contributions from the Defendant.

105. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of St. John's Florence real or personal property.

106. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted St. John's Florence's name and emblems by:

- i. Posting St. John's Florence's name or a name substantially similar on a website and improperly asserting that St. John's Florence is "in union with" the Defendant.
- ii. Using St. John's Florence's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. John's Florence is "in union with" the Defendant.

St. Matthias Episcopal Church, Inc. ("St. Matthias")

107. St. Matthias is a South Carolina non-profit corporation. Its business address is 9 North Dukes Street, Summerton, South Carolina. It was incorporated on March 26, 1984.

108. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

109. In 1899, a meeting in the yard of The Presbyterian Church marked the beginning of St. Matthias. The land on which the church was built was donated and the church was built and paid for through donations and accumulated funds. Worship began in the church building on February 24, 1899, St. Matthias Day. An adjoining rectory was erected in 1903. In 1910, many improvements were made in the church.

110. Upon becoming a Parish, St. Matthias voluntarily associated with the Diocese of South Carolina.

111. As of December 2011, St. Matthias had 132 baptized members and an annual operating income of \$151,049.

112. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. Matthias reaffirmed its disaffiliation with the Defendant by a vote of its Board of Directors in December 2012.

113. St. Matthias' is the fee simple owner of all its real property.

114. During its 113-year history, the acquisition of St. Matthias' real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Matthias' without any assistance or contributions from the Defendant.

115. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of St. Matthias' real or personal property.

116. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted St. Matthias' name and emblems by:

- i. Posting St. Matthias' name or a name substantially similar on a website and improperly asserting that St. Matthias is "in union with" the Defendant.
- ii. Using St. Matthias' name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Matthias is "in union with" the Defendant.

The Church Of St. Luke and St. Paul, Radcliffeboro ("The Cathedral")

117. The Cathedral is a South Carolina non-profit corporation. Its business address is 126 Coming Street, Charleston, South Carolina. It was incorporated on April 7, 1951.

118. The Cathedral is the successor by merger to St. Luke's, Charleston and The Protestant Episcopal Church of St. Paul, Radcliffeboro ("St. Paul's").

119. St. Luke's, Charleston was incorporated by an act of General Assembly on December 21, 1858.

120. St. Luke's began its services in 1858. It voluntarily associated with the Diocese of South Carolina in 1858. Its first church building was occupied in 1862 and it was regularly used and until October 7 1864 when struck by a shell. Services resumed in October 1865. In 1899 it ceased to be used but was revived as a mission in 1904 and as a parish later that year. It again voluntarily associated with the Diocese of South Carolina in 1905.

121. St. Paul's was incorporated by the General Assembly on December 21, 1814 as the Protestant Episcopal Church of St. Paul in Radcliffeboro. As the church primarily served the outlying plantation families, it was known as the "planters' Church". It voluntarily associated with the Diocese of South Carolina upon its becoming a Parish.

122. St. Luke's, Charleston and the Protestant Episcopal Church of St. Paul, Radcliffeboro left the Defendant in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant in 1866.

123. St. Luke's and St. Paul's have continually existed and acted as duly formed corporations with their Vestry and Wardens serving as their Board of Directors pursuant to their governance documents since their incorporation until their merger.

124. The Church of St. Luke and St. Paul held their first service together on July 17, 1949 at St. Paul's.

125. On May 11, 1950, St. Luke's Church, Charleston and The Protestant Episcopal Church of St. Paul in Radcliffeboro were merged into The Church of St. Luke and St. Paul, Radcliffeboro, using the church building of St. Paul's for their worship services.

126. In 1963 the church was designated as the Cathedral Church for the Diocese of South Carolina.

127. As of December 2011, The Cathedral had 341 baptized members and an annual operating income of \$493,048.

128. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, The Cathedral reaffirmed its disaffiliation with the Defendant by a vote of its Board of Directors on December 17, 2012.

129. The Cathedral is the fee simple owner of all its real property.

130. During its 198-year history, the acquisition of The Cathedral's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of The Cathedral without any assistance or contributions from the Defendant.

131. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of The Cathedral's real or personal property.

132. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted The Cathedral's name and emblems by:

- i. Posting The Cathedral's name or a name substantially similar on a website and improperly asserting that The Cathedral is "in union with" the Defendant.

- ii. Using The Cathedral's name or a name substantially similar to it to send email and other correspondence improperly asserting that The Cathedral is "in union with" the Defendant.

The Church Of Our Saviour Of The Diocese Of South Carolina ("Our Saviour")

133. Our Saviour is a South Carolina non-profit corporation. Its business address is 4416 Betsy Kerrigan Parkway, Johns Island, South Carolina. It was incorporated on March 10, 1981.

134. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

135. Prior to its incorporation, Our Saviour conducted worship services on Johns Island, South Carolina beginning in the early 1970's. Our Saviour was established as a mission on November 20, 1980. In 1982, the Church purchased nine acres of property along Bohicket Road (now Betsy Kerrison Parkway), just outside the entrances to Kiawah and Seabrook. A multipurpose building was completed in May of 1986. Upon its becoming a Parish, Our Saviour voluntarily associated with the Diocese of South Carolina.

136. As of December 2011, Our Saviour had 195 baptized members and an annual operating income of \$631,418.

137. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, Our Saviour reaffirmed its disaffiliation with the Defendant by a vote of its Board of Directors on December 11, 2012.

138. Our Saviour is the fee simple owner of all its real property.

139. During its 42-year history, the acquisition of Our Saviour's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Our Saviour without any assistance or contributions from the Defendant.

140. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of Our Saviour's real or personal property.

141. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted Our Saviour's name and emblems by:

- i. Posting Our Saviour's name or a name substantially similar on a website and improperly asserting that Our Saviour is "in union with" the Defendant.
- ii. Using Our Saviour's name or a name substantially similar to it to send email and other correspondence improperly asserting that Our Saviour is "in union with" the Defendant.

The Church Of The Good Shepherd, Charleston, S.C. ("Good Shepherd")

142. Good Shepherd is a South Carolina non-profit corporation. Its business address is 1393 Miles Drive, Charleston, South Carolina. It was incorporated on December 19, 1833.

143. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

144. Good Shepherd held its first service in an army tent in February of 1922. The lot on which the tent stood was bought and the first chapel was opened for services on May 14, 1922.

145. In 1933, the Church building was improved. At this time a lot north of the Church was acquired. In 1948, the congregation built a rectory adjoining the Church. In 1951 Good Shepherd voluntarily associated with the Diocese of South Carolina when it became a parish.

146. As of December 2011, Good Shepherd had 406 baptized members and an annual operating income of \$471,833.

147. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, Good Shepherd reaffirmed its disaffiliation with the Defendant by a vote of its Board of Directors on December 9, 2012.

148. Good Shepherd's is the fee simple owner of all its real property.

149. During its 90-year history, the acquisition of Good Shepherd's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Good Shepherd without any assistance or contributions from The Episcopal Church.

150. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of Good Shepherd's real or personal property.

151. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted Good Shepherd's name and emblems by:

- i. Posting Good Shepherd's name or a name substantially similar on a website and improperly asserting that Good Shepherd is "in union with" the Defendant.
- ii. Using Good Shepherd's name or a name substantially similar to it to send email and other correspondence improperly asserting that Good Shepherd is "in union with" the Defendant.

The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston, In The State Of South Carolina ("St. Philip's")

152. Pursuant to the Church Act of 1704 adopted by the Colonial Assembly on November 4, 1704, the Colonial Assembly officially established worship in the Province of Carolina according to the Church of England.

153. The Church Act of 1704 divided the Province into Parishes, and provided that "Charlestown, and the Neck between Cooper and Ashley Rivers...is and shall be from henceforth forever a distinct parish of itself, and be called by the name of the Parish of St. Philip's, in Charlestown."

154. The Church Act of 1704 further provided that the "church situate in Charlestown, and the ground thereunto adjoining, enclosed and used for a cemetery or church yard, shall be the parish church and church-yard of St. Philip's, Charlestown; and the same is hereby enacted and declared to be forever separated and dedicated to the service of God, and to be applied therein to the use and behalf of the inhabitants from time to time inhabiting and to inhabit there, that are of the religion and profession of the Church of England, and conform to the same."

155. On November 30, 1706, the Colonial Assembly repealed the Church Act of 1704 replacing it with the Church Act of 1706. Like the Act of 1704, the Church Act of 1706 divided the Province into various parishes, again establishing Charlestown, and the Neck between the Cooper and Ashley Rivers, as a “distinct parish of itself, and be called by the name of the Parish of St. Philip’s, in Charlestown”, and further declared, like the 1704 Act, that “...the church situate in Charlestown...and the ground thereunto adjoining, enclosed and used for a cemetery or church yard, shall be the church and church-yard of St. Philip’s in Charlestown.” Section XV of the Church Act of 1706 also provided that the Rector or Minister of each Parish to be constituted a “corporation sole” with all corporate authority to sue and be sued.”

156. On April 8, 1710, the Colonial Assembly enacted “An Act for the Establishment of Religious Worship in this Province [of Carolina] according to the Church of England, and for the erecting of Churches for the Public Worship of God” among other things, this Act designated the Parish of St. Philip’s, Charlestown, as the “head or chief place of this Province” and authorized certain debts of St. Philip’s to be paid from the public treasury.

157. Historically, St. Philip’s Church was known as the “Mother Church” of the Province and later became known and recognized as the Mother Church of the Diocese of South Carolina. Among those buried in the adjoining historic churchyard and cemetery of St. Philip’s Church is a signer of the Declaration of Independence, a signer of the Constitution of the United States, a former Justice of the United States Supreme Court, former Justices of the South Carolina Supreme Court, a former Vice-President of the United States, numerous Governors of South Carolina, former United States Senators from South Carolina, former Mayors of the City of Charleston, and former United States Ambassadors; former members of St. Philip’s Church

who are buried elsewhere include a second Signer of the Declaration of Independence and two former Presidents of the Continental Congress.

158. The original church structure known as St. Philip's, Charlestown, was constructed in 1681-1682 at the southeast corner of Broad and Meeting Streets in Charleston (now the location of St. Michael's Church), but by the first decade of the 1700s, the black cypress church structure began to decay and became too small for the increasing population of Charlestown. As a result, the Colonial Assembly, on March 1, 1710, passed "An Act for the Erecting of a new Brick Church at Charles-Town to be the Parish Church of St. Philip's Charles-Town" and authorized certain appointed commissioners to receive charitable donations to purchase and to take grant of a town lot or lots for the erecting of a new church structure at the location of the present day St. Philip's Church. This Act further provided that once built, the church and adjoining church yard shall be declared and known as the "Parish Church and Church-yard of St. Philip's, Charlestown." Pursuant to the Act, construction was begun on a brick structure at the present day location of St. Philip's Church in 1711, and following interruptions by the hurricane of 1713 and the Yemassee Indian Wars, the first service in the new St. Philip's Church, at its present day location, was held on Easter Sunday, 1723.

159. This structure was destroyed by fire in 1835 and replaced by the present day structure built in between 1835 and 1838.

160. On June 14, 1751, the Colonial Assembly, as a result of the increasing number of inhabitants in the Parish of St Philip, divided the Parish of St. Philip into two separate parishes, the Parish of St. Philip and the Parish of St Michael, and authorized the construction of a new church, to be known as St. Michael's Church, at the present day location of St. Michael's.

161. Following the American Revolution, in order to remedy any uncertainty following the disestablishment of the Church of England in the United States, including any uncertainty as to the title of various parish properties, the South Carolina General Assembly, on March 24, 1785, incorporated the Vestries and Wardens of the Parishes of St. Philip and St. Michael, declaring "...the present vestries and church wardens of the churches in the parish of St. Philip and St. Michael, and their successors forever hereafter, shall be, and they are hereby declared to be, one body corporate, in deed and in name, by the name 'Vestries and Church-Wardens of the Episcopal Churches of the Parishes of St. Philip and St. Michael, Charleston' and by that name shall, from time to time, and at all times hereafter, have perpetual succession and a common seal, and be capable in law, to have, hold, receive, possess and enjoy all of the lands, tenements and hereditaments, and the rents and income thereof, which now are vested in the said vestries and church wardens respectively, to them and their successors in office, and to sell, alien, exchange, demise or lease the same, or any part thereof, as they or a majority of them, shall think convenient."

162. Thereafter, in 1791, the General Assembly split St. Philip's Church and St. Michael's Church into two separate corporations, making each a separate and distinct body politic and corporate. The Legislature created "The Protestant Episcopal Church, of the Parish of Saint Philip, in Charleston, in the State of South Carolina" and "The Protestant Episcopal Church, of the Parish of Saint Michael, in Charleston, in the State of South Carolina", with each separate corporation having the right to "possess and enjoy their respective properties severally, and shall have, possess and enjoy the same authority, powers and privileges which [by Act No. 1278 adopted on March 24, 1785] are granted to them conjointly; and that the said vestry and church wardens of the Episcopal Church of the Parish of Saint Philip, in Charleston, and their

successors in office for ever hereafter, shall be and they are hereby declared to be incorporated, as a body politic and corporate, in deed and in law, by the name 'The Protestant Episcopal Church, of the Parish of Saint Philip, in Charleston, in the State of South Carolina'...capable in law, to have, hold, take, receive, possess and enjoy, all the lands, tenements and hereditaments, and the rents and income thereof, which now are, or hereafter shall be, vested in them, respectively, by gift, devise or purchase, to them and their respective successors in office, forever."

163. St. Philip's Church has been in continuous existence and operation serving the spiritual needs of the people of Charleston and surrounding areas since 1681, and since its incorporation on December 29, 1791, The Protestant Episcopal Church, of the Parish of Saint Philip, in Charleston, in the State of South Carolina, also known as "St. Philip's Church", has continued to validly exist and function as a South Carolina corporation, in good standing, with all such rights and powers granted unto it by law and by the said 1791 Act, along with all such rights and powers under the Act of 1785 that were not implicitly repealed by the Act of 1791, including, without limitation, the right, power and authority to own, hold, receive, possess and enjoy all real and personal property, lands, tenements and hereditaments, and the rents and income therefrom, then owned and vested in said corporation or thereafter acquired by said corporation, whether by gift, devise or purchase.

164. St. Philip's voluntarily associated with the Diocese of South Carolina, sending delegates to early diocesan conventions. St. Philip's was a signatory to the first Constitution of the Diocese of South Carolina.

165. St. Philip's left the Defendant in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina reassociated with the Defendant in 1866.

166. Its Vestry and Wardens have served as its governing body or Board of Directors pursuant to its governance documents since its incorporation.

167. As of December 2011, St. Philip's had 2,677 baptized members and an annual operating income of \$2,327,280.

168. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. Philip's reaffirmed its disaffiliation with the Defendant by a vote of its Vestry and Wardens serving as its Board of Directors on November 11, 2012.

169. St. Philip's is the fee simple owner of all its real property.

170. During its 331-year history, the acquisition of St. Philip's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Philip's without any assistance or contributions from the Defendant.

171. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of St. Philip's real or personal property.

172. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted St. Philip's name and emblems by:

- i. Posting St. Philip's name or a name substantially similar on a website and improperly asserting that St. Philip's is "in union with" the Defendant.
- ii. Using St. Philip's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Philip's is "in union with" the Defendant.

**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 ("St. Michael's")

173. St. Michael's is a South Carolina non-profit corporation. Its business address is 71 Broad Street, Charleston, South Carolina.

174. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation in 1785.

175. St. Michael's voluntarily associated with the Diocese of South Carolina, sending delegates to early diocesan conventions. St. Michael's was a signatory to the first Constitution of the Diocese of South Carolina.

176. On June 14, 1751, an Act of the Colonial Assembly, divided the Parish of St. Philip into two separate parishes, the Parish of St. Philip and the Parish of St Michael, and authorized the construction of a new church, to be known as St. Michael's Church. The parish church was directed to be built "on or near the place where the old Church of St. Philip formerly stood" at the southeast corner of Broad and Meeting Streets.

177. St. Michael's Church was opened for worship in February 1761.

178. Following the American Revolution, in order to remedy any uncertainty following the disestablishment of the Church of England in the United States, including any uncertainty as to the title of various parish properties, the South Carolina General Assembly, on March 24, 1785, incorporated the Vestries and Wardens of the Parishes of St. Philip and St. Michael, declaring "...the present vestries and church wardens of the churches in the parish of St. Philip and St. Michael, and their successors forever hereafter, shall be, and they are hereby declared to be, one body corporate, in deed and in name, by the name 'Vestries and Church-Wardens of the

Episcopal Churches of the Parishes of St. Philip and St. Michael, Charleston' and by that name shall, from time to time, and at all times hereafter, have perpetual succession and a common seal, and be capable in law, to have, hold, receive, possess and enjoy all of the lands, tenements and hereditaments, and the rents and income thereof, which now are vested in the said vestries and church wardens respectively, to them and their successors in office, and to sell, alien, exchange, demise or lease the same, or any part thereof, as they or a majority of them, shall think convenient."

179. In 1791, the South Carolina Legislature split St. Philip's Church and St. Michael's Church into two separate corporations, making each a separate and distinct body politic and corporate. Adopted on December 29, 1791, the legislation created "The Protestant Episcopal Church, of the Parish of Saint Philip, in Charleston, in the State of South Carolina" and "The Protestant Episcopal Church, of the Parish of Saint Michael, in Charleston, in the State of South Carolina", with each separate corporation having the right to "possess and enjoy their respective properties severally, and shall have, possess and enjoy the same authority, powers and privileges which [by the March 24, 1785 Act] are granted to them conjointly; ... and that the said vestry and church wardens of the Episcopal Church of the Parish of Saint Michael, in Charleston, and their successors in office for ever hereafter, shall be and they are hereby declared to be, incorporated as a body politic and corporate, in deed and in law, by the name 'The Protestant Episcopal Church of the Parish of Saint Michael, in Charleston, in the State of South Carolina' ...capable in law, to have, hold, take, receive, possess, and enjoy, all the lands, tenements, hereditaments, and the rents and income thereof, which now are, or hereafter shall be, vested in them respectively, by gift, devise or purchase, to them and their respective successors in office, forever."

180. In the fall of 1863, due to the war and shells targeting the steeple, the congregation retreated to St. Paul's Church where services were held until 1865. The Church, being seriously damaged, was repaired and then reopened on November 26, 1865.

181. St. Michael's left the Defendant in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant in 1866.

182. Among those buried in the historic cemetery of St. Michael's are two signers of the Constitution of the United States one of whom was the second Chief Justice of the United States Supreme Court, former members of the Continental Congress, former Revolutionary War Generals, numerous South Carolina Governors, former United States Senators and Congressmen, and former Mayors of the City of Charleston.

183. As of December 2011, St. Michael's had 1,820 baptized members and an annual operating income of \$1,889,269.

184. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. Michael's reaffirmed its disaffiliation with the Defendant by a vote of its Board of Directors on October 25, 2012.

185. St. Michael's is the fee simple owner of all its real property.

186. During its 227-year history, the acquisition of St. Michael's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Michael's without any assistance or contributions from the Defendant.

187. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of St. Michael's real or personal property.

188. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted St. Michael's name and emblems by:

- i. Posting St. Michael's name or a name substantially similar on a website and improperly asserting that St. Michael's is "in union with" the Defendant.
- ii. Using St. Michael's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Michael's is "in union with" the Defendant.

The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of Prince George Winyah ("Prince George")

189. Prince George is a South Carolina non-profit corporation. Its business address is 301 Screven Street, Georgetown, South Carolina.

190. Prince George's Parish at Winyah (often spelled "Winyaw") was created on March 10, 1721 by an Act of the Colonial Assembly. It was named for George, Prince of Wales who became George II of England in 1727; and was located on a bluff overlooking the Black River (Winyah or Winyaw was the local Indian word for "black").

191. In 1734, Prince George's Parish, Winyaw, was divided, as the center of population had moved to present day Georgetown. The parish was now centered in Georgetown, while the Black River parish was renamed "Prince Frederick" (for Frederick, Prince of Wales). Upon this division, planning was started for the present brick church located at the intersection of Highmarket and Broad streets in Georgetown. That structure was largely completed in 1751; however Sunday services began in this building on August 16, 1747, and have been held continuously ever since.

192. The Parish of Prince George, Winyah, was again divided by act of the Colonial Assembly in 1767, the area between the Waccamaw River and the ocean, north to the North Carolina boundary line becoming “All Saints’ Parish”.

193. On February 29, 1788, Prince George Parish was incorporated by the General Assembly as “The Vestry and Church Wardens of the Episcopal Church of the Parish of Prince George Winyaw”, and granted full title to the property of the parish and full rights to acquire or dispose of property “as they shall think convenient”.

194. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

195. Prince George voluntarily associated with the Diocese of South Carolina, sending delegates to early diocesan conventions. Prince George was a signatory to the first Constitution of the Diocese of South Carolina.

196. Prince George left the national church in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant.

197. Prince George, through its Board of Directors, voted on November 12, 2012, among other things, to declare that Prince George is not part of the Defendant and to repudiate any claim by any representative of the Defendant to have any right or authority over this Parish or its property.

198. As of December 2011, Prince George had 695 baptized members and an annual operating income of \$750,430.

199. Prince George’s is the fee simple owner of all its real property.

200. During its 281-year history, the acquisition of Prince George's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of Prince George without any assistance or contributions from the Defendant.

201. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of Prince George's real or personal property.

202. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted Prince George's name and emblems by:

- i. Posting Prince George's name or a name substantially similar on a website and improperly asserting that Prince George is "in union with" the Defendant.
- ii. Using Prince George's name or a name substantially similar to it to send email and other correspondence improperly asserting that Prince George is "in union with" the Defendant.

The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust ("St. Helena")

203. St. Helena is a South Carolina non-profit corporation legislatively incorporated on March 22, 1786. Its business address is 507 Newcastle Street, Beaufort South Carolina.

204. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

205. St. Helena voluntarily associated with the Diocese of South Carolina, sending delegates to early diocesan conventions. St. Helena was a signatory to the first Constitution of the Diocese of South Carolina.

206. St. Helena Parish was created in 1712 by an Act of the Colonial Assembly under the authority of the Church Act of 1706. The area south of Colleton County commonly called Granville County was renamed the Parish of St. Helena. Residents within the parish desired to have “divine worship” and five such residents were designated benefactors, of the parish “willing to contribute to the building a church, and afterwards for the building of a Rector’s or Minister’s house, without any charge to the public.”

207. On Dec. 11, 1717 an act of the Colonial Assembly authorized a Grant of Land not exceeding fifty acres belonging to Beaufort, for a “ ‘Glebe for the use of the Rector, or Minister of the Parish of St. Helena and his successors forever.’ ”

208. A brick church, forty feet by thirty feet with a ten square foot chancel, was completed in 1724 within the fifty-acre glebe granted in 1717.

209. In 1778, as a consequence of the Revolutionary War, the Church of England was disestablished in South Carolina. In order to alleviate uncertainty concerning the legal status and title to church property, some parishes, including St. Helena, petitioned the South Carolina legislature for incorporation.

210. On May 12, 1785 the first “Convention of the Protestant Episcopal Church in South Carolina” was held. St. Helena voluntarily associated with the Diocese of South Carolina and it was a signatory to the first Constitution of the Diocese of South Carolina.

211. On March 22, 1786, the legislature passed an act incorporating St Helena as “The Vestry and Churchwardens of the Episcopal Church of the Parish of St. Helena” and affirming its ownership of certain lands including the lands on which the church is located today.

212. In about 1810 St. Helena began raising money to expand the church. The original church building was enlarged in 1817. The church also underwent expansion and renovation in 1842.

213. St. Helena left the Defendant in 1861 along with the rest of the Diocese. They returned with the Diocese of South Carolina when it voluntarily reassociated in 1866.

214. Between November 1861 and 1865, Union forces occupied Beaufort, including St. Helena’s Church, which was first used as a chapel and then converted to a hospital. While services continued elsewhere, at the conclusion of the war, it took nearly two years of repair work before services could resume in the church.

215. The church was severely damaged twice more, by a storm in 1896 and by hurricane Gracie in 1959. In both instances extensive restoration was required and completed by the congregation.

216. By 1999, the church was in need of restoration and repairs. After 19 months of work at a cost of some \$2.6 million paid for by the congregation, the Church reopened on Palm Sunday 2000.

217. On January 22, 2012 St. Helena marked the beginning of its tricentennial year with a worship service presided over by the Lord Bishop of London.

218. As of December 2011, St. Helena had 1,885 baptized members and an annual operating income of \$2,059,723.

219. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. Helena reaffirmed its disaffiliation with the Defendant by a vote of its Board of Directors on November 13, 2012.

220. St. Helena's is the fee simple owner of all its real property.

221. During its 300-year history, the acquisition of St. Helena's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Helena without any assistance or contributions from the Defendant.

222. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of St. Helena's real or personal property.

223. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted St. Helena's name and emblems by:

- i. Posting St. Helena's name or a name substantially similar on a website and improperly asserting that St. Helena is "in union with" the Defendant.
- ii. Using St. Helena's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Helena is "in union with" the Defendant.

The Vestry and Wardens Of St. Paul's Church, Summerville ("St. Paul's")

224. St. Paul's is a South Carolina non-profit corporation incorporated on December 19, 1855. Its business address is 316 W Carolina Avenue, Summerville, South Carolina.

225. St. Paul's traces history back to colonial Dorchester. For 11 years after the passage of the Church Act of 1706 the area of Dorchester encompassing what is now

Summerville was part of St. Andrews Parish. In 1717 Episcopalians within Dorchester petitioned the Colonial Assembly for their own parish. The new parish, formed by an Act passed on Dec. 11, 1717 was named St. George. "The Church and Parsonage-House were directed to be built where the Commissioners should direct, with the consent of a majority of the Parishioners, professing the religion of the Church of England, who should contribute to the expense."

226. By 1720 construction of the outer portion of a church was complete. The construction was paid for by local subscriptions and by a contribution from the Colonial Assembly.

227. In 1734 the Church was renovated and enlarged and in 1751 a bell tower was added. The British occupied the area during the Revolutionary War. In 1782 the British set fire to the church, with only the bell tower surviving.

228. As of 1829 the rector of St. Paul's Stono was holding regular summer services in parishioners homes. St. Paul's Summerville remained a chapel-of-ease under the vestry of St. Paul's Stono until after 1865. In 1830 parishioners built a church in Summerville near the present site.

229. In 1855 the General Assembly of South Carolina incorporated "The Vestry and Wardens of St. Paul's Church, Summerville" and granted ownership of certain property including the property on which the church is located to St. Paul's Summerville.

230. St. Paul's Summerville has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation.

231. In 1857 the parishioners, needing a larger church, completed and consecrated the present church building that was enlarged in 1878.

232. Since 1857 the church has undergone repairs caused by the 1886 earthquake, has seen the addition of Ambler Hall in 1924, the construction of the parish house in 1974 and a new addition in 1986. All work was at the impetus of, under the direction of and at the expense of the rector and parishioners of St. Paul's Summerville.

233. St. Paul's left the Defendant in 1861 along with the rest of the Diocese. They returned when the Diocese of South Carolina voluntarily reassociated with the Defendant in 1866.

234. As of December 2011, St. Paul's had 952 baptized members and an annual operating income of \$1,140,170.

235. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, St. Paul's reaffirmed its disaffiliation with the Defendant by a vote of its Board of Directors on December 17, 2012.

236. St. Paul's is the fee simple owner of all its real property.

237. During its 295-year history, the acquisition of St. Paul's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from funds donated or obtained from the parishioners of St. Paul's without any assistance or contributions from the Defendant.

238. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of St. Paul's real or personal property.

239. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted St. Paul's name and emblems by:

- i. Posting St. Paul's name or a name substantially similar on a website and improperly asserting that St. Paul's is "in union with" the Defendant.

- ii. Using St. Paul's name or a name substantially similar to it to send email and other correspondence improperly asserting that St. Paul's is "in union with" the Defendant.

Trinity Church Of Myrtle Beach ("Trinity")

240. Trinity is a South Carolina non-profit corporation. Its business address is 3000 N Kings Highway, Myrtle Beach, South Carolina. Trinity was incorporated on May 27, 1949.

241. It has continually existed and acted as a duly formed corporation with its Vestry and Wardens serving as its Board of Directors pursuant to its governance documents since its incorporation in 1949.

242. Trinity was organized in June 1939 as the "Church of the Messiah." It became a mission of the Diocese of South Carolina in October 1939. In 1949, it voluntarily associated with the Diocese of South Carolina as a parish. In 1951, its name was changed to "Trinity Episcopal Church." In November 2009, its name was changed to "Trinity Church of Myrtle Beach."

243. As of December 2011, Trinity had 650 baptized members and an annual operating income of \$700,533.

244. Trinity's is the fee simple owner of all its real property.

245. In addition to its votes at the Special Convention of the Diocese of South Carolina held on November 17, 2012, Trinity reaffirmed its disaffiliation with the Defendant by a vote of its Board of Directors on December 10, 2012.

246. During its 63-year history, the acquisition of Trinity's real and personal property and the maintenance, repair and renovation of its real property has been accomplished from

funds donated or obtained from the parishioners of Trinity without any assistance or contributions from the Defendant.

247. Neither the Defendant nor any other entity associated with the Defendant has any legal, beneficial or equitable interest in any of Trinity's real or personal property.

248. Defendant and those under its control including individuals claiming to be members of Defendant have assumed, used, adopted Trinity's name and emblems by:

- i. Posting Trinity's name or a name substantially similar on a website and improperly asserting that Trinity is "in union with" the Defendant.
- ii. Using Trinity's name or a name substantially similar to it to send email and other correspondence improperly asserting that Trinity is "in union with" the Defendant.

**DEFENDANT
THE EPISCOPAL CHURCH ("TEC")**

249. TEC is an unincorporated association with a business address of 815 Second Avenue, New York, New York. At least one of its members is a citizen of South Carolina.

250. TEC is a voluntary association of corporately independent dioceses.

251. Katharine Jefferts Schori is an agent of TEC.

252. Thomas S. Tisdale, Jr. is an agent of TEC and of Katharine Jefferts Schori and has been since at least December 2009.

253. On information and belief, Thomas S. Tisdale, Jr. was asked by TEC, through its agent, Katharine Jefferts Schori, to form a group some months before November 2012 called the "Steering Committee."

254. The Steering Committee is, on information and belief, operated under the auspices of TEC through Katharine Jefferts Schori.

255. Thomas S. Tisdale, Jr. has spoken on behalf of TEC at public meetings since on or about November 7, 2012 where he has stated, among other things, that TEC and those acting at and under its direction and control:

- i. will use the name and symbols of the Diocese of South Carolina;
- ii. have opened a bank account in the name of the Diocese of South Carolina.
- iii. will pursue lawsuits against the Diocese of South Carolina and against its parishes.

256. Since on or about November 7, 2011, TEC has repeatedly assumed, used, adopted and continued to use the names and emblems of the Diocese of South Carolina and of the Plaintiff Parishes without their consent. Specifically, TEC through its agents:

- i. sent an invitation by email at approximately 3:00 p.m. on November 8, 2012 from "Episcopal Diocese of South Carolina" using the email address "epsiscopaldioceseofsc@gmail.com" to all the Clergy of The Diocese inviting them to a "Clergy Day" to be held on November 15, 2012 at The Church of the Holy Communion, Charleston, SC. The invitation used the seal of the Diocese of South Carolina and the shield of TEC;
- ii. upon information and belief, the meeting location was changed because the rector of The Church of the Holy Communion, Charleston, SC was not aware when he allowed the meeting of its purposes, was not aware

- of the email that would be sent in the name of the Diocese of South Carolina, and was not aware of the unauthorized use of the Seal of the Diocese of South Carolina and the use of the protected Diocesan name;
- iii. caused to be registered the domain name “episcopaldioceseofsc.com” on October 27, 2012;
 - iv. caused to be created a website, “www.episcopaldioceseofsc.com”;
 - v. caused to be created an address at gmail.com using the name “episcopaldioceseofsc”;
 - vi. sent another email invitation on November 9, 2012 to clergy in the Diocese of South Carolina which was the same in substance as the November 8th email except with a new location. The email used the same names, and the diocesan Seal together with the TEC shield;
 - vii. caused to be published on November 11, 2012 an advertisement in the name of the Steering Committee in The Post & Courier, The Beaufort Gazette and Island Packet which used the Diocese name and its seal;
 - viii. caused to be launched a website, “www.episcopaldioceseofsc.org”, which used the Diocesan Seal on all of its pages and used the names of the Plaintiff Parishes misrepresenting their status;
 - ix. caused to be launched a website called “www.scstewardship.com” using the name and seal of the Diocese which continues to be used;
 - x. caused to be duplicated, word for word, from the Diocese of South Carolina’s website, and placed on the above website the history and description of the Seal of the Diocese of South Carolina;

- xi. caused to be placed in The Island Packet on December 29, 2012 an invitation to a meeting using imitations of the Seal of the Diocese of South Carolina and using the name of the Diocese of South Carolina.
- xii. Caused the parish Plaintiffs names and website address links to be placed on TEC's website at www.episcopalchurch.org/diocese/southcarolina asserting, without the consent of the Plaintiff parishes and the Diocese of South Carolina, that they are associated with TEC and improperly using the name of the Diocese of South Carolina in an unauthorized web address called "www.episcopaldioceseofsc.org";
- xiii. TEC through Katherine Jefferts Schori improperly used the name of the Diocese of South Carolina in her letter of November 16, 2012;
- xiv. TEC through Katherine Jefferts Schori improperly used the name of the Diocese of South Carolina when TEC purportedly called a convention for January 25-26, 2013.

**FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT**

(Interest in Real and Personal Property, South Carolina Code of Laws §§ 15-53-10, *et seq.*)

257. Plaintiffs incorporate by reference paragraphs 1-256.

258. The Defendant contends the real and personal property of Plaintiffs belongs to the Defendant or to those under its control "to be used for the mission of the Episcopal Church."

259. The Defendant contends that it, or those under its direction and control, have the right to the ownership and possession of Plaintiffs real and personal property even though there are no documents that have been signed by the Plaintiffs that expressly or impliedly create a property interest in favor of the Defendant and even though the Defendant has not taken any

reasonable steps necessary to obtain and protect that alleged interest through any commonly recognized mechanism to record its alleged interest in any court in South Carolina.

260. There exists an actual, justiciable controversy between the Plaintiffs and the Defendant.

261. As a result of the matters alleged above, the Plaintiffs seek a declaration, in accordance with the provisions of § 15-53-20 of the South Carolina Code of Laws (1976), that:

- a. The Defendant has no legal, beneficial or equitable interest in any of the real and personal property of Plaintiffs;
- b. The Defendant and anyone claiming under any alleged interest of the Defendant has no right, title or interest, legal, beneficial or equitable, to the real and personal property of the Plaintiffs;
- c. The Plaintiffs are the lawful and rightful possessors of all of the real and personal property as alleged above.

SECOND CAUSE OF ACTION
(Service Mark Infringement, South Carolina Code of Laws §§ 39-15-1105, *et seq.*)

262. Plaintiffs incorporate by reference paragraphs 1-261.

263. Defendant, and those acting under its direction and control, without the consent of the Plaintiffs, has used and caused to be used the registered service marks of Plaintiffs in the connection with its services and has used reproductions, copies or imitations of Plaintiffs' registered service marks which is likely to, and has, caused confusion, mistake and deception in that it has done so falsely claiming to be, or have the consent of, Plaintiffs.

264. Defendant and those acting under its direction and control have committed the acts alleged with the intent to cause confusion, mistake or to deceive.

265. The registered service marks of the Plaintiffs are famous within the meaning of § 39-15-1165, South Carolina Code of Laws (1976).

266. The Plaintiffs are entitled to injunctions prohibiting Defendant and those acting under its direction and control from using the registered service marks, requiring the return of all the counterfeit or imitation service marks to an officer of the Court or to the Plaintiffs for their destruction, and for such reasonable attorney's fees as may be determined by the Court all as provided by § 39-15-1170 of the South Carolina Code of Laws (1976).

**THIRD CAUSE OF ACTION
(Improper Use of Names, Styles and Emblems South Carolina Code of Laws §§ 16-17-310
and 320)**

267. Plaintiffs incorporate by reference paragraphs 1-266.

268. Plaintiffs are charitable organizations in the State of South Carolina.

269. Defendant and persons under its direction and control have assumed, used, adopted and have continued to assume, use and adopt the names, styles and emblems of the Plaintiffs or those so nearly resembling such names, styles and emblems, to be colorable imitations, all in violation of § 16-17-310 of the South Carolina Code of Laws (1976).

270. Plaintiffs were organized prior to and first used the names, styles and emblems or those substantially similar to those assumed, used and adopted by the Defendant and persons or any entity under its direction or control before Defendant or any organization under its direction or control was organized and first used the names, styles or emblems.

271. Plaintiffs are entitled to a declaratory judgment that Plaintiffs have the exclusive use of such names, styles and emblems and to have the rights of the Defendant and those under

its direction or control including its individual members fixed and determined all as provided in § 16-17-310, South Carolina Code of Laws (1976).

272. Plaintiffs are entitled to injunctions against the Defendant and those under its direction or control for the actual, and threatened continued, violation of the provisions of §16-17-310 all as provided by § 16-17-320, South Carolina Code of Laws (1976).

WHEREFORE, Plaintiffs pray that this Court declare the rights, status and other legal relations of the parties pursuant to §§ 15-53-10, *et seq* of the South Carolina Code of Laws and enjoin the Defendant and those acting under its direction and control, pursuant to §§ 39-15-1105, *et seq.*, 16-17-10 and 16-17-20 of the South Carolina Code of Laws, all as follows:

- a. That the Plaintiff, The Protestant Episcopal Church in the Diocese of South Carolina (“Diocese of South Carolina”) is the only properly organized civil corporation and organization entitled to the use and control of the corporate entity, its names, emblems, styles and seal, its corporate assets, its real and personal property;
- b. That the only proper and authorized representatives of the Diocese of South Carolina are the members of its Board of Directors, and their duly elected or appointed successors, and employees of the Diocese of South Carolina and that they alone are authorized to update the signature cards on any account held by the Diocese of South Carolina and to file proper amendments to the articles of incorporation and any other necessary filing with the South Carolina Secretary of State;
- c. That the Diocese of South Carolina has withdrawn from the Defendant;
- d. That there is only one of each Plaintiff Parishes and that each Parish through its Board of Directors and its duly elected or appointed successors and employees are the only

proper authorities of the Parish and are entitled to the exclusive use and control of the Parish corporation, its assets, its real and personal property;

- e. That the Defendant may not assume or hold out that any entities under its direction or control are the Diocese of South Carolina or are any of the Plaintiff Parishes;
- f. That the Defendant or anyone under its direction or control does not have legal capacity to act in the name of the Diocese of South Carolina or in the name of any of the Parishes;
- g. That the Defendant does not have a legal, beneficial or equitable interest in the real and personal property owned by the Diocese of South Carolina or in that of any of the Plaintiff parishes;
- h. That the Defendant has no rights to or authority over any Diocese of South Carolina or Parish real and personal property, and that the Defendant has no right or authority to possess, divert, encumber, alienate, transfer, or use any such property;
- i. That the Defendant and any entity or persons under its direction or control may not use in any way the registered service marks of the Diocese of South Carolina or of the Plaintiff parishes and that it be enjoined from such uses all as provided by Sections 39-15-1105 *et. seq.* South Carolina Code of Laws (1976);
- j. That the Defendant, its successors and assigns, and any person acting in concert with them, or under its direction or control be enjoined from operating or using under the Plaintiffs' names, filing unauthorized corporate documents under the Plaintiffs' names and using the names, seals, other service marks and intellectual property of the Plaintiffs without their express written authorization all as provided by Sections 16-17-310 and 320 of the South Carolina Code of Laws (1976);

- k. That the Defendant, its officers, agents, servants, employees, members, and attorneys, and any person in concert with or under its direction or control be enjoined from holding themselves out as the officers or other leaders of the Plaintiffs and/or any other constituent entities of the Plaintiffs all as provided by Sections 16-17-310 and 320 of the South Carolina Code of Laws (1976);
- l. That the Court grant such other, further or different relief as may be deemed just and proper including reasonable attorney's fees as provided by Sections 39-15-1105 *et seq.* of the South Carolina Code of Laws (1976).

SERVICE LIST

Agents for The Episcopal Church

Via Certified Mail & Personal Service

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Via Certified Mail & Personal Service

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Respectfully submitted,

January 4, 2013

*The Protestant Episcopal Church In The
Diocese of South Carolina; and
The Trustees of the Protestant Episcopal Church of
South Carolina*

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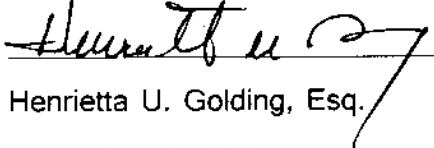
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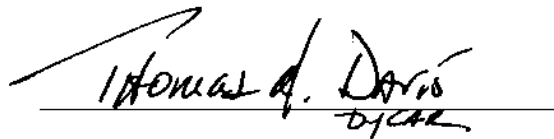
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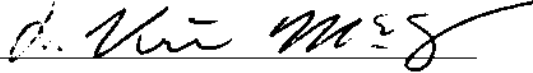
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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

The Protestant Episcopal Church
In The Diocese Of South Carolina, et
al.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

2013-CP-18-13

-CP -

vs.

The Episcopal Church

Defendant(s)

Submitted By: C. ALAN RUNYAN, ESQ
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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

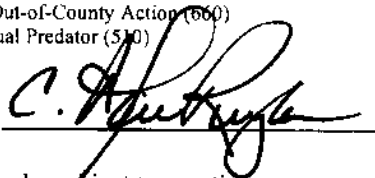
- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

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|--|---|---|--|
| Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP- _____
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | Torts - Personal Injury
<input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Other (399) | Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
| Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | Administrative Law/Relief
<input type="checkbox"/> Reinstat Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) | Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Other (799) | Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) |
| Special/Complex /Other
<input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input checked="" type="checkbox"/> Other (699) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of State Depositions (650)
<input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Sexual Predator (510) | | |

complex

Submitting Party Signature:



Date: January 4, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

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Our Diocesan Seal



The Seal of the Diocese of South Carolina was first formally proposed at Diocesan Convention in 1908 and initially adopted in 1911. The current final form was adopted in 1930, based largely upon the seal used by Bishop Nathaniel Bowen during his time as the Third Bishop of the Diocese (1818-1839). It is described in detail by the Rt. Rev. A. S. Thomas, Ninth Bishop of the Diocese of South Carolina (1928 - 1944) in his book *The Episcopal Church in South Carolina* (1957).

The seal is an oval cartouche containing a shield quartered by a Latin Cross in white. In the first quarter of the shield is a lighted candle upon a golden candlestick upon a red background, representing Christ as the Light of the World.

In the second quarter, on a blue background is placed "the pelican in her piety," an image in white of the pelican feeding her young with the blood of her own breast, which represents the atonement by Christ. The pelican is also associated with the Society for the Propagation of the Gospel in Foreign Parts, an English missionary society which maintained the Anglican Church in large measure during Colonial days. There is a pelican, for example, on St. James', Goose Creek, which was a mission of the Society as early as 1702.

The third quarter, also upon a blue background, displays the South Carolina palmetto tree, the symbol of the state.

In the fourth quarter of the shield, upon a red background, are two crossed swords of St. Paul. They were the main symbol on the seal of the Diocese of London. The South Carolina Church in Colonial days was a part of the Diocese of London and under the Bishop of London. These symbols were added with that bishop's expressed consent at that time.

Centered above the shield, in gold on a white background, is a bishop's mitre with lappets, bearing three crosses. It is an indication of the episcopal character of the diocese. To its left is the symbol of the key, also in gold, representing the authority Christ has given to His Church. To its right is the gold head of the bishop's crozier or staff, the symbol of the pastoral jurisdiction of the bishop.

In the cartouche around the perimeter of the shield and mitre is inscribed the name and motto of the Diocese on a white background in gold letters. The name as given on the top half of the seal is: The Diocese of South Carolina. The motto around the bottom half is from an old seal used in the Diocese as early as 1818. It is written in the original Greek, reading: ΜΗΔΕΙΣ ΣΟΥ ΠΕΡΙΦΡΟΝΕΙΤΩ

The phrase is an excerpt from Titus 2:15:

"These things speak, and exhort, and rebuke with all authority. *Let no man despise thee.*"

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...that all may come to know Him..."

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Easter Monday
9 April 2012

Dear Friends in Christ,

As bishop of South Carolina I carry out my ministry at the intersection of yesterday's heritage and today's miracles which keeps me conscious of how tomorrow's legacy is being shaped. It is the Easter season, and I recall that remarkable narrative from Luke's Gospel, the Road to Emmaus. You may recall that a disciple name Cleopas and his unnamed companion walk to a village a short ways from Jerusalem. They are heartbroken over Jesus' crucifixion. They shuffle along the road. A stranger joins them. It is the risen Jesus but their eyes are kept from recognizing him. They arrive at their destination and invite the stranger to stay. He sits at their table and they offer him a meal. When Jesus takes the bread, gives thanks and breaks it, suddenly, and miraculously, their eyes are opened. They see it is the Risen Lord who has been with them all along. Unspeakable joy fills their hearts. It is a lovely story that illustrates what it is like being bishop of this Diocese of South Carolina where yesterday's legacy and today's miracles are transforming realities that shape tomorrow.

Not long ago I instituted The Rev. Christopher Royer as rector of Christ the King, Waccamaw. A few years ago this was a congregation of 40 beleaguered castaways from All Saints', Pawleys Island. Today it is a vibrant and growing congregation of well over 100 faithful members. When I came on that joyous Sunday afternoon I brought with me a \$25,000 check from the Building for Christ Fund to assist in paying for the property they had recently procured on Highway 17 on Pawleys Island. Here they will build a new church. To say there was joy at the gift would be an understatement. The gift came from you, their brothers and sisters throughout the diocese. It came from checks written at your table and from the abundance and scarcity of your daily bread. In Christ's hands it blessed these brothers and sisters with a sense of his risen presence among them. Some of these parishioners of Christ the King carry with them a legacy that goes back several centuries. Others have joined the congregation just a month or two ago. But the "bread" other members of the diocese have given through the grace of Jesus Christ, is a reminder to them of his risen presence.

I could tell you other stories of how our Lord manifests his presence among us. Jesus continues to share his promises and joy as we invite him to our tables and offer him the bread of our daily lives. With these, he does the life transforming miracles that will be tomorrow's legacy others will walk in—grateful for our faithfulness, as you and I are grateful for the faithfulness of those who gone before us. As you give expectantly I believe God will use your gift to perform a miracle today that will be used to form the Gospel shaped stories others will recount and will be the inspiration upon which they build their future.

Yours in Christ,

The Right Reverend Mark J. Lawrence
XIV Bishop of South Carolina

For more information, please contact us either on-line , or by calling (843) 722-4075.

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FAQs About the Assault on the Diocese of South Carolina



The following frequently asked questions (FAQ's) are offered as a more detailed explanation of recent events in the Diocese of South Carolina. Note: These are being updated regularly.

[Please return here frequently, as these will be updated as new information becomes available.]

Why did the Diocese of South Carolina file a lawsuit against the Episcopal Church?

The Diocese and 31 parishes filed suit to protect the Diocese's property and that of its parishes. The suit asks the court to declare that The Episcopal Church has no legal, beneficial or equitable interest in the property of the Diocese, the Trustees of the Diocese or in that of the parishes. It also asks the Court to prevent the Episcopal Church from infringing on the protected marks of the Diocese, including its seal and its historical names, and to prevent the Episcopal Church from assuming the Diocese's identity, which was established long before the Episcopal Church's creation.

On January 31, 2013 South Carolina Circuit Judge Diane S. Goodstein issued a Temporary Injunction which blocks the Episcopal Church (TEC), its continuing parishes, individual, organizations or any entity associated with it from using, assuming or adopting, 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. The Temporary Injunction replaces the Temporary Restraining Order which was issued on January 23, 2013

Is there any reason to believe The Episcopal Church will try to hijack our Diocese's historic property and other assets?

Unfortunately, yes. The Episcopal Church has a history of suing any diocese or parish that leaves in order to obtain the property. It also has a history of trying to assume the identity of those who left and it had begun to try and take the Diocese of South Carolina's identity by calling for a convention to identify new leadership for the diocese, creating a website using the Diocesan seal and producing material identifying this splinter organization as the Diocese of South Carolina. In recent years, it has spent more than \$20 million on lawsuits to prosecute dioceses and parishes that have separated themselves from their extreme positions.

The Presiding Bishop has said that a Diocese may not leave The Episcopal Church. Is that true?

No. The Episcopal Church is a voluntary association. There are no provisions stating that a diocese cannot leave. Were there such provisions, they would violate our freedom of association, which is protected by the United States and South Carolina Constitutions.

Why did we disassociate from The Episcopal Church?

The Episcopal Church attempted to remove Mark Lawrence as the Bishop of the Diocese of South Carolina on grounds that are invalid. The move was intended as the first step in the removal of the people's duly chosen leadership in both the Diocese and our parishes, with the end goal of taking control of both. The Diocese has held firm to positions of theology, morality and polity increasingly at odds with the rapidly changing and unprecedented positions of TEC. The attempt to remove the Bishop is clear evidence that there is no longer a place for us within TEC, so we have exercised our legal right to end that voluntary association.

The Diocese embraces the theology, morality and policies that have united Anglicans for centuries. However, many in TEC have broken with these positions that guide 80 million members of the world Anglican Communion. It is no longer the church we helped to establish more than 200 years ago. Today, we differ on the most fundamental cornerstone of Christianity: As good Anglicans we in the Diocese believe a moral life comes from the transforming power of faith in Christ alone; TEC says that is only one of the options available to members.

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Minimizing the importance of Christ and his teaching calls into question much within TEC . This fundamental shift has resulted in families, parishes and entire dioceses leaving the church. In response to this dramatic loss of resources, TEC has tried to claim more centralized authority over its historically decentralized dioceses and parishes, including the authority to seize their property. TEC has every right to choose its path, but it has no right to impose it on us under the threat of commandeering property acquired through the blood and sweat of faithful believers.

What actions were taken against Bishop Lawrence?

On September 18, 2012, the Disciplinary Board for Bishops (a feature of the Title IV changes to the national Canons which our Diocese rejected because they are contrary to the TEC Constitution) voted to “certify” that Bishop Lawrence had abandoned the Church. Bishop Lawrence was not informed of this action until almost a month later..

What does that mean?

That means that the Episcopal Church's Disciplinary Board for Bishops believe his actions amounted to renouncing the doctrine, discipline and worship of the Episcopal Church. The TEC canons require the Presiding Bishop immediately notify the Bishop. That did not happen. She informed him verbally nearly a month later of this certification and of her intention to restrict his ministry. This after beginning a conversation in the interim about the potential for a negotiated settlement of our differences.

What are those charges?

The first two are that Bishop Lawrence failed to prevent Diocesan Convention from voting to change our diocesan Constitution and Canons to limit or remove reference to those of TEC and for not preventing a similar resolution that had the same effect upon our corporate charter. The final charge was for participating in the granting of quit claim deeds to parishes. These legal documents confirmed what we believe was already established in South Carolina law, that parishes own their property, free of any imposed trust interest by others. All three items were known and the first two explicitly a part of the formal charges of which the Bishop was acquitted last November when the same disciplinary body considered accusations of abandonment.

Did Bishop Lawrence “abandon” the Episcopal Church?

No, he did not. The disciplinary board may disagree, but one reality is that we already did not recognize their actions, having agreed as a Diocese that the canonical changes creating their processes were contrary to the TEC constitution and so of no effect in the Diocese of South Carolina. Those same national canons are presently under review by resolution of the General Convention for that reason. Further, if there was substance to the charges, why were both the Bishop and our deputation granted seat, voice and vote at General Convention this summer? All our actions were over a year old by then. If the Bishop can be charged with abandoning the communion of the Church for these actions, so can the Diocese. It is also worth noting that we have received letters of support and affirmation from across TEC and around the worldwide Anglican Communion. It is clear the larger Church recognizes we have not abandoned its communion.

What does it mean that we are “disassociated” from The Episcopal Church?

It means that we have now completely withdrawn our accession to the Constitution and Canons of TEC. The Diocese of South Carolina continues as it has since its founding as those parishes in union with one another and legally organized and incorporated as The Protestant Episcopal Church in the Diocese of South Carolina. That identity has not changed.

How was that accomplished?

The Standing Committee voted to withdraw our membership in The Episcopal Church and our accession to its constitution effective upon the occurrence of any action against anyone within the Diocese. When that occurred, we were automatically disassociated from The Episcopal Church. The actual language of the resolution may be found at : http://www.diosc.com/sys/images/documents/tec/sc_conditional_disassociate.pdf)

Are there additional conditional resolutions?

Only one, which also took effect immediately. When charges were being considered last Fall against Bp. Lawrence, the Standing Committee passed a similar resolution that called a special convention to be held for the first Saturday more than 30 days from any action taken against the Bishop (the minimum notice required by our diocesan canons). [The minutes of the meeting in which that decision was made can be found here: http://www.diosc.com/sys/images/documents/tec/sc_min_bd_dir_diosc_11_1_11.pdf)

Doesn’t a Diocesan Convention have to vote on whether or not to leave the Episcopal Church?

Our diocesan canons give the Bishop authority as the final arbiter of the meaning and application of our constitution and canons. The Standing Committee formally requested an interpretation of those canons and who had the authority to take such an action. The formal reply of the Bishop made it clear the Standing Committee has such authority to act on behalf of the Diocese (That interpretation can be found here: http://www.diosc.com/sys/images/documents/tec/sc_interpret_cons_can.pdf)

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What happened at the Special Convention Held November 17, 2012?

On Saturday, November 17, 2012, the Protestant Episcopal Church in the Diocese of South Carolina met in Special Convention at the "mother church of the Diocese," historic St. Philip's Church in Charleston. There, an overwhelming majority passed three resolutions. The first resolution affirmed the act of disassociation taken by the Bishop and Standing Committee of the Diocese, in response to actions of The Episcopal Church (TEC). Though it was a voice vote, only one "nay" was heard. The second resolution also passed on first reading. It approved amendments to the Diocesan Constitution removing all reference to the Constitution of the Episcopal Church. On this voice vote only two "nays" were heard. The final vote, which was by orders, was for approval of amendments to the diocesan canons, likewise removing all such reference to the Episcopal Church. It passed with an overwhelming vote of 96% (71 clergy) in the clergy order, with 3 abstaining. In the lay order, the vote passed with 90% in favor (47 voting yes with 5 abstentions).

How will these actions affect the day-to-day workings of our churches?

It will not affect the day-to-day workings of our churches. This Diocese will continue to function and minister largely as it always has. The primary work of the Gospel proclamation will remain the same. Our worship and ministry will be no different. How we relate to one another within the Diocese, in accord with our own Constitution and Canons will be no different.

Most importantly, Bishop Lawrence will continue in all his functions as Diocesan Bishop. He will confer with the leadership of the parishes he is scheduled to visit, and where there are pastoral considerations, his visit may be postponed as seems best. Otherwise, his ministry will continue unchanged.

Practically speaking, our Diocese has its own Health Insurance program. That will remain unchanged. Many of our parishes have their own property insurance plans outside of the Church Insurance Corporation. These too will remain unchanged.

Those parishes that have their insurance through the Church Pension Group will need to begin exploring alternatives.

Clergy will be provided a new Church Pension Fund. Plans are being finalized to do so for lay employees as well.

What is the significance of the Presiding Bishop declaring Bishop Lawrence's renunciation?

Because the Diocese of South Carolina had already left the Episcopal Church, the Presiding Bishop's declaration is of no effect other than for the purposes of their own record keeping. The November 17 Convention affirmed this legal and canonical reality. This action by the Presiding Bishop will come as no surprise to most, though it should be a disappointment to all. It has been done before. Just as the Episcopal Church has been increasingly characterized by ignoring the plain meaning of biblical texts, that same behavior has now come to characterize the application of their own governing canons as well. Those canons are quite explicit about the renunciation of ministry. It is to be a request, made in writing, to the Presiding Bishop, that the bishop in question wishes to be released from the ministry of the Episcopal Church. None of those qualifications have been complied with. Bishop Lawrence has never renounced his orders or expressed the desire to do so.

Isn't this really all about sexuality?

No! While that is one issue about which we are in disagreement with TEC, it is not the central issue, just a symptom of the deeper divisions. We believe that God has revealed in scripture a model for living that is in keeping with His created order, is subject to His blessing and has the greatest likelihood of experiencing that wholeness of life we all crave. That happens to encompass, along with many other areas, our expressions of human sexuality. TEC has chosen the path of least resistance, opting to bless what the culture wishes to bless and avoiding the harder work of calling God's children to repentance and amendment of life. This Diocese, because we uphold the inspired and authoritative character of scripture, continues to affirm the historic teaching of the Church in this and many other crucial areas. We do so because we believe it essential both to our love for God (the response of love is obedience) and because of our love for others (we wish for them what we believe is God's best). Consequently, we will love and accept everyone who comes through our doors, whatever their sexual orientation. But what we will tell them, as we tell every other sinner redeemed by grace, is that we are called to amendment of life, a new life, in Jesus Christ.

Where are we going?

There are no plans to go anywhere. Going somewhere has never been the focus of the work of the Bishop or Standing Committee. Their objective has always been to plan ways to protect the Diocese while remaining within TEC. That option is no longer open to us. For the foreseeable future, we will remain who we have been since our founding in 1785. We are the Protestant Episcopal Church in the Diocese of South Carolina. Our relationships across the Anglican Communion are numerous and strong. The formal character of those relationships and how they may be expressed will be a decision arrived at only after much prayer and conversation as an entire Diocese.

How is our standing within the Anglican Communion?

The Diocese has received letters of support from Anglican primates around the world who recognize that we – like four other U.S. dioceses and at least 200 Episcopal parishes – have disassociated from the Episcopal Church over differences with its interpretation of theology, which many in the global Anglican community consider to be unorthodox. Our relationships with Provinces across the Anglican Communion are numerous and strong. The formal character of those relationships and how they may be expressed will be a decision arrived at only after much prayer and conversation as an entire Diocese. [View the letters of support.](#)

If we are out of TEC, what does it mean when we gather as a Convention?

As with every other Diocesan Convention, since the first seven conventions of the Diocese when there was no association called The Episcopal Church, we gather as the Protestant Episcopal Church in the Diocese of South Carolina. We will continue to do the work of ministry that God has put before us, in covenanted fellowship with one another. Our gathering in Convention has never been predicated upon being part of TEC, as we operate under our own constitution and canons. These things remain unchanged.

If we have left TEC, why do we still use the word “Episcopal” in our names and in our documents?

The term exists in the legal incorporated names of our Diocese and many of our parishes. The churches and the Diocese were always “episcopal” by name from their first founding, going back in some cases to the 1680’s. Its application is far broader than and not exclusively franchised by TEC. It is rightly used to designate any church that has bishops, for that is what the term refers to in the Greek and Latin from which the English word is derived. The episcopos is the bishop. An Episcopal church is simply one that has bishops. We continue, both as a diocese and as parishes to be that kind of church. This is both our legal and ecclesiastical heritage and we embrace it as such.

2/19/13

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EXHIBIT I



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Convention Information

222nd Convention Delegates Information



222nd Diocesan Convention

Making Biblical Anglicans for a Global Age

March 8th and 9th, 2013

Dear Convention Delegates and Clergy:

Below you will find an electronic version of your packet for the 222nd Convention of the Diocese of South Carolina:

- [Welcome Letter from hosting parishes](#)
- [Convention Schedule](#)
- [Proposed Agenda](#)
- [Lodging Information](#)
- [Proposed Resolutions R-1 and R-2](#)
- [Diocesan Convention Committees](#)
- [Convention Election Nominations](#)
- [Convention Workshops](#)

Note: Packets cannot be mailed to parishes who have not yet certified their delegation. To download the certificate, click here:

Please contact me if we can answer any of your Convention questions. bsnyder@dioceseofsc.org or call the Diocesan House at 843-722-4075.

222nd Convention of the Diocese of South Carolina



The 222nd Annual Meeting of the Convention of the Diocese of South Carolina will be held March 8th and 9th, 2013.

Friday, March 8

Francis Marion Fine Arts Center

5:00 pm Opening Convention Eucharist

St. John's Church, Florence Reception immediately following

Saturday, March 9th

Francis Marion Fine Arts Center

7:30 am Registration

9:00 am Call to Convention

CERTIFICATION OF DELEGATES:

Please return [completed form](#) by January 31st, 2013.

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The Diocese of
South Carolina

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Latest News

[latest news](#)

Rectors Speak Out Against
TEC's Attempt to Seize Local
Property; "Hijack" Identity
23/01/2013

**Several Rectors of
congregations
participating in the
lawsuit seeking a
declaratory judgment
from the courts have
spoken out against The
Episcopal Chu [...]**

+ FULL STORY

[latest news](#)

Diocese of South Carolina
Only Authority to Convene
Convention in the Diocese
20/12/2012

Charleston...December 20,
2012...The Presiding Bishop
of the Episcopal Church,
Katharine Jefferts Schori,
publicly released an
announcement yesterday
[...]

+ FULL STORY

Other Articles

► Nominating Committee
Accepting Suggested
Nominees

► Diocese Responds to
Announcement of January
TEC Meeting

Women's Ministry
Youth Ministry

- Anglican Comm. Dvp
- Committee
- College & Young Adults
- Commission on Ministry
- Congregational Development
- Diocesan Council
- Faith Formation
- Finance Department
- Social Ministries
- Standing Committee
- Stewardship
- Youth Ministry

Current Issues

Institutions

- Bishop Gadsden
St. Christopher
Canterbury House
Episcopal Bookshops
Porter Gaud School
SC Episcopal Home
Voorhees College
York Place
Sewanee

Resources

- Background Check
- Constitution
- Canons
- Congregational Development
- Diocesan Forms
- Diocesan Payroll Plan
- Congregations in Transition
- Disaster Preparedness
 - Hurricane Preparedness
- Employee Handbooks
- Employment Opportunities
- HR Manual
- Letter of Agreement Rector
- Medical Insurance
- Manual of Business
- Marriage
- Ordination Process
- Parochial Report
- Parochial Report Forms
- Prayer Calendar
- For Parish Admins
- Records Management
- Risk Management
- Stewardship
- Vestry Handbook

Office of the Treasurer

- Dio. Audited Fin.l Stmts.
- Budget Timeline
- Clergy Compensation
- Clergy Salary Worksheet
- Declaration of Intent
- Diocesan Budget
- Proposed Budget
- Manual of Business Methods
- Parish Audits
- Pledge Report

Clergy Resources

- Benefits & Compensation
- Child Abuse Prevention
- Pension Information
- Commission on Ministry
- Congregational Development
- Deacons
- Marriage
- Ordination Process
- Supply Clergy
- Retired Clergy
- Sabbatical Guidelines
- Parochial Report Forms
- Clergy Conf., 2012
- Clergy Conf. Presentation

Diocesan Convention

- Convention Information
- Convention News
- Convention Journals
- Convention Notes
- Convention Archives

REGISTRATION:

Visitors are welcome, but seating is limited.

Alternates attending (in addition to your delegation) must be registered as a visitor

Register here

Cost: \$60.00/per person for clergy and lay delegation

\$30.00/per person for visitors

Deadline to register delegation is January 31th, 2013.

RESOLUTIONS:

If you have resolution(s) that you would like mailed out to the delegates prior to the Convention, I must have them no later than January 31st. We urge you to offer the Convention time to prayerfully consider any resolution that might be set forth, and to observe this deadline.

Lodging Information.

FURTHER INFORMATION:

Questions? Please contact Beth Snyder at the Diocesan House, 843-722-4075, or my email, bsnyder@dioceseofsc.org

- ▶ Anglican Communion Institute Posts Open Letter to Bishops of TEC
- ▶ Group Attempts to Mislead Clergy; Unauthorized Use of Diocesan Seal and Name
- ▶ Dumbing Abandonment Down
- ▶ Panel of Reference Finds Misconduct; Nine Bishops Including Salmon

220th Convention Audio

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Reimbursement Form

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Remarriage Application

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EXHIBIT J

Proposed Resolution R-1 222nd Diocesan Convention, March 8 & 9, 2013

Offer By: The Standing Committee

Subject: Amendment of the Constitution of the Diocese of South Carolina [2nd Reading]

Resolved, that the Constitution of the Diocese of South Carolina be, and the same is hereby amended, as set forth in the attached copy of the Constitution.



DIOCESE OF SOUTH CAROLINA

CONSTITUTION



ARTICLE I

~~—The Church in the Diocese of South Carolina accedes to the Constitution of the Protestant Episcopal Church in the United States of America. In the event that any provision of the Constitution of the General Convention of the Protestant Episcopal Church in the United States of America is inconsistent with, or contradictory to, the Constitution and Canons of the Protestant Episcopal Diocese of South Carolina, the Constitution and Canons of this Diocese shall prevail.~~

ARTICLE II

Of Diocesan Convention Meetings

Section 1. A Diocesan Convention shall be held annually, at such time and place as shall have been determined upon by the preceding Convention; or, on failure of the Convention so to determine, at such time and place as the Ecclesiastical Authority shall appoint.

Section 2. The Ecclesiastical Authority of the Diocese shall have power to call a special meeting of the Convention by giving at least thirty (30) days' notice to every clergyman entitled to a seat in the Convention, and to every Parish and Mission in the Diocese in union with the Convention, and such meeting shall be held when and where the Authority so calling it shall determine and at such meeting no other business shall be transacted than that specified in the notice so calling said meeting: PROVIDED, That whenever a special meeting of Convention is called for the purpose, in whole or in part, of electing a Bishop, Bishop Coadjutor, or Suffragan Bishop, Lay Deputies from the several Parishes and organized Missions in union with Convention shall be elected after the call has been issued for such special meeting.

Section 3. If, in the judgment of the Ecclesiastical Authority, there exists sufficient cause to require a change of time or place for the meeting of a Convention either annual or special, the said Authority may designate another time or place of holding such meeting, to be held within 30 days after the time originally designated and after notice to every clergyman and Parish and Mission in the Diocese.

ARTICLE III

Of Diocesan Convention Members

Section 1. The Convention shall be composed of clergymen and laypersons, as hereinafter provided.

Section 2. The following shall be entitled to all of the privileges as members of the Convention: The Bishop of this Diocese; the Retired Bishops of the Diocese; the Bishop Coadjutor of the Diocese, when there is one; Suffragan Bishops of this Diocese, if there be any; ~~the Archdeacon of the Diocese, if~~ **Non-Parochial**; every clergyman who is actually and canonically resident within the Diocese and discharging the duties of his station as Rector, Minister, or Assistant Minister of an organized Parish or organized Mission; and every clergyman, who, after a continued membership of at least twenty years in the Convention is incapacitated by the infirmities of health or age from further active duties of the ministry, and is canonically and actually resident in the Diocese. The following shall also be entitled to all the privileges as members of the Convention: every clergyman canonically resident in the Diocese who is employed either by the Diocese or actively engaged in the work of the Church in the Diocese or at its affiliated institutions, PROVIDED, that no vote shall be received from any clergyman who has failed to deliver the Parochial Report required by Section 4 of Canon XXV by February first (1) preceding the Convention,



unless he be accorded such privilege by a majority vote of the Convention. ~~Vocational Deacons~~, otherwise qualified for membership in the Convention shall be entitled to seat and voice but not vote. Clergy Canonically Resident, but not otherwise qualified for membership in the Convention, shall be entitled to seat and voice, but no vote.

Section 3. Each Parish and each Mission in union with the Convention shall be entitled to lay representation in the Convention: a Parish by not more than four laypersons and a Mission by not more than two laypersons. The election of said Lay Deputies shall take place in each Parish and each Mission, which has been admitted to union with the Convention, by voice vote unless the presiding officer in his sole discretion determines that the result is unclear then it shall be by ballot of those in attendance ~~ballot~~, from among the confirmed ~~Ce~~communicants, at a meeting of the members thereof, on the Second Monday in January of each year, or some other day thereafter to be appointed, upon not less than one week's notice given by the Rector, or the Vestry, if there be no Rector. An equal number of Lay Deputies may be elected to serve as alternates or substitutes for such Lay Deputies, elected as above, who may not, from any cause, attend the Convention when it assembles, or who may not remain in such attendance; PROVIDED, that no votes shall be received from any Parish or Mission which has failed to comply with the requirements of the Canon as to Parochial Reports by February first (1) preceding the Convention, unless they be accorded such privilege by a majority vote of the Convention.

Section 4. The terms of office of Deputies so elected shall continue until their successors are elected, and shall before they are permitted to take their seats, produce written testimonials of their election.

Section 5. No deputy shall represent more than one Parish or Mission or have more than one vote; and, if a Lay Deputy, he/she shall not represent any Parish or Mission unless he/she is a communicant of such Parish or Mission and is not enrolled as a communicant of any other Parish or Mission.

Section 6. When the Convention shall have been called to order, the list of the Clergy prepared by the Bishop or Ecclesiastical Authority, shall be laid before the Convention and the names of the Clerical members shall be called therefrom. Immediately thereafter the Secretary shall proceed to call the names of the Lay Deputies; after which, if a quorum be found present, the President shall declare the Convention duly organized. PROVIDED, however, that if the Clerical and Lay Deputies have been registered on the opening day of the Convention and such registration is then in the hands of the Secretary, said roll calls may be dispensed with. PROVIDED, FURTHER, that if a question be made, the right of any clergyman or Lay Deputy shall be determined according to the provisions of the Constitution itself.

ARTICLE ~~III~~ IV **Of a Quorum**

A majority of the Clerical Order, together with ~~and~~ Lay Representatives from a majority of the Missions and Parishes in union with the Convention ~~churches~~ shall constitute a quorum for the transaction of business generally, but any number of either Order that shall assemble may recess or adjourn from day to day until a quorum is formed.

ARTICLE IV **Of the President**

The Bishop of the Diocese shall be ex officio President of the Convention, and in his absence the Bishop Coadjutor, if there be one. But in case neither of them be present, the Suffragan Bishop, if there be one, then the President of the Standing Committee shall be the President of the Convention; and if they be not present, a presiding officer shall be elected from among the attending presbyters.

ARTICLE V **Of the Other Officers of the Diocese**

Section 1. The other officers of the Diocese shall be a Chancellor, ~~an Assistant Chancellor~~, an Executive Secretary of the Diocese, a Treasurer, and a Historiographer who may also be the Secretary of



the Diocese, all of whom shall be confirmed Communicants, ~~of the Church~~, and a member of a Parish or Mission in union with the Convention.

Section 2. The Chancellor ~~and the Assistant Chancellor~~ shall be nominated by the Bishop and shall be elected by a majority vote of the Convention. ~~Any~~ ~~Before the~~ Assistant Chancellor ~~shall be~~ is nominated by the Chancellor and approved by the Bishop ~~Bishop, the nomination must be approved by the Chancellor.~~ The term of office of ~~any~~ the Assistant Chancellor shall run concurrently with the term of the office of the Chancellor, who shall serve for three (3) years or until his or her successor is elected. ~~They shall serve for three years, and until their successors are elected.~~ Their duties of the Chancellor and of any Assistant Chancellor shall be to act as legal advisors ~~to~~ of the Ecclesiastical Authority and other Diocesan offices and organizations, in matters affecting the interest of the ~~Diocese Church~~. The Chancellor (but not any Assistant Chancellor) ~~y~~ shall be an EX OFFICIO members of the Convention without the right to vote, unless a deputy from a Parish or Mission in union with the Convention.

Section 3. The Treasurer shall be elected at each Annual Convention by ballot (unless the ballot be unanimously dispensed with), and shall continue in office until his successor is elected. His duties shall be as prescribed by the Constitution, Canons, Resolutions, and Rules of Order of ~~both the Convention, of this Diocese and of the General Convention.~~ He shall be EX- OFFICIO a member of the Convention without the right to vote, unless he be a delegate from a Parish or Mission in union with the Convention.

Section 4. The ~~Executive~~ Secretary shall be appointed by the Bishop, and shall continue in office at the pleasure of the Bishop. In case there be no Bishop, or Bishop Coadjutor, or Suffragan Bishop canonically authorized to act, then the Standing Committee shall appoint the ~~Executive~~ Secretary to serve at its pleasure or until there be a Bishop, or Bishop Coadjutor, or Suffragan Bishop canonically authorized to act. He shall act as Secretary of the Convention, and his duties shall be prescribed by the Constitution, Canons, Resolutions, and Rules of Order of ~~both the Convention, of this Diocese and of the General Convention for the Secretary of the Diocese.~~

Section 5. The Historiographer shall be appointed by the Bishop, to serve for three years, and until a successor is appointed. If a Historiographer is not so appointed, the Secretary shall perform t ~~The~~ duties of the Historiographer which shall be prescribed by Canon.

ARTICLE VII

Of Deliberating and Voting in Convention

Section 1. On all questions coming before the Convention, unless otherwise provided by the Constitution, the members shall deliberate and vote as one body, unless a separate vote by Orders be demanded as below provided. Immediately prior to the putting of the question to be voted upon, the President shall inquire whether there be objection to voting as one body; whereupon, upon demand by any two clergymen or by any two Deputies from separate churches, a separate vote of each Order shall be had; in such case the clergy shall vote individually and the Lay Deputies by churches (a majority from each Parish having one vote and each mission having one-half vote). A majority vote of both Orders shall, in each case, be necessary to a decision.

Section 2. In the election of a Bishop, Bishop Coadjutor or Suffragan Bishop, the vote shall be by ballot, and by Orders, a concurrent majority of the two Orders being necessary to a choice; PROVIDED, that two-thirds of all the clergy entitled to vote and two-thirds of all the churches entitled to representation, be present; otherwise, two-thirds of the vote of each Order present shall be necessary to determine a choice.

ARTICLE VIII

Of Admitting Parishes and Missions Into the Convention

Section 1.

A. PARISH

As amended- ~~11-17-12~~ ~~00-00-132-19-11~~



Parishes which have been organized as provided by Canon for not less than one year may apply for and be admitted into union with the Convention ~~by vote of the Convention~~ by vote of the Convention; provided that the requirements hereinafter set forth have been met:

(1) Application for admission is made in writing (and in duplicate) by the Wardens and Vestry to the Secretary of the Convention ~~Secretary of the Convention~~, and such application is received by the Secretary ~~by the Secretary~~ at least 30 days prior to the convening of the Convention at its annual meeting].

(2) Said application may state such facts as the applicant deems pertinent, but it must state:

~~a.~~ the facts of applicant's organization in accordance with the Canons of the Diocese and its continued existence thereunder for at least one year,

a.

b. the number of its adult members and the number of its communicants,

c. the names of its Wardens, Vestrymen, Secretary, Treasurer and proposed Lay Deputies,

d. evidence that it is self-supporting and the prospects of remaining so, which evidence of self-support shall include its ability to pay the full salary of its minister at or greater than the minimum salary scale approved by the Department of Mission with the approval of the Bishop, ~~and~~ the amount contributed to the Diocese for the preceding year and that the Ecclesiastical Authority approves the admission of the applicant into union with the Convention.

e. its willingness to conform to ~~the Constitution of the Protestant Episcopal Church in the United States~~ ~~and~~ the Constitution and Canons of the Convention of this Diocese, which are, or thereafter may be, enacted by the authority of the Diocese.

(3) Said application must be accompanied by two certified copies of its corporation charter and two certified copies of its by-laws.

~~(4) Said application shall also be accompanied by a certificate from the Ecclesiastical Authority of the Diocese stating that said Authority approves the admission of applicant into union with the Convention and that applicant has been for at least one year duly organized as a Parish under the Canons of the Diocese.~~

(4) In case the applicant be within the limits of one or more existing Parishes or Missions, the application shall also state the reason for its organization, the distance of its place of worship from the other, or from each of the others, together with whatever additional facts may throw light upon the situation.

~~Missions, the application shall also state the reason for its organization, the distance of their place of worship from the other, or from each of the others, together with whatever additional facts may throw light upon the situation.~~

B. MISSIONS

Missions which have been organized as provided by the Canons of the Diocese ~~the Canons of the Diocese~~ for not less than one year may apply for and be admitted into union with the Convention, by ~~vote of the Convention~~ vote of the Convention, provided that the requirements hereinafter set forth have been met:

(1) Application for admission is made in writing (and in duplicate) by a majority of the members of the Mission seeking admission, to the Secretary of the Convention ~~Secretary of the Convention~~ and such application is received by the Secretary of the Convention ~~Secretary~~ at least 30 days prior to the convening of the Convention at its annual meeting.

(2) Said application may state such facts as the applicant deems pertinent, but it must state:



- a. the facts of applicant's organization in accordance with the Canons of the Diocese and its continued existence thereunder for at least one year,
 - b. that its organization has not been dissolved by the Ecclesiastical Authority,
 - c. the number of its adult members and the number of its communicants,
 - d. the names of its Wardens, Mission Council members, Secretary, Treasurer and proposed Lay Deputies,
 - e. the extent of its ability to support its work, its willingness to conform to ~~the Constitution of the Protestant Episcopal Church in the United States and~~ the Constitution and Canons of the Convention of this Diocese, which are then, or thereafter may be, enacted by the authority of the Diocese.
- (3) Said application must be accompanied by two certified copies of its corporate charter, and, if it has any by-laws then two certified copies thereof and evidence that the Ecclesiastical Authority approves the admission of the applicant into union with the Convention.

~~(4) Said application shall be accompanied by a certificate from the Ecclesiastical Authority of the Diocese stating that said Authority approves the admission of applicant into union with the Convention and that applicant has been for at least one year duly organized under the Canons of the Diocese, and its organization has not been dissolved.~~

In case the applicant be within the limits of one or more existing Parishes or Missions, the application shall also state the reason for its organization, the distance of its place of worship from the other, or from each of the others, together with whatever additional facts may throw light upon the situation ~~the application shall also state the reason for its organization, the distance of its place of worship from the other, or from each of the others, together with whatever additional facts may throw light upon the situation.~~

~~(4) -~~

Section 2. At the annual Convention next succeeding the receipt of application for admission to union with the Convention, the Secretary shall communicate the same to the Convention, the Secretary shall communicate the same to the Convention on the first day of its session; and after reference to both the Committee on Admission of New Parishes and the Committee on Constitution and Canons of the Diocese, the application shall be acted upon by the Convention.

Section 3. A Parish or Mission shall be accorded full privileges of membership in the Convention when it is admitted into union with the Convention, including the right of a voice and vote in the proceedings.

ARTICLE ~~VIII~~^{IX}

Of the Standing Committee

Section 1. There shall be a Standing Committee consisting of six Presbyters of the Diocese and six laypersons who are confirmed communicants in good standing of Missions or Parishes in union with the Convention ~~the Church in the Diocese~~. The Chancellor may be an elected member of the Standing Committee. If the Chancellor is not an elected member of the Standing Committee he shall be an ex officio member of the Standing Committee with voice and no vote. The members of the Standing Committee shall be elected by ballot as follows: Upon the effective date of this article, or as soon thereafter as practicable at the Convention of the Diocese, two Presbyters and two laypersons shall be elected for a term of three (3) years; two Presbyters and two laypersons for a term of two (2) years; and two Presbyters and two laypersons for a term of one (1) year; thereafter, at each succeeding annual Convention two Presbyters and two laypersons shall be elected for a term of three (3) years. No Presbyter or layperson whose term has expired shall be eligible for re-election until the passage of one Convention year from the date of said



expiration. If there be no Bishop or Bishop Coadjutor, or Suffragan Bishop, canonically authorized to act, the Standing Committee shall be the Ecclesiastical Authority of the Diocese. In all decisions as the Ecclesiastical Authority, the Standing Committee shall vote by Orders; and a majority vote of the members present from each Order shall be necessary for a decision.

Section 2. At their first meeting after the election they shall choose one of the Presbyters of their body to be their President and another member of their body to be their Secretary, whose duty it shall be to keep regular minutes of all the proceedings and business of the committee; to preserve them carefully recorded in a book prepared for that purpose alone; to preserve the originals of all letters and papers addressed to the Standing Committee; to attest their public acts; to perform such other duties as they may require and faithfully to deliver into the hands of his successors all books and papers relative to the concerns of the Standing Committee which may have been entrusted to him.

Section 3. They shall present to each Annual Convention an abstract of the minutes of their proceedings since the former Convention.

Section 4. Vacancies in the Standing Committee ~~this committee~~, caused by death, resignation or otherwise, shall be filled by the suffrage of the remaining members, a majority vote of each Order being necessary to a choice.

Section 5. The Standing Committee may adopt standing resolutions, which when adopted shall continue in force until repealed by majority vote of the total membership of the Standing Committee adopting same or by a majority vote of the total membership of a subsequent Standing Committee. The present standing resolutions of the Standing Committee are printed in the [Journal] by request.

ARTICLE X

Of Deputies to the General Convention

~~*Section 1.* At an Annual Convention during the triennium between General Conventions, but preceding each General Convention, four Presbyters and four laypersons, having qualifications established by the Constitution of the Episcopal Church, shall be chosen by ballot to represent the Diocese at the next succeeding General Convention. Four other Presbyters and four other laypersons, having the same qualifications, shall be chosen by ballot, as alternates for those selected. Such representatives and alternates shall serve until their successors are elected and qualified.~~

~~*Section 2.* In case any Deputy of those first chosen shall decline such election, or be unable to attend, he shall forthwith inform the Ecclesiastical Authority of the Diocese, and the said Ecclesiastical Authority shall thereupon summon to the General Convention one of the substitutes, in the order in which their names are on the Journal, which order shall be the order of their election; or when two or more are elected at one balloting, shall be determined by the aggregate vote received; PROVIDED, That in case all of the substitutes so elected shall decline to serve, or be unable to attend, the Ecclesiastical Authority may appoint a substitute, or substitutes, of like qualifications in his or their stead.~~

ARTICLE IX

Of the Trial of a Clergyman

A clergyman shall be subject to a trial for offences enumerated in the Canons of this Diocese Convention, and if found guilty shall be sentenced in accordance therewith. The trial shall be conducted according to the Canons of this Diocese Convention.

ARTICLE X

Of Altering the Constitution

No alteration or amendment of, or addition to this Constitution shall be made unless the same be proposed in writing and in duplicate on the first day of a Convention and after reference to the Committee on



Constitution and Canons, is adopted by a majority vote of the Convention at which it is proposed, and further adopted by a two-thirds vote of both Orders present at the next Convention.

STANDING RESOLUTIONS

1. **RESOLVED**, That when any clergyman of the Diocese shall depart this life, his record shall be inscribed on a memorial page of the Journal.
(Passed 1872).

2. **RESOLVED**, That in a vote by Orders, the Secretary shall call the names of the clerical deputies and then call the roll of the Parishes and Missions in union with the Convention, and, if desired by any Deputy record the clergymen and laymen voting affirmatively and negatively. (Passed 1877, revised 1914, and 1961).

3. **RESOLVED**, That the Secretary is instructed to print separately in the Journal so much of the reports of each Parish and Mission as shows the name of the officers and also remarks, if any. It will be sufficient to print the statistics of the churches together in tables. (Passed 1918).

4. **RESOLVED**, That one copy of the Journal of the Convention of the Diocese be mailed to each and every Deputy separately by the Secretary as soon as such Journal may be printed and ready for distribution. (Passed 1913).

5. **RESOLVED**, One of the three Trustees of the University of the South shall be elected at each Convention of the Diocese to fill the expiring three-year term, whether lay or clergy. Should an earlier vacancy have occurred election to fill the un-expired term shall be held. No Trustee of the University of the South shall succeed himself more than once for a three-year term. (Passed 1958).~~+~~

6. **RESOLVED**, That notices of the Convention sent out by the Secretary shall include a request that proposed Amendments to the Constitution and Canons be sent at least thirty (30) days before the Convention to the Secretary of the Convention for reference to the Committee on Constitution and Canons. (Passed 1961. Amended 1970 and 1971).

7. **RESOLVED**, (A) That whenever there is an election of a Trustee of the University of the South by this Convention, the one receiving the next highest number of votes be designated as the Alternate Trustee and that the Bishop be authorized to appoint him as such; (B) That in case the Alternate Trustee be unable to attend a meeting of the Board of Trustees, the Bishop is hereby authorized to appoint another Alternate Trustee of the same order (Passed 1965).

8. **RESOLVED**, That the Diocesan Council through the Secretary of Convention shall send to every congregation at least twenty (20) days prior to Convention information concerning major matters to be brought before the Convention by the Council, including any action by Council on these matters. Each Parish or Mission is urged to make such information known to the congregation.

9. **RESOLVED**, That the Ecclesiastical Authority of the Diocese shall appoint, at least sixty (60) days before the convening of each Annual Convention, a nominating committee composed of one Presbyter and one layperson from each Deanery, designating a convener; and such committee shall nominate two persons for each vacancy to be filled at the next Annual Convention of the Diocese, ~~excepting Deputies to General Convention, in which case the Nominating Committee shall nominate all qualified persons whose names have been duly and properly submitted~~; PROVIDED, that before any person is nominated by such committee, it shall secure the consent of such person to serve if elected. (Passed 1970, Amended 1972 and 1989).

10. **RESOLVED**, That all Parishes, Missions, and organizations in the Diocese that are not incorporated are urgently requested to incorporate under the laws of South Carolina; and if a Parish or Mission, then it is



requested to include the provision in its charter that the corporation is formed for the purpose of operating a Parish or Mission, organized pursuant and subject to the Canons of ~~the Protestant Episcopal Church in the~~ Diocese of South Carolina as now in force or as thereafter may be amended, and in the event said charter does not otherwise contain a provision for the orderly distribution of assets upon dissolution in a manner consistent with the intents and purposes of the diocese, said charter shall contain the further provision that upon being dissolved pursuant to the Canons of ~~the Protestant Episcopal Church in the~~ Diocese of South Carolina, automatically the offices of the Vestry, Wardens, and other officers of the corporation shall become vacant, and the Standing Committee ~~of the Protestant Episcopal the Diocese Church in the Diocese~~ of South Carolina shall become the managing body of the corporation, with full power and authority, without restriction, to liquidate the property of the corporation, to sell or mortgage its property or any part thereof, to convey any or all of its property to the Trustees ~~of the Diocese of the Prote of stant Episcopal Church in~~ South Carolina, and upon complete liquidation to surrender the charter of the corporation; and that each Parish and Mission in the Diocese that is now incorporated is urgently requested to amend its charter to include the aforesaid provision in its charter. (Passed 1970, Amended 2012). ~~(Passed 1970).~~

11. **RESOLVED**, That all Parishes, Missions, and organizations in the Diocese which hold any property with reverter clauses to the grantor, grantors, or other persons in the title are urgently requested to make every effort to remove, or have removed therefrom, all possibility of a reverter; and that all Parishes, Missions, and organizations in the Diocese are further urged to avoid, if possible, the taking of any title to property with reverter clauses therein. (Passed 1970).

12. **RESOLVED**, That the Convention elect to the Board of Trustees of The Porter-Gaud Academy one clergyman and one layperson each to serve for a term of four (4) years and thereafter upon the expiration of said terms or in the event a vacancy occurs during a term of office of one of the individuals so elected, the Convention will elect a person to fill the un-expired term of such person provided, however, that in the event it becomes necessary to fill the un-expired term of a clergyman, the successor to him shall be a clergyman, and if said vacancy occurs during the term of the layperson so elected, a layperson shall be elected to fill the un-expired portion of said term. And be it further

RESOLVED, That the Diocese of South Carolina, in recognition of the historic close affiliation between it and The Porter-Gaud Academy continue in such relationship and continue to develop mutually beneficial programs with a view toward serving the mutual purposes of both institutions. ~~And be it further~~

~~**RESOLVED**, That the Diocese of South Carolina, in recognition of the historic close affiliation between it and The Porter Gaud Academy continue in such relationship and continue to develop mutually beneficial programs with a view toward serving the mutual purposes of both institutions.~~

13. **RESOLVED**, That the Thanksgiving Day Offering received by the Parishes Churches in the Diocese of South Carolina be designated for the work of the Episcopal Church Home for Children in York.

14. **RESOLVED**, That this Diocese renew its endorsement of the tithe of 10 percent of personal income as the minimum standard of Christian giving; that the Convention challenge the people of each Parish and Mission to adopt a plan of proportionate giving as a way to grow toward the goal of the tithe; that the Convention challenge each Parish and Mission to give serious consideration to proportionate giving from their gross receipts and to the goal of 50 percent of their income being spent in ministry and mission beyond the Parish; that the Convention challenge each individual and church of this Diocese to adopt a personal plan for moving toward these goals; and that the Journal of this Convention and the Jubilate Deo publish annually the stewardship statistics of all Parishes and Missions in such a way that our individual and corporate growth in giving can be shared and celebrated.

~~15. **RESOLVED**, That the Mother's Day offering received by the churches in the Diocese of South Carolina be designated for work with the aging; and be it further~~

~~**RESOLVED**, That the parishes and missions in the Diocese of South Carolina are urged to set aside a budget item for the ministry to the aging; and be it further~~



~~— **RESOLVED**, That this Convention commends to all the valuable resources offered by the Episcopal Society for Ministry to the Aging and requests the Diocese to create a Commission of Ministry to the Aging under the Division of Human Needs to emphasize the Diocese's ongoing concern with a total ministry to the aging and to coordinate efforts with the Episcopal Ministry to the Aging, Inc.~~

~~16. **RESOLVED**, That the Congregation of Prince George Parish, Winyah in Georgetown urges the 198th meeting of the Convention of the Diocese of South Carolina to adopt as a Standing Resolution the resolution of the 197th Convention, to wit:~~

~~—"The time honored and biblically rooted standard of chastity for Christian people remains unchanged. This means that sexual relations are to be confined to one's partner in marriage.~~

~~— Since Clergy are expected to provide, in their lives and in their teaching, a wholesome example for others, Bishops and other Diocesan officials should not knowingly admit to, nor retain in, Holy Orders, any person who cannot or will not do so.~~

~~— And, furthermore, while we are called by Our Lord to offer love, forgiveness and pastoral care to all persons, neither the Clergy nor the Laity of this Church should encourage any attempt to legitimize any sexual behavior other than that which is appropriate between a man and a woman united in Holy Matrimony."~~

158. **RESOLVED**, That this Convention commend the clergy and laity of the Diocese of South Carolina to support and actively respond to the admonition found in the rubric on page 445 of The Book of Common Prayer, which reads as follows:

The Minister of the Congregation is directed to instruct the people, from time to time, about the duty of Christian parents to make prudent provision for the well-being of their families, and of all persons to make wills, while they are in health, arranging for the disposal of their temporal goods, not neglecting, if they are able, to leave bequests for religious and charitable uses.

16. **RESOLVED**, Whereas the members of the Standing Committee also serve as the Board of Directors of The Protestant Episcopal Church in the Diocese of South Carolina, a South Carolina non-profit religious corporation, that no member of the Standing Committee may be removed, replaced, or a vacancy filled except by compliance with the South Carolina Nonprofit Corporation Act, the Bylaws of The Protestant Episcopal Church in the Diocese of South Carolina and the Constitution of the Diocese. (Passed 2012).

-

BE IT FURTHER, RESOLVED, That this Convention challenge each Minister in charge of a congregation to abide by the rubric of The Book of Common Prayer, and annually to instruct the people under his or her charge, regarding the maintaining of valid wills for the State of South Carolina and the making of bequests in their wills for the benefit of the mission of the Diocese of South Carolina Church, including parishes and mission congregations, the Diocese, and other institutions or organizations supported by the Diocese of South Carolina Episcopal institutions.

19. **RESOLVED**, That the Diocese of South Carolina hereby implements Resolution D-165-a of the General Convention of 1991 concerning lay employees' retirement benefits as follows:

~~— 1. All Parishes, Missions, and other ecclesiastical organizations, or bodies of the Protestant Episcopal Church in the Diocese of South Carolina which under the regulations of the Church Pension Fund have elected or shall elect to come into the pension system, shall provide all lay employees who work a minimum of 1,000 hours annually retirement benefits through participation in the Episcopal Church Lay Employees Retirement Plan (ECLERP) or in an equivalent plan, the provisions of which are at least equal to those of ECLERP. Such participation shall commence no later than January 1, 1993. At its commencement, if the plan is a defined benefit plan, the employer contribution shall be not less than 9 percent of the employees'~~



salary; if the plan is a defined contribution plan, the employer shall contribute not less than 5 percent and agree to "match" employee contributions of up to another 4 percent.

~~2. The employer may impose a minimum age of 21 years and minimum employment period not to exceed one year of continuous employment before an employee would be eligible to participate.~~

~~3. The Trustees of the Church Pension Fund shall have authority to increase or decrease the contribution percentages required for the lay pension plan.~~

EXHIBIT K



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222nd Annual Diocesan Convention to be Held in Florence, March 8-9



the 14th Bishop of South Carolina, is focusing on the future. "We cannot afford to focus on the backward glance," said Lawrence "Christ calls us to look forward and carry out the Great Commission to make disciples and to proclaim the Gospel to a hurting world."

This year's convention workshops are designed to equip the Diocese's lay members and clergy for the work of ministry. Bishop Lawrence promised that such workshops would be key parts of future annual Diocesan Conventions.

This year, four free workshops will be open to the public on Friday, March 8:

Youth Ministry for Small Churches, to be held from 2:30 – 4 p.m., led by the Diocesan Youth Ministry Coordinator Dave Wright. The program is designed to help small churches do youth ministry like the larger churches. "They can do excellent youth ministry if they take a different approach," said Wright.

The Apologetics of CS Lewis, a primer on how to defend Christianity, to be held from 1-2:30 p.m., led by the Rev. Dr. Kendall S. Harmon, the Diocese's Canon Theologian. "In today's post-Christian culture it's imperative for people to be able to understand and defend their beliefs," said Harmon.

Sozo Prayer, a workshop on inner healing through prayer, to be held from 1-4 p.m., led by Kelli Hample, Lisa Fike and Karen Tetrev. The Very Rev. Peet Dickinson, Dean of the Diocese's Cathedral will share stories about how this type of prayer ministry has transformed his parish's pastoral care.

Diocesan Risk Management, to be held from 3-4 p.m., led by Billy Mills, of Wells Fargo Insurance Services. Every congregation is subject to risk. Mr. Mills will provide a synopsis of the components parishes should be considering in a good risk management plan. He will also be available to answer questions about the specifics of the Diocesan Property and Casualty program and how it can benefit all our congregations.

Learn more about the [workshops](#).

The convention will also feature a special sermon by the Rt. Rev. Keith Ackerman, Bishop Vicar of the [Diocese of Quincy](#) (Illinois) of the Anglican Church in North America. He will serve as guest preacher at the opening Eucharist Friday evening at St. John's, Florence. The Diocese of Quincy left The Episcopal Church in 2008 and the following year was a founding member of the Anglican Church in North America.

"I invited Bishop Ackerman to preach because he speaks from a love of God's Word and the depth of the Catholic Anglican tradition," said Bishop Lawrence. "But along with this I wanted to remind us all that as we turn the page and eagerly look toward the future, we will strive to maintain a comprehensive Anglicanism in this great Diocese of South Carolina."

Delegates and others attendees will also hear from ministry leaders about their vision for the future. A highlight will be the presentation from the Rev. Bob Lawrence, Director of St. Christopher Camp and Conference Center. The Camp will celebrate its 75th Anniversary this year.

The convention is also a time that delegates elect its [new leadership](#) which is comprised of both clergy and lay members and review the proposed [budget](#). [Two resolutions](#) will also be voted on:

- One is the second reading of a resolution which deleted all references to The Episcopal Church from the Diocese's Constitutions and Canons. This resolution passed by an overwhelming majority at the November 17, 2012, convention, held in Charleston.
- The second affirms the "Declaration of Life Statement" made by Anglicans for Life.

On Saturday, while the convention is in progress, the Diocese is offering a three-hour simulcast program on "Courageous Grandparenting," with Cavin Harper, author of *Courageous Grandparenting in a Turbulent World*. This event, open to the public, is geared towards grandparents and those involved in family ministry. It will be held concurrently with the Convention so delegates will not be able to attend. There is a \$10 fee for this event, which covers the cost of the book and box lunch. [Pre-registration is required](#).

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Diocese of South Carolina Only Authority to Convene Convention in the Diocese
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Charleston...December 20, 2012...The Presiding Bishop of the Episcopal Church, Katharine Jefferts Schori, publicly released an announcement yesterday [...]

+ FULL STORY

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EXHIBIT L

The Post and Courier

Finding the current: Small Episcopal worship groups form in wake of theological storm

Adam Parker

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Posted: Sunday, March 3, 2013 12:01 a.m.

UPDATED: Sunday, March 3, 2013 4:55 p.m.



Provided The Rev. Kate Chipps, visiting from the Diocese of Virginia, celebrates the Eucharist with the Summerville worship group recently.

One clear evening in mid-January, a group of Edisto Island Episcopalians gathered at the home of Gretchen Smith. They filled the living room. They spilled into the adjacent kitchen and front hallway.

Three congregations join diocese lawsuit

To date, a total of 34 congregations have joined [the lawsuit filed by the independent Diocese of South Carolina](#) against the Episcopal Church late last year.

The suit is meant to secure the physical property and marks (names and seal) of the diocese, which it has claimed after leaving the Episcopal Church in October.

Joining the suit are St. Jude's, Walterboro; Trinity, Pinopolis; and Church of the Holy Cross, Stateburg.

The "continuing diocese" was added as a defendant in the suit.

" 'The Episcopal Church in South Carolina' is the working name for the diocese in the Eastern part of South Carolina that is associated with the Episcopal Church and the Anglican Communion. The diocese is currently barred from using its historical name because of a temporary injunction issued in the lawsuit at the request of the breakaway parishes," the continuing diocese said in a statement.

Making the diocese a party to the lawsuit is a necessary step so that issues such as the diocese's identity can be resolved in court, said Chancellor Thomas Tisdale.

It also gives the continuing diocese more time to file its responses to the Jan. 5 complaint.

After greeting each other warmly, the group of perhaps 30 got down to business. They voted on a 10 a.m. Sunday morning worship time. They voted on who they wanted to serve on the vestry election committee. They voted on who should lead the bylaws committee.

Extra Photos



A parishioner enters Po Pigs BBQ on Edisto Island Sunday, February 17, 2013. The Episcopal Church On Edisto Island meets at the Po Pigs on Hwy174 for services every Sunday. The continuing congregation are made up of members loyal to the national church. (Brad Nettles/postandcourier.com)

Conventions

Both the independent Diocese of South Carolina and the "continuing diocese" of the Episcopal Church in South Carolina are holding conventions next weekend.

Both conventions, the governing bodies of the respective religious organizations, are meant to address administrative, governance and mission issues.

The Diocese of South Carolina's 222nd annual Convention will be held at the Francis Marion Performing Arts Center in Florence and will focus on moving the diocese forward, officials said.

Workshops for lay members and clergy are planned, including three Friday that are open to the public: Youth Ministry for Small

2/17/13



Rev. Jack Nietert, from Beaufort, a supply priest leads the Sunday service at The Episcopal Church of Edisto Island. The continuing congregation meets at Po Pigs BBQ on Edisto Island and are loyal to the national church. (Brad Nettles/postandcourier.com)

2/17/13



Kathy Fritz plays an electric piano, as she leads the members of The Episcopal Church of Edisto Island in singing a hymn during Sunday service February 17, 2013. The continuing congregation, loyal to the national church, meet's at Po Pigs BBQ on Edisto Island. (Brad Nettles/postandcourier.com)

2/17/13



Emily Craig reads The Epistle during the Episcopal Church on Edisto Island service Sunday, February 17, 2013. The Episcopal Church On Edisto Island congregation holds their service at the Po

Churches, The Apologetics of C.S. Lewis and Sozo Prayer.

The convention also will feature a special opening Eucharist sermon by the Rt. Rev. Keith Ackerman, bishop vicar of the Diocese of Quincy (Illinois) of the Anglican Church in North America. Also on the agenda is a presentation from the Rev. Bob Lawrence, director of St. Christopher Camp and Conference Center. The camp will celebrate its 75th anniversary this year.

For more information about the convention, including its full schedule and resolutions, or to register, visit www.dioceseofsc.org and click "Convention Information."

The convention of the Episcopal Church in South Carolina will be at Grace Episcopal Church.

It will feature a special sermon by the Rt. Rev. Dr. J. Neil Alexander, dean of the School of Theology at the University of the South and former bishop of Atlanta.

The convention also will amend governing documents modified in recent years by its former leadership, restoring the continuing diocese's accession to the Episcopal Church, officials said.

For more information, or to register, visit www.episcopalchurchsc.org.

They talked about outreach and volunteerism. They discussed options for securing a long-term worship space. They updated one another on the status of donated items.

It seemed as though they were forming a new congregation, but that wasn't really the case. They already were a congregation, and had been since 1774. But in January, they had no formal leadership, no regular priest, no organizational structure in place, no budget of any significance and no church building.

All that had suddenly fallen away several weeks earlier, to the great distress — and relief — of those left behind to figure out how best to carry on.

For their parish, Trinity Episcopal Church of Edisto, had split in two after the Diocese of South Carolina announced in November it would chart a course distinct from the wider Episcopal Church.

Pigs BBQ on Hwy174, on Edisto Island. The continuing congregation is made up of members loyal to the national church. (Brad Nettles/postandcourier.com) 2/17/13



The Rev. Jack Nietert (right), a supply priest from Beaufort, and chalice bearer John Nickerson (left) give Holy Communion during Sunday service for the Episcopal Church of Edisto Island. The continuing congregation meets at Po Pigs BBQ on Edisto Island.



Rev. John Fisher reads The Gospel during the Episcopal Church of Edisto Island service Sunday, February 17, 2013. The continuing congregation meets at Po Pigs BBQ on Edisto Island and are loyal to the national church. (Brad Nettles/postandciurier.com) 2/17/13



The Rev. Jack Nietert of Beaufort, a supply priest, leads the Sunday service for

The final break between diocese leadership and the church came after decades of discontent, especially among clergy who fretted that their church was compromising essential Christian tenets such as sin and salvation as it veered on a path of political and social accommodation.

Trinity is one of several parishes to see portions of its congregation leave to form worship groups of continuing Episcopalians. They call themselves by different names: the Edisto Worship Group, Episcopalians of the Florence Deanery, St. Anne's worshipping community in Conway, St. Mark's Chapel in Port Royal, East Cooper Episcopalians, The Continuing Episcopal Church, Summerville.

The Edisto Group has taken up temporary residence at a barbecue joint on S.C. Highway 174. The Summerville group borrows a black Methodist church. The Mount Pleasant group worships in the chapel of Hibben United Methodist Church.

So how does denominational schism play out at the parish level? What happens to worshippers suddenly out on their own?

Most of the Episcopal faithful consulted for this article insisted on looking forward, not dwelling on the religious rifts among friends and neighbors. They spoke of the fellowship and cooperation, the joyful worship experience, the generosity of people near and far who've lent support.

It all feels like something new, they said, but really it's all very old, a return to traditional Episcopal theology and practice. "What we're experiencing is a joy and homecoming in that worship experience," said Ginga Wilder, a leader of the Summerville group.

Peggy Kwist said she left the church two years ago and lost contact with many of the parishioners, but she's back.

"Now it's a homecoming every Sunday," she said.

George Tupper said the discipline of worship offered by the Episcopal Church and the big-tent values it advances make it something worth belonging to.

the Episcopal Church of Edisto Island. The continuing congregation meets at Po Pigs BBQ on Edisto Island and is loyal to the national church.



Hymnals, Prayer Books and Bibles take the place of barbecue at Po Pigs BBQ on Edisto Island as The Episcopal Church of Edisto Island hold Sunday service. The continuing congregation are loyal to the national church. (Brad Nettles/postandcourier.com) 2/17/13

Why is this happening?

The displacement of Episcopalian worship groups is the consequence of festering theological disagreement and a property dispute that already has prompted the independent Diocese of South Carolina to sue the Episcopal Church, accusing it of trying to “hijack” church buildings.

The church, instead, says it’s the breakaway diocese that’s trying to make off with property it pledged to hold in trust, according to a canon law the diocese itself had voted for.

Litigation could take awhile

Wilder said the emphasis on sin is, for her, misplaced. “The issue is not sin but love and openness,” she said. “The Episcopal Church that I was raised in and continue to be part of says, ‘Wherever you are, come.’ ”

Kwist said she feels relieved to be part of the worship group. “I wanted to be able to question, wonder and seek,” she said.

Reconnecting

The experience, though, has not been all joy. It is difficult to look from afar on a place so intimately woven into the fabric of one’s spiritual life, these continuing Episcopalians said.

Baptisms, weddings, funerals. These and other milestone experiences happened within the walls of their church building. For some, loved ones are buried in the church yard. For others, pews and stained-glass windows display the names of family members.

“We bear no ill-will toward those who formed another denomination,” Wilder said. “They are friends and we wish them well.”

On Edisto, members of the worship group often meet their co-religionists outside of church. They gather for meals. They work on outreach initiatives together. They run into one another at the store.

“Edisto is an amazing place,” said the Rev. John Fisher, a resident of the island for four years. “It’s the richest social life I’ve ever had.”

JoAnn Liles said the community simply avoids talking about religion and politics. The group is so busy making a new start, the effort has dulled the pain of separation.

“I thought it would be more traumatic than it is,” she said. “I thought, ‘Oh, I can’t do this!’ But it’s just a building.” Liles is busy with the nascent choir and Sunday school. She’s a chalice bearer. “Once this group was formed, it was like a huge celebration.”

and it's unclear who will ultimately end up with the buildings.

These worship groups join 19 whole parishes and missions that have elected to remain part of the Episcopal denomination, according to the "continuing diocese," now called the Episcopal Church in South Carolina. So far, 34 whole parishes have chosen to align with Bishop Mark Lawrence. The diocese has, or had, 70 parishes and missions.

The church's changing policies on homosexuality was only the latest evidence for conservatives that their religion was being compromised.

"The root problem we are facing is a salvation issue," wrote the Rev. E. Weyman Camp IV, rector of Trinity, in the February newsletter. "There have been two gospels presented in TEC (The Episcopal Church) for years; long taught in the Episcopal Seminaries and long preached by our Episcopal Bishops. This is not an accusation against anyone locally on Edisto but the divergence from the gospel and moral direction of the national leadership of TEC is committed and unswerving. The gender confusion and sexual immorality promoted by TEC, and in the wider world, is merely the fruit of this deeper gospel root problem."

Loyal Episcopalians have long argued that their church is remaining true to its inclusive

On Sunday mornings, between 20 and 40 people convert Po Pigs BBQ into a chapel. They call it St. Bobo's Cathedral. Priests, some of whom have emerged from retirement, others who drive from Charleston and beyond to fill in, lead worship.

On Edisto, Fisher shares the altar with the Rev. Bert Hatch, another retired priest living in the area.

On Jan. 13, the Rt. Rev. Charles vonRosenberg, retired bishop from the Diocese of East Tennessee, came from his Daniel Island home to preside over the service. Thirteen days later, vonRosenberg was elected provisional bishop of the Episcopal Church in South Carolina.

He said he thinks the number of worshipping communities, and the number of worshippers within each one, is likely to grow over time, and that they require careful support from the local diocesan administration.

"It seems to me we are, and have been, doing basically three things to be supportive of the continuing churches and worshipping communities," vonRosenberg said. "First, providing encouragement and moral support in a time that seems sad and risky. ... Secondly, we offer a resource of information, such as contact with supply clergy. That obviously is very important for the liturgical life of these communities."

And finally, the continuing diocese serves as a conduit to the broader Episcopal community, he said.

"As the Episcopal Church in South Carolina, we are providing access to the larger church," he said.

Workshops are planned for the weekend of Palm Sunday to help continuing Episcopalians understand and cope with church trauma, he said. Developing clear channels of communication among worship communities and continuing education for clergy also are on the agenda.

"As Episcopalians, we realize our relationships and our connections within the Episcopal Church in South Carolina, but also beyond that," vonRosenberg said. "And it's time to call on those willing to be supportive. We are part of something bigger

practices and refraining from “guarding the gate” to the point of distraction, as Presiding Bishop Katharine Jefferts Schori put it at a recent special convention in Charleston.

Eleanor Koets, a member of the Summerville worship group, said the church’s commitment to inclusiveness is in keeping with her understanding of Scripture.

“It is in our grounding in Holy Scripture, and especially in the way that we understand the Gospel of Jesus, that we live out Christ’s call on our lives,” she wrote in an email.

and need to be able to count on them and depend on them at this particular point.”

Staying the course

Support is in no short supply.

On Tuesday, vonRosenberg received an email from the Diocese of North Carolina offering books for worship, he said.

The Edisto group received 28 prayer books from St. Stephen’s Church in Heathsville, Va. That congregation had struggled through a schism of its own several years ago. The prayer books came inscribed by members of the parish with words of encouragement, Gretchen Smith said.

Recently, vestments arrived, and last month St. Stephen’s priest, the Rev. Lucia Lloyd, along with four parishioners, visited Edisto and joined the local group at its Sunday service.

A man from Massachusetts with ties to the Lowcountry sent money and donated his grandmother’s linens to cover the makeshift altar at St. Bobo’s Cathedral, Smith said.

In Summerville, where the worship group now numbers about 50, support has come from the Diocese of San Diego (46 hymnals), the Diocese of Western North Carolina (85 prayer books) and lots of moral, liturgical and administrative support from parishes in Virginia, including Grace Church, St. Margaret’s-Woodbridge and St. Stephen’s.

These local worship groups may have found themselves suddenly adrift in the wake of a theological storm, but they have found their current, they said.

“We have to be very patient, we have to stay the course and be faithful to each other and to God,” Summerville’s Tupper said. “It’s a rich time for us.”

EXHIBIT M



The Rt. Rev. Mark J. Lawrence, XIV Bishop of South Carolina

Diocese of South Carolina • Post Office Box 20127 • Charleston, South Carolina 29413
Office • 126 Coming Street • Charleston, South Carolina 29403

January 4, 2013

Dear Brothers and Sisters in Christ,

I write to you in this Christmas season to share some news. Today, parishes representing approximately 75 percent of baptized members in our Diocese joined in filing for a declarative judgment in a South Carolina Circuit Court against the Episcopal Church (TEC). We are asking the court to declare that The Episcopal Church (TEC) has no right to the Diocese's identity and property or that of its parishes.

We are saddened that we feel it necessary to ask a court to protect our property rights, but recent actions compelled us to take this action. As you know, The Episcopal Church (TEC) has begun the effort to claim the Diocese of South Carolina's identity by calling for a convention to identify new leadership for the diocese, creating a website using the Diocesan seal and producing material that invokes the name and identity of the Diocese of South Carolina.

Our suit asks the court to prevent TEC from infringing on the protected marks of the Diocese, including its seal and its historical names, and to prevent it from assuming the Diocese's identity, which was established long before TEC was formed. It also asks the court to protect our parish and Diocesan property, including church buildings and rectories, which our forefathers built and even shed blood over, and you have maintained without any investment of any kind from the national church.

The underlying point is that the Diocese disassociated from TEC in October 2012, after TEC attempted to remove me as your bishop. The congregations, participating in the lawsuit, many of the Diocese's largest and oldest, join many others in disassociating from TEC.

Of our 71 parishes and approximately 30,000 baptized members, 22,244 members of you have decided to remain with the Diocese. Fifty Three Hundred say they want to be with The Episcopal Church- with nearly half of those from one church in Charleston, and 1900 are still undecided. We respect the decision of those who wish to remain with TEC but believe they must also respect the identity and property of the Diocese of South Carolina, which has been painstakingly built over two centuries.

Though we have separated from TEC, as have 200 parishes and four other dioceses across the United States, we remain committed to our vision of Making Biblical Anglicans for a Global Age, as well as helping to shape emerging Anglicanism in the 21st Century. It is encouraging that so many Provinces of the Anglican Communion have expressed their continuing support for this Diocese of South Carolina.

I ask that you join me in praying for a peaceful and timely resolution of this situation so that we may continue to freely uphold the doctrine, discipline and worship of Christ as we have received them and as faithful stewards of the gospel and the church's resources to joyfully proclaim the Good News of Jesus Christ to those who live across the street and around the world.

Faithfully yours in Christ,

Telephone (843) 722-4075 • Email: bsnyder@dioceseofsc.org • Fax (843) 723-7628

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

The Right Reverend Charles G. vonRosenberg,)
individually and in his capacity as Provisional)
Bishop of the Protestant Episcopal Church in)
the Diocese of South Carolina,)

Plaintiff,)

v.)

The Right Reverend Mark J. Lawrence and)
John Does numbers 1-10, being fictitious)
defendants whose names presently are)
unknown to Plaintiff and will be added by)
amendment when ascertained,)

Defendants.)

CIVIL ACTION NUMBER:

AFFIDAVIT OF THE RIGHT REVEREND CHARLES G. VON ROSENBERG

The Rt. Rev. Charles G. vonRosenberg, having been duly sworn, deposes and states as follows:

1. My name is Charles G. vonRosenberg. I am over the age of nineteen years, and I make this Affidavit on the basis of personal knowledge and of records and information made known to me in the ordinary course of business.

2. I am Provisional Bishop of the Protestant Episcopal Church in the Diocese of South Carolina, having been elected to and installed in that office at a special meeting of the Convention of the Diocese held on January 26, 2013. Previously, I served as Bishop of the Episcopal Diocese of East Tennessee. I hold a bachelor's degree from the University of North Carolina, and a Masters in Divinity from Virginia Theological Seminary. Both the Diocese of

South Carolina and the Diocese of East Tennessee are among the 111 dioceses that have been admitted into union with, and are subordinate parts of, The Protestant Episcopal Church in the United States of America (the “Episcopal Church”).

3. Prior to the approximately thirteen years for which I held the office Bishop of East Tennessee, I served the Church as rector of parishes in Wilmington, North Carolina, and Greenwood, South Carolina, and served on the Diocesan staff as Canon to the Ordinary of the Diocese of Upper South Carolina, which covers a geographic area that is contiguous to the Diocese of South Carolina. Since resigning from my position as Bishop of East Tennessee, I have resided on Daniel Island, which is located within the City of Charleston, South Carolina.

4. The Presiding Bishop, on October 15, 2012, acting as required by the provisions of Canon IV.16(A).1 of The Episcopal Church, “place[d] a restriction on the exercise of ministry of” Bishop Mark J. Lawrence, then the Bishop of South Carolina, and declared that such restriction would remain in effect ““until such time as the House of Bishops shall investigate the matter and act thereon,”” and further declared: “During the period of such restriction, ‘the Bishop shall not perform any Episcopal, ministerial or canonical acts.’”

5. It has been widely reported publicly that on November 17, 2012, Bishop Lawrence delivered an address to a special meeting of the Convention of the Diocese of South Carolina, and, during his address, declared to the meeting that the Diocese had “withdrawn from” the Episcopal Church, and he called upon those present to “affirm the action of disaffiliation which,” he said, the leadership of the Diocese had “legally and canonically taken.”

6. The text of Bishop Lawrence’s speech thereafter was publicly posted on the internet website of the Diocese, as were audio and video files that were available for the public to

allow them to listen to audio recordings, and watch video recordings, of Bishop Lawrence's speech.

7. After having been informed of these oral and written declarations openly and publicly made by Bishop Lawrence, the Presiding Bishop of the Church, on December 5, 2012, acting under Title III, Canon 12, Section 7, of the Constitution and canons of the Church, with the advice and consent of her Council of Advice, accepted the renunciation of the ordained ministry of The Episcopal Church by Bishop Lawrence, as he declared such renunciation in his November 17 speech. The Presiding Bishop said that the consequence of her acceptance of such renunciation was that Bishop Lawrence "is therefore removed from the Ordained Ministry of this Church and released from the obligations of all Ministerial offices, and is deprived of the right to exercise the gifts and spiritual authority as a Minister of God's Word and Sacraments conferred on him in Ordinations."

8. Following Bishop Lawrence's removal, on January 26, 2013, the Presiding Bishop convened a special meeting of the Convention to elect a Provisional Bishop, in accordance with Canon III.13.1 of the Episcopal Church.

9. As Provisional Bishop of the Diocese of South Carolina, I know that the public has been confused as a result of the continued usage of certain names and seals by Bishop Lawrence and former Episcopal parishes that have deliberately and publicly – purportedly – "disassociated" themselves and "withdrawn" from The Episcopal Church. More specifically, I know that the use of certain names and seals on the internet and in other printed material and in oral communications has been confusing to prospective charitable donors who wish to support the mission and work of the Episcopal Church, as well as to active and prospective communicants of the Episcopal Church who are seeking parishes with whom they may worship

and enjoy fellowship, and who share their commitment to the work and mission of The Episcopal Church. I know the specific names and seals improperly used by Bishop Lawrence and those aligned with him include “the Episcopal Diocese of South Carolina,” “the Diocese of South Carolina,” “the Protestant Episcopal Church in the Diocese of South Carolina,” and the seal of the Diocese.

10. I can provide numerous examples of instances where I personally observed confusion at public meetings as to whether Bishop Lawrence and those aligned with him speak for the Protestant Episcopal Church in the Diocese of South Carolina, including, just to name a few: a meeting of the leadership and supporters of the Kanuga Conference Center of Hendersonville, North Carolina held in Charleston, South Carolina on February 5, 2013; a meeting held at Saint James-Santee Episcopal Church in McClellanville, South Carolina on February 7, 2013; a meeting held at the Church of Holy Communion in Charleston, South Carolina on February 17, 2013; a meeting held at Old Saint Andrews Parish Church in Charleston, South Carolina on February 17, 2013; a meeting held at Christ Episcopal Church in Florence, South Carolina on February 26, 2013; and a meeting with the Chair of the Board of Porter Gaud School in Charleston, South Carolina on February 19, 2013.

11. Another example of confusion I have witnessed occurred when a mother approached me to ask whether Bishop Lawrence could perform a confirmation of her child on behalf of the Episcopal Church during a scheduled visit. I advised her the answer is no. Similarly, an adult that had been confirmed by Bishop Lawrence approached me to ask whether I would have to affirm his confirmation on behalf of the Episcopal Church. I advised him the answer is yes.

12. Another example of confusion I have witnessed occurred when three residents of The Canterbury House, a non-profit senior living community in Charleston, South Carolina sponsored by the Protestant Episcopal Church in the Diocese of South Carolina, approached me with the concern that they did not know which bishop is authorized to speak on behalf of their residence, Bishop Lawrence or me.

13. Another example of confusion I have witnessed occurred when my office received a notice, dated February 11, 2013, from an insurance company informing the Protestant Episcopal Church in the Diocese of South Carolina that twelve parishes, including eleven parishes that have purported to withdraw and disassociate from the Episcopal Church, are in arrears in making payments.

14. Another example of confusion I have witnessed occurred when Bishop Lawrence's office on Coming Street in Charleston received a donation check through the United States Postal Service that was correctly addressed to the Protestant Episcopal Church in the Diocese of South Carolina with the correct P.O. Box for my office. In this instance, Bishop Lawrence's office recognized that the donation check was not intended for them and returned the donation check via mail to the sender, who advised me of these events and then delivered the donation check to my office.

15. Bishop Lawrence and his followers have called for a purported Diocesan Convention to occur on March 8 and 9, 2013, which will create confusion and compete with the legitimate Convention of the Protestant Episcopal Church in the Diocese of South Carolina that had already been scheduled for those exact same days. Bishop Lawrence and his followers propose to amend the Diocesan Constitution and to hold numerous workshops that claim to communicate the message of the Diocese. This purported Convention and similar events

undermine my ability to lead the Diocese. They falsely suggest to the public that Bishop Lawrence leads and is in control of the Diocese. They also falsely suggest to the public that Bishop Lawrence and his followers have the authority to communicate on behalf of the Diocese and espouse the values of the Diocese.

16. Bishop Lawrence and his followers have and continue to communicate and promote beliefs that are inconsistent with those accepted by myself and the Episcopal Church, thereby further confusing the public as to the beliefs of the Episcopal Church. Specifically, it has been widely reported publicly that Bishop Lawrence criticizes the Episcopal Church for its belief of what Bishop Lawrence derogatorily referred to as “indiscriminate inclusivity,” and Bishop Lawrence has been particularly critical of the Episcopal Church’s stance in accepting homosexuals, as opposed to discriminating against homosexuals. As a result, I have been approached by countless individuals who are confused as to whether the Protestant Episcopal Church in the Diocese of South Carolina accepts or discriminates against homosexuals.

17. Many individuals have approached me and explained that they have decided to leave the Episcopal faith altogether in favor of other Christian denominations because of the confusion and conflict in their respective congregations resulting from Bishop Lawrence’s above described actions.

18. My ability to discharge the duties and responsibilities of my office as Provisional Bishop of the Diocese of South Carolina is, and will continue to be, severely impaired by the circumstance that there are churches and parishes, located within the geographic area of the Diocese of South Carolina, that publicly call themselves “Episcopal” churches, and publicly claim to be parishes of the Diocese of South Carolina, but have disclaimed and disavowed any association or affiliation with the Episcopal Church.

19. The historical affiliation of the Diocese of South Carolina with The Episcopal Church always has been an integral element in the public activities of the Diocese directed at spiritual outreach to the people in the communities served by the parishes in the Diocese, at efforts seeking to better the communities that our parishes serve, and the wide variety of efforts by the Diocese to promote and enhance social justice. Many members of the faith community will support only an entity affiliated with The Episcopal Church. By claiming that the Diocese has withdrawn from The Episcopal Church, Bishop Lawrence has obstructed my ability to garner financial and spiritual support for my mission. At a minimum, Bishop Lawrence has led many members of the faith community to question the Diocese's continuing connection to The Episcopal Church and has made it impossible for me to protect and control the Diocese's reputation.

20. Bishop Lawrence and his followers promote and advocate a set of values that are inconsistent with those to which the Episcopal Church adheres and that it promotes and advocates to its followers, and their activities that, knowingly and deliberately, falsely associate the names of the Diocese, the seal of the Diocese, and its website and the contents of the website, with those values, create an enormous and continuing impediment to my ability to carry out my duties and responsibilities as Provisional Bishop of the Diocese of South Carolina, requiring me to devote much of my time and energy toward addressing public confusion, at the expense of reducing my time and energy toward encouraging the Episcopal Church's mission.

21. Bishop Lawrence's continuing practice of referring to himself, and holding himself out, as being the Bishop of the Protestant Episcopal Church in the Diocese of South Carolina, is a circumstance that serves only to mislead, and to create and perpetuate confusion among, the public, and among active and prospective Episcopalians, within and without the

Diocese of South Carolina, which further compounds the injury and damage that has been and will continue to be caused to the Diocese by the knowing, deliberate, and wrongful conduct of Bishop Lawrence and his allies.

Further, Affiant saith not.

[Signature page to follow]

Charles G. vonRosenberg
The Right Reverend Charles G. vonRosenberg

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 6th DAY OF MARCH, 2013.

Jason Smith
NOTARY PUBLIC, STATE OF SOUTH CAROLINA

My Commission Expires: 12/13/22

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

The Right Reverend Charles G. vonRosenberg,
individually and in his capacity as Provisional
Bishop of the Protestant Episcopal Church in
the Diocese of South Carolina,

Plaintiff,

v.

The Right Reverend Mark J. Lawrence and
John Does numbers 1-10, being fictitious de-
fendants whose names presently are unknown
to Plaintiff and will be added by amendment
when ascertained,

Defendants.

CIVIL ACTION NUMBER:

AFFIDAVIT OF THE RIGHT REVEREND JOHN C. BUCHANAN

1. My name is John C. Buchanan. I am over the age of nineteen (19) years, of sound mind, and fully capable and competent to make this Affidavit. I have personal knowledge of the facts stated herein, or have learned of such facts through documents and records made known to me in the ordinary course of business, and all facts stated herein are true and correct. If sworn as a witness, I can testify competently to the facts as stated herein.

2. I am a Bishop of The Episcopal Church (the "Church"). I am the former Bishop of the Church's Diocese of West Missouri and served in that capacity from shortly after my ordination as a bishop of the Church, in 1989, until 1999. Since that time, I have served as Assisting Bishop of the Episcopal Dioceses of Texas and Southern Virginia; and since April 4, 2009, pursuant to the Church's Canon III.13(1), I have served as the "Provisional Bishop" of the Church's

Diocese of Quincy, Illinois, exercising “all the duties and offices” of the Bishop of that diocese as provided by that canon. I also served as the Parliamentarian of the Church’s House of Bishops from 2003 to 2012.

3. In 2008, the Church’s Presiding Bishop engaged me to serve as an advisor and agent for the Church in answering discovery and otherwise speaking for the Church in litigation involving disputes with persons who have left the Church.

4. Although I serve as Provisional Bishop of the Diocese of Quincy, I continue to maintain my residence in the town of Mount Pleasant, South Carolina, which is within the Church’s Diocese of South Carolina. I became familiar with the Episcopal Church as a student at the University of South Carolina, and later when I practiced law in Laurens, South Carolina. I became an Episcopalian in 1961, while working for an insurance company in Florence, South Carolina. Ordained in 1969 and for twenty years, I served three congregations in the Episcopal Diocese of South Carolina, the last being St. Andrew’s Episcopal Church, Mount Pleasant. I served as Bishop of West Missouri from 1989 to 1999. Prior to my being elected as Bishop, my entire ministry had been in the Episcopal Diocese of South Carolina and in the state of South Carolina.

5. The Episcopal Church is a hierarchical church, in which dioceses are subordinate to the Constitution and Canons of The Episcopal Church. In turn, the parishes in each of the dioceses of The Episcopal Church are subordinate to their respective dioceses, as well as to The Episcopal Church.

6. The General Convention of The Episcopal Church adopts, and from time to time amends, the Church’s governing documents, which are its Constitution, canons, and Book of Common Prayer. The General Convention is a bicameral legislative body made up of a House of Bishops, composed of most of The Episcopal Church’s bishops, and a House of Deputies, composed of clergy and lay members of The Episcopal Church who are elected from each of the dio-

ceses in The Episcopal Church. One of those dioceses is the Diocese of South Carolina. The General Convention meets once every three years.

7. All dioceses, under Article V.1 of the Constitution of The Episcopal Church, are “formed, with the consent of the General Convention and under such conditions as the General Convention shall prescribe by General Canon or Canons.” All dioceses, as a condition of becoming admitted into union with the General Convention, and thus a part of The Episcopal Church, are required to promise “an unqualified accession to the Constitution and Canons of this Church.”

8. Each diocese in the Church has its own Constitution and Canons, but, under Article V.1 of the Constitution of The Episcopal Church, they cannot be inconsistent with the Constitution and Canons of The Episcopal Church.

9. Each diocese elects its own bishop; however, no bishop so elected may be ordained as a bishop without first having obtained the consent of the leadership of a majority of the other dioceses. As an example of the subordinate status of dioceses to the larger church, Bishop Lawrence failed to obtain the required consents to his ordination as the Bishop of South Carolina after he first was elected bishop by the Diocese of South Carolina. He was elected a second time, and, after he made explicit and unambiguous commitments of loyalty to the larger church, his election received the required consents.

10. Under Canon IV.16 (A).1, “If a Bishop abandons The Episcopal Church (i) by an open renunciation of the . . . Discipline . . . of the Church,” it thereupon “shall be the duty of the Disciplinary Board for Bishops, by a majority vote of all of its members,” to certify that fact to the Presiding Bishop, and to submit to the Presiding Bishop, with that certification, “a statement of the acts or declarations which show such abandonment.” The Presiding Bishop “shall then

place a restriction on the exercise of ministry of said Bishop until such time as the House of Bishops shall investigate the matter and act thereon. During the period of such restriction, the Bishop shall not perform any Episcopal, ministerial or canonical acts.”

11. By letter dated March 23, 2012, addressed to the Right Reverend F. Clayton Matthews, the Church’s Bishop for Pastoral Development, a Complaint was filed against Bishop Lawrence, alleging that he had abandoned the “communion” of the Church.

12. On the basis of the Complaint, the Church’s Disciplinary Board for Bishops, acting under the provisions of Canon IV.17 and by majority vote of all its members, on September 18, 2012, issued a Certificate of Abandonment of The Episcopal Church and Statement of Acts or Declarations Which Show Such Abandonment. According to the Certificate, the Board determined and certified “that the Right Reverend Mark J. Lawrence, Bishop of South Carolina, has abandoned The Episcopal Church by an open renunciation of the Discipline of the Church.”

13. As is required by Canon IV.16(A).1, the Board sent the Certificate and Statement to the Presiding Bishop, and, on October 15, 2012, the Presiding Bishop, also as is required by that Canon, “placed a restriction on the exercise of ministry of Bishop Lawrence ‘until such time as the House of Bishops shall investigate the matter and act thereon.’” The Presiding Bishop further stated that during the period of such restriction, and as is provided by the aforesaid Canon, “the Bishop shall not perform any Episcopal, ministerial or canonical acts.” A copy of the writing that memorialized the Presiding Bishop’s aforesaid action is attached hereto as Exhibit A.

14. Also on October 15, I understand that the Presiding Bishop telephoned Bishop Lawrence to advise him of the findings of the Disciplinary Board and of the action that, as a result, she had taken, as described in Paragraphs 12 and 13 hereof.

15. On October 17, 2012, I understand that Bishop Lawrence telephoned the Presiding Bishop and informed her that the Diocese of South Carolina had “disassociated” from The Episcopal Church. On the same day, a public statement was published on the internet website of the Diocese of South Carolina, stating, among other things: “As a result of TEC’s attack against our Bishop, the Diocese of South Carolina is disassociated from TEC, that is, its accession to the TEC Constitution and its membership in TEC have been withdrawn.”

16. The following month, there was a meeting of Bishop Lawrence and his followers, at which Bishop Lawrence delivered an address on November 17. The text of his address was posted on the website of the Diocese, as were audio and video files, which are available to members of the public who wish to listen to or watch Bishop Lawrence’s address. According to the posted text, Bishop Lawrence told his audience, “We have withdrawn from” The Episcopal Church, and he urged his listeners “to affirm the action of disaffiliation which the Standing Committee has legally and canonically taken.”

17. As a result of these public acts and statements by Bishop Lawrence, and acting pursuant to Title III, Canon 12, Section 7, of the Constitution and Canons of The Episcopal Church, and with the consent of her Council of Advice, the Presiding Bishop, on December 5, 2012, accepted the renunciation of the ordained ministry of The Episcopal Church of Mark Lawrence, as made in his public address of November 17. The renunciation was effective immediately on December 5.

18. I understand that the Presiding Bishop notified Bishop Lawrence of this action on December 5, by telephone, by electronic mail, and by postal mail. The result of her acceptance of Bishop Lawrence’s renunciation was that he “is, therefore, removed from the Ordained Ministry of this Church and released from the obligations of all Ministerial offices, and is deprived of

the right to exercise the gifts and spiritual authority as a Minister of God's Word and Sacraments conferred on him in Ordinations. This action is taken for causes that do not affect his moral character." A copy of the Presiding Bishop's aforesaid acceptance of Bishop Lawrence's renunciation is attached hereto as Exhibit B.

19. In accordance with the provisions of Title III, Canon 13, Section 1, of the Constitution and Canons of The Episcopal Church, a special meeting of the Convention of the Diocese of South Carolina was convened on January 26, 2013, at which I was in attendance. The Convention elected The Right Reverend Charles G. vonRosenberg as the Provisional Bishop of the Diocese of South Carolina. Bishop vonRosenberg was installed as Provisional Bishop of the Diocese by the Presiding Bishop. The President of the Church's House of Deputies was in attendance at the special meeting and supported the election of Bishop vonRosenberg. The Secretary of the Church's House of Bishops has entered Bishop vonRosenberg's name on the roll of Bishops as Provisional Bishop of the Episcopal Diocese of South Carolina.

20. Since I became an Episcopalian, in 1961, the name "the Diocese of South Carolina," other names by which that Diocese commonly is known, such as "the Protestant Episcopal Church in the Diocese of South Carolina," and the "Episcopal Diocese of South Carolina," and the seal of the Diocese, have been commonly known and understood, by many in South Carolina and adjacent areas, and among Episcopalians elsewhere, as referring to an assemblage or organization of Episcopal parishes and missions that share a common affiliation with and loyalty to The Episcopal Church of the United States.

21. Over the past decade or two, as public use of the internet has grown and become more and more widespread, the importance of the website of the Diocese of South Carolina has grown, and continues to grow, as a means by which the Diocese, its officers, and its parishes, can

communicate quickly, and at relatively low cost, with a broad range of the public. The Diocese's website has enormous value in a wide array of public activities, including, just to name a few, such things as informing the public and parishioners of events held or sponsored by the Diocese and by parishes; spiritual outreach, education, and training; promotion of applying spiritual attitudes and teachings in everyday life choices; and appealing to the public, and to Episcopal parishioners, to solicit financial support of the Diocese and its parishes and missions.


22. Based on my many years of residence in or adjacent to the Diocese, and my experiences as a member of the Episcopal clergy in the Diocese and elsewhere, it is my opinion that the fact that the names of the Diocese, its seal, and its website, now are under the control of, and are regularly used by, individuals who willingly have "withdrawn" and "disassociated" from The Episcopal Church of the United States is confusing and misleading to the public, which, for well over a hundred years, quite correctly and quite properly, has understood them to refer to people and local religious institutions who are affiliated with and loyal to The Episcopal Church of the United States.

Further, Affiant saith not.

State of Illinois)
)
County of Peoria) ss.

I, the Right Reverend John C. Buchanan, am over the age of nineteen years and am competent to make this affidavit. All the statements contained in this affidavit are true and correct and are within my personal knowledge.

This 4th day of March, 2013.


The Right Reverend John C. Buchanan

SUBSCRIBED TO AND SWORN
before me, the undersigned authority,
on this 4th day of March, 2013.


Notary Public



My commission expires:

6-11-16

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

The Right Reverend Charles G. vonRosenberg,)
individually and in his capacity as Provisional)
Bishop of the Protestant Episcopal Church in)
the Diocese of South Carolina,)

Plaintiff,)

v.)

Mark J. Lawrence and John Does numbers 1-)
10, being fictitious defendants whose names)
presently are unknown to Plaintiff and will be)
added by amendment when ascertained,)

Defendants.)

CIVIL ACTION NUMBER:

AFFIDAVIT OF WALTER EDGAR

Walter Edgar, having been duly sworn, deposes and states as follows:

1. My name is Walter Edgar. I am over the age of nineteen years, and I make this Affidavit on the basis of personal knowledge and of records and information made known to me in the course the activities described in this Affidavit and otherwise in the ordinary course of business.

2. I am a Distinguished Professor Emeritus of History and the Neuffer Professor of Southern Studies Emeritus at the University of South Carolina. When I retired from the University of South Carolina in May 2012, I held the following professorships at the University: Carolina Trustee Professor, George Washington Professor of History, Scudder Professor of Liberal Arts, and Neuffer Professor of Southern Studies. I received an A.B. degree from Davidson College and an M.A. and a Ph.D. from the University of South Carolina. My specialty is Southern

history, particularly the history of the State of South Carolina. My publications and lectures include *The South Carolina Encyclopedia*; *South Carolina: A History*; *Partisans and Redcoats: The Southern Conflict that Turned the Tide of the American Revolution*; *South Carolina in the Modern Age*, “Freedom of Religion in South Carolina: Myths and Realities” (lecture delivered before the South Carolina Supreme Court Historical Society), and several other edited publications. I was the founder and first director of the Public History Program in the University’s Department of History.

3. During my career as a historian, I have devoted considerable time and study to the history of The Episcopal Church of the United States and the history of the Diocese of South Carolina, including detailed review of the earliest records of the Diocese and study of how the Diocese came to be formed. From 1997 to 1999, I was the Registrar of the Episcopal Diocese of Upper South Carolina.

4. The Episcopal Church was founded in the 1780s, following the American Revolution. America’s independence from England left the former parishes of the Church of England with an uncertain future. While they had been under the authority of the Bishop of London prior to the Revolution, after independence the parishes found themselves without bishops and without any church structure beyond the parish level.

5. Dr. William White of Philadelphia was an early moving force urging organization of these parishes into state committees and a national organization. Following several local meetings held by parishes, the first national meeting of parishes was held in New York in October 1784. At this meeting it was resolved to hold another national meeting in Philadelphia, in 1785, and to write to clergy of former Church of England parishes around the new country to solicit their participation.

6. Among those to whom Dr. White sent such a letter was the rector of St. Philip's Church in Charleston. My study and research of Dr. White's correspondence, contemporaneous meeting journals, and other records of the period do not support the contentions of those who today argue that the Diocese of South Carolina was one of the founders of The Episcopal Church of the United States. Such contentions are not supported by the historical record. In point of fact, what is indicated by the records contemporaneous with the establishment of The Episcopal Church, and the formation of the Diocese of South Carolina, is that it was the actions of the organizers of The Episcopal Church that actually precipitated the formation of a structure for the parishes in South Carolina. The South Carolina organization did not even have a bishop until 1795, six years after the formation of The Episcopal Church.

7. During the debates over the formulation and adoption of a proposed Constitution for a national church, representatives of South Carolina parishes met to discuss various provisions that had been proposed to be included in the Constitution. At a meeting in April 1786, the South Carolina parishes approved inclusion of the following language in the national Constitution: "This General Ecclesiastical Constitution when ratified by the Church in Different States shall be considered as fundamental; & shall be unalterable by the Convention of the Church in any State."

8. At this same meeting, the South Carolina parishes approved the proposal to require that state churches seeking admission to The Episcopal Church should be required to "accede" to the Constitution of The Episcopal Church. Thus, from the inception of both the Diocese of South Carolina and The Episcopal Church, the Diocese has acknowledged that it is subordinate to the Constitution of The Episcopal Church.

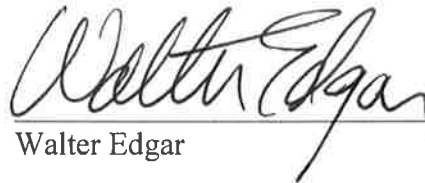
9. The Constitution of The Episcopal Church was adopted in 1789, and in 1790 the Diocese of South Carolina acceded to that Constitution. The first sentence of the Constitution of the Diocese of South Carolina declared as follows: “The Church in the Diocese of South Carolina accedes to the Constitution of the Protestant Episcopal Church in the United States of America.” An accession by the Diocese of South Carolina was a part of the Constitution of the Diocese until the recent actions of Bishop Mark Lawrence, and others in alignment with him, who adopted or enacted measures that purported to delete the accession clause, and other references to The Episcopal Church, from the Constitution and Canons of the Diocese of South Carolina.

10. When South Carolina and much of the East Coast of United States experienced a devastating earthquake in 1886, Bishop William Bell Howe estimated the losses of the Diocese of South Carolina at \$100,000, and he made a nationwide appeal for aid. The Bishop later reported that 48 dioceses and 12 missionary districts of The Episcopal Church, as well as donors in Japan and England, had contributed more than \$40,500 to the Diocese of South Carolina. The Bishop further reported that while one-tenth of those funds had been applied to personal relief, the remainder was used to repair churches and associated institutions. Thus, when the Diocese of South Carolina suffered substantial damages as a result of natural catastrophe, approximately 40 percent of the funds that it needed to repair those damages was received from fellow Episcopalians.

11. For virtually two centuries, the Diocese of South Carolina has regularly sent representatives to meetings of the General Convention of The Episcopal Church, including the Church’s most recent meeting, in 2012. The Diocese, through its duly elected representatives, regularly participated, throughout that period, in the General Convention’s enactment of amendments to the Constitution and Canons of The Episcopal Church, including adoption of the

Dennis Canon, which declares that all real and personal property held by or for any parish is held in trust for such parish's diocese and for The Episcopal Church.

Further, Affiant saith not.


Walter Edgar

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 27th DAY OF FEBRUARY, 2013.


NOTARY PUBLIC, STATE OF SOUTH CAROLINA

My Commission Expires: 5-23-13

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

The Right Reverend Charles G. vonRosenberg,
individually and in his capacity as Provisional
Bishop of the Protestant Episcopal Church in
the Diocese of South Carolina,

Plaintiff,

v.

Mark J. Lawrence and John Does numbers 1-
10, being fictitious defendants whose names
presently are unknown to Plaintiff and will be
added by amendment when ascertained,

Defendants.

CIVIL ACTION NUMBER:

AFFIDAVIT OF THE RIGHT REVEREND DORSEY F. HENDERSON, JR.

The Right Reverend Dorsey F. Henderson, Jr., having been duly sworn, deposes and states as follows:

1. My name is Dorsey F. Henderson, Jr. I am over the age of nineteen years, and I make this Affidavit on the basis of personal knowledge and of records and information made known to me in the ordinary course of business.

2. I am a Bishop of The Episcopal Church, having concluded my most recent active service, as Diocesan Bishop of the Diocese of Upper South Carolina, on December 31, 2009. I hold a Masters in Divinity degree from Virginia Theological Seminary and a Juris Doctor degree from the University of Florida.

3. I served for approximately fifteen years as the Bishop of Upper South Carolina. During much of that time I served on The Episcopal Church's Title IV Review Committee, and for part of that time I served as President of the Committee.

4. In 2011, I was elected a member of the Church's Disciplinary Board for Bishops. According to Canon IV.17.3 of The Episcopal Church, this Board, among other things, has "original jurisdiction over matters of discipline of Bishops." It consists of ten Bishops, elected by The Episcopal Church's House of Bishops, and four Priests or Deacons and four lay persons, who are elected by the Church's House of Deputies.

5. Under the Church's Canon IV.16 (A).1, "If a Bishop abandons The Episcopal Church (i) by an open renunciation of the . . . Discipline . . . of the Church . . . it shall be the duty of the Disciplinary Board for Bishops, by a majority vote of all its members, to certify the fact to the Presiding Bishop and with the certificate to send a statement of the acts or declarations which show such abandonment, which certificate and statement shall be recorded by the Presiding Bishop."

6. Canon IV.16(A).1 further provides that after such a certification of abandonment by a Bishop has been made, "The Presiding Bishop shall then place a restriction on the exercise of ministry of said Bishop until such time as the House of Bishops shall investigate the matter and act thereon. During the period of such restriction, the Bishop shall not perform any Episcopal, ministerial or canonical acts."

7. In 2012, I served as President of the Disciplinary Board for Bishops. In that capacity, I chaired the Board's review and disposition of complaints submitted to the Right Reverend F. Clayton Matthews, the Church's Bishop for Pastoral Development, and thereafter forwarded to the Disciplinary Board, by twelve adult communicants in good standing resident in the

Diocese of South Carolina, and two priests canonically resident in such Diocese, alleging that the Right Reverend Mark J. Lawrence, then the Bishop of South Carolina, had “abandoned The Episcopal Church by an open renunciation of the Discipline of the Church.”

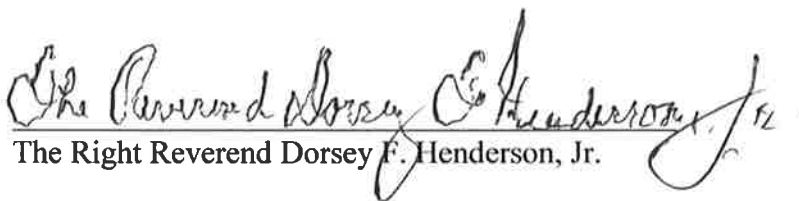
8. After a thorough and careful review of the matters alleged in the complaints referenced above, and of the evidence submitted in support thereof, the Disciplinary Board found that a series of acts by Bishop Lawrence that had begun as early as October 2010, during the proceedings of the 219th Convention of the Diocese of South Carolina, and that had continued at least to November 2011, “constitute[ed] abandonment of the Episcopal Church by an open renunciation of the Discipline of the Church.” The Discipline of The Episcopal Church is found in the Constitution and Canons of The Episcopal Church and in the Rubrics and the Ordinal of the Book of Common Prayer. (Canon IV.2.) The acts of Bishop Lawrence upon which the Disciplinary Board’s findings were based are set forth in detail in the attached Certificate of Abandonment of The Episcopal Church and Statement of the Acts or Declarations Which Show Such Abandonment, attached hereto as Exhibit A.

9. Among the obligations that Bishop Lawrence had assumed as Bishop were the requirements that he “safeguard the property and funds of the Church and Community” and “exercise his . . . ministry in accordance with applicable provisions of the Constitution and Canons of the Church and of the Diocese” (Canon IV.4.1(c), (e), & (g).)

10. Moreover, Article VIII of the Constitution of The Episcopal Church provides that no person “shall be ordained and consecrated Bishop” unless such person “shall subscribe and make the following declaration,” among others: “. . . **I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.**”

11. In accordance with the provisions of Canon IV.16(A).1 of The Episcopal Church, the Certificate and Statement that are appended hereto as Exhibit A were transmitted by the Disciplinary Board for Bishops to the Presiding Bishop, through the United States Postal Service, on October 8, 2012, so that she might take such actions as are required by the Canons in such circumstances.

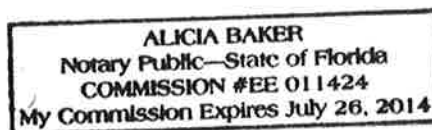
Further, Affiant saith not.


The Right Reverend Dorsey F. Henderson, Jr.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 1 DAY OF MARCH, 2013.


NOTARY PUBLIC, STATE OF Florida

My Commission Expires: 7/26/14



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

The Right Reverend Charles G. vonRosenberg,
individually and in his capacity as Provisional
Bishop of the Protestant Episcopal Church in
the Diocese of South Carolina,

Plaintiff,

v.

Mark J. Lawrence and John Does numbers 1-
10, being fictitious defendants whose names
presently are unknown to Plaintiff and will be
added by amendment when ascertained,

Defendants.

CIVIL ACTION NUMBER:

AFFIDAVIT OF DR. ROBERT BRUCE MULLIN

Before me, the undersigned authority, personally appeared Dr. Robert Bruce Mullin,
who, having been duly sworn, deposed and said:

1. My name is Robert Bruce Mullin. I am of sound mind, capable of making this
Affidavit, and have personal knowledge of the facts herein stated.

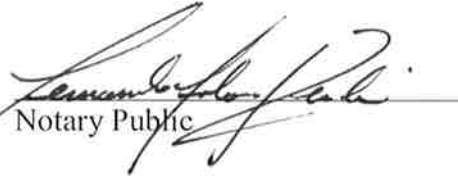
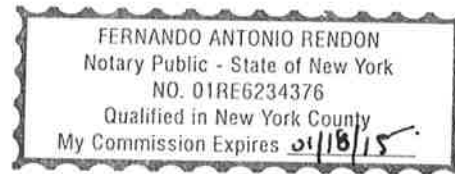
2. Attached to this Affidavit is a Statement by me regarding the history, formation, and
governance of The Episcopal Church. In making such Statement, I personally reviewed the
historical documents cited therein. It is my belief that the representations made in the Statement
are true. The opinions expressed therein I continue to hold.

3. My qualifications are set out in the attached Statement.



Robert Bruce Mullin

SUBSCRIBED TO AND SWORN BEFORE ME on this 28. day of February, 2013.


Notary Public

STATEMENT OF ROBERT BRUCE MULLIN

1. I am an historian and teacher at the General Theological Seminary in New York City, one of the accredited seminaries of The Episcopal Church (“the Church”). I serve as the Professor of Modern Anglican Studies and the Society for the Promotion of Religion and Learning Professor of History and World Mission. I have held these positions since 1998. I received my Bachelor’s degree in history from the College of William and Mary and my Ph.D. in the History of Christianity from Yale University in 1984. I also received Master’s degrees in religion from Yale Divinity School and from the Berkeley Divinity School at Yale, another accredited seminary of The Episcopal Church.

2. Since 1984, I have been teaching, researching, and publishing in the area of religion in America, with a special focus on The Episcopal Church. Prior to obtaining my current positions, I taught in these fields at North Carolina State University, Duke Divinity School, the University of North Carolina, Wesleyan University, and Yale University.

3. In connection with litigation involving certain former members of The Episcopal Church who have claimed the right to control and use Episcopal diocesan and parish property for the mission of other churches, I have been asked by the Church’s Presiding Bishop to render expert opinions in the following general area within my professional expertise: The current and historical hierarchical organization and structure of The Episcopal Church and the consequent reasons why dioceses and parishes of the Church, as opposed to their individual leaders, may not, consistent with the Church’s polity, articulated in its Constitution, canons, and Book of Common Prayer, unilaterally withdraw or disaffiliate from the Church and its governing body, the General Convention, or, in the case of parishes, their dioceses.

4. My conclusions are based on over 30 years of study and publication in the fields of American history, American religious history, the history of The Episcopal Church, and the history of the Anglican Communion. In addition to the general knowledge that I have gained in that work, in preparation for this statement I have extensively surveyed the Journals of the General Convention of The Episcopal Church; the diocesan journals of many of the Church's dioceses; the Church's Constitution and canons; the standard commentaries on the Church's Constitution and canons; the Constitutions and canons of many of the Church's dioceses; various Episcopal journals that cast light on the understanding of the Church's relationship to property; relevant contemporary historical sources that shed light on the question of churches and property law; contemporary literature on various questions concerning the history of the Church; the standard Episcopal Church histories; modern monographs on the history of the Church; comparative studies of other denominational families in order to identify Episcopal distinctiveness; and journalistic accounts that shed light on the Nineteenth- and Twentieth-Century history of the Church. I have also incorporated the understanding of the international Anglican Communion that I have acquired through almost 20 years of participation in ecumenical dialogue. Finally, I have incorporated the insights I have gained from having directed a number of doctoral dissertations in the field of Episcopal/Anglican studies.

INTRODUCTION

5. The following is an analysis of the question of whether and to what extent The Episcopal Church has been and has understood itself to be a hierarchical church over its history, and of the subsidiary question of whether, consistent with the Church's polity, a diocese may exercise a purported right to withdraw from participation in and the governance of the General Convention of the Church. The present disagreements within the Church flow

from two distinct positions. On the one side are those persons wishing to separate themselves and their dioceses from the Church and join a rival church, arguing that their dioceses are not subject to the Church's central legislative body, the General Convention. On the other side is the Church itself and the persons in those dioceses who wish to remain in the Church who hold that the General Convention represents and legislates for the whole Church and that dioceses may not unilaterally absent themselves from the General Convention's governance.

6. The separatists' fundamental thesis is that The Episcopal Church is not hierarchical but is rather a confederation, or a strictly voluntary association of independent dioceses. The separatists therefore argue that entire dioceses (not merely individual members) may detach themselves from the Church at will and join a different denomination of their choosing. Indeed, some profess a right to join a different Anglican church within the United States that they contend should be recognized both nationally and internationally as an authentic Anglican entity.¹

7. This argument relies on a number of specific claims. Most basically, it assumes that the Constitution of the Church should be seen as analogous to the United States Constitution. In this view, the Constitution preceded, defines, and limits the authority of the General Convention. That body and the laws or "canons" it has passed are seen as later

¹ Some of the recent statements advancing aspects of this view are Mark McCall, "Is the Episcopal Church Hierarchical?" (Anglican Communion Institute, 2008); George Conger, "The Concept of Hierarchy in the Episcopal Church of the Nineteenth Century," (Anglican Communion Institute, 2010); "Bishops' Statement on the Polity of the Episcopal Church" (2009), available at www.anglicancommunioninstitute.com/2009/04/bishops-statement-on-the-polity-of-the-episcopal-church/; Affidavit of the Rt. Rev. William C. Wantland, The Episcopal Church in the Diocese of Connecticut v. Ronald S. Gauss (Sept. 28, 2009); Declaration of the Rt. Rev. William C. Wantland, The Episcopal Diocese of San Diego v. St. John's Parish (Episcopal), Fallbrook, California (Oct. 10, 2009); and Affidavit of the Rev. Canon George A. M. Conger, The Episcopal Church in the Diocese of Connecticut v. Ronald S. Gauss (Oct. 7, 2009).

additions which individual dioceses may accept or reject at will. Secondly, when dioceses have formally subscribed or “acceded” to the Constitution and canons of the Church (as every diocese is required to do), this has represented merely a temporary and mutual agreement between independent sovereigns (the Church and the diocese) — in legal terms, a treaty rather than a contract, and one that can be unilaterally rescinded by either party. These claims have no basis, as a systematic study of the nature of The Episcopal Church – not undertaken by those cited in note 1 – will demonstrate.

8. I understand that a “hierarchical” church has been defined by the courts to be, in essence, a religious denomination that is organized as a united body of constituent regional and/or local affiliates with a common convocation or ecclesiastical head, and in which the regional bodies and individual worshipping congregations are subject to the rules, regulations, and authority of that common convocation or ecclesiastical head. This definition, which I have been asked by counsel for the Presiding Bishop to accept as legally sound, also comports with my understanding, as a researcher and teacher in church history and polity, of what constitutes a hierarchical church in the United States. Under this definition, The Episcopal Church has been, and has understood itself to be, throughout its existence without question a hierarchical church. That being so, as I demonstrate below, the separatists’ arguments fall.

9. What follows in Part I is a brief discussion of the English roots of The Episcopal Church and an overview of the hierarchical structure of the Church. Parts II through V then contain an extended historical and theological analysis of the development of the Church’s hierarchical structure from its earliest days to the present. This analysis also responds to a series of essays and other statements that have recently claimed that there is no – or perhaps only partial – hierarchical authority vested in the General Convention of the Church and that

ultimate authority in the Church is vested in its dioceses and not the synodical or general Church. That discussion will focus on five areas of inquiry:

Evidence from the period of the organization of the Church from 1784 to 1789 (Part II);

Evidence from the first Church canons and subsequent Constitution in 1789 (Part III);

Evidence from actions by the General Convention from 1790 to the present (Part IV);

Evidence from Nineteenth-Century commentators on the polity of the Church (Part V); and

Evidence from the Civil War era (Part VI).

10. What will become evident is that the Church has understood itself as a hierarchical church, governed ultimately by its General Convention, from its very beginning. What will also become clear is that the ultimate source of authority in the Church is the General Convention, not its individual dioceses, and that every diocese, once formed and admitted into union with the General Convention, remains bound by the rules of the Church and may not unilaterally withdraw or disaffiliate from the General Convention.

I. THE EPISCOPAL CHURCH IS HIERARCHICAL.

A. Formation from English Roots

11. The Episcopal Church has its roots in the extension of the Church of England into the colonies of the New World. Permanently planted in the colonies in 1607, the Church of England was present in all of the original colonies during the Colonial period.

12. From its beginning, the Church of England has been a national church, whose bishops make up and are subordinate to the Church's Synod, or governing body. The Church of England was, and is, a three-tiered hierarchical church, governed at present by a national synod

at the topmost level, with regional, geographically-defined “dioceses” at the middle tier, and local congregations (usually called “parishes”) at the lowest tier.² Each diocese was, and is, under the oversight of a bishop who visits and oversees the parishes and other congregations of the diocese. Congregations in the New World colonies were under the oversight of the Bishop of London, who appointed a special representative to the colonial congregations.

13. The governmental authority of the Church of England was historically rooted in synodical bodies of bishops and clergy meeting in convocation. Since the coming of St. Augustine to Britain in the Sixth Century, the English Church has been organized synodically, and since the mid-Eighth Century it has been grouped into two provinces, Canterbury and York. In these two provinces the clergy (both bishops and priests) would gather in what was known as Convocation for the passing of legislation and governance.

14. The synodical principle was crucial in Anglicanism. Nineteenth-Century American canonist, John Fulton, explained the authority of the synod over individual bishops.

“ [W]e must remember that the Bishop was himself, in fact as well as theory, the executive and representative of an authority superior to his own. The episcopate of the whole world was held to be a unit to which, as a never dying College of Apostles, was committed the ingathering and safe-keeping of the Flock of Christ. Of this Sacred College every Bishop in his Parish was the representative. ... And as the power of the Episcopate was exercised by one Bishop over the people of one Parish, so the Bishops of every Province, acting in their corporate capacity, exercised the power of their united Episcopate over every Bishop and every Parish within their jurisdiction. ... Even when he [a Bishop] had been validly elected, duly consecrated, and canonically constituted Bishop of his See, they still retained the power to try him for malfeasance, to reverse his unwise judgments, and if need were, to withdraw the jurisdiction they had given him. The Provincial

² This is somewhat complicated by the formal relationship between Church and State, which involves Parliament and the Crown in key decisions.

Synod, therefore, in which the Bishops of the Province assembled twice a year, was a real power in every parish.”³

15. The Eighteenth-Century and present governmental structure of the Church of England was given shape by events of the English Reformation which, in the words of one scholar, “incorporated the Church of England with the constitution of the realm.”⁴ Through the Acts of Supremacy and Uniformity, the older synodical governance of the Church of England was grafted upon the political structure of the realm, and the provinces fell under the authority of King and Parliament. The King became the “Supreme Governor” of the Church of England, and the Church became the official or “established” church of the realm.

16. Synodical legislation, once approved by the Crown, was binding on all parts of the Church of England. For example, in 1603-1604, canons were passed which governed the English Church on a variety of levels. They dictated worship practices; outlined the duties and responsibilities of clergy and other church officials; dictated educational requirements for clergy; outlined the proper maintenance of church property; and set forth a system of discipline. These canons bound all clergy and church officials and served as the basis of governance of the Church. They were national in nature and were an essential part of the national Church. Indeed, they were expressly binding even upon members who chose not to be present at their enactment.⁵

³ John Fulton, Index Canonum: The Greek Text, An English Translation, and a Complete Digest of the Entire Code of Canon Law (New York, 1872) at 44-45 and 99. This principle continues to be reflected in the current Constitution of The Episcopal Church.

⁴ James S. M. Anderson, The History of the Church of England in the Colonies and Foreign Dependencies of the British Empire, 2 vols. (London: Francis and John Rivington, 1845-8) at 1:130. Anderson here was quoting Henry Hallam, The Constitutional History of England: From the Accession of Henry VII to the Death of George II.

⁵ Canon CXL of the Canons of 1603-1604.

17. The model of the Church of England as a national church was further embodied in Article XXXIV of the Articles of Religion (the Sixteenth-Century statement of doctrine) which enunciated an important responsibility of a national church:

“Every particular or national Church hath authority to ordain, change and abolish, ceremonies or rites ordained only of man’s authority, so that all things be done to edifying.” BCP (1662) at 708.

The revision of liturgy and ceremony could only properly be undertaken on the national level.⁶

18. The concept of diocesan autonomy that is being advocated in some quarters had no standing in the world of Anglican Christianity in the Seventeenth and Eighteenth centuries. The central governing model was the national Church. Furthermore, church division, or schism, was deemed one of the most onerous of sins. The great Litany, the oldest part of the Book of Common Prayer, stated, “from all false doctrine heresy and schism...Good Lord deliver us.” BCP (1662) at 70.

19. The American Revolution created a crisis for the Church of England congregations in this country. Political independence meant that American worshipping congregations could no longer be part of the Church of England, because, *inter alia*, the leaders and members of these congregations could no longer take an oath of loyalty to the English Crown as the Church of England’s rules required. Independence also meant that the Church of England liturgy would have to be revised to remove prayers that reflected royal supremacy. But the American Anglicans fervently wanted to retain their Anglican identity, traditions, and mode of worship, as well as their church buildings and other properties, in the new country. A new general church had to be formed, therefore, to succeed to the old.

⁶ American Episcopalians would later also connect national organization and liturgical reform.

20. As I set out more fully below, in 1784, Anglicans from several of the colonies gathered for the purpose of “the revival” of their church “which had existed before the Revolution”; and in 1785, clergy and laity from the former congregations of the Church of England in seven new states met in what was styled as the first meeting of the “Convention of the Protestant Episcopal Church.”⁷

21. After several more meetings, in 1789, clergy and laity from the former colonial congregations met again, this time with two of three newly-ordained bishops in attendance, as an entity that they called “the General Convention of the Protestant Episcopal Church in the United States of America”; in August, the entity adopted bylaws, called “canons,” and in October it adopted a Constitution for the entity.

22. The canons and thereafter the Constitution of the newly-formed Episcopal Church set out a structure that mirrored that of the Church of England – and was significantly different from that of the new United States, whose Constitution was also adopted in 1789. As its predecessor, the new Episcopal Church was a three-tiered hierarchical church, governed by a national parliamentary body and comprised of regional bodies containing local parishes.⁸ And, the American Church continued the English principle of bishops in synod, requiring the consent of the General Convention to the consecration of every new bishop and contemplating discipline of bishops. 1789 Const. Art. 6; Canon II. JGC 1789 at 1:99-100. The American

⁷ William Stevens, Perry, ed. Journals of the General Conventions of the Protestant Episcopal Church in the United States, 1785-1835, 2 vols. (Claremont, N.H.: The Claremont Manufacturing Co., 1874) at 1: 11-29. The Journals of the General Convention of the Protestant Episcopal Church have been published individually as well as in collected reprints. From this point forward they will be cited as “JGC” unless otherwise noted, and all references to General Conventions through 1835 will be from these volumes.

⁸ JGC 1789 at 99-100 (Articles 1-3 of 1789 Constitution, describing General Convention), 101 (setting out Deputies by state and parish).

Church was distinctive, however, in allowing lay participation in church governance and having both lay and clerical representatives elect bishops, as well as in lodging the highest authority in the Church in its General Convention.

B. The General Church

23. The same basic three-tiered structure exists today. At the highest tier is The Episcopal Church, traditionally a national body that in the Twentieth Century has expanded into several other countries. Next are regional, geographically-defined dioceses, which belong to, are subordinate to, and are under the jurisdiction of the Church. Finally, there are local worshipping congregations, generally called parishes or missions, which belong to, are subordinate to, and are under the jurisdiction of the Church and the individual dioceses in which the congregations are located.

24. As stated above, at the topmost level the Church is governed by its General Convention, a bicameral legislative body made up of a House of Bishops, composed of most of the Church's active and resigned bishops, and a House of Deputies, composed of clergy and lay representatives elected from each of the Church's dioceses. Const. Arts. I.2, .4. Legislation must be approved by both houses. Const. Art. I.1.

25. The General Convention establishes the policies, rules, and programs of the Church. It has adopted and from time to time amends the Church's governing documents, its Constitution, canons, and Book of Common Prayer. Together, these documents are the ultimate authoritative statements governing the spiritual and temporal affairs of the Church and are applicable to every tier of the Church as well as to the persons in those tiers, including bishops, other clergy, and laity.

26. The General Convention is the body that articulates the Doctrine, Discipline, and Worship of the Church and cannot be limited by actions of other bodies in the Church, including its dioceses or bishops.

27. The “Chief Pastor and Primate” of the Church is its Presiding Bishop, who is elected by the General Convention. The Presiding Bishop is charged with, among other duties, responsibility for leadership in initiating and developing policy and strategy in the Church and speaking for the Church as to the policies, strategies, and programs authorized by the General Convention. Const. Art. I.3; Canon I.2(4).

28. Between meetings of the General Convention, an elected Executive Council of bishops, priests, and laypersons manages the fiscal and programmatic affairs of the Church under the direction of the Church’s Presiding Bishop as Chair. Canons I.4(1), (3).

C. The Dioceses

29. At the next level, the Church is comprised of 111 dioceses in the United States and other countries. Episcopal Church Annual (2010) at 16-19. All dioceses are “formed, with the consent of the General Convention and under such conditions as the General Convention shall prescribe by General Canon or Canons.” Const. Art. V.1.

30. All dioceses and their clergy acknowledge the applicability to them of the Constitution and canons of the general Church and their authoritative nature. All dioceses, as a condition of their formation as entities in “union” with the General Convention, promise “an unqualified accession to the Constitution and Canons of this Church.” Const. Art. V.1; *see also* Canon I.10(4) (new diocese “shall have . . . acceded to the Constitution of the General

Convention in accordance with Article V, Section 1 of the Constitution”).⁹ All clergy at their ordinations subscribe to the following written declaration (known as the “Declaration of Conformity”):

“I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.” Const. Art. VIII; Ordination Services of the Book of Common Prayer at 513, 526, 538.

Since 1979 this oath has become part of the public service of ordination, emphasizing to the congregation as well as the candidate its importance and solemnity.

31. In addition, a bishop-elect is required by the Prayer Book to promise to “guard the faith, unity, and discipline of the Church” and to “share with [his or her] fellow bishops in the government of the whole Church.” Book of Common Prayer at 518. And, all persons accepting “office[s]” in the Church “shall well and faithfully perform the duties of [those] office[s] in accordance with the Constitution and Canons of [the] Church and of the Diocese in which the office is being exercised.” Canon I.17(8).

32. The governing body of each diocese is generally called its “Convention,” or sometimes its “Council” or “Synod,” and is comprised of the Bishop of the diocese, other bishops and clergy, and lay members elected by the worshipping congregations in that diocese.

33. Each diocese’s Convention has adopted, and from time to time amends, its own Constitution and canons that supplement, and must not be inconsistent with, the Church’s

⁹ The term “unqualified” was added to Article V in 1982, when that provision was reworded; the new version was adopted with virtual unanimity. JGC 1982 at D-28, C-23. Only the lay and clerical deputies from the Diocese of Haiti voted against it. Divided votes were recorded by the clerical deputies from the Diocese of Lexington and the lay deputies from the Diocese of the Northern Philippines. Records of the General Convention, Group 312, Archives of The Episcopal Church, Austin, TX (through communication with Archivist, May 3, 2010).

Constitution and canons. Const. Art. V.1; Canon I.10(4). The Constitution and canons of each diocese are authoritative for the governance of the diocese and the worshipping congregations in that diocese. As a matter of history, dioceses have generally required of all parishes accession to the Constitutions and canons of the general Church and of the diocese.

34. Each diocese has a diocesan bishop, a person elected by the diocesan Convention and ordained as a bishop by at least three bishops with the consent of the leadership of a majority of the other dioceses. Const. Art. II.1, .2; Canons III.11(1), (3), (4).¹⁰ The diocesan bishop serves as the “Ecclesiastical Authority” and chief executive officer in charge of both spiritual and temporal affairs within that diocese. Const. Arts. II.3, .5; Canon III.12(3), IV.15. The diocesan bishop is advised by, and as to certain matters shares authority with, a “Standing Committee,” a body of clergy and laity elected by the diocesan Convention. Const. Art. IV; Canon I.12(1). When a diocese has no bishop, the Standing Committee serves as the Ecclesiastical Authority. Const. Art. IV; Canon IV.15.

D. The Parishes

35. At the third level of governance, the 111 dioceses together contain the Church’s approximately 7,400 worshipping congregations. Episcopal Church Annual, supra, at 16-19. Most of these congregations are called parishes; others, usually newly-forming congregations that do not meet all of the requirements for parish status, are generally called missions; and still

¹⁰ In one instance in the Constitution and canons the diocesan Bishop is referred to as the “Ordinary,” Const. Art. II.8, where it is clear that the term is used to differentiate between the diocesan bishop and a coadjutor. Claims in the “Bishops’ Statement” (pp. 3-4) that the use of this term suggests an authority in diocesan bishops to preempt General Convention are baseless. I have found no support for such claims in either the legislative history or in contemporary accounts of the legislation. See JGC 1964 at 267-268; The Living Church (October 26, 1964) at 5.

others include cathedrals, chaplaincies at educational institutions, and other institutions. *See, e.g., id.* at 132-34 (listing congregations in the Diocese of Alabama).

36. An Episcopal parish has a governing body called a “vestry,” which is comprised of the rector of the parish and lay persons elected by the voting membership of the parish. Canons I.14(1)-(3). Members of the vestry serve as officers of the parish. Canons I.14(1), (2).

37. The rector of a parish in the Church is a priest elected by the vestry in consultation with the bishop of that diocese and is in charge of the spiritual and temporal affairs of the parish. Canons I.6(1); I.17(4); III.9(3)(a), (5).

E. Anglican Communion Membership

38. The Episcopal Church is “a constituent member of the Anglican Communion.” *See, e.g., Constitution Preamble.* The “Anglican Communion” is a name generally used to describe a worldwide fellowship among a group of churches “in communion with the See [*i.e.*, seat of the Archbishop] of Canterbury.” *Id.* The churches of the Anglican Communion have their roots in the Church of England and were generally established in their respective countries or regions by English immigrants or missionaries adhering to the Church of England’s doctrine and worship.

39. Each individual member church, or “Province,” within the group is self-governing and autonomous: Each of the 38 individual member churches has its own prime bishop (in the United States, the Presiding Bishop), governing bodies, Constitution, canons, and Prayer Book. While The Episcopal Church is a hierarchical church, the Anglican Communion is not.

40. The term “Anglican Communion” dates back only to the mid-Nineteenth Century, long after a number of the churches that currently comprise the Anglican Communion were

formed; and the first meeting of the bishops of those churches as such did not occur until 1867.¹¹ Since that time, the bishops of the churches in the Communion have generally met every ten years for united worship and common council at gatherings known as “Lambeth Conferences.” They were never understood to be a legislative sessions. Indeed, at the very outset the Archbishop of Canterbury noted, “such a meeting would not be competent to make declarations or lay down definitions on points of doctrine.”¹² Because the member churches of the Anglican Communion are not themselves “governed” by the Lambeth Conference or by the Archbishop of Canterbury, Lambeth resolutions are not binding on a particular member church.¹³

41. The historic tradition of the Anglican Communion as regularly enunciated through the Lambeth Conferences is that each Province forms its own constituent units and exercises jurisdiction within its own geographic territory, and not within the geographic territory of any other Province. Indeed, Anglican churches have inherited this principle from their Roman Catholic predecessor and its adoption of canons at the Council of Nicaea in 325 A.D.

II. THE HIERARCHICAL NATURE OF THE EPISCOPAL CHURCH WAS EVIDENT DURING THE CHURCH’S ORGANIZATIONAL PERIOD, 1784-1789.

42. The founders of The Episcopal Church thus created a national church with an authoritative General Convention. During the colonial period there had been no tradition of ecclesiastical legislation at the level of individual colonies; all ecclesiastical legislation had originated from the Church of England, and the goal of a General Convention was to continue

¹¹ Colin Podmore, Aspects of Anglican Identity (London: Church House Publishing, 2005) at 36-38.

¹² Quoted in, The Five Lambeth Conferences... (London: Society for Promoting Christian Knowledge, 1920) at 6.

¹³ See “Lambeth Conference,” in Don S. Armentrout and Robert Slocum, eds., An Episcopal Dictionary of the Church (New York: Church Publishing, 2000) at 291-292.

this practice of national legislation. Only such an organization could assure a united Church and the reception of the episcopate from the Church of England.

A. Development of the General Convention

43. The hierarchical nature of The Episcopal Church was clear from the very beginning of its organization in the decade of the 1780s. An obvious illustration is the name that was assumed. In contrast with the political trends at the time that strove to establish a federation of states (*i.e.*, The United States of America), Episcopalians strove to establish a unified church (The Protestant Episcopal Church in the United States of America). This was in keeping with their heritage of a national Church -- *i.e.*, a church representing the communicants of a sovereign state. Political independence necessarily divorced them from the Church of England, and made the organization of their own church, in the model of the English church, a crucial concern. But unlike the Church of England, where the topmost authority of the Church was vested in Parliament and the Crown, The Episcopal Church placed ultimate authority in a General Convention consisting of a House of Bishops and a House of clerical and lay Deputies. The inclusion of laity in the Church's governance structure was another innovation, one that may be attributed in part to William White of Pennsylvania, the architect of the organization of The Episcopal Church in America, whose organizational plan was laid out in The Case of the Episcopal Churches in the United States Considered (1782).¹⁴

44. Early movement towards organization of the Protestant Episcopal Church in the United States of America was in evidence at a meeting of clergy and laity in New Brunswick, New Jersey, in May 1784. This led to a first, informal "convention" of clergy and laity from

¹⁴ William White, The Case of the Episcopal Churches in the United States Considered, edited by Richard G. Salomon ([Philadelphia]: Church Historical Society, 1954).

different states in New York City later in 1784, which then called for a formal meeting of a “general convention” in Philadelphia, Pennsylvania, in 1785.

45. The first principle of ecclesiastical union recommended by the members at the New York meeting was that “there shall be a general convention of the Episcopal Church in the United States of America.”¹⁵

46. For this to occur, members of the newly-forming Episcopal Church would need to be officially represented in the General Convention (there were no official representatives at the New York meeting). Thus, the New York meeting called for the Episcopal Church in each state to organize and send delegates to a meeting in Philadelphia in 1785.¹⁶ Hence, the second recommendation by the members of the meeting for ecclesiastical union was that “the Episcopal Church in each state, send deputies to the convention, consisting of clergy and laity.”¹⁷ *Id.*

¹⁵ William White, Memoirs of the Protestant Episcopal Church in the United States of America, 2nd ed. (New York: Swords, Stanford, and Co., 1836) at 80.

¹⁶ An exception is the Episcopal Church in Maryland, which had been an established church during colonial times. Episcopalians there found it necessary between 1783 and 1784 to organize a successor entity to the Church of England in order to retain the property that had been held during colonial times by Church of England parishes. *See* the documents reprinted in William Stevens Perry, ed., Historical Notes and Documents Illustrating the Organization of the Protestant Episcopal Church in the United States of America (Claremont, HH: The Claremont Manufacturing Co, 1879) at 20-24. A similar situation arose in Virginia, where the church was organized in 1784-1785 to protect its properties. *See* George MacLaren Brydon, Virginia’s Mother Church and the Political Conditions Under Which it Grew, 2 vols. (Philadelphia: Church Historical Society, 1952) at 2: 447-453.

¹⁷ In the discourse of the 1780s, the language referred to Episcopalians organizing themselves into state conventions at the behest of the newly-forming General Convention; one sees no discussion of dioceses, which was an independent ecclesiastical category and not present in early America.

47. What ones sees here is that, far from dioceses “creating” the General Convention, it was the need for delegates to establish the General Convention that led to the subsequent organization of the State conventions that at a later date would be called “dioceses.”¹⁸

48. The various states chose different means for gathering to choose deputies to the General Convention. In Pennsylvania and New York, Episcopalians organized themselves for the first time into formal state conventions, calling themselves “The protestant Episcopal church in the state of Pennsylvania”¹⁹ and “the Protestant Episcopal Church in the State of New York.”²⁰ In other states, such as New Jersey, Episcopalians simply came together, without formally organizing, to choose delegates,²¹ and in still others, such as Delaware (which had only two congregations in the state), there is no evidence that any meeting was even held.²²

49. In each of these instances the national nature of the Church was clearly recognized. These state meetings did not speak of state churches. Rather, they referred to the Episcopal Church in a given state. I have found almost no evidence of any language of the

¹⁸ This historical fact is in itself enough to demonstrate the error in the claims of the authors of the “Bishops’ Statement” (p. 4ff) that the dioceses created the General Convention.

¹⁹ Journal of the Meetings Which Led to the Institution of a Convention of the Protestant Episcopal Church in the State of Pennsylvania (Philadelphia, 1790) at 12.

²⁰ Journals of the Conventions of the Protestant Episcopal Church in the Diocese of New York (New York: Henry M. Onderdonk, 1844) at 6.

²¹ Proceedings of a Convention of the Protestant Episcopal Church in the State of New Jersey (NP, 1785) NP.

²² Charles A. Silliman, The Episcopal Church in Delaware, 1785-1954 (Wilmington: The Diocese of Delaware, 1982) at 6.

Episcopal churches or of the Episcopal Church of a given state.²³ A unified national model was clearly presupposed.

50. The first meeting of the General Convention was in Philadelphia in September of 1785, with representatives from seven states and presided over by William White. This Convention undertook three primary projects.

51. First, it began the task of revising the Book of Common Prayer, which, we have seen, under Anglican principles only a national church could do.

52. Second, it addressed a letter to the Archbishops and other bishops of the Church of England requesting the bestowal of the office of the episcopacy. In the members' view, this request could not be made by any body lesser than the General Convention itself. Thus the Convention stated in its letter to the English bishops:

“[I]t was not until this Convention that sufficient powers could be procured for addressing your Lordships on this subject.” JGC 1785 at 1: 26.

This view was subsequently affirmed by the English archbishops and bishops who responded by stating that they would not consider any candidates for the episcopacy who did not come with the approval of the General Convention.²⁴

²³ Here again, Maryland was the exception. In the early 1780s, one finds occasional reference to the "Protestant Episcopal Church of Maryland." *See supra* n. 16. But, significantly, after acceding to the Church's Constitution in 1789, it began referring to itself as "The Protestant Episcopal Church in the State of Maryland." *Viz, Journal of a Convention of the Protestant Episcopal Church in the State of Maryland Held in St. Paul's Church in the Town of Baltimore* (Baltimore, 1789).

²⁴ The English bishops required a testimony from the General Convention for prospective bishops, even providing the wording: "We whose names are under written, fully sensible how important it is that the sacred office of a Bishop should not be unworthily conferred, and firmly persuaded that it is our duty to bear our testimony on this solemn occasion without partiality or affection, do in the presence of almighty God, testify that A.B. is not, so far as we are informed, justly liable to evil report either for error in religion or for viciousness of life, and that we do not

53. Third, the General Convention in 1785 drafted a proposed Constitution, which in a modified form would be approved in 1789. This version included a series of “whereas” clauses that explained why such a General Convention was necessary:

“The...Deputies being now assembled, and taking into consideration the importance of maintaining uniformity in doctrine, discipline, and worship in the said Church, do hereby determine and declare: That there shall be a General Convention of the Protestant Episcopal Church in the United States of America....” *Id.* at 1: 21.

54. The General Convention, therefore, was to be the instrument to “maintain[] uniformity in doctrine, discipline, and worship” in the American Church. In the words of the Hon. Murray Hoffman, the leading Nineteenth-Century expert on Episcopal Church law:

“Now what could possibly achieve the object of maintaining uniformity in discipline and worship, but this principle of ultimate authority in some constitutional body? What else could fulfil the primitive law of unity and perfection in a national Church—what else could have met the exigencies of those days? ²⁵

Further,

“From the foundation of Christianity, there has never been a Church without a body in which resided the ultimate and absolute power of government....It is

know or believe there is any impediment or notable crime, on account of which he ought not to be consecrated to that holy office, but that he hath led his life, for the three years last past, piously, soberly, and honestly.” *Id.* at 1:55. It was only through such assurance that the English bishops were able to persuade Parliament to pass “An Act to empower the Archbishop of Canterbury, or the Archbishop of York, for the time being to consecrate to the Office of a Bishop, Persons being Subjects or Citizens of Countries out of His Majesty’s dominions.” This act presupposed that only bishops who were members of a larger Church would be eligible for such ordinations, and not individual bishops reflecting lone dioceses: “And be it furthermore enacted, that a certificate of such consecration shall be given under the hand and seal of the Archbishop who consecrates, containing the name of the person so consecrated, with the addition as well of the country whereof he is a subject or citizen, as of the Church in which he is appointed Bishop.” *Id.* at 1:56 (emphasis added). The candidates must be from organized churches, and not simply from independent dioceses.

²⁵ Murray Hoffman, A Treatise on the Law of the Protestant Episcopal Church in the United States (New York: Stanford and Swords, 1850) at 114.

anomalous and contradictory to speak of such a Church without it. When then, in 1789, the whole Church of the United States, through its competent representatives, declared, ‘there shall be a General Convention of the Protestant Episcopal Church in the United States,’ it enunciated the great principle that this was a national Church, and that such a Convention was to be its highest Council. The mere act of establishing this Council involved and attached to it every power inherent in such a body, and not expressly refused to it.” *Id.* at 54.

The role of the General Convention in securing uniformity in worship and discipline was for Hoffman the crowning achievement of the organizational period.

55. The General Convention met twice in 1786, in Philadelphia in June and Wilmington, Delaware, in October. In both meetings, the authority of the General Convention over the state conventions was reasserted. One such instance involved the ratification of the Book of Common Prayer. The General Convention of 1785 had invited the state conventions to comment on proposed changes to the Prayer Book, and the result was a cacophony of voices and liturgical diversity. As William White described, this evidenced “the necessity of a duly constituted ecclesiastical body”; moreover, a system in which the individual states exercised controlling authority “appeared so evidently fruitful of discord and disunion, that it was abandoned from this time.” White, *Memoirs*, *supra* at 115 (emphasis added). Hence, Article IX of the proposed Constitution was reworked to permit state conventions to determine whether to use the proposed revised Prayer Book only until “further provision is made, in that case by the first General Convention which shall assemble with sufficient power to ratify a Book of Common Prayer for the Church in these States.” JGC 1786 at 1:42. This declaration of the authority of the General Convention alone to adopt changes in the Book of Common Prayer was crucial in asserting the national nature of the Church.

56. The General Convention meeting in Wilmington in 1786 approved the election and credentials of William White of Pennsylvania and Samuel Provoost of New York to the

episcopate and sanctioned them to proceed to England to be ordained. Significantly, however, the Convention rejected William Smith of Maryland. Although he had been elected by the church in Maryland, the Convention had doubts about his morality and refused to sign a testimonial. Smith never became a bishop. Hence, from the very beginning the General Convention exercised final authority on who might become a bishop.²⁶

57. The General Convention meeting in Philadelphia in 1786 also rewrote Article XI of the proposed Constitution to state that the Constitution would be ratified not by the individual state conventions, but by the General Convention itself. The 1785 wording had stated that “This General Ecclesiastical Constitution, when ratified by the Church in the different States, shall be considered fundamental, and shall be unalterable by the convention of the Church in any State.” JGC 1785 at 1: 23. After rewriting, it provided:

“This Constitution of the Protestant Episcopal Church in the United States of America, when ratified by the Church in a majority of the States assembled in General Convention, with sufficient power for the purpose of such ratification, shall be unalterable by the Convention of any particular State, which hath been represented at the time of said ratification.” JGC 1786 at 1: 40 (emphasis added).

58. Significantly, just as under White’s Case in 1782, no ultimate rights were reserved for the states or the dioceses. This decision was remarkable in that it flew in the face of the overwhelming political sentiment of the time. Whereas other organizations regularly expressed a fear of centralization and emphasized that power should be kept on the lowest level possible,

²⁶ See the extensive correspondence reproduced in William Stevens Perry, ed., Historical Notes and Documents Illustrating the Organization of the Protestant Episcopal Church in the United States of America (Claremont, NH: The Claremont Manufacturing Co., 1874) at 334-341.

Episcopalians chose a different course. As a cardinal example, the General Convention would ratify its own Constitution!²⁷

B. The Connecticut Experience

59. While William White and the Episcopalians of the southern and middle states were planning to organize by means of a General Convention, some Episcopalians in the northern states were acting on a different front. In response to the publication of White's Case, which called for the organization of The Episcopal Church before bishops could be secured, Episcopalians in Connecticut, New York, and Massachusetts argued that the office of the bishop was essential for any church organization. Despite this difference, they held the same view as their southern counterparts of the preeminence of a national church over its dioceses.

60. In 1783, Connecticut clergy elected Samuel Seabury to seek episcopacy from the Church of England. Although elected by the clergy of Connecticut, he was always understood to be representing a larger community. For example, Seabury's application for the episcopacy received the testimonial of clergy from New York.²⁸ One contemporary described the office he sought as "Bishop for America."²⁹

61. For a variety of reasons, the English bishops refused Seabury's request. Seabury did, however, receive the support of the unestablished (and politically marginal) Episcopal Church of Scotland, which consecrated him to the episcopate.

²⁷ The authors of the "Bishops' Statement" (p. 6) thus err in claiming that "our first Constitution was ratified by the preexisting state (diocesan) churches."

²⁸ Francis L. Hawks and William Stevens Perry, ed., Documentary History of the Protestant Episcopal Church in the United States of America, 2 vols. (New York: James Pott, 1864) at 2 :217.

²⁹ E. E. Beardsley, Life and Correspondence of the Right Reverend Samuel Seabury, D.D. (Boston: Houghton, Mifflin and Co, 1881) at 104.

62. Once consecrated by the Episcopal Church of Scotland, Seabury's actions confirmed that he regarded himself, and was regarded, as a bishop of the American Church. For example, he claimed the right to ordain candidates from states other than Connecticut. Among his early ordinands, two were from New Jersey, and one was a candidate from Maryland.³⁰

63. Thus, when Seabury and his supporters from Connecticut and Massachusetts joined the General Convention in 1789 and signed the newly-adopted Constitution, they did so not in the spirit of an autonomous diocese, but as representing a part of The Episcopal Church. In order to accommodate Seabury and the New England churches, the Constitution was modified to reflect their view of the importance of the episcopate, by allowing a separate House of Bishops and making lay deputies optional. No modification was made, however, affecting the powers of the General Convention vis-à-vis the rest of the Church.

64. Unlike the representatives from the Church in the other states, Seabury and his supporters had not been officially chosen to represent the Church in their states at the 1789 General Convention. For this reason, on October 1, 1790, the Convocation of the Episcopal clergy of Connecticut affirmed a resolution stating, "we confirm the doings of our Proctors in the General Convention at Philadelphia, on the 2d day of October 1789."³¹ Also in 1790, the clergy in Connecticut formally adopted the Constitution and Prayer Book. However, even before this action was taken, Seabury urged the clergy in that state to use the Prayer Book that had been adopted by the General Convention in 1789.³² And, in 1792, the convention of the Protestant

³⁰ Beardsley, Seabury, *supra*, at 238.

³¹ Joseph Hooper, ed., Diocese of Connecticut: The Records of Convocation, A.D. 1790-A.D. 1848 (New Haven, Printed for the Convention, 1904) at 35.

³² Paul Victor Marshall, One Catholic and Apostolic: Samuel Seabury and the Early Episcopal Church (New York, 2004) at 261-63.

Episcopal Church in Connecticut decreed that a congregation that did not approve the “the Constitution of the Protestant Episcopal Church as settled by the General Convention at Philadelphia in October 1789” could not be a member of The Episcopal Church in Connecticut.³³

C. Conclusion

65. The goal of Episcopalians in the organizational period was the creation of a national Church with an authoritative General Convention. A national church was crucial for the continuance of the Episcopal Church in America. Only such an organization could assure a united Church and the reception of the episcopate from the Church of England. Significantly, in 1801 General Convention adopted the Articles of Religion, including Article XXXIV with its claim that “every particular or national Church hath authority to ordain, or change Ceremonies or Rites of the Church.” The Episcopal Church had organized itself, among other reasons, to adopt and revise its liturgy.

III. THE HIERARCHICAL NATURE OF THE EPISCOPAL CHURCH WAS REFLECTED IN THE 1789 CONSTITUTION AND CANONS.

66. The Constitution of The Episcopal Church as it developed between 1785 and 1789 was a unique document, in that it reflected a political vision far different from that in other contemporary political discourse. The Church’s first canons – adopted before the Constitution was ratified – echoed the same vision.

A. Relation of the General Convention to the Church Constitution

67. It is a common misunderstanding to assert parallels between the organization of The Episcopal Church and the federal government, and to interpret the Church Constitution in terms of the federal Constitution of the United States. The Federal Constitution created and

³³ Diocese of Connecticut: The Records of Convocation A.D. 1790 - A.D. 1848 at 40-41.

empowered the structures of the national government (*i.e.*, Congress, the Executive, and the courts), carefully delineating their powers. Judges and others speak of certain legislative acts as being “unconstitutional,” *i.e.*, not authorized by the Constitution. This has not been the case with the Church: The Church’s Constitution was a product of the General Convention and was never intended to limit the power of the General Convention.³⁴

68. Rather than the creation and empowerment of the General Convention, the Church Constitution’s primary goal was to ensure continuing meetings of the General Convention – whose existence and authority was assumed. As William White explained, the Constitution was expressly written so that further meetings of the General Conventions would occur:

“In order that the present convention might be succeeded by bodies of the like description, they framed an ecclesiastical constitution....” White, Memoirs, *supra*, at 24.

69. None of the actions taken at the first meeting of the General Convention was explicitly authorized by any language found in the Constitution. The General Convention acted on its own authority and did so for the well-being of the Church. The Constitution gave no indication of how and by whom episcopacy would be extended to the fledgling Church. Instead, the General Convention assumed the authority, just as it had in authoring a Constitution.

70. This unique relationship of the Convention to the Constitution gave to the Church Constitution a number of distinctive aspects.

³⁴ This is one of the fundamental errors of McCall’s reading of the Church’s Constitution and canons, and his claim that certain canonical actions should be seen as unconstitutional. *See* “Is the Episcopal Church Hierarchical,” pp. 3 and 21ff. A far better understanding of the Constitution and canons is found in James A. Dator’s dissertation, “Government in the Protestant Episcopal Church in the United States of America—Confederal, Federal or Unitary,” (Ph.D. diss., American University, 1959). Dator, after exhaustive independent analysis, finds the polity of the Church to be “unitary” and thus purely hierarchical.

1. Lack of “Federal” Language

71. Although written in the same period as the federal Constitution, the Church’s Constitution is strikingly bare of language of federation. That is, the Church’s Constitution lacks any language suggesting that the Church exists as the result of the union of independent, autonomous dioceses, or that any governmental authority is reserved to the dioceses to the exclusion of the General Convention.³⁵ Although it was written by persons well versed in the U.S. constitutional discussions of the 1780s, including the concepts of a confederation of independent sovereign units and the reservation of rights to local units, the Church’s Constitution in no way reflects those concepts.³⁶

72. The Church Constitution differed from the U.S. Constitution in its lack of language limiting national power or reserving authority to more local units. The Church Constitution had no language such as that found in the Tenth Amendment to the Federal Constitution:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Nor is there any language in the Church Constitution parallel to the following language of the Ninth Amendment to the Federal Constitution reserving rights and powers to the local levels:

³⁵ The most notable use of federal language in any discussion of the Church’s polity is found in Clara O. Loveland in The Critical Years: The Reconstitution of the Anglican Church in the United States of America, 1780-1789 (Greenwich, CT: The Seabury Press, 1956) at 62-118, in which she refers to the entire agenda of William White as the “federal plan for reorganization.” As early as the 1840s, commentators began referring to the Church as a federal system, but as Dator shows, this misuses the term “federal.” The use of this term may reflect the “de-facto federalism” that I describe below and a desire to use common political terms to describe the Church.

³⁶ James Duane, one of the persons on the 1785 drafting committee of the Church Constitution, had been a signer of the Articles of Confederation and was a strong backer of the new federal Constitution.

“The enumeration in this Constitution, of certain rights, shall not be construed to deny or disparage others related by the people.”³⁷ Clearly this silence (so out of step with the political culture of the time) is remarkable and patently deliberate. As will be shown below, this distinctive aspect of the Church’s Constitution was recognized by Nineteenth-Century legal experts.

73. Thus, while the U.S. Constitution conceives of the Federal Government as one of limited powers with the residuum of authority remaining in the states, the Church Constitution assumes the plenary authority of the General Convention and is a mechanism through which the General Convention grants powers to, and sets limits on, the Church in the states and, later, dioceses. For example, concerning the episcopate the Constitution stated:

“Art. 4. The Bishop or Bishops in every State shall be chosen agreeably to such rules as shall be fixed by the Convention of that State.”

(This provision exists in Article II.1 today.) Here, the Convention gave to the state conventions a new power – the authority to select their own bishops (by means of election). That this was not understood as an inherent right in the state conventions is evident from the fact that it had not been so exercised in Anglicanism for over 700 years. There was thus no understanding that the

³⁷ Some have recently attempted to invent such a principle in the structure of The Episcopal Church by quoting one of the early resolves of the Episcopal Church in Pennsylvania, “That no powers be delegated to a general ecclesiastical government, except such as cannot be conveniently exercised by the clergy and laity, in their respective congregations.” Convention Journals of Pennsylvania, 1785-1814 at 6. (As described below, another attempt was made in 1895 to reserve powers to the dioceses, but it was also rejected.) They, however, fail to acknowledge that such language was never considered in any of the drafts of the Constitution, much less adopted as part of it, nor is there any language in the Constitution of power being “delegated” to General Convention by local bodies. Wantland in his affidavit for The Episcopal Church in the Diocese of Connecticut v. Ronald S. Gauss (¶ 5) makes the claim of the reservation of powers, but offers no evidence to support it.

state conventions reserved the right to elect bishops; rather, they were given the authority to elect bishops by the General Convention.

74. The absence of any language of federalism in the Church Constitution should not be surprising. In the secular realm, the framers of the U.S. Constitution had to balance carefully the necessary powers and privileges claimed by the national government and powers of sovereign states, which had exercised considerable, if not unlimited, legislative and judicial authority for well over a century as colonies. Such was not the case in the Church. As discussed above, during the colonial period, Church of England congregations did not legislate for themselves but received all their laws from the Church of England, where full authority to legislate lay at the national level.³⁸ Thus, the assumptions of the Church Constitution of 1789 were that the General Convention was to be the chief legislative authority and that state conventions would possess only that authority which the General Convention chose not to exercise itself, either expressly or implicitly.

75. The assertion has been made that the Constitutions of certain other religious bodies appear to use more intentional language of supremacy than that found in the Church's Constitution in articulating the superior authority of the national body and that this is an argument against the hierarchical nature of the Church.³⁹

³⁸ It is common knowledge that, as the result of the minimal attention that the English congregations in the colonies received from the Bishop of London, those congregations developed a habit of self-governance that was generally uncharacteristic of Church of England parishes. But clergy from those parishes looked to the Church of England as the ultimate governing authority before the Revolution, and then worked toward the creation of the unified American Church afterward.

³⁹ This is a major claim of McCall. See "Is the Episcopal Church Hierarchical?" pp. 26-30. The "Bishops' Statement" repeats this misunderstanding (pp. 13-14), as does Conger in his affidavit in The Episcopal Diocese of San Diego vs. St. John's Parish, Fallbrook (¶¶ 28-31). Indeed, a key part of McCall's argument (and a point taken up in the "Bishops' Statement" and

76. This is a misreading of the facts. In three often-cited Twentieth-Century church Constitutions, those of what is now the United Methodist Church, the Presbyterian Church USA, and the Evangelical Lutheran Church of America (“ELCA”), explicit language of supremacy was necessary, because in each case the present church was a union of earlier churches with long traditions of legislative independence. The Methodist merger of 1939 represented the coming together of Southern and Northern branches (among others) that had been separate since 1844. Presbyterians similarly re-joined churches divided by the Civil War, while the ELCA represented the union of three churches (the Lutheran Church of America, the American Lutheran Church, and the Association of Evangelical Lutherans) that had been historically independent. When there have been competing traditions of legislative autonomy, language of supremacy may be necessary to delineate authority. But in the case of The Episcopal Church in the 1780s, where no such competing authorities existed, language of supremacy in the Constitution was unnecessary and, indeed, inappropriate.⁴⁰

by others), is the assertion that the Constitution of the Church lacks any language of supremacy. *E.g.*, McCall, “Is the Episcopal Church Hierarchical?” (pp. 1-11), and “Bishops’ Statement” (p. 8). Besides the obvious refutation of that argument in the consistent mandatory language of the Constitution and canons (to be discussed below), what these critics ignore is the far more striking fact that the document, composed by such legal experts as James Duane, has no principle of federalism or the reservation of powers to the state conventions. Moreover, despite the claims of Wantland and others that the Church is a “confederation” of dioceses, language of confederation is also conspicuously absent from the Constitution.

⁴⁰ As shown below, *e.g.* at ¶¶ 101 and 109, there are multiple instances of the mandatory language of supremacy in the Church’s canons. McCall dismisses this evidence entirely, on the erroneous premise that these canons are “unconstitutional” efforts by the General Convention to legislate beyond its constitutionally-defined authority (as we have seen above, the General Convention’s authority to adopt canons is inherent and does not derive from the Constitution).

2. Lack of Enumerated Powers

77. As is well known, the Federal Constitution carefully delimits the rights and powers of each branch of the U.S. Government. By contrast, the Church Constitution acknowledges a General Convention without specifically defining its authority, thus placing no limitations on that authority. Indeed, as noted, William White attested that the primary function of the Church Constitution was simply to describe the structure of the General Convention, define its membership, and mandate its continued existence. The Constitution was never intended to set or prescribe the scope of, and in that way set limits on, the General Convention's authority.

78. This concept of the inherent legislative authority of the General Convention was evident from the very beginning. As early as August of 1789, the General Convention asserted the right to legislate, not from constitutional mandate, but out of its very nature as representing the wider Church. At that meeting, the General Convention adopted a series of canons, even though the Constitution had not yet been finally ratified!

79. This action of legislating before there was a Constitution would be unusual from the perspective of contemporary secular politics. Yet, it was in keeping with understandings about the nature of the Church discussed in Sections I and II above. The authority to adopt canons was seen not as a privilege derived from a written Constitution, but rather as part of the fundamental nature of the Church. Since the early centuries, ecumenical councils had claimed the right to issue canons binding on the Church, and national churches had claimed the same right. As we have seen, the Church of England did so in 1603-1604 without possessing any written Constitution. Similarly, the General Convention of The Episcopal Church in August of 1789 was claiming this authority by adopting canons before the Constitution was in place.

B. Evidence in the 1789 Constitution of the Supremacy of the General Convention

80. The supremacy of the General Convention over the whole Church, including over the Church in the states (and, later, dioceses), was made clear in early constitutional provisions governing seven important aspects of Church governance and life.

81. The first was liturgical. The first Constitution reflected the General Convention's absolute authority in revising the Book of Common Prayer and in making use of the Prayer Book mandatory throughout the Church. Article 8 stated that "[a] Book of Common Prayer . . . when established by this or a future General Convention, shall be used in the Protestant Episcopal Church in these United States, which shall have adopted this Constitution." (Emphasis added.) The Book of Common Prayer had (and has) been seen as one of the foundations of Anglicanism, and the General Convention has always had sole authority to define its content for use in The Episcopal Church. As the General Convention of a "particular or national Church" (to use the language of the Articles of Religion), it alone had the authority "to ordain, change, and abolish, Ceremonies or Rites of the Church."

82. A second place was the establishment of compulsory requirements for admission to holy orders, including a mandatory declaration for ordination. Article 7 provided that "[n]o person shall be admitted to holy orders" unless certain requirements were met, "[n]or shall any person be ordained" until he subscribed to a specific declaration:

"I do believe the holy scriptures of the Old and New Testament to be the word of God, and to contain all things necessary to salvation: And I do solemnly engage to conform to the doctrines and worship of the Protestant Episcopal Church in these United States." Art. 7 (emphasis added).

Thus, all clergy were held to a mandatory national standard and were required to promise conformity with the larger Church.

83. A third area was the binding nature of the General Convention's legislation. During the meetings leading up to the ratification of the Constitution in 1789, attendance was erratic. Hence, Article 2 of the Constitution provided that if any state Convention failed to send Deputies to the General Convention, "the Church in such State shall nevertheless be bound by the acts of such Convention." Art. 2 (emphasis added). Here again, submission to the decisions of the General Convention was not optional. This followed the principle stated in Canon CXL of the English Canons of 1603-1604.

84. It is important to note the mandatory language used in these provisions. There is no question but that all units of the Church – dioceses, parishes, clergy – had no option but to obey these Church rules.

85. A fourth area was the lack of a judiciary. The absence of any judiciary in the Church Constitution demonstrated that the General Convention was the final interpreter of the Constitution (as well as of the canons and the doctrine, discipline, and worship of the Church). In these circumstances, the General Convention – like the English Parliament – could legislate in areas on which the Constitution was silent.

86. The fifth and sixth areas involved the authority to ratify and amend the Constitution. As previously noted, one of the singular aspects of the Church Constitution was the manner of its own ratification. In 1786, the draft Constitution was amended so that ratification took place within the General Convention itself, and not by the state conventions, as had been proposed by an earlier version. Thus, the 1786 version stated:

"The Constitution of the Protestant Episcopal Church in the United States of America, when ratified by the Church in a majority of States assembled in General Convention, with sufficient power for the purpose of such ratification, shall be unalterable by the Convention of any particular State, which has been represented at the time of ratification." Art. 9. (Emphasis added.)

In the secular political process of the ratification of the federal Constitution, much weight was put on the participation of the states themselves. In the Church context, however, this power was vested in the General Convention. Similarly, Article 9 also committed the amendment power to the General Convention:

“This Constitution shall be unalterable, unless in General Convention, in a majority of States which may have adopted the same; and all alterations shall be first proposed in one General Convention, and made known to the several State Conventions, before they shall be finally agreed to, or ratified, in the ensuing General Convention.” Art. 9.

Unlike in the U.S. Constitution (or in a less hierarchical polity such as that of the Presbyterian Church), there is no step in the amendment process where an amendment needed to receive the approval of the states (or in the case of Presbyterians, the presbyteries) themselves. The General Convention had – and still has – sole power to amend its Constitution.

87. Finally, and perhaps most fundamentally, was what was required for a state convention to become a part of the General Convention. Article 5 provided:

“A Protestant Episcopal Church in any of the United States not now represented may, at any time hereafter, be admitted on acceding to this Constitution.” Art. 5.

For a state convention to join the General Convention, it had to acknowledge the powers of the General Convention. Accession was not optional. Indeed, as will be shown, in a number of instances state conventions were denied membership because they failed adequately to accede.

88. Some have recently argued that this language of accession is temporary and reversible.⁴¹ As will be shown below, in an extensive review of Nineteenth-Century commentary and practice I have found no evidence for such an interpretation.

⁴¹ This argument lies at the core of McCall’s paper. See “Is the Episcopal Church Hierarchical?” p. 20ff.

C. Evidence in the 1789 Canons of the Supremacy of the General Convention

89. The General Convention's legislative authority has from the very beginning been unrestricted. In practice, however, the Convention has historically been conservative in exercising its authority, and has acted only when it considered such action necessary for the well-being of the Church. Many decisions have been expressly delegated to the individual dioceses, thus giving to some the impression of a "de-facto" federalism. But this is not a true federal system. These diocesan functions were not inherent rights, but were powers granted by General Convention. Moreover, as will be shown, the General Convention has over time increased its direct mandates to dioceses and parishes.

90. The authority of the General Convention can be seen from the issuing of the earliest canons. As noted above, one compelling piece of evidence of the supremacy of the General Convention is in the fact that it passed canons before adopting the Constitution. But the early canons also reveal the supremacy of the General Convention in two other respects: From 1789, the General Convention asserted the right to pass canons in a number of areas that had no foundation in the Constitution itself, and in so doing often used mandatory language that confirmed the supremacy of the General Convention's authority.

91. The first such area concerned the selection of bishops. Although the Constitution delegated to state conventions the right to set the rules for electing their own bishops, the canons confirmed the General Convention's plenary authority in this area. Thus, Canon II of 1789 set out the mandatory requirement that "[e]very Bishop elect, before his consecration, shall produce" to the consecrating bishops certificates from the electing state convention and the General Convention. Canon II (emphasis added).

92. A second area in which the General Convention asserted its authority in a mandatory fashion on a subject not addressed by the Constitution involved the duties of bishops.

Canon III commanded that “[e]very bishop shall, as often as may be convenient, visit the churches within his Diocese or district, for the purpose of examining the state of his Church, inspecting the behaviour of the Clergy, and administering the apostolic rite of Confirmation.” Canon III (emphasis added).

93. A third area concerned requirements for ordination. The authority to dictate ordination requirements is nowhere made explicit in the Church Constitution, yet from the very beginning the General Convention assumed this responsibility. Four of the original canons passed by the same Convention that ratified the Constitution made mandatory certain details relating to ordination: Canon IV provided that “Deacon’s orders shall not be conferred” on anyone until he reached the age of 21, “nor Priest’s orders” until the age of 24; and “[n]o man shall be consecrated a Bishop of this church” until the age of 30. (Emphasis added.) Canon V commanded that “[n]o person shall be ordained” unless he produced a certificate showing a potential for gainful employment within the Church. (Emphasis added.) Canon VI required that “[e]very candidate for holy orders shall be recommended to the Bishop” by the convention’s Standing Committee and set out the precise language for the recommendation, which “shall be signed by the names of a majority of the committee.” (Emphasis added.) Finally, Canon VIII set the appropriate times for ordination: “the stated times of ordination shall be on the Sundays following the Ember weeks.” (Emphasis added.)

94. A fourth area concerned clergy education. The Constitution nowhere specifies that this was in the purview of the General Convention, yet Canon VII assumed the right of the General Convention to establish mandatory learning requirements, providing that “[n]o person shall be ordained in the Church” until he has “satisfied the Bishop and . . . two Presbyters . . . that he is sufficiently acquainted with the New Testament in the original Greek, and can give an

account of his faith in the Latin tongue, either in writing or otherwise, as may be required.”
(Emphasis added.)

95. A fifth area involved the duties of clergy. Here, too, the Constitution was silent, but the General Convention exercised authority by imposing mandatory requirements in this area. These included Canon XI (providing that ministers “shall” prepare and present confirmands to the Bishop and “shall” inform the Bishop of the state of the congregation); Canon XIV (all persons in the Church “shall” duly celebrate Sundays); and Canon XV (all ministers “shall” keep a register of baptisms, marriages, and funerals in the parish). In addition, Canon X expanded on the Constitutional requirement that the Prayer Book “shall be used,” mandating that “[e]very minister shall . . . use the Book of Common Prayer, as the same shall be set forth and established by the authority of this or some future General Convention...and no other prayer shall be used besides those contained in the said book.” (Emphasis added.)

96. A sixth area concerned clergy behavior and discipline. The right of the General Convention to establish rules of behavior and discipline for clergy was not specified in the Church Constitution, but from the very beginning the General Convention asserted its authority to do so. Canon XIII thus prohibited clergy from “resort to taverns,” “base or servile labor,” “drink or riot,” and “spending...their time idly,” and provided that offenders “shall be liable” to sanctions “according to such rules or process as may be provided either by the General Convention or by the Conventions of the different States.” (Emphasis added.)

97. Similarly, in Canon XII the right to discipline laity for “wickedness of life” is asserted, although nowhere found in the Constitution. Here again, the General Convention not only described a list of offenses for which laity could be punished, but required that offenders

“shall be repelled from the Holy Communion” and reserved the right to establish the process for prosecution of those offenses. (Emphasis added.)

98. In sum, the powers exercised in these original canons came not from enumerated powers found in the Constitution, but from the right of the Church to self-governance; and their mandatory nature reflected the nature of the General Convention’s authority. In this way, they reflect the same over-arching powers that lay behind the English Canons of 1603-1604.

IV. THE SUPREMACY OF THE GENERAL CONVENTION HAS CONTINUED TO BE REFLECTED IN GENERAL CONVENTION ACTIONS FROM 1790 TO THE PRESENT.

99. Since the promulgation of the Constitution and canons of 1789 and up to the present, the General Convention has continued to exercise its authority over bishops and other clergy and their dioceses and parishes and to legislate on such matters as requirements for ordination, clerical practice, discipline, and church property. These actions confirm that the Church Constitution (unlike the U.S. Constitution) was never intended to limit the actions of the General Convention. Rather, the Church has always regarded the General Convention as having full authority to legislate for the well-being of the Church.

100. At various times the General Convention has explicitly defined its understanding of its hierarchical authority to take such actions, as shown in the following two examples. In 1964, the General Convention formally defined the levels of authority in the Church:

“The Protestant Episcopal Church accepts as its authority the Holy Scriptures, the Nicene and Apostle’s Creeds and speaks through the Book of Common Prayer and the Constitution and Canons of the Church. The Protestant Episcopal Church speaks also through the Resolutions, Statements and actions of the General Convention. In these ways the Church speaks at the highest level of responsibility for the Church to the Church and to the world.” JGC 1964 at 312-313.

Likewise in 1994, the General Convention, in reordering its clergy disciplinary judicial system, made the following declaration:

“Disciplinary proceedings under this Title [IV] are neither civil nor criminal, but ecclesiastical in nature and represent determinations by this Church of who shall serve as Members of the Clergy of this Church and further represent the polity and order of this hierarchical Church. Clergy who have voluntarily sought and accepted ordination in this Church have given their express consent and subjected themselves to the discipline of this Church and may not claim in proceedings under this Title constitutional guarantees afforded to citizens in other contexts” Canon IV.14.1 (emphasis added).

A. Bishops

101. The General Convention, using the mandatory language of supremacy, has continued to exercise authority over the selection of bishops, providing for consents to be given by a majority of bishops and Standing Committees when the General Convention is not in session,⁴² and requiring that bishops-elect be ordained by no fewer than three bishops. Const. Art. II.2; Canon III.11(6). In 1832, it adopted Canon XXXII (“On Episcopal Resignations”) (now Canon III.12(8)) which required the General Convention’s consent for a bishop to resign; and in 1853, it adopted the Canon III (“Of Bishops absent from their Dioceses because of Sickness, or other sufficient reason”) authorizing bishops to take temporary leave from their dioceses provided they turn over ecclesiastical authority to the Standing Committee. Consent of the larger church is also required for the “translation” of a bishop, that is, the election as diocesan bishop of a person who is a diocesan bishop or bishop coadjutor of another diocese. Const. Art. II.8. These provisions reflect the teaching of the ancient canons that a bishop serves only with the consent of the larger Church.

102. Using similar language, the General Convention amended the Constitution in 1901 to provide a minimum age (30) for the ordination of bishops (Const. Art. II.2); to specify that consents to episcopal ordinations be given only by bishops with jurisdiction (in addition to

⁴² This provision was first adopted in 1799 as Canon II (“Of the Consecration of Bishops in Recess of General Convention”), and is now found in Canon III.11(4).

consents by the House of Deputies or Standing Committees as provided earlier) (*Id.*); and to provide that bishops may not resign without the consent of the House of Bishops (Const. Art. II.4, now II.6). In 1943, the General Convention went further and provided a mandatory resignation age for bishops (72) (Const. Art. II.9), and provided for the House of Bishops to declare a bishop's position "terminated" if this requirement was not obeyed (Canon 43.7(c), now III.12(8)(c)).

103. Further, in its amendment of Article I.2 of the Constitution in 1901, the General Convention expanded the membership of the House of Bishops beyond only diocesan bishops to include coadjutors and resigned bishops, so that membership in the House became based not on diocesan representation but episcopal status. No longer was the House of Bishops a house of diocesan bishops, but it now included other bishops as well. In the same vein, the General Convention authorized the ordination of suffragan bishops in 1910 and made them non-voting members of the House of Bishops (Const. Art. II.4); it gave the vote to suffragans in 1943 (Const. Art. I.2(1)); and in 1982, it created the position of "Assistant Bishop" with full membership in that House (*id.*).

104. The General Convention also has exercised authority over the selection of bishops by reversing the decisions of dioceses in a number of instances. In 1795, the consecration of the Bishop of Vermont was refused, on the ground that the state had not yet acceded to the Constitution. JGC 1795 at 1: 205. In 1801, consent to the consecration of the Bishop of New Jersey was withheld on account of questions about the election. JGC 1801 at 1: 264. In 1844, the House of Deputies refused to consent to the consecration of the Bishop of Mississippi because of financial concerns about the candidate in question. JGC 1844 at 71. In 1847, consent was refused in the case of an Assistant Bishop of Illinois because of canonical concerns.

JGC 1847 at 37. In 1874, consent to the consecration of the Bishop of Illinois was withheld on churchmanship grounds. JGC 1874 at 97-100. A majority of the Standing Committees refused to consent to the consecration of James DeKoven as Bishop of Illinois in 1875, also because of questions concerning his churchmanship. Four candidates have been rejected in the Twentieth and Twenty-First Centuries, the most recent in 2009 when the Bishops and Standing Committees rejected the consecration of the Bishop of Northern Michigan.

105. In each of these cases the diocesan choice for bishop was overturned according to canonical procedures established by the General Convention. Furthermore, in each case the diocese accepted the decision without protest.

106. The General Convention has also made bishops subject to discipline and removal by the general Church, as set forth in Title IV of the Church's canons. Grounds for such discipline or removal include "Abandonment of the Communion" of the Church under Canon IV.9 and violation of the Church's or diocese's Constitutions or canons or of the vows required of a bishop-elect in the Ordination Service for a bishop under Canon IV.1.

107. Yet another acknowledgment of the General Convention's authority to dictate to individual dioceses is clearly seen in an example relating to the trial of bishops. In the 1840s, the House of Bishops brought to trial the popular Bishop of New York on charges of "immorality and impurity" and suspended him from the office of Bishop.⁴³ Even though the clergy and laity of the diocese continued to be loyal to the bishop, and indeed refused to replace him, they accepted the decision stating, "The event, so unlooked for, and so distressing to the friends of the Church, has been patiently submitted to by the Diocese." JGC 1849 at 179. If ever there were a

⁴³ James Elliott Lindsley, This Planted Vine: A Narrative History of the Episcopal Diocese of New York (New York: Harper and Row, 1984) at 151-154.

place to expect arguments for diocesan autonomy or impassioned claims of the lack of a national hierarchy it would be here. But no such language has been found.

108. The General Convention has also dictated to bishops concerning the ordination process. In 1804, Canon IX (“Of Candidates who may be refused order”) stated that a bishop could not ordain a candidate until he had inquired whether the candidate had ever directly or indirectly applied for orders in another diocese and been turned down. Furthermore, the canon stated, “When any bishop rejects the application of any candidate for Orders, he shall immediately give notice to the bishop of every state or diocese.” JGC 1804 at 1: 324.

B. Dioceses

109. The General Convention has consistently exercised authority over the formation of dioceses, here too using the mandatory language of supremacy. In 1795, it set minimum sizes for the establishment of new dioceses (Canon I (“Of Episcopal Visitation”)); in 1835, it provided a mechanism for combined dioceses to be divided (Canon I (“Of the Election of Bishops”)); and in 1838, it provided for the division of existing dioceses with the General Convention’s consent (Canon VIII (“On the Organizing of New Dioceses Formed Out of Existing Dioceses”)). It continued to exercise its authority to determine whether or not a diocese should be formed as part of the Church. In 1967, it provided a mechanism by which territory might be transferred from one diocese to another, and this too required the permission of the General Convention. Const. Art. V.6.

110. In 1835, the General Convention provided for the election by it of “Missionary Bishops” to exercise episcopal functions in areas in which the Church was not organized, asserting that the “jurisdiction of this Church extend[ed] in right, though not always in form, to all persons belonging to it within the United States” Canon II of 1835 (“Of Missionary

Bishops”). The canon further provided that “each Missionary Bishop shall have jurisdiction over the Clergy in the district assigned him.”

111. The General Convention has always had the authority to form and admit new dioceses to membership, and the admission and division of dioceses has been in no way automatic. In 1817, the Convention refused the petition of the proposed Diocese of Ohio for membership in Convention because there was not sufficient evidence that the proposed diocese had acceded to the Constitution of the Church. JGC 1817 at 1:459. In 1835, a petition from the Diocese of Indiana was rejected because there were doubts whether it would have sufficient number of clergy to warrant diocesan status. JGC 1835 at 2:614.

112. The case of the Church in California is particularly illuminating. The Constitution drafted by organizers there contained no mention of the Protestant Episcopal Church, and indeed there was talk of forming an independent church consisting of “California, Oregon, ... and the Sandwich [Hawaiian] Islands.”⁴⁴ Accordingly, in 1853, when the organizers had elected a bishop and petitioned General Convention to become a diocese, not only was the proposal rejected and the bishop denied consecration, but the Convention instead made California a missionary district and appointed a missionary bishop to oversee it.⁴⁵

113. There are also cases in which requests for division of a diocese have been rejected. In 1871, the petition of the Diocese of Illinois to subdivide into three dioceses was

⁴⁴ See D. O. Kelly, History of the Diocese of California from 1849 to 1914 (San Francisco: Bureau of Information and Supply, [1915]) at 9 through 11; Lionel U. Ridout, Renegade, Outcast, and Maverick: Three Episcopal Clergymen in the Californian Gold Rush (San Diego: San Diego University Press, 1973) at 58.

⁴⁵ JGC 1853 at 57-58. Conger misinterprets the case of the organization of the Diocese of California, and attempts to argue that it shows the decentralized nature of the formation of dioceses. See “The Concept of Hierarchy in the Episcopal Church of the Nineteenth Century” pp. 15-16.

rejected because of doubts that each of the new dioceses could adequately support a bishop (as called for in Art. V of the Constitution).⁴⁶

114. In 1979, the General Convention adopted Canon 1.10(3)(b) (“Transfer of Area Missions”) (now Canon I.11(3)(f)) providing that “Missionary Dioceses” outside of the United States could, with the consent of the General Convention, be released from union with the General Convention to form or become part of another province of the Anglican Communion – an opportunity never provided by the General Convention to any other dioceses of the Church.

115. Finally, an amendment to the Constitution in 1904 made explicit three principles. The first was that dioceses could only be formed with the consent of the General Convention. Art. V.1. Since 1835 this had been the case for the dioceses created from the division of existing dioceses, but now it was the case for all new dioceses. The second concerned the content of the diocesan accession to the Church’s rules. The Constitution of 1789 had required that in order for a new diocese to become part of the General Convention it must first accede to the Church’s Constitution. Art. 5. It had, however, always been assumed that accession to the Constitution implied accession to the Church’s canons, as well, and many dioceses explicitly acceded to both the Constitution and canons.⁴⁷ This requirement was made explicit in an amendment to the Constitution in 1901. Art. V.1. Third, the Convention in 1904 clarified that all new dioceses

⁴⁶ JGC 1871 at 231, 245, and 361.

⁴⁷ See, for example, the early Constitutions of Dallas, Colorado, Illinois, and Quincy. A number of writers have either misunderstood or misinterpreted this point. In particular see Wantland’s Affidavit in The Episcopal Diocese of San Diego v. St. John’s Parish, ¶ 11; and “Bishops’ Statement,” p. 5., both claiming that dioceses self-organize and then are admitted into union. An existing diocese, however, cannot begin the process of dividing and organizing a separate diocese without the permission of General Convention, and as we have seen above in the case of Illinois, this approval is in no way automatic. And, after subsequently organizing itself, the new diocese must submit its Constitution with its accession clause to the Church in order to become recognized as a diocese of the Church.

were required to make such an accession. Art. V.1. Until then a distinction had been made between new dioceses (which had never acceded) and dioceses created from the division of older dioceses (which were viewed as already having acceded). In 1904, the Constitution expressly required accession of every new diocese, including those created from existing dioceses. Thus, Art. V.1. now reads:

“When it shall appear to the satisfaction of the General Convention, by a certified copy of the proceedings and other documents and papers laid before it, that all the conditions for the formation of a new diocese have been complied with and that it has acceded to the Constitution and Canons of this Church, such new Diocese shall thereupon be admitted to union with the general Convention.”

116. The General Convention from its earliest days exercised authority over the relationship between bishops and their dioceses. In 1808, the Convention required that the bishop deliver a “Charge to the Clergy” at least every three years. Canon XXIII (“Of Episcopal Charges and Pastoral Letters”). In 1856, the Convention required that bishops visit their congregations at least once every three years, and a procedure for a panel of bishops to impose further requirements upon a bishop who failed to do so was established. Canon II.1 (“Of Episcopal Visitations”). The same canon also affirmed the authority of the bishop to administer both word and sacrament during such visits. Relations between bishops and their dioceses were further regulated by the Convention by requiring that each diocese have a Standing Committee to advise the bishop. Canons adopted in 1795 and 1808 stipulated certain tasks for Standing Committees. In 1832, however, the Convention dictated that each Standing Committee’s duties, “except so far provided by the Canons of the General Convention, may be prescribed by the Canons of the respective Dioceses.” Canon IV.1 (“Of Standing Committees”). This provision subordinating the canons of the dioceses to those of the Church was placed in the Constitution in 1901. Art. IV.

117. The Convention's exercise of authority over the conduct of the dioceses can be further seen in a wide variety of constitutional and canonical provisions. In 1795, it required that congregations could only be members of the diocese in which they were situated. Canon I ("Of Episcopal Visitation"). In 1856, Article II of the Constitution was amended to require that deputies elected by the dioceses to the General Convention be "Communicants in this Church."

118. The Convention has also set forth requirements and conditions for the formation and operation of parishes and other worshipping congregations under the oversight of the dioceses (such as in current Canon I.13, "Of Parishes and Congregation"), as well as detailed rules and procedures under which dioceses must select, train, ordain, deploy, and supervise the clergy of parishes and other worshipping congregations (found in current Const. Arts. VIII, X and Canons I.8, .12, .13; II.3; III.5-.12, .15).

119. The General Convention has also required each diocese to report regularly to the Church concerning its activities and official actions. Canon I.6(5)(a) requires dioceses to forward to the Secretary of the House of Deputies and to the Archives of the Church "immediately upon publication, two copies of the Journals of the Convention of the jurisdiction, together with Episcopal charges, statements, and such other papers as may show the state of the Church in that jurisdiction," while Canon I.6(4) requires dioceses to file annual reports "in the form authorized by the Executive Council" to that body. These canons date from 1804.

120. In 1916, the Convention implemented a series of provisions, first contained in Canon 50 ("On Business Methods in Church Affairs") and culminating in current Canon I.7, requiring parishes to adopt numerous business practices relating to such matters as audits of accounts, maintenance of adequate insurance for church property, ensuring the integrity of treasurers, and expanded reporting to the diocese.

121. In 1919, the General Convention required each diocese to establish a Finance Committee to ensure adequate fiscal oversight of the diocese and all its parishes and other congregations.

122. The General Convention in 1901 eliminated the last vestige of diocesan voting when it amended the Constitution to provide that amendments to the Constitution be adopted, not “in General Convention, by the Church in a majority of the States” as the Constitution of 1789 had provided (Art. 9), but by a majority in both Houses, the Deputies voting by orders. Art. XI.

C. Ordination Requirements

123. The Constitution was amended in 1901 to strengthen the clergy’s required “Declaration of Conformity” of 1789 by providing that each person to be ordained “solemnly engage to conform” to the “Discipline” of the Church in addition to its “Doctrine” and “Worship.” Art. VIII.

124. The General Convention has continually asserted its authority over ordination in other respects. In 1795, it established the procedures for candidates’ preparation for the ordained ministry. Canon VI (“Of the Preparatory Exercises of a Candidate for the Ministry”). In 1808, it set rules of conduct for candidates (Canon VIII (“Of the conduct required in Candidates for Orders”)); and in 1804, it first set rules, modified over time, regarding the ordination of candidates previously rejected for ordination (Canon IX (“Of Candidates Who May Be Refused Orders”)).

125. In 1795, the Convention also exercised authority over the education requirements for ordinands (Canon IV (“Of the Learning of those who are to be Ordained”)), further directing in 1801 that the House of Bishops establish a mandatory “Course of Ecclesiastical Study” for ordinands. JGC 1801 at 1: 268. Over time, those requirements have grown into an elaborate

system, reflected in Title III of the present canons, prescribing the required areas of theological education. Since 1970, every diocese has been required to have a Commission on Ministry to assist the bishop in the selection of persons for ministry, but here too, the power of such commissions is also limited by the Church's canons:

“The Commission on Ministry may adopt rules for its work, subject to the approval of the Bishop, *Provided*, the same are not inconsistent with the Canons of the General Convention and the Diocese.” Canon III.2(3).

126. Numerous other ordination requirements set by the General Convention over time deal with such matters as age, health, prior education, testimonials, and minimum time frames for ordination. *See, e.g.*, Canons III.5, .6, .8.

D. Clerical Practices

127. The General Convention has continued to dictate clerical practices, adopting a canon in 1795 restricting clergy from ministering in the parish of other clergy without consent (Canon V (“Of the Officiating of Ministers of this Church in Churches or within the Parochial Cures of other Clergymen”)) and other canons in 1804 considerably expanding the requirement that clergy keep records of their sacramental actions (Canon XI (“Providing for an accurate view of the State of the Church from time to time”)); providing the required procedure for induction of rectors (Canon I (“Concerning the Election and Induction of Ministers into Parishes or Churches”)); and establishing rules for clergy desiring to move from one diocese to another (Canon III (“Concerning Ministers removing from one Diocese or State to another”)).

128. The Convention in 1804 also adopted canons governing procedures for resolving differences between clergy and congregations (Canon II (“Respecting the dissolution of all pastoral connection between Ministers and their Congregations”) and Canon IV (“Respecting differences between Ministers and their Congregations”)). The Convention's concern for the

responsibility of clergy with regard to Episcopal visitations culminated in a canon in 1832 setting forth their duties (Canon XXVI (“Of the duty of Ministers in regard to Episcopal Visitation”)).

129. The Twentieth Century brought important new requirements for clergy prescribed by the General Convention. In 1904, the Convention defined the role of parish rectors vis-à-vis lay vestry members stating:

“The control of the worship and the spiritual jurisdiction of the Parish, are vested in the Rector, subject to the Rubrics of the Book of Common Prayer, the Canons of the Church, and the godly counsel of the Bishop. All other Ministers of the Parish, by whatever name they shall be designated, are to be regarded as under the authority of the Rector.” Canon 15.1(1) (“Of Ministers and their Duties”).

130. Finally in 1955, the General Convention adopted a mandatory retirement age (72) for all deacons and priests (having passed one for bishops earlier), and dictated the terms under which clergy could continue in limited employment thereafter. Canon 45.8 (“Of Ministers and their Duties”). Just as in the case for bishops, the General Convention claimed the authority to decide when and how ordained ministry should be ended as well as when and how it should begin.

E. Tenure of Church Property

131. Treatment of church property, a long-held Anglican concern, was incorporated into the early Church governance in a number of ways and has continued to be refined over the years.

132. The Anglican concern for the sanctity of Church property and its protection for the mission of the Church can be seen in the Church’s inclusion in its Book of Common Prayer in 1799 the service “The Form of Consecration of a Church or Chapel.” That rite, or “liturgy,”

formally set apart a church building for the sacred work of worship and has been included ever since.⁴⁸

133. The early versions of the Prayer Book adopted by the General Convention directed that the “Bishop, sitting in his chair, shall have the instruments of Donation and Endowment, if there be any, presented to him,” indicating that the property was being dedicated to the interests of the Church, and was being set apart from “all unhallowed, worldly and common use.” The “instruments of donation” that parishes used in the early Nineteenth Century stated that such property was being appropriated and devoted to the worship and service of God, according to the ministry and doctrine of The Episcopal Church and by a congregation in communion with the Church. BCP 1789 at 572.⁴⁹

134. These principles put into effect by the General Convention through the Prayer Book over time came to be expressed in the canon law of the Church as situations arose that required that such principles be made more explicit.

135. Thus, in 1868, the General Convention passed Canon I.21 (“Of the Consecration of Churches”), which provided as follows:

“I. No Church or Chapel shall be consecrated until the Bishop shall have been sufficiently certified that the building and ground on which it was erected have been fully paid for, and are free from lien or other incumbrance.

“II. It shall be not lawful for any Vestry, Trustees, or other body authorized by law of any State, or territory, to hold property for any Diocese, Parish, or Congregation, to incumber or alienate any consecrated Church or Chapel without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese in which such Church or Chapel be situated.

⁴⁸ Massey Hamilton Shepherd, The Oxford American Prayer Book Commentary (New York: Oxford University Press, 1950) at 563-8.

⁴⁹ This ritual was removed from the Book of Common Prayer in 1979, but as will be shown, by that time the principle was firmly embedded in the Church’s canons.

“III. No consecrated Church or Chapel shall be removed, taken down, or otherwise disposed of for an “unhallowed, worldly, or common use,” without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese in which such Church or Chapel may be situate.”

Section 1 of Canon I.21 was strengthened in 1871 to read as follows:

“I. No Church or Chapel shall be consecrated until the Bishop shall have been sufficiently certified that the building and ground on which it was erected have been fully paid for, and are free from lien or other incumbrance; and also such building and ground are secure, by the terms of the devise, or deed, or subscription by which they are given, from the danger of alienation from those who profess and practice the doctrine, discipline, and worship of the Protestant Episcopal Church in the United States of America.”

136. This language is currently found in Canon II.6. Three times during the Twentieth Century the General Convention acted to explicate rules concerning the tenure of Church property. In 1904, the Convention adopted a canon providing:

“For the purposes of his office, and for the full and free discharge of all functions and duties pertaining thereto, the Rector shall, at all times, be entitled to the use and control of the Church and Parish buildings, with the appurtenances and furniture thereof.” Canon 15.1(11) (“Of Ministers and their Duties”).

This language is currently found in Canon III.9.(5)(a).(2).

137. In 1940, the General Convention adopted Canon 57(4) (“Of Parishes and Congregations”) extending the earlier restrictions on alienation to all church real property:

“No Vestry, Trustee, or other Body, authorized by Civil or Canon law to hold, manage or administer real property for any Parish, Mission, Congregation, or Institution, shall encumber or alienate the same or any part thereof without the written consent of the Bishop and Standing Committee of the Diocese of which the Parish, Mission, Congregation or Institution is a part, except under such regulations as may be prescribed by Canon of the Diocese.”

This canon is now I.7(3).

138. A third canon concerning the treatment of property was set forth by the General Convention in 1979. New Canon I.6(4) (“Of Business Methods in Church Affairs”) (now Canon I.7(4)) clarified that all parish property was held in trust for the Church and the Diocese:

“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.”

This canon is often referred to as the “Dennis canon” after its principle author, Walter Dennis, later Suffragen Bishop of New York, or “the 1979 Trust Canon.” Similar language was also added in what is now Canon II.6(4).

F. Clergy and Lay Discipline

139. In 1832, the General Convention in Canon XXXVII (“Of Offenses for which Ministers shall be tried and Punished”) amended earlier canons to specify the grounds on which priests and deacons could be disciplined, including “violation of the Constitution and Canons of [the] Church.” Dioceses were permitted to hold ecclesiastical trials, but only “until otherwise provided for by the General Convention”; thus, trial on the diocesan level was not an inherent right of dioceses, but a task delegated to them by the Convention. While such trials may still be conducted by diocesan courts, a plenary system for the diocese to follow is now prescribed by Title IV of the Church’s canons, and review of decisions of such trial courts has been conducted outside the dioceses by Courts of Review in the Provinces ever since the provincial system was established by canon (Canon 29 (“Of Courts of Review of the Trial of Presbyters and Deacons”)) in 1904.

140. In 1841, the General Convention by amendment to Article 6 removed the right to try bishops from the dioceses and gave it to the bishops themselves. It since has adopted Canon IV.5 (“Of the Court for the Trial of a Bishop”) and Canon IV.6 (“Of Appeals to the Court of Review of the Trial of a Bishop”) that set forth the procedure for trials of and appeals by bishops.

141. The General Convention has also made provision for the discipline of laity. The original Canon XII of 1789 (“Notorious Crimes and Scandals to Censured”) had provided that persons engaged in offensive conduct “be repelled from the Holy Communion”; and in 1817, Canon III (“For Carrying into Effect the design of the second Rubric before the Communion Service”) further specified the procedures to be followed in this regard, also providing that persons could be deprived of “all privileges of Church membership, according to such rules or process as may be provided by the General Convention.” Modern versions of the General Convention’s specifications are now set forth in the “additional directions” or “rubrics” of the Prayer Book (p. 409) and in Canon I.17(6).

142. The General Convention has exercised its authority over the laity through its rules concerning Holy Matrimony starting in 1808 when it passed a joint resolution determining that the Church “shall not unite in matrimony a person who is divorced, unless it be on account of the other party having been guilty of adultery.” JGC 1808 at 1: 348. A stronger statement was contained in the 1868 Canon II.13 (“Of Marriage and Divorce”); and in 1877, Canon II.13.3 added provisions against divorced persons receiving the sacraments without the consent of the bishop. Over time, such restrictions have been relaxed considerably, but the terms on which marriages can be performed in the Church are still prescribed in detail by the Convention in Canons I.17 and I.18.

143. Still another important way in which the Convention has exercised its authority over the laity is through the passage of non-discrimination legislation. In 1964, in the midst of the Civil Rights struggle, the canon respecting laity (“Of Regulations Respecting the Laity”) was amended to state:

“Every communicant or baptized member of the Church shall be entitled to equal rights and status in any Parish or Mission thereof. He shall not be excluded from the worship or Sacraments of the Church, nor from parochial membership, because of race, color, or ethnic origin.” Canon 16.

In 1994, the language was expanded to prohibit exclusion on the basis of “marital status, sex, sexual orientation, disabilities or age, except as otherwise specified by Canon.” Canon I.17(5). Similar language can be found in Title III.1(2) (“Of the Ministry of All Baptized Persons”), in which it is required that no person shall be denied access to the discernment for any ministry because of “race, color, ethnic origin, national origin, marital status, sex, sexual orientation, disabilities or age, except as otherwise provided by these Canons.”

G. The Church Pension Fund

144. The care of retired clergy and their families had been a long-standing concern for The Episcopal Church. Notwithstanding an ambitious capital campaign early in the Twentieth Century, the General Convention determined that a national pension system could not succeed unless contributions were mandated from every parish and other institution in the Church.⁵⁰ Hence, in 1916, Canon 56 (“Of the Church Pension Fund”) was adopted authorizing the newly-created “Church Pension Fund ... to levy upon and to collect from all parishes and congregations of the Church and any other societies or organizations in the Church ... assessments based upon the salaries of the clergymen employed by them respectively in the office and work of the

⁵⁰ Harold C. Martin, Outlasting Marble and Brass: The History of the Church Pension Fund (New York: Church Hymnal Corp., 1986) at 81ff.

Ministry.” The substance of this canon is now in Canon I.8(3). Contributions to the Pension Fund were thus not voluntary. Never before in its history had the Church mandated a payment from every congregation. Few actions by the General Convention show its authority over the temporal affairs of the Church as much as does the passage of the Canon forming the Church Pension Fund.

H. Conclusion

As demonstrated above, the General Convention has consistently acted as a body with supreme authority. Indeed, the recognition of the supremacy of General Convention was so taken for granted by 1901 that the revisers of the Constitution felt free to drop the language of the original Article 2 that bound dioceses to actions of General Convention even when their parties were not present. From their perspective, that passage from the old Constitution seemed anachronistic. With the exception (as will be seen) of the Civil War period, no diocese had failed to attend meetings of the General Convention since 1820, and the authority of the General Convention had never been challenged. The leading commentator on the revised Constitution, William J. Seabury, acknowledged as much:

“[The General Convention] has always, moreover, been regarded not only as a Legislature in the system, but as the Supreme Legislature therein. The inference was inevitable from provisions incorporated in Article 2, from the beginning, declaring that the Church in each Diocese adopting the Constitution shall be bound by the duly consummated acts of General Convention, whether such Diocese has been actually present by its Deputies in that body or not. No such provision appears in the amended Constitution. It is here presumed to have been taken for granted that, as this supremacy in legislation has been established from the beginning of the System, and had always been and still was acquiesced in by all the Dioceses, it was not necessary to continue the stipulation.”⁵¹

⁵¹ William J. Seabury, Notes on the Constitution of 1901 (New York: Thomas Whitaker, 1902) at 38 (emphasis added).

Seabury acknowledged that from the perspective of 1901, the Church had so developed organizationally (particularly as exhibited by those organizational principles highlighted in the revised Constitution itself) that the specific sanction found in the Constitution of 1789 was now superfluous.⁵²

Some have suggested that it was through certain developments of the early Twentieth Century—such as the formalization of the Office of the Presiding Bishop and the establishment of the Executive Council and the Church Pension Fund—that the Episcopal Church’s hierarchical nature became more pronounced.⁵³ This is to confuse the principle of hierarchy with the way in which it is administered. Indeed, these developments underscore the conclusion that the General Convention’s authority has always been unlimited, because these changes (with the exception of the election of the Presiding Bishop) have occurred without any changes in the

⁵² Some have recently asserted that the removal from the Constitution in 1901 of the provision that dioceses absent from a meeting of the General Convention “shall nevertheless be bound” by the acts of the General Convention suggests that the General Convention’s authority since then has not been supreme. As noted, this was not the opinion of commentators at the time. Furthermore, as we have seen, in 1901 a number of new Constitutional provisions were added in which the General Convention assumed, and asserted, its supremacy over the entire Church. There was a self-conscious concern to show the authority of General Convention. Indeed, when the original version of the amendments to the Constitution that would be ultimately adopted in 1901 was presented in 1895, it included a proposal to insert into the Constitution a provision reserving rights to the dioceses, which stated: “The powers not committed to the General Synod or Provincial Synods by the Constitution, nor prohibited by it to the Dioceses are reserved to the Dioceses respectively.” JGC 1895 at 649. This language was pointedly rejected and viewed as “revolutionary.” See John H. Egar, “General Convention or General Synod – Which?” *The Churchman*, September 14, 1895, at 279. The rejection of the proposal in combination with the new provisions adopted in 1901 that so clearly assume the supremacy of the General Convention prove that the deletion of the “shall be bound” provision merely reflected the fact that such language was no longer necessary because the principle was so deeply embedded in the Church.

⁵³ This is the point argued by Robert Prichard in “The Making and Re-Making of Episcopal Canon Law” (2010), available at www.anglicancommunioninstitute.com/2010/02/the-making-and-re-making-of-episcopal-canon-law/ at 2-4.

Constitution or any actions by the dioceses to expand the Convention's authority. This is evidently because the authority has existed from the beginning.

V. NINETEENTH-CENTURY COMMENTATORS UNEQUIVOCALLY VIEWED THE GENERAL CONVENTION AS THE SUPREME AUTHORITY IN THE EPISCOPAL CHURCH AND DIOCESAN ACCESSION AS IRREVERSIBLE.

145. Given the background of the formation of the General Convention and its actions in adopting and amending the Church's Constitution and canons over the years, as described in the foregoing parts of this statement, it is not surprising that a survey of Nineteenth-Century commentators on the ecclesiastical law of the Church reveals an unequivocal and unanimous view of the hierarchical nature of the Church and the lack of independence of its dioceses.⁵⁴

A. Supremacy of the General Convention

146. Francis Hawks, the first historiographer of The Episcopal Church and author of the first commentary on the Church's Constitution and canons, wrote in 1841 of the authority of the General Convention as reflected in Article 2 of its Constitution:

“[T]he rights of the whole united Church were protected with equal care. The union was not sacrificed to diocesan independence. If any diocese sees fit to neglect its privilege of representation, and sends no delegates, it is nevertheless, as much bound by the acts of the General Convention, as if it had its full complement of representatives in the House.”⁵⁵

The supremacy of the General Convention over the dioceses was axiomatic for Hawks and is a basic theme in his volume.

⁵⁴ This historical evidence is addressed only by Conger, in “The Concept of Hierarchy in the Episcopal Church of the Nineteenth Century.” Unfortunately, he dismisses most of the sources without analysis, misreads one (John W. Andrews, by ignoring his recognition that the General Convention was the “highest Council” of the “National Church”), ignores another (Francis Wharton), and instead relies on a passing line in Thomas Vail's The Comprehensive Church, a minor work of apologetics and not an academic review of polity.

⁵⁵ Francis L. Hawks, The Constitution and Canons of the Protestant Episcopal Church in the United States (New York: Sword, Stanford and Co., 1841) at 21.

147. Murray Hoffman was the best-known authority on the laws of The Episcopal Church in the first half of the Nineteenth Century. His Treatise on the Law of the Protestant Episcopal Church in the United States (1850) was often cited as the standard authority on church law. In it he described the power of the General Convention as follows:

“[T]he power of the Convention of 1789 involved the power of rendering the system of government stable and enduring. Its office was not to establish a fugitive coalition, but a perpetual union. It possessed the right of instituting and providing for the continuance of a body in which should reside all authority necessary for the purpose and commensurate with the object of the Church; a body of superior ultimate jurisdiction.”⁵⁶

148. In 1870, Francis Vinton, another Nineteenth-Century commentator and Professor of Ecclesiastical Polity and Canon Law at the Church’s General Theological Seminary, published the first full commentary since Hawks. Using a question-and-answer style, he asked, “What is the relation of the General Convention to the Diocesan Conventions?” To which he answered:

“It is that of a Supreme Legislature, whose Constitution is the fundamental Law of the Protestant Episcopal Church in the United States, and whose Canons either overrule or sanction the Canons of the several Diocesan Conventions.”⁵⁷

149. A fourth authority, Francis Wharton, a legal scholar, clergyman, and expert in both civil and canon law, wrote in the 1880s, addressing the topic of “Distribution of Sovereignty” as follows:

“After a careful and anxious scrutiny of the constitution and canons of our General Church, the power of General Convention seems to me unlimited, while

⁵⁶ Murray Hoffman, A Treatise on the Law of the Protestant Episcopal Church in the United States (New York: Stanford and Swords, 1850) at 110 (emphasis added).

⁵⁷ Francis Vinton, A Manual Commentary on the General Canon Law and the Constitution of the Protestant Episcopal Church in the United States (New York: E. P. Dutton & Co., 1870) at 62.

that of the Diocesan Convention is only that which the General Convention is pleased to concede.”⁵⁸

Wharton contrasted the circumscribed powers of the U.S. government in the national Constitution with the virtually unlimited powers of the General Convention in the Church’s Constitution:

“It would have been easy for the constitution of our Church to have limited the powers of the General Convention. We have several examples of such limitations in the constitution of the United States. Congress can pass no law taking away jury trials, or destroying the liberty of the press, or interfering with the right of the people to assemble together, or restraining religious liberty. It would have been within the power of those who framed our ecclesiastical constitution to have provided that General Convention shall pass no law depriving the dioceses of certain enumerated rights, or conflicting with certain leading sanctions of our faith. It would have been within their power, also, to have provided, in analogy with corresponding clauses of the constitution of the United States, that all legislative powers not expressly granted to the General Convention be reserved to the dioceses. So far, however, from these or similar limitations on the power of the General Convention being introduced, that power on the face of the constitution is unlimited.” *Id.* at 2: 400.

150. Still another expert analyst of Episcopal Church law was John W. Andrews, a lawyer and leading layman from Ohio, whose work was regularly cited as authoritative. In an 1883 work, he wrote:

“From the foundation of Christianity there never has been a Church without a body in which resided the ultimate and absolute power of government....When then, in 1789 the whole Church of the United States, through its competent representatives, declared, ‘there shall be a General Convention of the Protestant Episcopal Church in the United States,’ it enunciated the great principle that it was a National Church, and that such a Convention was to be its highest Council.”⁵⁹

⁵⁸ This essay, “How Far We Are Bound by English Canons,” forms part of the appendix of William Stevens Perry, ed., The History of the American Episcopal Church 1587-1883, 2 vol. (Boston: James R. Osgood and Co., 1885) at 2: 400.

⁵⁹ John W. Andrews, Church Law: Suggestions on the Law of the Protestant Episcopal Church in the United States of America, Its Sources and Scope (New York: T. Whittaker, 1883) at 85.

151. Yet another legal expert was Hill Burgwin, the author of many learned articles on the polity and laws of The Episcopal Church and Chancellor of the Diocese of Pittsburgh from 1887 to 1895. In “The National Church and the Diocese,” he wrote, in 1885:

“1st. That our National Church within the proper scope of ecclesiastical legislation, and subject to the Divine law and that of the One Catholic Church is under no restriction or limitations, whatsoever, as to its power of legislation.

“2d. That our Dioceses are the creation of the National Church, and have no absolute, reserved or organic rights, nor any of which they may not be deprived in due legal course of legislation, by the National Church.”⁶⁰

152. Finally, in 1912, William J. Seabury, Professor of Ecclesiastical Law at the General Theological Seminary and author of An Introduction to the Study of Ecclesiastical Polity, described the power of the General Convention as follows:

“The common government [of the Church]...has direct and immediate authority over the individual members of its component parts and dependencies. This authority results from the provisions of the Constitution whereby the acts of General Convention, constitutionally performed, are made obligatory upon the Church in each Diocese, whether the consent of such church has been given or not (Art. 2); and whereby such acts so performed are declared to have the operation of law.”⁶¹

B. The Binding Nature of Diocesan Accession

153. The question of whether dioceses have the right to leave The Episcopal Church, or to nullify or withdraw their accession to the Constitution of the Church was a topic from time to time discussed by scholars in the Nineteenth Century. The following is a summary and

⁶⁰ Hill Burgwin, “The National Church and the Diocese,” American Church Review 45 (April, 1885) at 424.

⁶¹ William J. Seabury, An Introduction to the Study of Ecclesiastical Polity, 2nd ed. (New York, 1912) at 264.

analysis of these discussions – firmly and overwhelmingly rejecting any such right by the dioceses.

154. Francis Hawks, who, as noted above, wrote the first commentary on the Constitution and canons, explained that union was perpetual. In listing the rights surrendered when a diocese acceded to the Constitution and came into union with the General Convention, he named as the first:

“Such an exercise of independency as would permit them to withdraw from the Union at their own pleasure, and without the assent of other dioceses.”⁶²

While in other respects protective of diocesan authority, on the issue of secession he was adamant that dioceses could not leave without the consent of the General Convention.

155. Murray Hoffman in his Treatise on the Law of the Protestant Episcopal Church in the United States had emphasized the authority of the general Church and referred, as previously noted, to the work of 1789 as the creation of a “perpetual union.” He specifically addressed the question of secession in 1863 in a separate work in which he affirmed Hawks and added:

“Before the ratification of the Constitution, there was no bond holding the Churches of this continent together, but the bond of a common faith. The work begun in 1784, and consummated in 1789, constituted a National Church; bound every member of the Church in every diocese which then or hereafter adhered to it, to one strict system of duties and obligations.”⁶³

156. Francis Vinton addressed the question of secession in his 1870 work, and under the category, “Admission of New Dioceses,” he asked:

⁶² Hawks, The Constitution and Canons of the Protestant Episcopal Church in the United States at 10-11.

⁶³ Murray Hoffman, Remarks Upon the Question of What is Schism? According to the Law of the Protestant Episcopal Church in the United States of America (New York: Edmund Jones and Co., 1863) at 18-19.

“Q. How may a New Diocese be admitted into union with the other Dioceses and with General Convention?

“A. By ‘acceding’ to the Constitution and Canons of the Protestant Episcopal Church in the United States.

“Q. Does the act of ‘acceding’ to the Constitution imply the right of any Diocese to secede from the union established by the Constitution?

“A. No. Dr. Hawks says, ‘The several Dioceses surrendered...such an exercise of independency as would permit them to withdraw from the union at their own pleasure, and without the assent of the other Dioceses.’”⁶⁴

157. The expert analyst John W. Andrews in Appendix C (“Of the Constitution”) of his Church Law (at 101), also reiterated and quoted this principle enunciated by Hawks.

158. The same principle was articulated in an 1885 monograph by S. Corning Judd, a leading authority on Church law and Chancellor of the Diocese of Chicago, who wrote a commentary on Hawks, “Notes Upon Dr. Hawks’s Comments on the Constitution.” In it, he reprinted Hawks’s statement on dioceses being bound and approved of Hawks’s assertion that dioceses could not leave the Church by saying:

“The churches in the several States, having once united and consented to jurisdiction on the terms and conditions specified in the general constitution, the authority of the General Convention...became supreme save as otherwise provided in the constitution.”⁶⁵

159. One suggestion contrary to the assertion that dioceses could not secede appeared in a report to the Diocese of Virginia in 1878. Some in the Diocese during the decade of the 1870s had complained about the growth of ritualistic practices in the larger Church, and a study was commissioned, “On Diocesan Autonomy and Federal Relations,” in which it was asserted

⁶⁴ Vinton, A Manual Commentary on the General Canon Law and the Constitution of the Protestant Episcopal Church in the United States at 143 (emphasis added).

⁶⁵ William Steven Perry, The History of the American Episcopal Church, 2 vols. (Boston: James R. Osgood and Co., 1885) at 2: 404.

that the Diocese had the right to leave. In support of its assertion, this report invoked political principles of secession which were dear to the hearts of unreconstructed Virginians, but had little to do with the polity of the Church. This report was never approved or adopted by the Diocese, but, as shown below, ironically served to prompt others in the Church to state what would be the result of such an attempt.

160. The first such response is found in a study commissioned by the Diocese of Pennsylvania which carefully outlined the organization of the Diocese and its relationship to the General Convention and concluded:

“[W]e hold it to be a fundamental rule of law governing the Episcopal Church and every other religious body in Pennsylvania that while individual members may separate from our Church and decline any further communion with us, according to the dictates of their own consciences, no Congregation or Diocese can undertake to depart in form of worship, discipline, or essential Articles of Faith, as established by the General Convention ..., without imperiling not only their Church membership and organization as a part of the Episcopal Church, but also the rights of property in the Church edifices and other possessions which have been conferred upon them by members of our communion, which they hold in trust, to use the same for purposes of worship adopted by the General Convention..., which it would be a clear misappropriation to use for any other purpose.”⁶⁶

Thus, in this view, a diocese that attempted to sever its connection with the General Convention would lose its property, which was held in trust for the larger Church, and a diocese could no more secede from the larger Church than a parish could secede from its diocese.

161. A similar point was made by another legal expert referred to above, Hill Burgwin, Chancellor of the Diocese of Pittsburgh, in “The National Church and the Diocese.” Burgwin argued that the Virginia assertion was wrong on both historical and legal grounds and outlined

⁶⁶ Journal of the Proceeding of the Ninety-Fifth Convention of the Protestant Episcopal Church in the Diocese of Pennsylvania (Philadelphia, 1879) at 292-293.

what would be the consequences, including those relating to diocesan property, of any attempt for a diocese to withdraw from the larger Church:

“But suppose ... that the Convention of a Diocese...should...resolve to withdraw from Union with the National Church, and thereupon set up an independent organization, what would be the ecclesiastical and civil status of the different parties concerned? As to the former, all those who should remain faithful to the National Church, whether as individuals or Parishes, however small a remnant, ... would compose the Protestant Episcopal Church in that Diocese; if not strong enough to organize themselves as a Diocese, they would be taken under the fostering care of the National Church, and perhaps be organized temporarily as a Missionary Jurisdiction.

“As to the others, their act would be that of individuals only, being beyond the scope of their powers as members of the Convention. It would be of no legal effect, and the Diocese would still remain potentially, and when subsequently reorganized, actually in Union with the National Church, while any subsequent organization of the majority would be simply schismatical, especially after their Bishop had been deposed, as he would be at once.

“Not only would this be the ecclesiastical status of all the parties as held by the National Church, but they would be regarded in the same light by the civil law, and with this most important consequence, that all the property in the Diocese held in trust for Church purposes, whether by the Diocese at large, by Parishes, or by any other corporations or individuals, would remain for the use and benefit of those whom the law held to be, though in a minority, yet members of the ... Church ..., and her lawful representatives in the Diocese concerned. The Courts would permit no property to be diverted by any unlawful schism, ... from the purposes of the original trust,”⁶⁷

162. Even those commentators who argued for other rights of dioceses recognized that an attempted act of secession would be unavailing. A. S. Richardson, an Episcopal layman from the Diocese of Texas, in 1886 argued that if a diocese refused to accept a decision by the General Convention, the results would be severe, particularly as to diocesan property:

“The Diocese might be deprived of its church buildings and other property, as under the laws of the land it might, and probably would be held to belong to the

⁶⁷ Burgwin, “The National Church and the Diocese” at 454-455.

organization adhering to the General Convention, as being ‘the representative of the Protestant Episcopal Church in the United States of America.’”⁶⁸

163. So unthinkable has it been for Episcopalians for a diocese to claim the right to leave the Church that after the 1880s the topic was never again seriously discussed until the present period.

VI. THE CASE OF THE PROTESTANT EPISCOPAL CHURCH IN THE CONFEDERATE STATES OF AMERICA DOES NOT SUPPORT PRESENT-DAY SECESSIONIST CLAIMS.

164. Some have claimed that the experience of The Episcopal Church during the Civil War provides support for the right of dioceses to withdraw from the General Convention.⁶⁹ Such is not the case. From the Southern perspective, no right was ever asserted. Rather, Southern Episcopalians claimed that political changes had forced them to take action. The earliest statement by a Southern bishop on how the secession of the southern states would impact the Episcopalians in the South was by the Rt. Rev. Leonidas Polk, Bishop of Louisiana, and was issued in January of 1861. Far from invoking any principle of diocesan sovereignty, Bishop Polk noted that it was the political decision by Louisiana to separate from the Union that led to the present situation:

“The State of Louisiana having, by a formal ordinance, through her Delegates in Convention assembled, withdrawn herself from all further connection with the United States of America, and constituted herself a separate Sovereignty, has by that act, removed our Diocese from within the pale of ‘The Protestant Episcopal Church in the United States.’”⁷⁰

⁶⁸ A. S. Richardson, “Can the General Convention Prescribe the Qualifications of Members of Diocesan Convention?” Church Review 48 (August, 1886) at 141.

⁶⁹ This claim is found in Conger, “The Concept of Hierarchy in the Episcopal Church of the Nineteenth Century,” pp. 7-11; Wantland, Affidavit in The Episcopal Church in the Diocese of Connecticut v. Ronald S. Gauss ¶ 7.

⁷⁰ Journal of the Twenty-Third Annual Convention of the Protestant Episcopal Church in the Diocese of Louisiana (New Orleans, 1861) at 30.

Such a forced separation was based on secular political, not theological, factors. For Polk, it was like the situation that occurred at the end of the American Revolution. Political changes forced the reorganization of the Church so that the liturgy could be revised to reflect the new situation:

“Our separation from our brethren of ‘The Protestant Episcopal Church in the United States’ has been effected because we must follow our Nationality. Not because there has been any difference of opinion as to Christian Doctrine or Catholic usage. Upon these points we are still one. With us it is a separation, not division, certainly not alienation. And there is no reason why, if we should find the union of our Dioceses under one National Church impracticable, we should cease to feel for each other the respect and regard with which purity of manners, high principles and manly devotion to truth, never fail to inspire generous minds. Our relations to each other hereafter will be the relations we both now hold to the men of our Mother Church of England.” *Id.* at 31.

Although Polk was one of the leading Episcopal supporters of the Confederacy, eventually taking the rank of General and dying in combat in Georgia during the war, he nowhere invoked any inherent right of secession by a diocese of the Church.

165. The Bishop of South Carolina expressed a similar view of the Church in 1862:

“[I]t is my judgment that the Constitution of the Church in the United States made citizenship in the United States a condition precedent and necessary in membership in that body; that no citizen, holding and owing allegiance to a foreign power, could be a member of that General Convention....This idea of citizenship being necessary to jurisdiction, has always fully pervaded the English Church; and from that Church they, who sat in the Convention of 1789, and framed the Constitution.”⁷¹

166. Such language shunning church division should not be surprising. As has been noted, a prayer against schism or church division was one of the oldest in the Book of Common Prayer. It was liturgically recited at least once a week. This reinforcement of the sinfulness of

⁷¹ Journal of the Proceedings of the Seventy-Third Annual Convention of the Protestant Episcopal Church in South Carolina (1862) at 24.

willful church division lay behind Polk's distinction between a separation forced upon a church because of political factors and a voluntary decision to divide the Church.

167. Nor is there any evidence from the Northern side of any right of secession. Since Northern church leaders did not acknowledge the legitimacy of political secession, they did not recognize the organization of a Southern Episcopal Church. The actions of the General Convention clearly showed that it did not recognize the departure of the Southern dioceses. At the meeting of the General Convention in 1862, there was no recognition that the absent Southern Dioceses had separated from the Church - they were listed in the roll call (JGC 1862 at 26); their bishops were merely noted among the list of bishops as "absent," (*id.* at 16), and the Southern clergy were included in the appended list of clergy (*id.* at 282). In the House of Deputies, a claim that the Southern dioceses were absent because of willful separation (and hence guilty of the sin of schism) was formally rejected, and the absence of the Southern dioceses was left unexplained.⁷²

168. At the meeting of the General Convention in 1865, representatives of two Southern dioceses (North Carolina and Texas) were welcomed and resumed active participation, with no re-admission ritual that would have signified that the Church had been divided. JGC 1865 at 38. Furthermore, at this meeting, a proposal was made to divide the Church into geographical provinces, and the provinces proposed included other Southern dioceses that had not yet sent Deputies to the meetings of the General Convention. *Id.* at 49.

⁷² See Robert Bruce Mullin, "After Establishment What? The Paradox of the History of the Episcopal Church in America," in Douglas A. Sweeney and Charles Hambrick-Stowe, ed., Holding on to the Faith: Confessional Traditions in American Christianity (Lanham, MD: University Press of America, 2008) at 96-100.

169. In all this, there was no talk indicating that the oath of acceding to the Constitution could be or was abrogated.⁷³ The end of the Civil War led Southern Episcopalians not to accede anew, which might have made sense if accession were only like a voluntary treaty between equals, but simply to return to membership in the General Convention on the basis of their previous unbroken accession. The period of secession was a period of the forced separation of the Church, but not its division. Thus, we see that the Diocese of Virginia in its Convention of 1866 simply voted to resume its active “relations with” the General Convention:

“Whereas, the conditions which rendered necessary the separate organization of the Southern diocese no longer exist, and that organization has ceased by the consent and action of the Dioceses concerned; and whereas, the Diocese of Virginia, unchanged as are her principles, deems it most proper, under the existing circumstances, to resume her interrupted relations with the Protestant Episcopal Church in the United States: therefore,

“Resolved, That the Diocese do accordingly now resume its connection with the General Convention of the Protestant Episcopal Church in the United States, and that the Bishop be requested to send a copy of this preamble and resolution to the Presiding Bishop, and one to the Secretary of the house of clerical and lay deputies.”⁷⁴

170. Thus, throughout the Nineteenth Century, both theory and practice rejected the idea that a diocese might willfully leave the larger Church on the basis of supposed diocesan independence.

⁷³ If, as McCall claims, that accession was like a treaty between two sovereign powers which could be broken by either party, one would expect to see some discussion of requiring anew the oath of accession.

⁷⁴ The Journal of the Seventy-First Annual Council of the Diocese of Virginia (1866) at 29 (emphasis added).

CONCLUSION

171. The Episcopal Church has been hierarchical from its very beginning, with the General Convention at its apex. The hierarchical principle has been more fully formulated over the years, but was present from the very beginning. The Church is the child of a hierarchical church, the Church of England, and has attempted to continue that sense of hierarchy in a way that reflected democratic political principles. It is also clear that from the beginning the hierarchical principle was understood in a different manner from that in other churches. Final ecclesiastical authority was not vested in a monarch, a primate, or even a Constitution, but in the General Convention. But it was a hierarchical principle nonetheless.

172. The General Convention – with its House of Bishops and House of Clerical and Lay Deputies – represents the highest authority within the Church. It determines the Book of Common Prayer and who shall be bishops in the Church. Its legislation instructs on education, clerical responsibilities, rules for ordination, discipline, and many other vital matters. Over the history of the Church, it has been the final authority. The relationship of the General Convention to the Constitution of the Church is fundamentally different from the relationship of the Federal Government to the U.S. Constitution. The General Convention was the author of the Church's Constitution and alone has the power to amend it, and its legislative actions are not limited by the Constitution, as is the case in the Federal system.

173. Contrary to those who stress the similarities between the Church's Constitution and that of the United States, what is far more striking are their dissimilarities. The Constitution contains none of the federal language found in the U.S. Constitution. It neither limits the power of the General Convention nor explicitly reserves any powers to the dioceses or states. From its very beginning, the General Convention has been free to legislate in areas not mentioned in the

Constitution. It has legislated on issues of education, discipline, and ordination requirements and has dictated how congregations and dioceses are to operate.

174. This sole unqualified authority of the General Convention was regularly recognized by earlier commentators. They affirm that the General Convention had supreme authority over every unit of the Church.

175. We have also seen that there is virtually no tradition in the history of the Church claiming the right of dioceses to voluntarily withdraw from the General Convention, and, indeed, the overwhelming testimony of the commentators surveyed rejected any such action. The Church was united and central by purpose, because in only that way could it be The Protestant Episcopal Church in the United States of America. It was to be “a perpetual union” according to the great legal expert Murray Hoffman, and only in so doing could it fulfill its mission.⁷⁵

176. The authority of the General Convention is the center of the hierarchical nature of The Episcopal Church. Its authority gives unity and leadership to the Church. It was the case in the 1780s. It has continued to develop over the course of intervening years, and it is the case today.

⁷⁵ Hoffman, A Treatise on the Law of the Protestant Episcopal Church in the United States of America at 114.