

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
)
)
 THE PROTESTANT EPISCOPAL)
 CHURCH IN THE DIOCESE OF)
 SOUTH CAROLINA, ET AL.,)
)
 Plaintiffs,)
)
 v.)
)
 THE EPISCOPAL CHURCH, ET AL.,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2013-CP-18-00013

**DEFENDANTS’ NOTICE AND
 MOTION FOR RECONSIDERATION
 OF FINAL ORDER**

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRPC, Defendants The Episcopal Church (also referred to herein as “TEC” or “National Church”) and The Episcopal Church in South Carolina (also referred to herein as “TECSC”) hereby submit this motion for reconsideration of the Court’s Final Order dated and entered on February 3, 2015 (the “Order”).

This motion for reconsideration is divided into several sections as set forth below. Each section provides multiple grounds for reconsideration of the Court’s Order. Collectively, pursuant to these grounds for reconsideration, Defendants seek rulings on matters that the Court did not address in its Order; Defendants seek the Court’s reasons for deciding certain matters where no reasons are given; and Defendants seek for the Court to reconsider its findings and correct its errors based on the record and the law.

Section I. Grounds For Reconsideration Based On Exceptions To Particular Statements, Findings, And Conclusions In The Order.....Page 2

Section II. Grounds For Reconsideration Based On The Order’s Failure To Address Defendants’ Contentions Regarding The Identity Of The Parties, The Nature Of This Dispute, The Procedural History, The Evidence Presented, The Relevant And Determinative Facts, The Applicable Legal Analysis, And The Proper Relief.....Page 55

I.

**Grounds For Reconsideration Based On Exceptions
To Particular Statements, Findings, And Conclusions In The Order**

Defendants raise the following exceptions to particular statements, findings, and conclusions in the Order and Defendants respectfully request that the Court reconsider the same based on the record and the evidence and arguments identified herein.

On page 2, the Order fails to consider the true nature of this dispute and the real parties in interest. In the Complaint, the parties appearing as the Plaintiff Diocese and Plaintiff Trustees specifically sought declaratory judgments that they are the corporate identities they allege to be. Defendants, in response, sought declaratory judgments to the contrary. Because of the nature of such an identity dispute and the declaratory relief sought, the Court cannot begin its analysis by introducing Plaintiffs as the corporate identities they claim to be – because doing so presupposes the answer to the question that Plaintiffs asked the Court to resolve by declaratory judgment. The designation and alignment of the parties in the caption of the Complaint is not controlling: the Court must consider the real parties in interest in light of the nature of the relief sought. It is undisputed that the actual people that filed this action in the name of the Plaintiff Diocese and Plaintiff Trustees are a group of individuals that disaffiliated from TEC, led by Bishop Lawrence. The Court must determine, without any presuppositions, whether that group of people is entitled to act on behalf of the corporate identities at issue.

Also on page 2, the Order refers to the thirty-eight named Plaintiffs as typical corporations and only incidentally notes that their business is religious, as if that fact is inconsequential. Thirty-six of those named plaintiffs are churches, one is a trust, and one, at

least prior to this dispute, was a corporate shell for a diocese of TEC. Similarly, it is a misleading oversimplification to describe TEC as a “New York unincorporated association.” Although its administrative headquarters are located in New York, TEC is one of this country’s most well known and widespread religious organizations, comprised of approximately 110 dioceses, 7,500 parishes, and 2 million communicants, mostly in the United States but also extending to eighteen foreign countries. It is likewise an oversimplification to describe TECSC as a “South Carolina unincorporated association.” TECSC is a part of TEC. TECSC is TEC’s continuing diocese in this jurisdiction, which covers eastern South Carolina. In sum, the parties in this action are not typical corporations and associations and they should not be treated as such under the law. An entity’s status as a South Carolina corporation or an unincorporated association does not eradicate the protections of the First Amendment of the United States Constitution, which are discussed in further detail below. Additionally, unique statutory provisions, such as Section 180 of the South Carolina Nonprofit Corporations Act, apply to the religious corporations at issue, and principles of trust law apply to the Trustees to determine who is the beneficiary and what are the responsibilities of the Trustees, which are also discussed in further detail below. It is a masquerade to disregard the true nature and governance of these religious organizations and to characterize this dispute as one involving typical corporations and typical issues of corporate control. This dispute is overwhelmingly entangled with ecclesiastical determinations, such as the meaning of TEC’s canonical rules, the identity of its dioceses, and the authority of its dioceses’ leaders. Such determinations require deference to TEC, a hierarchical religious organization of which all of the other parties in this case are a part. Virtually every court in the nation to have discussed the issue has characterized TEC as “hierarchical.” See, e.g., (South Carolina Federal District Court) vonRosenberg v. Lawrence,

No. 2:13-587-CWH, Order (D.S.C. August 23, 2013); (Federal Fourth Circuit) Dixon v. Edwards, 290 F.3d 699, 716 (4th Cir. 2002); (California) Episcopal Church Cases, 198 P.3d 66, 71, 80-81 (Cal. 2009); Diocese of San Joaquin v. Schofield, No. 08-CE-CG-01425, Statement of Decision at 24-25 (June 19, 2014) (App. A045); (Connecticut) Rector, Wardens & Vestrymen of Trinity-St. Michael's Parish, Inc. v. Episcopal Church in Diocese of Conn., 620 A.2d 1280, 1285 (Conn. 1993); (Georgia) Rector, Wardens & Vestrymen of Christ Church v. Bishop of Episcopal Diocese of Ga., Inc., 699 S.E.2d 45, 48 (Ga. Ct. App. 2010), *aff'd*, 718 S.E.2d 237 (Ga. 2011); (Massachusetts) Parish of the Advent v. Protestant Episcopal Diocese of Mass., 688 N.E.2d 923, 931 (Mass. 1997); (Michigan) Bennison v. Sharp, 329 N.W.2d 466, 472 (Mich. Ct. App. 1982); (Nevada) Tea v. Protestant Episcopal Church in Diocese of Nev., 610 P.2d 182, 183 (Nev. 1980); (New Jersey) Protestant Episcopal Church in Diocese of N.J. v. Graves, 417 A.2d 19, 24 (N.J. 1980); (New York) Episcopal Diocese of Rochester v. Harnish, 899 N.E.2d 920, 921 (N.Y. 2008); (North Carolina) Daniel v. Wray, 580 S.E.2d 711, 714 (N.C. Ct. App. 2003); (Pennsylvania) In re Church of St. James the Less, No. 953NP of 2001, 2003 Phila. Ct. Com. Pl. LEXIS 91, at *24 (Mar. 10, 2003), *aff'd* in relevant part, 888 A.2d 795, 810 (Pa. 2005); (Tennessee) Convention of the Protestant Episcopal Church v. Rector, Wardens & Vestrymen of St. Andrew's Parish, No. M2010-01474-COA-R3-CV, 2012 WL 1454846 *15, *17 (Tenn. Ct. App. Apr. 25, 2012); (Texas) Masterson v. Diocese of Northwest Tex., 422 S.W.3d 594, 608 (Texas 2013); (Virginia) Protestant Episcopal Church in Diocese of Va. v. Truro Church, 694 S.E.2d 555, 558 (Va. 2010). *But see* Diocese of Quincy v. Episcopal Church, 14 N.E.3d 1245, 1256 (Ill. 2014) (affirming trial court's conclusion that it "could not 'constitutionally determine the highest judicatory authority'" in the Church).

On page 3, the Order incorrectly states that the Diocese is older than TEC. The evidence introduced at trial shows that an early convention of the Protestant Episcopal Church in the United States of America, held in 1784, predated and in fact recommended the earliest organizational meeting of former Anglican parishes in this State in 1785. These facts are represented on the face of the oldest document introduced by Plaintiffs from the Diocese's archives, dated February 8, 1785. DSC-56.

Also on page 3, the Order makes reference to a temporary restraining order, but fails to address that the motion for temporary restraining order was made *ex parte*. This was improper because (1) Plaintiffs were aware of the identity of TEC's counsel, and (2) there was no emergency that justified a lack of notice and opportunity for a hearing. Rule 65(b), SCRCPC ("No temporary restraining order shall be granted without notice of motion for the order to the adverse party unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon."). The *ex parte* motion was not filed until January 22, 2013 – which was 18 days after Plaintiffs filed their complaint alleging trademark infringement on January 4, 2013.

Also on page 3, the Order makes reference to a consent order, but fails to address that the consent order was not a concession or acknowledgment by Defendants on the merits of the preliminary injunction. To the contrary, the consent order provided: "Any party may move this Court upon written notice served at least 14 days before the time specified for the hearing, unless the parties consent to a shorter time, for an order modifying or dissolving this temporary injunction. This temporary injunction will remain in effect until further order of the Court." Defendants later moved to vacate or modify the consent order, which the Court denied.

On page 4, the Order makes reference to a federal action filed by Bishop vonRosenberg, but fails to address that whether that action was parallel and whether abstention was proper are issues pending before the Fourth Circuit Court of Appeals.

Also on page 4, the Order inaccurately states that Defendants “refused to engage in discovery contending that discovery was stayed.” In fact, the Court itself ruled that the case was stayed during the pendency of the appeal, including discovery. On January 15, 2014, Plaintiffs sent a letter to the Court requesting a ruling that the case is not stayed by the pending appeal and that discovery should proceed and that they should be authorized to issue subpoenas and depose witnesses. On January 17, 2014, the Court held a status conference by phone and ruled that the notice of appeal stayed the action and that the parties should not proceed with any matters affected by the appeal, including the discovery and subpoena issues discussed in Plaintiffs’ aforementioned letter. A few months later, on March 27, 2014, Plaintiffs again moved the Court to proceed with discovery and depositions. In response, on April 17, 2014, the Court once again stated that the case would remain stayed during the pendency of the appeal.

Also on pages 4 and 5, the Order references two interlocutory appeals taken by TECSC: one involving over 1,000 crucially important documents withheld from discovery by Plaintiffs, and another involving the joinder of the individuals Defendants allege to have acted *ultra vires* in filing this action in the name of Plaintiffs and manipulating their corporate documents. These issues have already been ruled on by this Court and are preserved for appeal. Defendants contend that these earlier decisions prejudiced them at trial by limiting the evidence they were able to present and the claims they were able to pursue.

On page 5, the Order’s Finding of Fact No. 1 is contrary to the evidence. A diocese, by definition, is a geographical sub-unit and district of a larger church. The Diocese came into

existence as the Diocese when TEC's constitution was adopted in 1789. D-425. The preceding meetings of representatives of former Anglican parishes in South Carolina, including the meeting on May 12, 1785, were preliminary steps in forming the Diocese that were recommended by an earlier Convention of TEC in 1784. DSC-56.

On page 6, the Order's Finding of Fact Nos. 3-5 are contrary to the evidence because the document dated May 31, 1786 is not a constitution of the Diocese. DSC-56. It is at best an ambiguous document, which proposes certain principles for the nascent organization of TEC, which were largely implemented in TEC's Constitution of 1789. Moreover, whatever this ambiguous document was intended to be when it was written, it was supplanted and became irrelevant when TEC's Constitution was adopted in 1789 and the Diocese came into existence as a diocese of TEC. Neither of the words "Constitution" nor "Diocese" appears on the face of the document. Article 1 introduces the entity to which the document applies as the "Protestant Episcopal Church in *these States*" – as opposed to referring to the Protestant Episcopal Church in *this State*. Article 2 refers back to the entity introduced in Article 1 (the "Protestant Episcopal Church in these States") using the pronoun "it" and the singular possessive phrase "its own Communion" – as opposed "they" and "their own Communion," which would have indicated independent churches in each state. Article 3 identifies the foreign authority, the Church of England, which is alluded to in Article 1, and recognizes the need of the Protestant Episcopal Church *in these States* to continue as near as possible to its liturgy. Article 4 is the only clause that refers to "this State," providing an exception to establishing bishops "in this State." However, that exception was crossed out in 1795 when a bishop consecrated by TEC became bishop of the Diocese, demonstrating the nonbinding nature of this ambiguous document. Article 5 does not reserve any authority or power to this or any diocese; it suggests an overall

structure of governance consistent with that set forth in in TEC's Constitution of 1789. Article 6 does not reserve any authority or power to this or any diocese. It suggests that parishes should have control over their own internal affairs, and the general ecclesiastical government should have control over the larger organization. This suggestion was partly implemented and partly disregarded, again demonstrating the nonbinding nature of this ambiguous document. While parishes in some respect handle their own day-to-day operations, for over two centuries, they have done so under according to the overarching governance prescribed by the Constitution and Canons of TEC, which provide detailed rules as to parish priests, vestries, communicants, etc. Moreover, the provisions from this 1786 document do not appear in any Constitutions of the Diocese in the record, which instead accede to, recognize, and acknowledge the authority of the Constitution and Canons of TEC.

On page 6, the Order's Finding of Fact No. 5, that "TEC's Constitution does not require that member dioceses have a bishop," is contrary to the evidence and the law. Throughout the Constitution and Canons of TEC, provisions regarding TEC's dioceses are full of references to bishops of the dioceses that imply that bishops are required. For example, Article V of the Constitution indicates that a diocese cannot be formed without a bishop. Furthermore, whether TEC's Constitution requires its member dioceses to have a bishop is an ecclesiastical determination that requires deference to TEC as a hierarchical church. Additionally, the Court did not indicate what evidence it used to support its contrary finding. To be sure, the Court could not support its finding based on Dr. Guelzo's testimony, which, if anything, establishes that the requirement of a bishop is implicit in TEC's Constitution. Tr. 2355-56. ("Q: Doctor, in fact, does the governance of the Episcopal Church today require that a diocese even have a bishop? A: Strictly speaking, no. It's one of the ironies of the way that the documents themselves have

been constructed over the years, that the constitution and canons both of the national church and the dioceses tend to respond to specific situations and specific questions. And if it doesn't occur, if it's not a particular challenge, then there tends not to be legal material on that or statutory material on that. So the exact idea that you must have a bishop in order for the diocese to function itself doesn't really appear in the documents.”).

On page 6, the Order's Finding of Fact No. 6 is contrary to the evidence. The conventions between 1785 and 1789 were preliminary steps to forming the Diocese as a part of TEC in 1789.

On page 7, the Order's Finding of Fact Nos. 9 and 10 fail to fully and adequately address evidence presented at trial regarding the meaning of the 1841 accession clause and like clauses in the record. The 1841 accession clause contains the phrase “accedes to,” together with the phrases “recognizes” and “adopts” and “acknowledges their authority accordingly,” all referring to the Constitution and Canons of TEC. A 2009 definition of the word “accede” in Black's Law Dictionary should not be applied to the distinguishable phrase “accedes to,” particularly when interpreted in the ecclesiastical context during the relevant time periods with the above listed additional phrases, which should not be disregarded or construed as merely duplicative or meaningless. Tellingly, an amendment first proposed at a Convention of the Diocese in 2010 (by those who ultimately disaffiliated from TEC) sought to remove additional phrases from Article 1 of the Diocese's Constitution. DSC-2. (“Resolved that Article I of the Diocese of South Carolina is hereby amended to read as follows. The Church in the Diocese of South Carolina accedes to ~~and adopts~~ the Constitution and Canons of the Protestant Episcopal Church in the United States of America ~~and acknowledges this authority accordingly.~~”). In sum, the accession clause of 1841 and like clauses in the record that repeatedly appear for the next two centuries

mean more than mere consent or agreement to the Constitution and Canons of TEC; they are binding.

On page 7, the Order's Finding of Fact No. 11 fails to address that the acts of secession taken by the confederate states during the Civil War stand as unlawful and unrecognized according to the law of this country. Corresponding acts of secession taken by divisions of national organizations during the Civil War, which relied upon the legality of the secession of the confederate states, must be considered in that context. Furthermore, the Court failed to address evidence that TEC did not recognize the withdrawal of the Diocese during the Civil War. The Diocese remained on the roll call at General Conventions and was not required to reapply to TEC after the war after was over, whereupon the Diocese resumed its long-standing operations as part of TEC. Moreover, the council of confederate dioceses recognized that they had been forced to "separate in a legislative capacity" because they had been "impaled by political events," and they resolved that "wherever the word Confederate occurs in the standards of this church the word United be substituted there for." See, e.g., Testimony of Dr. Edgar.

On page 7, the Order's Finding of Fact No. 12 fails to address that the Diocese's principal governing document has been the Constitution and Canons of TEC; whereas the Diocese's own Constitution and Canons provide only supplementary rules. This is manifest from the 1973 corporate charter, as well as Article I of the Diocese's own Constitution and Canons, which expressly accedes to, recognizes, adopts, and acknowledges the authority of the Constitution and Canons of TEC. It is also evident by comparing the size and breadth of the Constitution and Canons of TEC versus those of the Diocese, and the many references to the former throughout the later. The Order's Finding of Fact No. 12 also fails to address evidence that TEC's approval of amendments to the constitutions and canons of its dioceses always exists with regard to

amendments that are consistent with the Constitution and Canons of TEC. On the other hand, TEC's approval never exists for amendments that are inconsistent with the Constitution and Canons of TEC. The inescapable fact is that a diocese cannot contravene the Constitution and Canons of TEC without the diocese's bishop and other leadership breaching their oaths to conform to the Doctrine, Discipline, and Worship of TEC, which includes its Constitution and Canons, and without the diocese breaching its own constitution that accedes to, recognizes, adopts, and acknowledges the authority of the Constitution and Canons of TEC. The Order's Finding of Fact No. 12 also fails to address that the Constitution and Canons of TEC were incorporated by reference in the 1973 articles of incorporation and were therefore controlling over any inconsistent bylaws, including the purported corporate bylaws that appeared in 2010.

On pages 7 and 8, the Order's Finding of Fact Nos. 13-15 fail to address that the Convention of the Diocese is an ecclesiastical body, not a corporate one; that the Convention's delegates cannot exercise corporate authority; that the 1973 charter provides for corporate authority to be exercised by the Bishop operating under the Constitution and Canons of TEC; that the Standing Committee is a council of advice to the Bishop that only has ecclesiastical authority to act on behalf of the Diocese in the absence of a Bishop; and that the Standing Committee had no corporate authority under the 1973 charter or the bylaws, and that the corporate authority the Standing Committee purports to have comes from self-serving bylaws the Standing Committee adopted in 2010 and a retroactive attempt by a so-called "Convention" of disaffiliated individuals who, in 2013, purported to resolve to make the Standing Committee the Board of Directors.

On page 8, the Order's Finding of Fact No. 16 fails to address that Mark Lawrence was one of The Episcopal Church's duly ordained bishops and the Bishop of the Diocese. He was

not designated as the Diocese's COO or CEO until after the purported charter amendment in 2010 and the subsequent appearance of self-serving corporate bylaws. The Order's Finding of Fact No. 16 also fails to address that Mark Lawrence had to be approved and duly ordained as a bishop of TEC before he could become the Bishop of the Diocese. According to Lawrence's own testimony and the testimony of others at trial, the first time the Diocese elected Lawrence, he did not receive the requisite approval from the other dioceses, he was not ordained by TEC, and therefore could not and did not become Bishop of the Diocese. He remained at his parish in California.

On page 8, the Order's Finding of Fact No. 17 fails to address that the Bishop is vested with overall management of the affairs of the Diocese; that the Standing Committee is not the Board of Directors; that the Standing Committee is a merely council of advice to the Bishop that only has ecclesiastical authority to act on behalf of the Diocese in the absence of a Bishop; that the Bishop is designated in the 1973 charter as having the power of a typical board of directors; that the Bishop did not have an employment contract until after the *ultra vires* articles of amendment in 2010 and that the employment contract improperly provided for Mark Lawrence's control and salaried employment, irrespective of his position as a bishop of TEC and of the Diocese; and that the Trustees hold title to diocesan real property in trust for the South Carolina diocese of TEC and are responsible for its management.

On page 9, the Order's Finding of Fact Nos. 17 and 18 fail to address why the Court arbitrarily considers the Standing Committee to be the Board of Directors based on certain acts it self-servingly took, such as hiring Alan Runyan as its counsel, when, for example, the Diocesan Council is responsible for and administers the budget and program development of the Diocese. As between the Standing Committee and the Diocesan Council, the Diocesan Council has more

business responsibilities. Neither body, however, is the Board of Directors of the corporation chartered in the name of the Diocese in 1973.

On page 9, the Order's Finding of Fact No. 21 fails to address that the actual 1973 corporate charter itself makes no reference to the Standing Committee or its members.

On pages 9 and 10, the Order's Finding of Fact Nos. 22-23 fail to address that the actual amendment was signed by Bishop Allison under the title of "Bishop."

On page 10, the Order's Finding of Fact No. 24 fails to address that the Dennis Canon was also adopted in 1979 into the Canons of The Episcopal Church by a vote of both the House of Deputies, which included deputies elected by the Diocese, and the House of Bishops, which included the Diocese's Bishop. The delegates of the parishes of the Diocese then adopted the Dennis Canon into the Diocese's own Canons in 1987 at the Convention of the Diocese. These delegates and deputies were fully authorized to act for their parishes and the Diocese, respectively. The evidence also shows that the parishes thereafter acceded to the Constitution and Canons of the Diocese and TEC, which both included the Dennis Canon.

On pages 10 and 11, the Order's Finding of Fact No. 25 fails to address that Lawrence took his office under an oath to conform to the Doctrine, Discipline, and Worship of TEC, which includes its Constitution and Canons. Any authority the Diocese's Convention might have attempted to give Lawrence to decide questions over the Diocese's Constitution and Canons was limited accordingly. The Order's Finding of Fact No. 25 also fails to address that the amendments to the Constitution of the Diocese that were first proposed at the 2010 Convention had not been adopted at the time the corporate charter was amended in 2010. DSC-2 (March 26 and October 15, 2010: first vote of proposed amendments); DSC-3 (February 18 & 19, 2011: second vote and adoption of proposed amendments); DSC-9 (Corporate Articles of Amendment

dated October 19, 2010). Accordingly, the amendment to the corporate charter, when made, was in contravention of and inconsistent with the Constitution of the Diocese. The Diocese's Constitution requires that all amendments be voted on in two Conventions. DSC-2 ("Article XII 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.").

On page 11, the Order's Finding of Fact No. 26 fails to address that there is no evidence in the record that the Standing Committee was the Board of Directors. Moreover, this vote was in contravention of the corporate charter that incorporated by reference the Constitution and Canons of the TEC; this vote was also in contravention of the Diocese's Constitution at the time, which still acceded to, adopted, and acknowledged the authority of the Constitution and Canons of TEC; and this vote was prior to the Convention's resolution to amend the corporate charter.

On pages 11 and 12, the Order's Finding of Fact No. 27 fails to address that the delegates of the Convention of the Diocese Convention did not have corporate authority under the 1973 charter, and certainly did not have authority to resolve to contravene the corporate charter by removing the Constitution and Canons of TEC; that the delegates of the Convention of the Diocese could not revoke or divest the trust interest that had been conveyed by the Dennis Canon; and that the Dennis Canon effectively remained in the Constitution of the Diocese through its Article I, which incorporated the Constitution and Canons of TEC, which included the Dennis Canon.

On page 12, the Order's Finding of Fact No. 28 fails to address that articles of amendment were executed by Bishop Lawrence on October 19, 2010. DSC-9. And according to testimony by Plaintiffs' witnesses, the amendment was voted on by the Standing Committee prior to October 15, 2010. Tr. 173-74. The amendment thus preceded the new bylaws in both its vote and its execution. The Court therefore cannot rely on the new bylaws as somehow providing retroactive authority for the amendment of the charter.

On page 12, the Order's Finding of Fact Nos. 29-30 fail to address that the applications included a false declaration of exclusive rights and the absence of confusingly similar federal trademarks. Furthermore, the registrations do not raise any presumption of trademark rights; they are only evidence of the registration itself. TEC's trademark rights and federal registrations are controlling and require cancellation of these state registrations.

On page 13, the Order's Finding of Fact No. 32 fails to address that the quitclaim deeds were inconsistently executed by various entities and individuals, including the Bishop, the Standing Committee, the Diocese, and the corporation chartered in the name of the Diocese, but never by the Trustees; that the quitclaim deeds were kept secret from TEC; that Plaintiffs' witnesses repeatedly testified that the quitclaim deeds did not convey any interest whatsoever; that the quitclaim deeds fail for lack of consideration; that the quitclaim deeds represent violations of the Trustees duty to hold the assets of the Diocese in trust; that the quitclaim deeds represent violations of the oaths taken by leaders of the Diocese; and that the quitclaim deeds violated the Diocese's own fundamental rules – because they contravened the Dennis Canon. The Dennis Canon remains one of TEC's Canons, which was undisputedly incorporated into Article I of the Diocese's Constitution until at least 2011. It was also undisputedly one of the

Diocese's canons until at least 2010; and its removal from there was inconsistent with the Diocese's own constitution at the time.

On page 13, the Order's Finding of Fact Nos. 33-34 fail to address that the Standing Committee was not the Board of Directors of the corporation. Furthermore, this resolution improperly purported to avoid the issues of authorization and good standing by making automatic what Bishop Lawrence would not be able to do in the future if TEC disciplined him and restricted or removed his authority.

On page 13, the Order's Finding of Fact No. 35 fails to address that Bishop Lawrence never did attempt to respond to the claims. Regardless, the First Amendment prohibits the Court from imposing due process procedures on the inner workings of TEC.

On page 14, the Order's Finding of Fact No. 36 fails to address that the withdrawal of the Diocese from TEC was pursuant to an unauthorized and ineffective resolution that was purported to be automatic and retroactive.

On page 14, the Order's Finding of Fact No. 37 fails to address that the changes to the Constitution and Canons of the Diocese were made after the fact in an attempt to retroactively justify acts of disaffiliation that contravened the Constitution and Canons when taken; and that this Convention was attended only by the faction that wished to disaffiliate.

On page 14, the Order's Finding of Fact No. 38 fails to address that the purported March 2013 "Convention" of the Diocese was presided over by Bishop Lawrence, who had disaffiliated from TEC and was no longer a bishop of TEC or of its diocese, and attended by people that had also decided to disaffiliate from TEC. Furthermore, March 2013 marks the first date when the Diocese's own Constitution purportedly did not provide for accession to the Constitution of TEC. All of Plaintiffs' prior acts leading to disaffiliation, which were in contravention of the

Constitution of TEC and the Diocese when taken, fatally depend upon this purported change for retroactive support.

On page 14, the Order's Finding of Fact No. 39 fails to address that evidence and testimony from numerous clearly demonstrates that Mark Lawrence intended and in fact attempted to lead the Diocese out of TEC and that he testified and contends in this action that he was successful in doing so.

On page 14, the Order's Finding of Fact No. 40 fails to address that when a corporate director acts *ultra vires*, he or she is not in good standing.

On page 15, the Order's Finding of Fact No. 44 fails to address evidence that a substantial minority of South Carolinians within the Diocese and within most if not all of the parishes in the Diocese oppose the acts taken by Bishop Lawrence and his followers. This dispute cannot fairly be characterized as being between unified South Carolinians and a far off organization headquartered in New York. It is very much a dispute between and among South Carolinians. Plaintiffs only enjoy a slight majority in their total number of supporters, and they have disregarded and taken property away from their South Carolinian neighbors.

On page 16, the Order's Finding of Fact Nos. 45-47 fail to address that the 1880 and 1902 Acts have not been amended and trump inconsistent bylaws; that a beneficiary must exist for property to be held in trust and that the beneficiary is TEC's diocese, TECSC; and that all, not "some" of the property held by the Trustees is held in trust for TEC's diocese, TECSC.

On page 16, the Order's Finding of Fact No. 48 fails to address that the 1880 and 1902 Acts provide that the beneficiary and electorate body of the trust is TEC's diocese. As a hierarchical church, the Court must defer to TEC's determination of who is its continuing diocese. The Order also fails to address that the recent changes to the bylaws were *ultra vires*

because they contravened the 1880 and 1902 Acts; and that accordingly, the 1982 bylaws, which incorporate by reference the Constitution and Canons of TEC, are still in effect. TEC therefore does effectively have a voice in the Trustees governance.

On page 16, the Order's Finding of Fact No. 49 does not address that the Trustees corporation does not have members: it has trustees obliged to hold assets in trust according to the Acts.

On page 16, the Order's Finding of Fact No. 50 is contrary to the plain language of the Acts, which does in fact reference TEC. The Court fails to provide any analysis whatsoever of that language to support its finding.

On page 16, the Order's Finding of Fact No. 51 fails to address that a majority of the Trustees board have the power to establish supplementary details of governance, but cannot adopt bylaws that are inconsistent with the 1880 and 1902 Acts.

On pages 16-17, the Order's Finding of Fact No. 52 fails to address that the recent bylaws are trumped by the 1880 and 1902 Acts.

On page 17, the Order's Finding of Fact No. 53 fails to address evidence that the parishes were a part of the Diocese and a part of TEC; that delegates of the Plaintiff parishes elected deputies through the diocesan convention to participate in the General Convention; that the evidence shows that the parishes acceded to the Constitution and Canons of the Diocese and of TEC. This finding also improperly presupposes, without any analysis, that TECSC is not the continuing diocese that has existed since the Eighteenth Century and that instead it was only recently formed in 2013 – which is a central issue to be decided by declaratory judgment in this action.

On page 17, the Order's Finding of Fact No. 55 fails to address that the Constitution and Canons of TEC and of the Diocese provide regulations regarding activities of the parishes and the qualifications and scope of authority of the vestries; and the Bishop visits and oversees the operation of parishes.

On page 17, the Order's Finding of Fact No. 56 fails to address that every delegate has a vote, four for parishes, two for missions, except in a vote by orders in which each parish has one vote and a vote by orders.

On page 17, the Order's Finding of Fact No. 57 fails to address that the Constitution and Canons of TEC and of the Diocese do include restrictions on parishes in withdrawing their membership. The Dennis Canon is one example. Of course, people can withdraw from TEC, but the parishes remain with TEC.

On page 19, the Order's Finding of Fact No. 63 fails to address that the governing documents of the parishes also included the Constitution and Canons of TEC and of the Diocese and the Book of Common Prayer.

On page 19, the Order's Finding of Fact No. 64 fails to address that although the amendments may have satisfied notice and quorum requirements, they were in contravention of their accession to TEC and its Constitution and Canons.

On page 20, the Order's Finding of Fact Nos. 65-66 fail to address that Defendants have a trust interest in the parishes' property.

On page 20, the Order's Finding of Fact No. 67 again oversimplifies the organizational nature of TEC, as discussed above.

On page 20, the Order's Finding of Fact No. 68 fails to address that TEC met in Convention in 1784 (with representatives from several states, not including South Carolina) and

recommended that former Anglican parishes in South Carolina join it. The Order's Finding of Fact No. 68 also fails to address that the Plaintiff parishes were all a part of TEC and now claim to have withdrawn from TEC. Whether parishes are "members" of TEC in a typical common law association or corporate sense is a misguided legal question that infringes upon the TEC's First Amendment rights and disregards the true organizational nature of TEC: TEC's dioceses and parishes are part of TEC, as a hierarchical religious organization. The First Amendment requires that TEC is the only body that can declare who are its dioceses and parishes.

On page 20, the Order's Finding of Fact No. 69 fails to address that dioceses are in union with and part of TEC. Whether diocese are "members" of TEC in a typical common law association or corporate sense is a misguided legal question that infringes upon the First Amendment and disregards the true organizational nature of TEC: TEC's dioceses and parishes are part of TEC, as a hierarchical religious organization. The First Amendment requires that TEC is the only body that can declare who are its dioceses and parishes.

On page 20, the Order's Finding of Fact No. 70 fails to address that the Diocese had the Dennis Canon in its own Constitution by way of Article 1, which incorporated TEC's Canons.

On page 21, the Order's Finding of Fact No. 71 fails to address that TEC does not need such rights because the Diocese is part of it and through the Diocese's own Constitution, acceded to TEC's Constitution and Canons.

On page 21, the Order's Finding of Fact No. 72 fails to address TEC has determined that its dioceses cannot withdraw from it except with permission from the General Convention, and the First Amendment requires that this Court defer to that determination on that ecclesiastical issue.

On page 21, the Order's Finding of Fact No. 73 fails to address that the Constitution and Canons of TEC do provide for the discipline of bishops and priests with authority over dioceses; TEC has authority over the creation and operation over all dioceses; and that TEC's dioceses are part of TEC. This finding further supports the point that the concept of membership in a typical common law association or corporate sense is inapplicable to TEC and its dioceses and parishes. If each diocese was itself a wholly separate and independent member, having the power to contravene TEC, than disciplinary rules and sanctions against dioceses would certainly have been adopted.

On page 21, the Order's Finding of Fact No. 74 highlights the fact that TEC is a not just a typical New York association. TEC's dioceses are a part of TEC.

On page 21, the Order's Finding of Fact No. 75 fails to address that this finding is based on one random letter written by a treasurer for the Domestic and Foreign Missionary Society in 1987. In the face of the plethora of other documentary evidence demonstrating the hierarchical structure of TEC, it alone is not credible or sufficient evidence to find that TEC's dioceses are autonomous.

On page 21, the Order's Finding of Fact No. 76 fails to address that the General Convention is the ultimate judicatory, and that it has delegated its authority to other bodies, including the Disciplinary Board for Bishops and the House of Bishops.

On page 21, the Order's Finding of Fact No. 77 fails to address that such oversight is not necessary because the dioceses are controlled by the Constitution and Canons of TEC, and the authority of their officers are limited accordingly.

On page 21, the Order's Finding of Fact No. 78 fails to address evidence other benefits that TEC has given to the Diocese, including, for example, the rights to use TEC's brand and intellectual property, trained clergy, and other benefits detailed below.

On page 22, the Order's Finding of Fact No. 79 fails to address a large volume of evidence presented at trial and a long line of precedent that TEC, including its dioceses and parishes, is hierarchical and that the General Convention is its highest authority. It also fails to address the oath that must be taken by all bishops of TEC to conform to the doctrine, discipline, and worship of TEC, including its Constitution and Canons. This oath limits the ecclesiastical authority of bishops accordingly.

On page 22, the Order's Finding of Fact No. 80 fails to address that the historical derivation of a word is not determinative of trademark rights, as discussed below.

On pages 22-23, the Order's Finding of Fact No. 81 fails to address evidence presented by Defendants that TEC is hierarchical and that its dioceses are a part of it and cannot withdraw; that the Diocese did not come into existence as a diocese until TEC adopted its constitution in 1789; that Dr. Guelzo testified that he had no familiarity or expertise with the 20th and 21st centuries; that Dr. Guelzo's opinions regarding TEC and its dioceses therefore are wholly uninformed by any familiarity or expertise with what has transpired since the 1800's; that Dr. Guelzo's testimony on the ancient meaning and use of the word Episcopal has no relevance to the modern use and meaning of the word in this country, the federal trademark registrations, and the public confusion protected by the Lanham Act.

On page 23, the Order's Finding of Fact No. 82 presupposes the declaratory relief sought before considering the evidence and fails to address evidence that TECSC is TEC's continuing diocese that has existed since the Eighteenth Century.

Beginning on page 23, the Order's conclusions of law are based on a misguided and incomplete analysis of applicable statutes and case law.

On pages 23-24, the Order fails to fully and adequately address First Amendment limitations and U.S. Supreme Court jurisprudence in its application of neutral principles of law. All Saints did not do away with all First Amendment deference to hierarchical religious organizations. It explicitly adopted, as it was bound to, the First Amendment protections that limit the application of neutral principles of law, citing the U.S. Supreme Court decisions in Jones and Serbian:

South Carolina courts are to apply the neutral principles of law approach as approved by the Supreme Court of the United States in Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979).

* * *

Nonetheless, where a civil court is presented an issue which is a question of religious law or doctrine masquerading as a dispute over church property or corporate control, it must defer to the decisions of the proper church judicatories in so far as it concerns religious or doctrinal issues. See Serbian Eastern Orthodox Diocese, 426 U.S. at 709, 96 S.Ct. 2372 (finding that the controversy before the Court " essentially involve[d] not a church property dispute, but a religious dispute the resolution of which ... is for ecclesiastical and not civil tribunals.").

All Saints Parish Waccamaw v. The Protestant Episcopal Church in Diocese of South Carolina, 685 S.E.2d 163, 385 S.C. 428 (S.C. 2009).

More particularly, Jones describes the First Amendment limitations on the neutral principle approach as follows:

It is also clear, however, that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." Id. at 449. Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. Serbian

Orthodox Diocese v. Milivojevich, 426 U.S. 696, 710 (1976); Maryland & Va. Churches v. Sharpsburg Church, 396 U.S. 367, 368 (1970); Presbyterian Church I, 393 U.S. at 449. As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. Serbian Orthodox Diocese, 426 U.S. at 724-725; cf. Watson v. Jones, 13 Wall. 679, 733-734 (1872). **Subject to these limitations**, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes.

Jones, 443 U.S. at 602 (emphasis added).

Serbian and its progeny are clear on the specific point that civil courts must defer to a hierarchical church's determination as to the authority of its bishops. Serbian, 426 U.S. 696; see also Dixon v. Edwards, 290 F.3d 699, 718 (4th Cir. 2002) ("In the final analysis, it was for the Episcopal Church to determine whether Bishop Dixon was acting within the bounds of her role as Bishop *Pro Tempore* of the Diocese of Washington."); cf. Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, ___ U.S. ___, 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.").

Plaintiffs brought this action masquerading it as a property and corporate dispute, but the evidence presented at trial clearly revealed that it is really about religious polity and theology.

Also beginning on page 24, the Order misinterprets, misapplies and fails to analyze the distinguishing issues and facts in All Saints. These points are discussed at length at the end of this section.

On page 25, Footnote 5, the Order fails to address that determining the rightful leaders of the Diocese is a First Amendment issue that requires deference to TEC. The existence of a corporate shell does not change that; in other words, the existence of a corporate shell does not

effectively remove First Amendment protections. It is a masquerade to consider the diocesan leadership questions in this case as typical corporate issues.

On page 26, the Order fails to address that for over two hundred years, the Diocese has been governed according to the Constitution and Canons of TEC.

On page 26, footnote 7 of the Order fails to address that majority rule does not apply in hierarchical religious organizations like The Episcopal Church.

On page 26, the Order inaccurately states that it is uncontested that the procedures in the Constitution and Canons were followed; and that the Standing Committee was the Board of Directors.

On page 27, the Order inaccurately states that the Convention of the Diocese removed all references to the Diocese's association with TEC in its Constitution and Canons in 2012; as discussed herein, that was not even attempted until a second vote was taken at the so-called Convention of the Diocese presided over by Bishop Lawrence in 2013 when he was no longer a bishop of TEC.

On page 27 at Footnote 8, the Order fails to address that Defendants claimed the identity of the corporate plaintiffs in this identity dispute and that Defendants attempted to join the individuals they alleged to be acting *ultra vires* as third party defendants. In effect, therefore, Defendants alleged a derivative claim.

On page 27, the Order fails to address that the 1987 amendment to the 1973 corporate charter was valid and distinguishable from the 2010 amendment because it did not contravene the charter itself.

On pages 27-28, the Order fails to fully and adequately address Prof. McWilliams' expert opinion. Additionally, contrary to statements in the Order, Prof. McWilliams did not opine that

the corporation could never amend its purpose: he opined only that the amendment in question was improper.

On page 28, the Order fails to address that there is no evidence that the Standing Committee was the Board of Directors.

On page 28, Footnote 9, the Order fails to follow the cardinal rule of statutory construction: that a statute should not be construed as meaningless.

On pages 29-30, the Order fails to address that Section 801(c) provides that the articles may authorize one person with the powers of the board of directors and that the 1973 corporate charter does that with respect to the position of Bishop; that the 1973 corporate charter provides no corporate authority to delegates of the Convention; that any power arguably possessed by the delegates is limited by the 1973 corporate charter and the Constitution and Canons of TEC and the Diocese; that the purported corporate bylaws that appeared in 2010 were contradictory to the 1973 charter and the Constitution and Canons of TEC and the Diocese; that the Standing Committee is not the Board of Directors of the corporation; that the Standing Committee is a council of advice to the Bishop that only has ecclesiastical authority in the absence of the bishop; that the Bishop, which is in fact designated as having authority in the 1973 corporate charter, does not even have a vote on the Standing Committee, which further belies the Court's conclusion that the Standing Committee is the Board of Directors; that the delegates of the Convention did not purport to make the Standing Committee the Board of Directors of the corporation until the so-called "Convention" in March 2013, which was presided over and attended by individuals that had disaffiliated from TEC; that the 1987 amendment itself was actually signed under the title of "Bishop"; that the Diocese has done more than follow the Constitution and Canons of TEC: for two centuries, it has operated as a sub-unit and geographic

jurisdictional diocese of TEC, its representatives have participated in the General Convention of TEC, and it has explicitly acceded to, adopted, recognized, and acknowledged the authority of the Constitution and Canons of TEC and its General Convention.

On page 31, the Order fails to address that the application of the First Amendment of the Constitution of the United States affects how the common law is applied to South Carolina religious organizations and whether they have the right to withdraw from larger hierarchical organizations of which they are a part. The Order also fails to address that the corporate and common law concept of “membership” is not applicable to describe the hierarchical religious organization of TEC and its dioceses. The Order also fails to address that being in “association” with is different than being part of and in union with TEC. Furthermore, it is misguided for the Court to rely on the absence of rules sanctioning or expelling dioceses themselves. Because TEC’s dioceses are a part of its hierarchical organization, and because TEC has rules for the discipline and removal of bishops having authority in its dioceses, no such rules are logical or necessary. Their absence only further supports Defendants’ position and belies the Court’s conclusions that the diocese is a member in a typical corporate or common law sense. At Footnote 11, the Order fails to address Bishop Daniel’s testimony about how it is clear from the Constitution and Canons of TEC that a diocese cannot disaffiliate without the consent of the General Convention. The Order also fails to address that TEC has made its own determination that its dioceses cannot disaffiliate from it without the consent of the General Convention. The Court is required to defer to that ecclesiastical determination of TEC as a hierarchical church.

On pages 33-34, the Order fails to address that the corporate and common law concepts of “membership” are not applicable to describe the beneficiary of the trust or TEC’s connection to the trust. The Order also fails to address that in its opening sentence, the 1880 Act makes

reference to the “Protestant Episcopal Church for the Diocese of South Carolina,” and that the 1880 and 1902 Acts go on to make reference back to the “Protestant Episcopal Church for the Diocese of South Carolina” by using the phrases “said Church” and “said Diocese” together and apart with various other words which clearly describe the property held in trust, the beneficiary of the trust, and the electorate body of the Trustees (e.g., “Protestant Episcopal Church *for* the Diocese of South Carolina”; “...objects connected *with* said Church *in* said Diocese...”; “*of* the Diocese *of* the said church”; “*in* and *for* the said church *in* the said Diocese”; “...Council or Convention *of* the Episcopal Church *in* the Diocese of South Carolina”). The beneficiary is a singular entity – but that singular entity is described as being a diocese of TEC: not a particular corporation, and certainly not one that did not exist at the time and purports to no longer be a corporate shell for a diocese of TEC. The Order also fails to explain how D-383B supports the Court’s construction of this legislative charter: Defendants contend it does not. The Order also fails to address that the 1880 Act capitalizes the C in “said Church.” The 1902 Act does not explain or suggest that there is any significance to changing that C to the lower case. The 1902 Act similarly capitalizes the T in Trustees, inconsistent with the 1880 Act. Moreover, the 1902 Act references and incorporates the terms of the 1880 Act without fully repeating its terms. Therefore, the language of the 1880 Act is part of the operative language of the 1902 Act. The Order also fails to address that the Trustees’ bylaws cannot be inconsistent with the legislative charter. The legislative charter only gives the Trustees the power to make rules “for their government and for the management of the property under their charge...” Their charge, according to the 1880 and 1902 Acts, is to hold property in trust for the said diocese of the said church. The legislative charter therefore gives the Trustees the power to perform that charge as a

majority of Trustees best sees fit, but it does not give them the power to change that charge. In other words, the Trustees cannot change the beneficiary of the trust.

On pages 33-37, the Order addresses the parishes collectively, without regard to the unique facts at issue for many of the parishes, discussed in further detail below.

On page 35, the Order fails to address that the Dennis Canon was first adopted by TEC in its Canons in 1979, and that the Diocese incorporated it into its own Constitution through its Article I, which incorporated the Constitution and Canons of TEC, which included the Dennis Canon. The Diocese then separately adopted the Dennis Canon into its own Canons in 1987, as voted upon and approved by the parish delegates having authority to act for the parishes. These parish delegates were fully authorized to act for their parishes. The evidence also shows that the parishes thereafter acceded in their own governing documents to the Constitution and Canons of the Diocese and TEC, which both included the Dennis Canon.

On pages 33-37, the Order fails to address distinguishing facts and issues in applying All Saints Parish Waccamaw v. The Protestant Episcopal Church in Diocese of South Carolina, 685 S.E.2d 163, 385 S.C. 428 (S.C. 2009) to the parish issues in this case. The discussion of the Dennis Canon in All Saints has been misunderstood and misapplied by this Court. In All Saints, the Diocese defendant contended that its allegiance to the Dennis Canon, coupled with its filing of a notice in Georgetown County,¹ gave the Diocese a trust interest in the parish plaintiff's

¹ Whether or not The Episcopal Church or the Diocese filed record notice of the Dennis Canon with the county recording offices of the respective parishes would only be relevant as to The Episcopal Church and TECSC's rights against third party *bona fide* purchasers without actual or constructive notice of the trust. See South Carolina Tax Commission v. Belk, 225 S.E.2d 177, 179, 266 S.C. 539, 543-4 (1976). Here, there has been no purchase of the parish property by a third party; the Parish-Plaintiffs certainly have actual notice of the Dennis Canon; authorized representatives of the Parish-Plaintiffs unanimously voted in favor of the Dennis Canon and accepted its terms in consideration for the many benefits of their continued affiliation with The Episcopal Church and the Diocese, discussed above. The Episcopal Church and

property. 685 S.E.2d at 437-438. The All Saints opinion held that these actions of the Diocese did not create a trust:

It is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of another. The Diocese did not, at the time it recorded the 2000 Notice, have any interest in the congregation's property. Therefore, the recordation of the 2000 Notice could not have created a trust over the property.

For the aforementioned reasons, we hold that title to the property at issue is held by All Saints Parish, Waccamaw, Inc., the Dennis Canons had no legal effect on the title to the congregation's property, and the 2000 Notice should be removed from the Georgetown County records.

Id. at 449.

The All Saints Court analyzed the “trust” claim in light of the actions of the Diocese, and rested its decision on the fact that the Diocese did not have title to the parish’s property. Here the “trust” claims that are made by the National Church are based upon *the actions of the parishes* - entities holding title to property which they repeatedly declared was held in trust for the benefit of the National Church.

The record of the proceeding contains most, if not all, of the records of the governing documents of the parish Plaintiffs. These include such documents as corporate charters, bylaws, and similar documents with their various iterations. The records of the Plaintiff Parish of St. Jude’s at Walterboro serve as an example. For many years, Article II of the Constitution of St. Jude’s at Walterboro stated that:

The Church of St. Jude's accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church in the United States of America and also the Constitution and Canons in the Church in the Diocese of South Carolina and acknowledges their authority accordingly.

TECSC are therefore entitled to enforce the Dennis Canon against the Parish-Plaintiffs without regard to any recording statutes. The All Saints decision does not hold otherwise.

The Constitution was updated in 1990 and 2006 without any modification of this language. The Dennis Canon was adopted by the National Church in 1979. Insofar as St. Jude's Constitution, "accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church in the States of America" after 1979, St. Jude's Constitution accedes to and adopts the Dennis Canon.² As hereinafter argued, this created an irrevocable trust for the benefit of the National Church.

This Court failed to review and consider the historical records of all of the Plaintiff parishes so as to determine whether they, like Plaintiff St. Jude's, created irrevocable trusts for the benefit of the National Church. Many of the Plaintiff parishes have historical records that are not materially different from that of St. Jude's. These include, but are not limited to: St. Andrews, St. Helena's, St. Michael's, St. James (James Island), Holy Comforter, St. John's Parish(Charleston County), St. Paul's Parish (Summerville), Trinity Episcopal (Myrtle Beach), Cathedral St. Paul & St. Luke (Radcliffeboro), St. Paul's (Conway), Holy Trinity (Charleston), All Saints (Florence), St. Luke's (Hilton Head), St Matthews (Ft. Motte), St. Bartholomew's (Hartsville), Trinity Episcopal (Edisto Island), Church of the Holy Cross, Christ Church (Mt. Pleasant), and Church of the Resurrection (Surfside). In addition, it appears that other Plaintiff parishes acceded to, and adopted, the Constitution and Canons of the Diocese *after* the Diocese adopted the Dennis Canon. Consequently, even if those Plaintiffs did not specifically accede to, and adopt, the Constitution and Canons of the National Church, they would have nonetheless created an irrevocable trust for its benefit.

Given the already exceptional length required for this Motion for Reconsideration, Defendants do not believe it appropriate to address in detail the historical records of each

² The All Saints opinion does not address the effect of the Dennis Canon in this context.

Plaintiff parish. Rather, it is respectfully submitted that the Court erred by failing to address in detail *all* of these parish records so as to ascertain whether the Plaintiff parishes have created irrevocable trusts for the benefit of the National Church.

Also on pages 33-37, the Order misstates the applicable trust law, which is discussed in further detail below. For instance, the Order fails to address that the trust code was not adopted until 2006 and that prior thereto express trusts were presumed to be irrevocable; that the law at the time of the creation of the trust is the law that applies; and that an express trust need not be in writing. S.C. Code Ann. § 62-7-407 (“Except as otherwise required by statute, a trust need not be evidenced by a trust instrument. The creation of an oral trust and its terms may be established only by clear and convincing evidence.”); Beckham v. Short, 380 S.E.2d 826, 828, 298 S.C. 348, 351 (1989) (“...the doctrine of part performance in the context of oral trusts is well settled.”); S.C. Code Ann. § 62-7-403 (“A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation: (1) the settlor was domiciled, had a place of abode, or was a national; (2) a trustee was domiciled or had a place of business; or (3) any trust property was located.”).

Also on pages 33-37, the Order fails to address that membership of the parishes in TEC in a corporate or common law sense is not applicable in this context involving TEC, a hierarchical organization of which TEC’s dioceses and parishes are a part.

On page 35, the Order fails to address that the substantive point in Jones v. Wolf is that the general church could include a trust in its own governing rules. No court has been persuaded that the governing rules must be embodied in a denomination’s constitution – rather than its canons – to be enforceable.

On page 36, Footnote 16, the Order fails to address that it is Defendants that have been divested of rights based on retroactive constitutional changes. TEC had a vested trust interest that the parishes chose to give TEC. The parishes had no right to divest it.

On pages 37-44, the Order fails to address federal trademark law and TEC's federally registered trademarks. The Order also fails to address that all South Carolina state trademark registrations are only proof of a mark's registration, provide no presumption of substantive trademark rights, are issued by the Secretary of State without a search or substantive examination based on a self-serving declaration by the applicant, and are subject to cancellation based on pre-existing federal registrations. The Order also mischaracterizes Defendants' argument regarding derivation and fails to address several of Defendants' trademark related counterclaims and defenses. The Order also fails to address the evidence presented at trial of actual and likely confusion resulting from Plaintiffs' use of the marks after purporting to disaffiliate from TEC. The Order also fails to address that Plaintiffs' claims based on a criminal statute for improper use of names are preempted by the Lanham Act. These issues are all detailed further below.

On page 39, the Order inaccurately states that Defendants admitted that Plaintiffs own the marks. Defendants admitted only that TEC, and its continuing diocese that remains a part of it, is the owner of the marks.

On pages 39-42, the Order fails to address that TECSC took extensive measures to comply with the Court's TRO and preliminary injunction in this case, as testified to by Bishop vonRosenberg.

As mentioned above, beginning on page 24, the Order misinterprets, misapplies, and fails to address distinguishing facts and issues in All Saints. The Order essentially holds that the recent flurry of self-serving paperwork that Bishop Lawrence and others drew up (including the

corporate charter amendment, quitclaim deeds, and state trademark filings) represents the determinative “neutral” evidence in this case according to All Saints. Essentially everything else outside of those documents, the Court holds, is ecclesiastical and off limits. The Court provides, in turn, that the applicable legal analysis is simple and limited to whether those documents, on the surface, are technically compliant with certain isolated statutory provisions applied in a vacuum. As discussed above, the Order disregards, for example: the ordination vows and declarations and further assurances relied upon by the Church in providing jobs and delegating authority to Lawrence and the clergymen who conspired with him; the nature and history of the preexisting diocese; the language in the 1973 corporate charter that adopts the Church’s hierarchical rules to serve as the framework for its corporate governance; the parishes’ own votes to create a trust interest in their property; and year after year of custom, acquiescence, course of conduct, reliance, and acceptance of benefits.

Such an interpretation or extension of All Saints, however, is contrary to the U.S. Supreme Court’s decision in Jones v. Wolf and unconstitutional under the First and Fourteenth Amendments.

In approving the “neutral principles of law” approach, Jones v. Wolf explicitly held that state courts should indeed scrutinize evidence arising in an ecclesiastical context (*e.g.*, church constitutions) in secular terms under neutral principles of law, as follows:

Furthermore, the neutral principles analysis shares the peculiar genius of private law systems in general -- flexibility in ordering private rights and obligations to reflect the intentions of the parties. . . . The neutral principles method, at least as it has evolved in Georgia, requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church . . . In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious

precepts in determining whether the document indicates that the parties have intended to create a trust.

443 U.S. at 603.

Subsequent cases have analyzed evidence arising in an ecclesiastical context accordingly. See In re Church of St. James Less, 888 A.2d 795 (Pa. 2005) (“However, as explained above, we hold that St. James is bound by the Dennis Canon under neutral principles of law as well as the fact that St. James had already agreed to place its property in trust for the Diocese prior to the enactment of the Dennis Canon. Accordingly, contrary to St. James’ contention, *we are not simply deferring to a religious canon ‘to override the rights of parties under civil law.’*”) (emphasis added); The Conference of African Union First Colored Methodist Protestant Church v. Hovington Faith Community Church, Del. Ch., C.A. 1751-MG (“Among the neutral principles of law to which this Court looks in resolving disputes over church property is the doctrine of implied trust. Under that doctrine, where a local church, incorporated under the laws of this State, exists in affiliation with and is a member of a general denominational church and holds property acquired by general grant, the property is held in ‘trust for the maintenance and furtherance of the faith and creed of the denominational church at large.’”); Trustees of the Peninsula-Delaware Annual Conference of the United Methodist Church, Inc. v. East Lake Methodist Episcopal Church, Inc., Del. Ch., C.A. No. 14530, Chandler, C. (Feb. 13, 1998) (OPINION) at 23, *aff’d*, 731 A.2d 798 (1999) (“In church property control disputes, relevant evidence of the intent to create a trust interest should not be rejected solely because it does not relate exclusively to or contain the language of traditional property and trust law. An implied trust was correctly found here on the basis of neutral principles of law.”).

It is the opposite of “neutral” to set aside such evidence as ecclesiastical taboo and to instead apply only select provisions of statutory code in a vacuum. The statutory code itself does

not even purport to be so indiscriminately controlling. For example, as discussed further below, the South Carolina Nonprofit Corporation Act explicitly makes religious doctrine controlling over inconsistent provisions, and it also has many provisions that come into play regarding powers, fiduciary duties, etc.

Jones v. Wolf also explicitly requires that when states apply “neutral principles of law,” they must do so *consistent with* the First and Fourteenth Amendments of the U.S. Constitution. See Jones v. Wolf, 443 U.S. 595 (1979) (“The question for decision is whether civil courts, *CONSISTENT WITH* the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of ‘neutral principles of law,’ or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church.”) (emphasis added).

The First and Fourteenth Amendments provide protection to religious organizations in various overlapping ways under three clauses. The Establishment Clause requires all laws to have a secular purpose, not have the primary effect of advancing or inhibiting religion, and not result in excessive entanglement. See Lemon v. Kurtzman, 403 U.S. 602 (1971). The Establishment Clause generally does not involve a balancing analysis; violations are unconstitutional *per se*. Id.

The Free Exercise Clause provides that no law can be passed unduly prohibiting religious practices. See Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993). The Free Exercise Clause involves a balancing analysis known as the “compelling interest” test, unless it is neutral and of general applicability. Id.

The Equal Protection Clause guarantees that laws are enforced equally, including the common law. See Shelley v. Kraemer, 334 U.S. 1 (1948) (“It has been recognized that the action of state courts in enforcing a substantive common law rule formulated by those courts, may

result in the denial of rights guaranteed by the Fourteenth Amendment, even though the judicial proceedings in such cases may have been in complete accord with the most rigorous conceptions of procedural due process.”). The Equal Protection Clause has three-tiered balancing analysis: “rational basis,” “intermediate scrutiny,” and “strict scrutiny.” The strict scrutiny test applies to “fundamental rights” and “suspect classifications.” One such fundamental right is to acquire, enjoy, own and dispose of property; another is the right to present defenses and relevant evidence in court. See Shelley, 334 U.S. 1 (“It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee.”); United States v. Scheffer, 523 U.S. 303, 118 S.Ct. 1261, (1998) (“The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant’s version of the facts as well as the prosecution’s to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution’s witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.”) (quoting Washington v. Texas, 388 U.S. 14 (1967)). Classifications related to religion are suspect. See Burlington Northern Railroad Company v. Ford, 504 U.S. 648 (1992) (“...classify along suspect lines like race or religion...”).

As a corollary, the U.S. Supreme Court has held that laws that discriminate among religious sects are unconstitutional *per se* under the Establishment Clause and subject to strict scrutiny under the Equal Protection Clause. See Larson v. Valente, 456 U.S. 228 (1982) (“The

government must be neutral when it comes to competition between sects.”) (quoting Zorach v. Clauson, 343 U.S. 306 (1952)); Corporation of the Presiding Bishop of the Church of, 483 U.S. 327 (1987).

On multiple grounds under this constitutional framework, the Order’s interpretation and application of All Saints is unconstitutional. It creates a judicial rule of law that applies only to religious organizations, a suspect class. It denies religious organizations of their fundamental rights to defend themselves in court against common fraud and statutory violations involving their property. It entangles courts in religious disputes in an arbitrary manner without regard to the relevant facts. It has the effect of destroying hierarchical religious organizations in South Carolina by disregarding the governance they have chosen and relied upon, as any organization is entitled to do. In a discriminatory manner, it favors breakaway religious sects, whose leaders are essentially given a judicial license to take from long established religious organizations to endow their new organizations.³

Under strict scrutiny or any other balancing standard, the Order’s interpretation and application of All Saints cannot be justified on the ground of avoiding entanglement; more particularly, it cannot be justified on the ground that by considering the relevant facts supporting Defendants’ neutral claims and defenses the Court would entangle itself in an essentially religious controversy. The explicit answer to that balancing question, according to Jones v.

³ By their very nature, breakaway sects are not distinct entities until they have actually broken away. They must, however, be liable for unlawful acts pre-formation, just like any other corporation or organization. Certainly, when an incorporator takes funds from a company he or she is working for to capitalize a new corporation he or she plans to form, that new corporation does not get to take those funds free and clear simply because the incorporator says so in the corporate organizational documents. The law is not blind to events preceding the corporate formation: there is clearly pre-incorporation liability. The same logic applies equally to breakaway religious sects under neutral principles of law. See e.g., S.C. Code Ann. § 33-31-204 (Liability for preincorporation transactions).

Wolf, is for the Court to defer to the hierarchical organization to resolve the dispute under the First Amendment, as opposed to simply ignoring those relevant facts and neutral claims and defenses – which, as described above, would be unconstitutional. See Jones v. Wolf, 443 U.S. 595 (1979) (“If, in such a case, the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.”) (citing Serbian Orthodox Diocese, 426 U.S. at 709). In other words, the neutral principles of law approach is not absolute. When its application leads to entanglement, it ultimately yields to the First Amendment. Notably, as will be discussed below, the South Carolina legislature took this idea one step further by codifying deference to religious doctrine over inconsistent provisions of the Nonprofit Corporation Act. S.C. Code Ann. § 33-31-180.

Taking a closer look now at some of the relevant evidence at issue in this case: to start, the Court should not disregard an ordination vow just because it was made in a church instead of a corporate boardroom – it is nonetheless a promise with terms that may be relied upon. Of course, such a promise does not legally bind the promisor to forever practice a particular religion under the First Amendment, but until it is openly rescinded, it certainly may be relied upon by a church in providing a job and delegating authority to the promisor. See Hayes v. Clinkscales, 9 S.C. 441 (1878) (“It was in the power of the defendant to revoke his promise, but there is no proof that he did so; therefore, he was willing that the plaintiff should perform the condition at any time, and it was in law an offer renewed from day to day and from year to year.”); Craft v. South Carolina Com’n for Blind, 685 S.E.2d 625, 385 S.C. 560 (Ct. App. 2009) (“To us, it seems reasonable for a would-be employee to rely on a promise of future employment from the only entity with the power to hire him.”).

And when the promisor knows that his or her church is relying on his or her false promise to its detriment, resulting in loss of property, how could it be said that a claim does not lie for breach of contract, promissory estoppel, or fraudulent misrepresentation, for example? The elements of these causes of action are plainly satisfied without delving into religious doctrine. See e.g., Higgins Const. Co., Inc. v. Southern Bell Tel. & Tel. Co., 281 S.E.2d 469, 470, 276 S.C. 663, 665 (1981) (“[A]n estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice.”) (citation omitted); M. B. Kahn Const. Co., Inc. v. South Carolina Nat. Bank of Charleston, 271 S.E.2d 414, 275 S.C. 381 (S.C. 1980) (“In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear, cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance on its truth; (8) the hearer’s right to rely thereon; (9) the hearer’s consequent and proximate injury.”); Hennes v. Shaw, 725 S.E.2d 501, 397 S.C. 391 (Ct. App. 2012) (“The necessary elements of a contract are offer, acceptance, and valuable consideration To recover for a breach of contract, the plaintiff must prove: (1) a binding contract; (2) a breach of contract; and (3) damages proximately resulting from the breach.”).

In the same way, how could such a promise, which is known by the promisor to be a prerequisite to obtaining any authority over church affairs, not limit the scope of the promisor’s authority? Again, without delving into religious doctrine, it is clear that acts that are contrary to such a promise fall outside of the authority delegated by the church and are therefore *ultra vires*

and null and void, and certainly cannot be enforced against the church by the promise breakers themselves. See Hollinger Intern., Inc. v. Black, 844 A.2d 1022, 1081 (Del. Ch. 2004) (“Although it is no small thing to strike down bylaw amendments adopted by a controlling stockholder, that action is required here because those amendments complete a course of contractual and fiduciary improprieties. Inc.’s written consent was the culmination of Black's efforts on his (and Inc.’s) behalf to end-run the Strategic Process he had agreed to lead and support.”).

The record shows that Bishop Lawrence clearly knew that The Episcopal Church and its dioceses, parishes, and loyal members understood his ordination vow and declaration as a promise to adhere to the hierarchical governance set forth in the Constitution and Canons, and more simply, as a promise not to attempt to withdraw the Diocese from the Church or take away its property. He also knew that he could not assume any authority as a bishop of the Diocese without making that promise.

Evidence of such knowledge is glaring. For example, as the record reflects, Lawrence was elected by the Diocesan Convention in 2006, but he did not receive the requisite approval from the other dioceses in accordance with the Constitution and Canons of The Episcopal Church. Instead of proclaiming such approval to be unnecessary, the next year, he made further assurances to all of the other dioceses that he would follow the Constitution and Canons and not attempt to withdraw the Diocese from the Church.

March 7, 2007

Dear Standing Committees of The Episcopal Church,

I have been told that some diocesan Standing Committees have graciously offered to reconsider their denial of consent to my election as the XIV Bishop of South Carolina, if they only have assurance of my intention to remain in The Episcopal Church.

Although I previously provided assurance of my intention, this has not been sufficient for some Standing Committees, which are earnestly seeking to make a godly discernment . . . I am reminded to make every attempt to reason with those who have denied consent or who have not yet voted. As I stated at the walkabout in Charleston on September 9, 2006 and again in a statement written on 6 November 2006, I will make the vows of conformity as written in the BCP and the Constitution & Canons, (III.11.8). I will heartily make the vows conforming “...to the doctrine, discipline, and worship” of the Episcopal Church, as well as the trustworthiness of the Holy Scriptures. So to put it as clearly as I can, my intention is to remain in The Episcopal Church.

Yours in Christ,

The Very Reverend Mark J. Lawrence

Based on this letter and other assurances presented at trial, Lawrence’s election was approved by the other dioceses in 2008. All the while, he remained in his home state of California and assumed no role with the Diocese until after his ordination on January 26, 2008.

It is self evident that Lawrence took his ordination vow and declaration with the intent to induce the Church and the Diocese to endow him with authority. Irrespective of whether his ordination vow and declaration were false when made or whether Lawrence secretly had mixed emotions and only later determined to breach his promise, he understood that his promise was continuing for the entire duration of his tenure as a bishop, and he was well aware that he could release himself of his vow and his obligations as bishop at any time in accordance with Canon III.12.7.

Whatever personal belief Lawrence may have secretly had that TEC’s understanding of the vow was oppressive, overreaching, or unjustified is irrelevant. The Court need not resolve whose interpretation of the ordination is more correct (notably, that would be an esoteric exercise ultimately demanding deference to the Church’s hierarchical polity pursuant to the First Amendment). The only relevant interpretation of the ordination vow and declaration under

neutral principles of law is the one that Lawrence knew that the Church possessed and relied upon in giving him a job and delegating authority to him.

The same analysis applies to each of the priests that conspired with Bishop Lawrence, who each misled the Church through their own ordination vows and declarations.

Additionally, similar to an ordination vow, in applying neutral principles of law, courts should likewise not ignore: the language in a corporate charter because it adopts a hierarchical church's fundamental rules to serve as the framework for its own corporate governance. Nor should courts discount a vote to create a trust because the vote occurred at a religious convention; or fail to recognize the acceptance of benefits because those benefits include things such as a supply of trained clergy.

In secular terms, all of that evidence supports Defendants' neutral claims and defenses under South Carolina common and statutory law – which cannot be ignored, as the Court did in its Order.

All Saints did not address Section 180 of the South Carolina Nonprofit Corporations Act, which is discussed in further detail below.

All Saints did not involve any non-declaratory causes of action; this case, on the other hand, involves over a dozen. In addition to declaratory claims, Plaintiffs have asserted statutory causes of action for trademark infringement and improper use of names. Defendants asserted claims for state trademark infringement under common law, federal trademark infringement and dilution under the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a) and (c), state unfair competition under S.C. Code Ann. §§ 39-5-10 *et seq.*, fraudulent transfers, accounting, conversion and restitution, and civil conspiracy. These claims have various elements that collectively increase the scope of the relevant evidence well beyond what was considered in All Saints.

All Saints did not involve the governance of the Diocese's corporations or the particular parish corporations that are named as Plaintiffs here, which have unique histories and corporate organizational documents.

All Saints did not involve the authority and fiduciary duties of a Bishop acting under personal promises and assurances and an ordination oath and declaration to conform to the doctrine, discipline, and worship of The Episcopal Church.

All Saints did not involve personal allegations of fraud and conspiracy that render the *ultra vires* corporate acts at issue here null and void. For example, Lawrence improperly amended the charter of the Diocese's corporate entity in complete contradiction to its governing rules by removing its express purpose to operate under the Constitution and Canons of The Episcopal Church. In place of those long standing governing rules, Lawrence and others drafted self-serving bylaws, making Lawrence the corporation's "Chief Operating Officer," irrespective of his authority as a Bishop of The Episcopal Church, and an *ex officio* member of the board of directors, and also making the contemporaneous members of the Standing Committee directors of the corporation. Lawrence and others later told members of the Standing Committee that they were simultaneously the board of directors of the Diocese's corporate entity and encouraged them to vote to withdraw both the Standing Committee and the corporation from The Episcopal Church. Similarly, Lawrence and others wrongfully led the Diocesan Convention to amend the Diocese's Constitution and Canons to remove their accession to the Constitution and Canons of The Episcopal Church in contravention to their own terms, which required accession from all its dioceses. Additionally, among other things, Lawrence and others, acting outside of their authority, executed quitclaim deeds from various combinations of the Diocese (as a whole), the Diocese's corporate entity, and the Standing Committee to the parishes of the Diocese to

frustrate the interests of Defendants. Using his influence over the Trustees and the Diocese's corporate entity, by contract, Lawrence also attempted to shield his own personal interests in the Bishop's salary and residence in anticipation of having his authority as Bishop removed by The Episcopal Church.

All Saints did not involve trademarks or other intellectual property, which involve a host of legal issues independent of the Court's determination of who is entitled to corporate control.

Although All Saints and the instant case both involve quitclaim deeds, the quitclaim deeds themselves are of a wholly different nature. The 1903 quitclaim deed at issue in All Saints was more than 100 years old when All Saints was decided. It was executed in good faith, after the parish's records were lost in a great storm, to clarify, as a technical matter, that the Diocese did not contend that the parish had been inactive prior to its re-incorporation in 1902 in such a manner that would have triggered a controlling interest in favor of the Diocese under an 1880 Act of the General Assembly. The multitude of quitclaim deeds at issue in the instant case, on the other hand, were recently issued in 2010 and 2011 by individuals acting outside the scope of their authority with the obvious intent to wrongfully encourage and conspire with the Diocese's parishes to contravene their corporate governance under the Constitution and Canons of The Episcopal Church and to disaffiliate from the Episcopal Church. The wrongful and *ultra vires* nature of those quitclaim deeds renders them null and void. Moreover, the Order did not address Defendants' contention that the quitclaim deeds, by their nature, address only title, and do not waive trust interests; nor did it address the argument that the Diocese had no ability to waive the separate trust interests of TEC.

While All Saints is not analogous to the instant case for the above reasons, to be sure, there is case law that is analogous. There are many analogous cases involving *ultra vires*

attempts to take over and amend the governing rules of religious and other nonprofit corporations. See e.g., Oberly v. Howard Hughes Medical Institute, 472 A.2d 366, 392-3 (Del. Ch. 1984); In re Osteopathic Hosp. Ass'n of Del., 195 A.2d 759, 41 Del.Ch. 369 (Del. 1963); Hollinger Intern., Inc. v. Black, 844 A.2d 1022, 1081 (Del. Ch. 2004); The Conference of African Union First Colored Methodist Protestant Church v. Hovington Faith Community Church, Del. Ch., C.A. 1751-MG; Trustees of the Peninsula-Delaware Annual Conference of the United Methodist Church, Inc. v. East Lake Methodist Episcopal Church, Inc., Del. Ch., C.A. No. 14530, Chandler, C. (Feb. 13, 1998) (OPINION) at 23, *aff'd*, 731 A.2d 798 (1999), citing Trustees of Pencader Presbyterian Church v. Gibson, Del. Supr., 22 A.2d 782, 787-88 (1941).”); Harman v. Dreher, 17 S.C. Eq. (Speers Eq.) 87 (1843); The State ex relation Abraham Ottolengui v. Ancker, 31 S.C.L. 245 (S.C. App. Law 1846); Bramblett v. Young, 229 S.C. 519, 93 S.E.2d 873 (1956); Adickes v. Adkins, 215 S.E.2d 442, 445, 264 S.C. 394 (S.C. 1975), cert. denied, 423 U.S. 913, 403 (1975); Tuberville v. Morris, 203 S.C. 287, 26 S.E.2d 147 (1943); Seldon v. Singletary, 326 S.E.2d 147, 284 S.C. 148 (1985); Knotts v. Williams, 319 S.C. 473 462 S.E. 288 (1995).

As recognized in All Saints, there is also a line of U.S. Supreme Court decisions and progeny that require this Court to defer to the hierarchical polity of The Episcopal Church to the extent it is relevant as an underlying issue of fact in applying neutral principles of law. Even under neutral principles of law, such polity is highly relevant to the civil causes of action because it was adopted and incorporated into the governance of the Diocese’s corporations and the parish corporations. See e.g., Jones v. Wolf, 443 U.S. 595, 604 (1979); Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 724-25 (1976); Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 132 S. Ct. 694, 704 (2012); Dixon v. Edwards, 290 F.3d 699, 714 (4th Cir. 2002);

Watson v. Jones, 80 U.S. (13 Wall.) 679, 727 (1872).

Furthermore, the equitable doctrine of judicial estoppel applies to prevent a litigant from asserting inconsistent factual positions in subsequent proceedings. Quinn v. Sharon Corp., 540 S.E.2d 474, 480, 343 S.C. 411, 423 (Ct. App. 2000). “Under this philosophy, the fact a litigant is using the court as a forum for his inconsistent statements injures the judicial system; therefore, such abuse must be avoided under all circumstances.” Id. The five elements for judicial estoppel are: “(1) two inconsistent positions must be taken by the same party or parties in privity with each other; (2) the two inconsistent positions were both made pursuant to sworn statements; (3) the positions must be taken in the same or related proceedings involving the same parties in privity with each other; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent – that is, the truth of one position must necessarily preclude the veracity of the other position.” Id. In applying these elements, “[t]here is no fixed method or formula that courts must follow in the doctrine’s application. This flexible standard permits a judge to consider all circumstances involved.” Id.

Here, the lead Plaintiff in this litigation – the Diocese’s corporate entity that was incorporated in 1973 and is now operating under the name The Protestant Episcopal Church in the Diocese of South Carolina – was, itself, the lead defendant in the All Saints case.⁴ Therein, that same corporation took many positions that it now attempts to completely reverse itself on, including the nature of its existence as part of the hierarchical Church; its governance under the

⁴ “4. The Defendant, The Protestant Episcopal Church in The Diocese of South Carolina (“Diocese”) is, upon information and belief, an eleemosynary corporation organized and existing in accordance with the laws of the South of South Carolina...” All Saints Amended Complaint at ¶ 4. “It admits the allegations of Paragraphs 4 and 5.” All Saints Amended Answer To Amended Complaint, Counterclaim and Cross-Claim of the Protestant Episcopal Church in the Diocese of South Carolina at ¶ 47.

Constitution and Canons of the Church; the limited authority of the Bishop and his duty to fully adhere to that governance; the unlawful, fraudulent, and null and void nature of any attempt to do away with that governance by simply amending the corporate charter; the enforceability of the Diocese's trust interest in parish property; and the great value of benefits conferred on the Diocese and its parishes by the Church over many years.

The elements of judicial estoppel are clearly met in this case. First, these prior factual assertions were asserted by the Diocese's corporate entity through its authorized agents at the time (note that the Diocese was a party to the All Saints litigation between 2005 and 2009). Second, these prior factual assertions were made in sworn statements, including pleadings, discovery responses, affidavits, depositions, trial testimony, and appeal documents. Third, these prior factual assertions appear in the same general context as the current reversed assertions – relating to control and ownership of church property. Fourth, the current reversal is part of an intentional effort to misuse the Diocese's corporate entity and mislead the Court. It reflects the reality that the corporation has been taken over by individuals acting outside of their authority who are misusing the corporation to facilitate their own radical objectives. Fifth, the factual assertions then and now are totally opposite and mutually exclusive. See Quinn, 540 S.E.2d at 480, 343 S.C. at 423.

As mentioned above in response to page 29, Footnote 9 of the Order, the Court misinterpreted and misapplied Section 180 of the South Carolina's Nonprofit Corporation Act. Section 180 provides as follows: "If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this chapter on the same subject, the religious doctrine controls to the extent required by the Constitution of the United States or the Constitution of South Carolina, or both."

This statute was adopted in 1994 as a direct legislative response to confusion and conflict arising out of the “neutral principles of law” alternative approach to deciding disputes involving religious organizations, which was approved by the U.S. Supreme Court in Jones v. Wolf, 443 U.S. 595 (1979), and thereafter applied in a mix of states around country, including South Carolina.

Reconciling the neutral principles of law approach with the intent and purpose of the Nonprofit Corporation Act, Section 180 adjusted and simplified the analytical framework by making it a neutral principle of statutory law in South Carolina to defer to religious doctrine governing the affairs of the corporation over inconsistent provisions of the Nonprofit Corporation Act.

The legislature took this step because of the incongruity between typical corporations, which require a corporate governance framework of uniform rules, procedures, and formalities to effectively serve their purpose, and religious corporations, which typically already have a governing framework in place with their own set of rules, procedures, and formalities. The legislature further recognized that excessive entanglement in religious activities by the state might occur if, by incorporating, religious organizations were deemed to have suddenly abandoned their long-standing governance in favor of default corporate rules – which was surely not their intent. Churches were instead enticed to incorporate to obtain basic corporate privileges related to liability and property ownership, which became increasingly important to churches as the doctrine of charitable immunity was eroded by the judiciary throughout the later part of the twentieth century. See Comments to Model Code Section 1.8 (“The Model Act attempts to walk the thin line between the establishment clause and the free exercise clause. It allows religious corporations to be formed and gives them the same rights and privileges as other corporations.

The Model Act avoids interfering with the free exercise of religion by negating or allowing religious corporations to negate provisions of the Model Act that might result in excessive entanglement in religious activities by the state.”); see Jeffcoat v. Caine, 198 S.E.2d 258, 260, 261 S.C. 75, 80 (1973) (“A long discussion of the charitable immunity doctrine is unnecessary. It is sufficient to point out that it has been subject to much criticism in recent years and considered by an increasing number of courts and writers as unsupportable under modern conditions.”).

Through Section 180, the legislature closed any loopholes created by provisions of the Nonprofit Corporations Act that might be exploited to upset the long-standing operation of religious organizations under the guise of “neutral principles of law.”

The Order holds that Section 180 adds nothing to the religious protections already inherent in the First Amendment. The Order implies, therefore, that the statute is superfluous and could be deleted from the Nonprofit Corporation Act without any effect, and that it should accordingly have no bearing on this case. Construing this or any other statute as meaningless, however, is of course disfavored as a general rule. See Hays v. Adair, 267 S.C. 291, 296, 227 S.E.2d 665, 667-68 (1976) (“A proper construction seeks to harmonize the various provisions and a construction which gives meaning to all should be preferred over one which renders some provisions meaningless.”).

Furthermore, as alluded to above, the statute’s mandate for deference to religious doctrine in the application of the rather technical and nondescript procedural provisions of the Nonprofit Corporation Act, which otherwise explicitly apply to “religious corporations,” is indeed impactful and certainly not an unquestionably obvious consequence of the First Amendment – particularly in light of the “neutral principles of law” approach that prompted the legislature to pass Section 180 in the first place. See Comments to Model Code (“Section 1.80 is based on the

recognition that some provisions of the Model Act may conflict with the United States Constitutions or state constitutions. The exact scope of constitutional imitations is less than clear and is subject to debate.”); S.C. Code Ann. § 33-31-140 (“‘Corporation’ means public benefit, mutual benefit, and religious corporation.”).

Notably, the All Saints decision did not consider Section 180 when it held that the congregation’s amendments to the corporate charter of All Saints Parish were valid. Instead, the Court analyzed the amendments under the Non-Profit Corporation Act’s default rule that allows unrestricted amendments of the corporate charter by majority vote, S.C. Code Ann. § 33-31-1001, *et seq.*

Here, the default rule of Section 1001 that allows unrestricted amendments of the corporate charter by majority vote is inconsistent with and thus not controlling over the religious doctrine governing the affairs of the corporation chartered in the name of the Diocese, pursuant to Section 180. Such a result was anticipated in Jones v. Wolf, 443 U.S. at 608 (“Most importantly, any rule of majority representation can always be overcome, under the neutral principles approach, either by providing, in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way, or by providing that the church property is held in trust for the general church and those who remain loyal to it.”).

In particular, the religious doctrine governing the affairs of the corporation chartered in the name of the Diocese in 1973 is found in the Constitution and Canons of The Episcopal Church. In fact, the 1973 charter provides: “The purpose of the said proposed Corporation is to continue the operation of an Episcopal Diocese under the Constitution and Canons of The Protestant Episcopal Church in the United States of America.” The inclusion of such language

made the Constitution and Canons the fundamental governing rules of the corporation. They are, in effect, governing rules higher than bylaws. They provide, as bylaws do, the rules “for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated,” but because they are incorporated into the charter itself, their authority goes beyond that of bylaws, such that they may not be amended in a manner that is internally inconsistent. S.C. Code Ann. 33-31-140 (4) (“Bylaws’ means the code or codes of rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated.”); S.C. Code Ann. 33-31-302 (corporation has power “to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this State for regulating and managing the affairs of the corporation.”); S.C. Code Ann. 33-31-206 (b) (“The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.”).

The fact that the Constitution and Canons are referenced in connection with the corporation’s purpose does not somehow nullify their nature as the corporation’s governing rules. Section 202’s list of what *may* be set forth in a charter includes, among other things, the corporation’s purpose, as well as rules for managing and regulating the corporation’s affairs. There are no hyper-technical instructions as to the order and format of how that information must appear on the face of the charter. S.C. Code Ann. 33-31-202 (c) (“The articles of incorporation may set forth: (1) the purpose for which the corporation is organized which may be, either alone or in combination with other purposes, the transaction of any lawful activity; . . . (3) provisions not inconsistent with law regarding: (i) managing and regulating the affairs of the corporation;

(ii) defining, limiting, and regulating the powers of the corporation, its board of directors, and members, or any class of members . . .”).

Looking now to the substance of the governing rules provided in the Constitution and Canons, they include many pages of detailed rules governing all aspects of the hierarchical organization and its dioceses and parishes, such as their accession, various leadership positions, management committees, powers, fiduciary duties, business methods, accounting procedures, budgets, insurance, property ownership and management, etc. See e.g., Constitution and Canons of The Episcopal Church, e.g., Preamble (“...sets forth the basic Articles for the government of this Church.”); Canon I (“Organization and Administration”); Article V (accession of dioceses); Canon I.17(8) (fiduciary duties); Article VIII (ordination vow and declaration); Canon II.6 (parish property); Canon III.9(5)(a)(2) (parish property); Canons I.7(3), (4), and (5) (parish property).

Bishop Lawrence and his followers attempted to get around these particular governing rules by *entirely* removing the Constitution and Canons of The Episcopal Church from the charter – using the default majority vote procedure of Section 1001, *et seq.*

Substantively, such amendments, which obliterated the governing rules then in effect, were manifestly “inconsistent” with those governing rules as a whole, as well as with the particular rules Bishop Lawrence and his followers sought to avoid, including their own fiduciary duties and limitations on their own authority to take away property. This inconsistency triggers the protection of Section 180, rendering the default majority vote procedure of Section 1001 inapplicable for making such amendments. It follows that the amendments purportedly accomplished thereunder are null and void.

In addition, procedurally, such amendments were also “inconsistent” with Article XII and Title V Canon 1 of the Constitution and Canons, which set forth detailed procedures for amending the governing rules of the dioceses and parishes through the legislative body of the General Convention.

To be sure, Defendants’ position on the applicability of Section 180 does not require the Court to suspend all practical considerations and make an absolute determination that the corporate charters at issue can never, under any circumstances, be amended pursuant to Section 1001. That statute may be utilized so long as the amendments do not contravene or attempt to obliterate or change the governing rules in the Constitution and Canons. For instance, the slight name change in 1987 to the corporation chartered in the name of the Diocese was an innocuous amendment that was not at odds with any provision in the governing rules of the Constitution and Canons and therefore would not have triggered the protection of Section 180.

II.

Grounds For Reconsideration Based On The Order’s Failure To Address Defendants’ Contentions Regarding The Identity Of The Parties, The Nature Of This Dispute, The Procedural History, The Evidence Presented, The Relevant And Determinative Facts, The Applicable Legal Analysis, And The Proper Relief

The Order adopts Plaintiffs’ contentions regarding the identity of the parties and the nature of this dispute, the procedural history, the evidence presented, the relevant facts, the applicable legal analysis, and the proper relief. While the Court by implication appears to have considered some of Defendants’ contentions regarding the same (which were presented to the Court in pre-trial proceedings and at trial, and according to the Court’s instructions, presented to the Court in Defendants’ pre-trial position papers and post-trial submissions and proposed

orders), the Order does not fully or adequately address Defendants' contentions. Defendants therefore respectfully request that the Court reconsider each of the points raised herein regarding the identity of the parties and the nature of this dispute, the procedural history, the evidence presented, the relevant facts, the applicable legal analysis, and the proper relief.

The dispute giving rise to this lawsuit involves a dissension in The Episcopal Church.⁵ In the fall of 2012, the leadership of the regional diocese of The Episcopal Church covering the eastern portion of South Carolina (the "Diocese")⁶ together with some of the individual parishes within the Diocese's jurisdiction, announced their disaffiliation from The Episcopal Church.

Upon the disaffiliation, those leaving The Episcopal Church claimed that they controlled two diocesan corporations that owned and controlled the property of the Diocese, including the trademarks used by the Diocese; and that the departing parishes owned such parish property and trademarks used by the parishes without any limitations or trust interests in favor of The Episcopal Church or its Diocese.

This litigation was instituted in early 2013. The lead plaintiffs identified in the Amended Complaint are the two diocesan corporations: (1) The Protestant Episcopal Church in The Diocese of South Carolina, a South Carolina non-profit religious corporation chartered in 1973; and (2) The Trustees of The Protestant Episcopal Church in South Carolina, a corporate trust formed by the General Assembly of South Carolina in 1880 (Act Number 222). The diocesan corporate plaintiffs generally allege and seek declarations in their Amended Complaint that they

⁵ The Episcopal Church is also known as The Protestant Episcopal Church or The Protestant Episcopal Church in the United States of America. At times in this litigation, The Episcopal Church has also been referred to as the National Church for purposes of clearly distinguishing between the parties and the identities that are in dispute.

⁶ The term "Diocese" is used herein to describe the religious organization of the diocese as it existed prior to the schism. The corporation chartered in the name of the Diocese in 1973, which appears in this action as a Plaintiff, is referred to herein by describing it as such.

are entitled to assume the identities of those corporations and that they control the assets of those corporations, and that neither The Episcopal Church nor The Episcopal Church in South Carolina, the named defendants, have any interest in the corporations or their assets. There are also thirty-eight parish plaintiffs appearing in the Amended Complaint. The parish plaintiffs, too, claim that The Episcopal Church and its local diocese have no continuing interest, by a trust or otherwise, to the property in dispute. Plaintiffs also assert trademark infringement under S.C. Code Ann. §§ 39-15-10 *et seq.* and improper use of names under S.C. Code Ann. §§ 16-17-310 and 16-17-320.

Defendants, The Episcopal Church and The Episcopal Church in South Carolina⁷ responded to Plaintiffs' Amended Complaint denying material allegations, pled multiple affirmative defenses, and asserted counterclaims generally alleging and seeking declarations of ownership and control of both diocesan corporations and their assets, as well the exclusive right to use trademarks that implicate a connection or affiliation with The Episcopal Church. Defendants likewise responded to the claims of the parish party plaintiffs and have entered counterclaims contending that they possess a trust interest in the plaintiff parish property. Defendants also asserted claims for state trademark infringement under common law, federal trademark infringement and dilution under the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a) and (c), state unfair competition under S.C. Code Ann. §§ 39-5-10 *et seq.*, fraudulent transfers, accounting, conversion and restitution, and civil conspiracy.

⁷ "The Episcopal Church in South Carolina" or "TECSC" is a temporary pseudo name standing in place of the name of the Diocese. It was chosen by the Defendants to comply with a consent preliminary injunction entered by the Court soon after this litigation was commenced. TECSC is designated and recognized by The Episcopal Church as the continuing Diocese of The Episcopal Church in this region of eastern South Carolina.

The principal issues to be decided are the following: (1) who is entitled to ownership and control of the corporation chartered in the name of the Diocese in 1973; (2) who is the beneficiary and electorate body of the Trustee corporation; (3) who has the right to continue to use trademarks formerly used by the Diocese and certain parishes; and (4) whether Defendants have a trust or other beneficial interest in parish property.

A. The Corporation Chartered In The Name Of The Diocese In 1973

The Episcopal Church has a long history dating back to the Eighteenth Century. It was born out of The Church of England in the aftermath of the American Revolution. At present, The Episcopal Church comprises approximately 110 dioceses, 7,000 parishes and 2 million communicants in the United States and about 18 other countries.

The Diocese of South Carolina⁸ has a history that goes hand-in-hand with the history of The Episcopal Church. The Diocese came into existence as a diocese when a group of parishes in South Carolina that were formerly parishes of The Church of England, together with several like groups from other states, adopted a Constitution for The Episcopal Church in 1789. D-425.

For the next two-plus centuries leading up to the beginnings of this dispute (notwithstanding the interruption of the Civil War), the Diocese operated like other dioceses of The Episcopal Church. A great quantity of records from historical archives introduced into the record at trial show: that the Diocese's bishop, representatives, and deputies participated in the General Convention of The Episcopal Church, composed of the House of Bishops and the House of Deputies; that upon its creation and reiterated many times thereafter, the Diocese explicitly acceded to and adopted the Constitution and Canons adopted by the General Convention, which

⁸ There are two dioceses of The Episcopal Church in the State of South Carolina. The one at issue here and another, the Diocese of Upper South Carolina, comprising the western portion of the State. The two dioceses were one until about 1922, when the Diocese of Upper South Carolina was created and distinguished from the Diocese at issue here.

provide the governing rules of The Episcopal Church and its dioceses and parishes;⁹ and that the Diocese operated in South Carolina according to those rules. As prescribed, the Diocese operated under the ecclesiastical authority of a bishop of The Episcopal Church. That bishop of The Episcopal Church presided over the Convention of the Diocese, composed of canonically resident clergy of the Diocese and other lay delegates elected by parishes within the Diocese, which adopted the Constitution and Canons of the Diocese that expressly acceded to, adopted, acknowledged the authority of, and merely supplemented the Constitution and Canons of The Episcopal Church. That bishop of The Episcopal Church received advice from the Standing Committee of the Diocese, composed of members elected by the Convention of the Diocese. All such operations were prescribed by the Constitution and Canons of The Episcopal Church.

Nearly two centuries after the Diocese came into existence, a corporation, for the first time, was chartered in the name of the Diocese in 1973. DSC-7; Tr. 31 (Logan). The 1973 charter provided as follows: “The purpose of the said proposed Corporation is to continue the operation of an Episcopal Diocese under the Constitution and Canons of The Protestant Episcopal Church in the United States of America.” The 1973 charter designates that “all Managers, Trustees, Directors or other officers” consist of the positions of “Bishop,” “Secretary,” and “Treasurer.” The 1973 charter names no members.¹⁰

After the corporation was chartered in 1973, the evidence clearly shows that the Diocese continued to operate as it always had, *i.e.*, as described above. The only trace of corporate activity occurred in 1987, when a slight amendment to the name of the corporation was filed

⁹ The Constitution and Canons of The Episcopal Church include over two hundred pages of rules, for example, rules for the election, approval, discipline, and removal of bishops (Article II and Canon III.12), rules related to business methods and the control of property (Canon 7), and rules for changing the rules (Article XII and Title V Canon 1). Ds. Ex. 203.

¹⁰ Plaintiffs’ witnesses also testified that the corporation has no members. Tr. 104 (Logan).

with the Secretary of State. DSC-8. Then another period of corporate silence endured, as the Diocese continued to carry out its operations as it always had both before and after the formation of the 1973 corporation. For over three decades following the 1973 charter, there were no corporate rules or By-Laws aside from the Constitution and Canons of The Episcopal Church referenced in the 1973 charter, or the Constitution and Canons adopted by the Diocese, which expressly acceded to, adopted, and acknowledged the authority of the Constitution and Canons of The Episcopal Church, as follows:

ARTICLE I The Church in the Diocese of South Carolina accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church in the United States of America and acknowledges this authority accordingly.

DSC-1.

In 2008, Bishop Lawrence was ordained as a bishop of The Episcopal Church and simultaneously became the Bishop of the Diocese. He was installed only after he was approved by a majority of other bishops and dioceses of The Episcopal Church and duly ordained as a bishop by The Episcopal Church, as prescribed by the Constitution and Canons of The Episcopal Church and the Book of Common Prayer of The Episcopal Church. D-24 (Bishop Lawrence Deposition). Before assuming any authority as Bishop of the Diocese, he specifically made representations that he would solemnly engage to conform to the Constitution and Canons of The Episcopal Church, both in a declaration and vow at his ordination, and in earlier statements he made to other bishops and dioceses during the approval process.¹¹

¹¹ Tr. 1334 (Plaintiffs' response to request to admit quoting a letter from Bishop Lawrence: "March 8, 2007 . . . Dear Standing Committees of The Episcopal Church, I have been told that some diocesan Standing Committees have graciously offered to reconsider their denial of consent to my election as the XIV Bishop of South Carolina, if they only have assurance of my intention to remain in The Episcopal Church. Although I previously provided assurance of my intention, this has not been sufficient for some Standing Committees, which are earnestly seeking to make a godly discernment . . . I am reminded to make every attempt to reason with those who have denied consent or who have not yet

Beginning in 2010, the corporation chartered in 1973, which to that point had always been effectively dormant, while serving its purpose of providing corporate liability protection to the Diocese's long-standing operations, suddenly became a focal point for overhauling the fundamental governance of the Diocese. First, articles of amendment were filed with the Secretary of State with respect to the 1973 charter, removing its reference to The Episcopal Church and the Constitution and Canons of The Episcopal Church. DSC-9. The amendment was approved by the Standing Committee of the Diocese, purporting to act as the "Board of Directors," and executed by Bishop Lawrence, purporting to act as "President." There is nothing in the record that previously named the Standing Committee as the Board of Directors or Bishop Lawrence as President of the corporation. Plaintiffs' witnesses testified instead that those corporate roles were implied from the historical operation of the Diocese. D-24 (Lawrence Deposition at 131); Tr. 90-91 (Logan). The record reveals, however, that the Constitution and Canons of both The Episcopal Church and of the Diocese provided only that the Standing Committee is to act as an ecclesiastical council of advice to a bishop. D-203; DSC-1.

After the amendment to the 1973 charter, the corporation adopted a series of corporate By-Laws, that among other things, specifically named Bishop Lawrence as the President of the corporation and members of the Standing Committee as the Board of Directors of the corporation, and gave the Board of Directors sole authority to determine the identity and

voted. As I stated at the walkabout in Charleston on September 9, 2006 and again in a statement written on 6 November 2006, I will make the vows of conformity as written in the BCP and the Constitution & Canons, (III.11.8). I will heartily make the vows conforming "...to the doctrine, discipline, and worship" of the Episcopal Church, as well as the trustworthiness of the Holy Scriptures. So to put it as clearly as I can, my intention is to remain in The Episcopal Church. Yours in Christ, The Very Reverend Mark J. Lawrence").

authority of the Bishop of the Diocese. DSC-6.¹² The Standing Committee then took various acts on behalf of the corporation culminating in a resolution to disaffiliate from The Episcopal Church in late 2012, which by its own terms, was automatically effectuated when The Episcopal Church restricted Bishop Lawrence's authority as one of its bishops on the basis, in part, that he had improperly amended the 1973 charter. DSC-32. In 2013, Bishop Lawrence, admittedly no longer a bishop of The Episcopal Church, presided over a so-called "Convention of the Diocese" whose delegates voted to remove the accession clause to Constitution and Canons of The Episcopal Church that had existed as Article I of the Constitution of the Diocese long before the creation of the corporation in 1973. DSC-5; D-24 (Bishop Lawrence Deposition at 173: "I am no longer a bishop of The Episcopal Church."). The Convention also adopted a "Standing Resolution" to make the Standing Committee the board of directors of the corporation. Tr. 92, 127 (Logan); D-24 (Lawrence Deposition at 131).

There was an abundance of testimony introduced at trial that these acts carried out by Bishop Lawrence and members of the Standing Committee were contrary to the will and decisions of The Episcopal Church and a significant minority of the constituents of the Diocese. The many parishes, parishioners, and clergy members in South Carolina that opposed these

¹² Three days after the 2010 amendment, a document with the heading "Bylaws" was executed by the Secretary of the Standing Committee, Lydia Evans, under the title Secretary of the corporation. DSC-6C. The document names Bishop Lawrence as President of the corporation and an *ex officio* member of the board of directors. The document also named the members of the Standing Committee of the Diocese, elected by Convention of the Diocese, as the "current board of directors," and it names the President of the Standing Committee as the chairman of the board of directors. The document incorporates by reference the Constitution and Canons of the Diocese. The document was the first in the history of the corporation to explicitly be titled "Bylaws." Two months later, another document with the heading "Bylaws" was executed by the President of the Standing Committee, Jeffery Miller. DSC-6A. He signed under the title "President" of the corporation, which is inconsistent with the prior document that named Bishop Lawrence the President of the corporation. But like the prior document, the members of the Standing Committee were named as the present directors of the corporation. The new document further granted the directors the sole authority to determine the identity and authority of the "Bishop" of the Diocese, thereby effectively removing the corporate authority designated in the 1973 charter to the succession of bishops elected, approved, and ordained under the Constitution and Canons of The Episcopal Church.

actions have since reorganized and are recognized by The Episcopal Church as the continuing Diocese, led by Bishop Charles G. vonRosenberg. Tr. 2150-52 (vonRosenberg).

These facts clearly support a conclusion that is unassailable: “The Episcopal Church is hierarchical.” Dixon v. Edwards, 290 F.3d 699, 716 (4th Cir. 2002). The Supreme Court of the United States has held that the First Amendment of the United States Constitution requires deference to decisions of a hierarchical church on questions of polity, including whether its dioceses can disaffiliate from it, and who are its rightful leaders. Jones v. Wolf, 443 U.S. 595, 604 (1979); Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 132 S. Ct. 694, 704 (2012); Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 724-25 (1976); see also Dixon, 290 F.3d at 714. Accordingly, this Court must defer to The Episcopal Church’s decision that Bishop Lawrence and the Standing Committee were acting outside of their authority in changing the governance of and then disaffiliating the Diocese from The Episcopal Church using a diocesan corporation to do so.

Notwithstanding the deference that this Court must give to the decisions of The Episcopal Church on such issues, under the authority of the Nonprofit Corporations Act, S.C. Code Ann. § 33-31-101, *et seq.*, the recent changes to the corporation chartered in the name of the Diocese in 1973 were *ultra vires* and are null and void as a matter of corporate law.

A corporation’s charter is its fundamental controlling governing document. The charter may set forth “provisions not inconsistent with law regarding: (i) managing and regulating the affairs of the corporation; (ii) defining, limiting, and regulating the powers of the corporation, its board of directors, and members, or any class of members . . .” S.C. Code Ann. § 33-31-202(c). The charter may also designate who is to have the authority to act as director of the corporation

and who will succeed him or her. S.C. Code Ann. § 33-31-804. The charter is controlling over any inconsistent By-Laws adopted by the corporation. S.C. Code Ann. § 33-31-206(b) and 302.

Under these provisions of corporate law, the 1973 charter incorporates by reference the Constitution and Canons of The Episcopal Church as the governing rules of the corporation and designates the position of “Bishop” as the director of the corporation. DSC-7; Tr. 1363-68 (McWilliams). Managing provisions, definitions, limitations, and regulations found in the Constitution and Canons of The Episcopal Church – including rules for the election, approval, ordination, discipline, and removal of bishops (Article II and Canon III.12), rules related to business methods and the control of property (Canon 7), and rules for changing the rules (Article XII and Title V Canon 1) – are therefore controlling over the corporation. D-203; Tr. 1710-14 (Daniel); Tr. 1377-99 (McWilliams).

The 2010 amendment to the 1973 charter was executed by Bishop Lawrence in complete contravention of these managing provisions, definitions, limitations, and regulations found in the Constitution and Canons of The Episcopal Church. Bishop Lawrence, having derived any authority he had over the corporation as a bishop of The Episcopal Church under the Constitution and Canons of The Episcopal Church, could not remove the very source of his own authority in order to expand his own authority or prevent it from passing to the next bishop installed by The Episcopal Church. Nor could he delegate any such powers, which he did not possess, to the Standing Committee, the Convention of the Diocese, or any other individuals. Tr. 1378-80 (McWilliams). See Oberly v. Howard Hughes Medical Institute, 472 A.2d 366, 392-3 (Del. Ch. 1984) (ruling that an executive committee created and deriving its power from the sole trustee of a non-profit corporation could not amend the corporate charter to prevent authority over the corporation from passing to a successor trustee).

Moreover, the 2010 amendment was contrary to Bishop Lawrence's own personal representations that he would engage to conform to the Constitution and Canons of The Episcopal Church. See e.g., Hollinger Intern., Inc. v. Black, 844 A.2d 1022, 1081 (Del. Ch. 2004) ("Although it is no small thing to strike down bylaw amendments adopted by a controlling stockholder, that action is required here because those amendments complete a course of contractual and fiduciary improprieties. Inc.'s written consent was the culmination of Black's efforts on his (and Inc.'s) behalf to end-run the Strategic Process he had agreed to lead and support.").

Additionally, at the time of the 2010 amendment, there had been no corporate election, resolution, or any other document authorizing Bishop Lawrence to act as President of the corporation or the members of the Standing Committee to act as the board of directors of the corporation.

The evidence introduced at trial shows that the only "code or code of rules, other than the articles," that could be designated as the "By-Laws" of the corporation in effect at the time 2010 amendment were the Constitution and Canons of the Diocese – which expressly acceded to, adopted, and acknowledged the authority of the Constitution and Canons of The Episcopal Church, as required by the 1973 charter. S.C. Code Ann. § 33-31-140 (4) ("Bylaws' means the code or codes of rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated."); S.C. Code Ann. § 33-31-302 (corporation has power "to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this State for regulating and managing the affairs of the corporation."); S.C. Code Ann. § 33-31-206 (b) ("The bylaws may contain any provision for regulating and managing the affairs of the corporation that

is not inconsistent with law or the articles of incorporation.”). Those existing By-Laws did not authorize Bishop Lawrence to act as President of the corporation or the members of the Standing Committee to act as the board of directors of the corporation.

The new and completely different set of “By-Laws” adopted *after* the 2010 amendment to the 1973 charter could not retroactively cure the absence of such authorization, nor could actions of the Convention of the Diocese, whose delegates (comprising resident clergy and lay delegates elected by parishes) were not members of the non-member corporation, and thus had no voting rights under corporate law. Moreover, the so-called Convention of the Diocese presided over by Bishop Lawrence in 2013, after he had been removed as a bishop of The Episcopal Church, certainly could not have retroactively provided such authority.

Plaintiffs’ witnesses testified that Bishop Lawrence’s corporate authority as President and the Standing Committee’s corporate authority as the board of directors were implied by the historical operation of the Diocese. But such implied authority based on the historical operation of the Diocese must be accompanied by implied limitations based on the historical operation of the Diocese. The end result is the same. The corporation must be operated in accord with the governing rules of The Episcopal Church, as the Diocese always has been.

Furthermore, Section 180 of the Nonprofit Corporation Act provides that religious doctrine governing the affairs of a religious corporation, as a neutral principle of law, prevails over any corporate statutory provision that is inconsistent with such religious doctrine. It then necessarily follows that all of the corporate acts taken by Bishop Lawrence, the Standing Committee or the Convention of the Diocese are null, void, and of no effect because they were taken in violation of the Constitution and Canons of The Episcopal Church, incorporated by reference in the 1973 charter as the religious doctrine governing the affairs of the corporation.

Tr. 1373-76, 1391-92 (McWilliams). The 2010 amendment, which was taken under a default corporate voting procedure provided by Section 1001 *et seq.* of the Nonprofit Corporation Act, was specifically inconsistent with Article XII and Title V Canon 1 of the Constitution and Canons of The Episcopal Church, which prescribe procedures for amending the governance of dioceses and parishes by and through the General Convention of The Episcopal Church. D-203; Tr. 1273-76, 1391-92 (McWilliams). Section 180 of the Nonprofit Corporation Act requires deference to such canonical rules as a neutral principle of law.

Based on the foregoing, the 2010 amendment to the 1973 charter and subsequent By-Laws and corporate acts of disaffiliation taken by Bishop Lawrence and the Standing Committee were *ultra vires* and therefore null and void. Those who now claim to possess the right to control Plaintiff, The Protestant Episcopal Church in The Diocese of South Carolina, a South Carolina non-profit religious corporation chartered in 1973, should be required to vacate the offices they claim, relinquish all such control, and provide a full accounting to Defendants.

B. The Trustees Of The Protestant Episcopal Church In South Carolina

It is without any question or dispute that the fundamental and singular governing documents of the Trustees corporation, identified as a Plaintiff herein, are two legislative Acts of the General Assembly of South Carolina which created the Trustees; and that no subsequent By-Laws that are contrary to the legislative authority have any effect on the right of the ownership or control of the corporation so formed. See Baumann v. Long Cove Club Owners Ass'n, Inc., 668 S.E.2d 420, 380 S.C. 131 (Ct. App. 2008); Pearson v. Mutual Ins. Co., 39 S.E. 512, 61 S.C. 321 (S.C. 1901).

The first of the two such legislative Acts is identified as Act 222 that was approved on February 20, 1880; and the second one is Act 612 that was approved on February 20, 1902. DSC-13, 14.

The 1880 Act provides as follows: “Be it enacted . . . That the Bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina, and their successors in office or a majority of them, are hereby appointed trustees for the purpose of holding in trust any property heretofore given or acquired, or hereafter to be given or acquired, for objects *connected with said Church, in said Diocese...*” (emphasis added). The 1880 Act further states that the “trustees shall report annually to the Convention of *the Diocese of the said Church.*” DSC-13 (emphasis added).

The 1902 Act provides as follows: “Whereas . . . [in the 1880 Act] . . . the Bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina and their successors in office were appointed Trustees for the purpose of holding in trust any property heretofore given or acquired for objects *connected with said church in said Diocese . . .* [they shall now be discharged and replaced by a Board of Trustees] . . . “which Board shall . . . be elected at the annual Council *in and for the said church in the said Diocese* in accordance with such canon or canons as by such Trustees may from time to time be adopted.” DSC-14 (emphasis added).

An examination of these two legislative Acts of the General Assembly of South Carolina reveals that for the purpose of deciding the issues in this case, the provisions of the 1880 Act and the 1902 Act are of the same substance and effect as the 1902 Act confirms the pertinent provisions of the 1880 Act. In fact, the 1902 Act has the effect of changing the composition of and the method of designating the body of governing trustees of the trust created by the

legislature. The 1902 Act does not change the beneficiary of the trust. The 1880 Act provides that The Bishop and Standing Committee of the Protestant Episcopal Church for the Diocese of South Carolina were the designated trustees for the governance and management of the trust assets. And the 1902 Act substitutes an elected Board of Trustees to be elected by the annual Council, now called Convention of *the Protestant Episcopal Church for the Diocese of South Carolina* to continue to act as trustees for the beneficiary of the trust “*the Protestant Episcopal Church for the Diocese of South Carolina*”. The 1902 Act therefore clearly changes the designation and method of election of the trustees of the trust, but does not in any respect change the beneficiary of the trust.

Plaintiff contends that the 1880 and 1902 Acts of the General Assembly do not create a trust and that, consequently, the trust laws of South Carolina do not apply to it. Plaintiff further contends that the corporation that was created by the General Assembly is now owned or controlled by some entity other than that described in the legislation.¹³ The law of South Carolina, with respect to the proper application and consideration of statutory language, consistently holds that such language must be given its plain and ordinary meaning, and that all language statutory is presumed to have been intentionally written and is to be given its plain and ordinary meaning. The Court does not have the authority or right to change the obvious meaning or the language contained in a statute. There is room for interpretation if and when there is an ambiguity in statutory language, but there is no ambiguity in the language of the statutes now before the Court, and it must be given its clear and plain meaning to resolve this dispute. Hodges v. Rainey, 341 S.C. 79, 533 S.E. 2d 578 (2000) (“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Under the plain meaning rule, it is not the

¹³ The record in this case does not reflect that either of the legislative Acts have been amended, contravened, or repealed since the 1902 amendment.

court's place to change the meaning of a clear and unambiguous statute.”); Hays v. Adair, 267 S.C. 291, 296, 227 S.E.2d 665, 667-68 (1976) (“A proper construction seeks to harmonize the various provisions and a construction which gives meaning to all should be preferred over one which renders some provisions meaningless.”).

The 1880 Act of the General Assembly plainly states that “*the Bishop and the Standing Committee of the Protestant Episcopal Church for the Diocese of South Carolina are hereby appointed trustees for the purpose of holding in trust...*” the assets held or to be later acquired by the corporation it formed (emphasis added). The amendment of the Act in 1902 did not change substantive language of the 1880 Act in this respect, but it simply provided that the Bishop and Standing Committee of the Protestant Episcopal Church for the Diocese of South Carolina be replaced as trustees of the corporate trust by others elected as trustees as provided by a procedure prescribed by a canon or canons of the diocese “said Diocese of the said church” referring clearly and unambiguously to the Protestant Episcopal Church. The language consistently used in both legislative Acts is that the controlling entity of the corporation and its assets held in trust by statute is the diocese of the Protestant Episcopal Church and not those who have disaffiliated from it. This legislative mandate has never been changed and is today the governing language for the conduct and control of the Trustee corporation.¹⁴

¹⁴ The Trustees first known set of By-Laws was adopted in 1982. DSC-15. Those By-Laws provided, in accordance with the dictates of the legislative charters of 1880 and 1902, that the Trustees “duties and responsibilities shall be performed under the authority of the Constitution and Canons of The Episcopal Church and of the Diocese of South Carolina.” DSC-15. Beginning in 2010, the Trustees adopted a series of amendments to those By-Laws, removing references to The Episcopal Church and its Constitution and Canons, in derogation of the requirements of the Trustees’ legislative charter. DSC-16, 17. The members of the Trustees now, in complete derogation of the legislative charter, claim to hold the diocesan property in trust for the 1973 diocesan corporation, named here as the lead Plaintiff, that the Trustees recognize as having been disaffiliated from The Episcopal Church in 2012. The current members of the Trustees also were elected by and recognize the disaffiliated “Convention” of the 1973 diocesan corporation as the Trustees’ electorate body. This is a breach of trust as it violates the most basic requirements imposed by the legislative charter.

The evidence that has been presented by the parties in the trial of this matter is undisputed that the those who now claim to control the two Plaintiff corporations, whether it is a corporation created in 1973 called The Protestant Episcopal Church in the Diocese of South Carolina or the Trustees of the Protestant Episcopal Church in South Carolina are not a diocese of the Protestant Episcopal Church or in any way connected to “said church” as the statutory language requires to control or benefit from the assets of the corporate trust. The evidence shows that the Standing Committee, Bishop Lawrence and, through their actions, the 1973 corporation intentionally disaffiliated from the Protestant Episcopal Church (also commonly called The Episcopal Church) in 2012.¹⁵

Those who now claim to control the Plaintiff Trustees corporation, do not and cannot meet the clear definition prescribed by both the 1880 and 1902 Acts of the General Assembly which created it as those qualified to control or benefit from the assets of the Plaintiff corporation. It clearly follows that the 1973 corporation, The Protestant Episcopal Church in the Diocese of South Carolina, cannot control or benefit from the assets of the 1880 trust corporation because it was not in existence when the Plaintiff Trustees corporation was formed, and is not a part of the Protestant Episcopal Church as is required by the formative legislation to be able to control the Plaintiff corporation. The legislation that prescribes what entity controls and benefits

¹⁵ DSC-32 (Resolution to disaffiliate: “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.”) (emphasis added); D-24 (Bishop Lawrence Deposition at 173: “I am no longer a bishop of The Episcopal Church.”); DSC-79 (The Episcopal Church’s acceptance of the renunciation made by Bishop Lawrence in writing on November 17, 2012).

from the assets of Plaintiff corporation cannot be amended except by an act of the General Assembly of South Carolina, and no such amendment or repeal of this legislation has occurred since 1902 in Act 612.

The evidence that has been presented in in the trial of this matter establishes that defendant, The Episcopal Church in South Carolina (the Diocese of South Carolina) by the clear language of the 1880 and 1902 Acts of the General Assembly is the designated body that controls Plaintiff Trustee corporation and is the beneficiary of the assets held in trust by the Plaintiff corporation. In support of such a conclusion, the undisputed evidence establishes that defendant, The Episcopal Church in South Carolina, is the diocese of The Protestant Episcopal Church in this geographic region, and that it has duly designated The Right Reverend Charles G. vonRosenberg who testified in this case to the effect that he has been designated bishop of the diocese that is in the statutory language of the pertinent legislation, which is Defendant The Episcopal Church in South Carolina, and that it is the only diocese in this region that is a part of the Protestant Episcopal Church.¹⁶ Such factual assertions are undisputed in the record of this case. Tr. 2150-52 (Bishop vonRosenberg). When these facts are considered and applied to the clear language of the two legislative Acts in question, it becomes clear that The Episcopal Church in South Carolina is the only beneficiary of the assets of Plaintiff corporation and is entitled by law to control it.

The Statute of Uses does not apply to execute the trust in favor of the 1973 corporation because the Trustees have held and managed the property as Trustees with duties to the identifiable beneficiary capable of taking title, The Episcopal Church's regional diocese, which is now operating under the name TECSC. See All Saints Parish Waccamaw v. The Protestant

¹⁶ There are two dioceses of The Episcopal Church in South Carolina, the Diocese of South Carolina, comprising the southeastern part of the State, and the Diocese of Upper South Carolina, comprising the northwestern parts of the State.

Episcopal Church in Diocese of South Carolina, 685 S.E.2d 163, 385 S.C. 428 (2009). Tr. 276 (Robert Kunes testified that the Trustees corporation in fact holds and manages the property of the Diocese).

Based on the foregoing, those who now claim possess the right to control Plaintiff, The Trustees of the Protestant Episcopal Church in South Carolina, should be required to relinquish all such control to Defendant TECSC and provide a full accounting to Defendants; and further that Defendant TECSC should certify to the Court that it has duly elected trustees prescribed by the Acts of the General Assembly referenced herein, and that they have assumed the control and management of the corporation and its assets in accordance with such legislative mandates.

C. Trademark Rights

1. The State Trademark Registrations For Marks That Include The Term “Episcopal”

Plaintiffs seek a declaration that they have the exclusive right to use the marks “The Episcopal Diocese of South Carolina,” “The Protestant Episcopal Church in the Diocese of South Carolina,” “The Protestant Episcopal Church, The Parish of St. Michael, In Charleston, In the State of South Carolina,” “St. Michael’s Episcopal Church,” “The Parish Church of St. Helena (Episcopal),” and “St. Helena’s Episcopal Church” (collectively, the “State Episcopal Registrations”), which were registered by the South Carolina Secretary of State on or after November 5, 2010.¹⁷ For the following reasons, Plaintiffs have no rights in the State Episcopal Registrations and those registrations should be cancelled.

a. Legal Standards

Unlike a federal trademark registration granted by the United States Patent & Trademark Office (“USPTO”), a South Carolina State trademark registration does not raise a presumption or

¹⁷ The parish names that were registered with the South Carolina Secretary of State and do not include the word “Episcopal” are not in dispute.

create *prima facie* evidence of ownership or validity of a trademark; it merely provides the registrant with certain ancillary benefits under the South Carolina Trademark Act, including the ability to bring a claim for infringement of the registered mark, and the registration certificate itself is admissible as evidence that the South Carolina Secretary of State registered the trademark. 15 U.S.C. § 1115(a); S.C. Code Ann. § 39-15-1125(b); S.C. Code Ann. § 39-15-1180; Griggs v. Driggers, 94 S.E.2d 225, 230 S.C. 97 (1956).

When a party files a trademark application with the South Carolina Secretary of State, the Secretary does not scrutinize the application to determine whether the mark conflicts with a prior federal trademark registration or any entity’s common-law rights. Instead, the Secretary of State relies only on a form declaration by the applicant as confirmation that the mark meets the State trademark filing requirements. State trademark registrations are, however, subject to cancellation if a court determines that the registered mark conflicts with prior trademark registrations by the USPTO. This is why Plaintiffs’ trademark applications included the following disclaimer:

THE OFFICE OF THE SECRETARY OF STATE DOES NOT SEARCH OTHER STATE OR FEDERAL REGISTRATIONS, INTERNET DOMAIN NAMES OR OTHER COMMON LAW (UNREGISTERED) USERS, THEREFORE, RIGHTS GRANTED BY THIS REGISTRATION MAY BE AFFECTED OR PREEMPTED BY PRIOR USE OR OTHER REGISTRATION OF THE MARK.

D-1 (emphasis in original). This disclaimer is consistent with the State trademark statute, which provides that State trademark registrations are trumped by common law rights: “Nothing in this article may adversely affect the rights or the enforcement of rights in marks *acquired in good faith at any time at common law.*” S.C. Code Ann. § 39-15-1180 (emphasis added).

Because the Secretary of State does not attempt to determine whether a trademark application conflicts with other marks, an applicant must make the following declaration:

Applicant herewith declares . . . that the applicant is the owner of the mark, and that the mark is in use. Additionally, to knowledge of the person verifying this application, no other person has registered this mark either federally or in this State, or has the right to use this mark in its identical form or in near resemblance as to be likely, when applied to the goods or services of another person, to cause confusion or to cause mistake or to deceive.

D-1 (quoting S.C. Code Ann. § 39-15-1115). While this declaration is sufficient to obtain a State registration, the South Carolina Code provides that registrations “shall” be “cancel[led]” if “a court of competent jurisdiction finds that the . . . registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office before the date of the filing of the application for registration by the registrant under this article, and not abandoned.” S.C. Code Ann. § 39-15-1145(3)(f).

Although the South Carolina Code does not provide a likelihood-of-confusion standard, the courts have filled this gap. “Likelihood of confusion has been found to exist in trademark cases ‘when consumers viewing the mark would probably assume that the product or service it represents is associated with the source of a different product or service identified by a similar mark.’” Taylor v. Hoppin’ Johns, Inc., 304 S.C. 471, 477, 405 S.E.2d 410, 413 (S.C. Ct. App. 1991) (quotation omitted). Courts consider multiple factors to determine whether likelihood of confusion exists (see Swatch AG v. Beehive Wholesale, LLC, 739 F.3d 150, 158 (4th Cir. 2014) (identifying nine factors)), but “actual confusion is generally considered to be the ‘most important factor’ in a likelihood of confusion analysis.” Id. at 162. See also George & Co., LLC v. Imagination Entm’t Ltd., 575 F.3d 383, 393 (4th Cir. 2009) (“evidence of actual confusion is ‘often paramount’ in the likelihood of confusion analysis”).

b. Application To The Marks At Issue

The State Episcopal Registrations should be cancelled because they are so similar, as to be likely to cause confusion or mistake or to deceive, to marks owned by The Episcopal Church under common law and marks registered by The Episcopal Church with the USPTO before the State Episcopal Registrations were filed with the South Carolina Secretary of State. Before November 5, 2010 (the earliest date on which any mark covered by the State Episcopal Registrations was filed with the Secretary of State), the USPTO had registered multiple marks that are owned by The Episcopal Church, namely, three registrations for the mark “The Episcopal Church” (Fed. Reg. No. 3379870 (registered Feb. 12, 2008) and (Fed. Reg. 3195455 and 3195454 (both registered Jan. 9, 2007))); “The Protestant Episcopal Church in the United States of America” (Fed. Reg. No. 3342725 (registered Nov. 27, 2007)); and “The Episcopal Church Welcomes You” (Fed. Reg. No. 3342677 (registered Nov. 27, 2007)).¹⁸ Together, these federal registrations establish a proliferation of federal trademark rights around the word “Episcopal,” in favor of The Episcopal Church.

At the most basic level, confusion between the State Episcopal Registrations and The Episcopal Church’s federally registered marks and common law rights is likely because, empirically, there has been confusion. Witnesses for the Plaintiff Parish Corporations testified that they recently removed the word “Episcopal” from their names and signage to avoid giving the public the false impression that they continued to be affiliated with The Episcopal Church. For example, Mr. Alonso Galvan, who has served as a vestry member, treasurer, and senior

¹⁸ The Episcopal Church also owns other federal trademark registrations for marks that include the term “Episcopal,” including “La Iglesia Episcopal (Fed. Reg. 3378051 and 3378049 (both registered Feb. 5, 2008)) and “Episcopal Church Center” (Fed. Reg. 3397082 and 3397068 (both registered Mar. 18, 2008) and 3390734 (registered Mar. 4, 2008)).

warden of The Cathedral Church of St. Luke and St. Paul Radcliffeboro, testified about the concern that the continued use of the term “Episcopal” by entities that no longer considered themselves affiliated with The Episcopal Church would create confusion:

Q. So why was that name removed?

A. In the current environment we thought it created confusion because the Episcopal Church is commonly understood as the national church while Episcopal being a term referring to a bishop indeed refers to our bishop we didn’t want to create any confusion whatsoever.

Q. So you wanted to avoid confusion between your parish or cathedral and the Episcopal Church?

A. Yes. (Tr. 506)

This concern was justified. Ms. Nancy Armstrong, the Assistant Treasurer for the Plaintiff Diocese Corporation, testified that there was actual confusion when the Plaintiff Diocese Corporation continued to use the term “Episcopal” in its name even after it no longer claimed to be part of The Episcopal Church:

A. We received phone calls intended for the other diocese. We have actually had churches get confused and they weren’t with us anymore, send us a check and it was intended for the other diocese. It has caused confusion.

Q. So people seem to think that you’re still affiliated with The Episcopal Church?

A. Some may. (D-23 at 23:6-10.)

Because the “most important factor” in the likelihood-of-confusion analysis has been met – that is, there has been “actual confusion” with Plaintiffs’ use of names that include the term “Episcopal” – the Court could conclude on that basis alone that the State Episcopal Registrations should be cancelled.

To be sure, the other factors also favor defendants. See Swatch AG, 739 F.3d at 158. For example, Plaintiffs and Defendants both provide religious services, and they do so in similar facilities (churches). Thus, the various marks are used in the same field for the same purposes. Plaintiffs' explicit intent is to assume the goodwill built up in the marks. Moreover, The Episcopal Church's rights in its federal trademark registrations are strong. The Church's registered marks have become distinctive of The Episcopal Church's religious services. When the USPTO registered the marks "The Episcopal Church," "The Protestant Episcopal Church in the United States of America," and "The Episcopal Church Welcomes You," it did so under Section 2(f) of the Trademark Act, which applies to marks that have "become distinctive of the applicant's goods in commerce." 15 U.S.C. § 1052(f). This type of "acquired distinctiveness" provides a basis for trademark protection under federal law and state law. See id.; S.C. Code Ann. §§ 39-15-1180 ("Nothing in this article may adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law."), 39-15-1165 ("acquired distinctiveness" is used to determine whether a mark is famous), and 39-15-1110 (state analog to 15 U.S.C. § 1052(f); a mark may be registered if it "has become distinctive of the applicant's goods or services"). This is *prima facie* evidence that the Church's rights in these marks are strong.

Independent of the USPTO's determination that The Episcopal Church's rights in its marks are strong, there can be no question that the term "Episcopal," when used in connection with religious services – and not distinguished by terms indicating a religious organization other than The Episcopal Church¹⁹ – is synonymous with churches that are affiliated with The

¹⁹ For example, the African Methodist Episcopal Church and the Reformed Episcopal Church use the word "Episcopal" in their names even though they are not affiliated with The Episcopal Church. But other distinguishing features (such as the words "African Methodist" and "Reformed") in those church

Episcopal Church. Approximately 7,500 parishes and 110 dioceses (including two in South Carolina) that are part of The Episcopal Church use the word “Episcopal” in their name to denote their affiliation with The Episcopal Church and each other. These parishes and dioceses include over 2,000,000 members. The evidence presented at trial demonstrates that the nature and quality of those religious services, including those of Plaintiffs prior to 2012, have been controlled in extraordinary detail by The Episcopal Church, dating back to the Eighteenth Century, as prescribed by the Constitution and Canons of its General Convention and its Book of Common Prayer. This type of long and prolific use and control has created a common understanding in the public that by representing itself as an “Episcopal” diocese or parish, that diocese or parish is indicating its affiliation with The Episcopal Church and its other dioceses and parishes nationwide. The record reflects that this is how the term “Episcopal” is in fact understood by the public. *See* Tr. 506 (Alonso Galvan testimony).

This is exactly the type of “acquired distinctiveness” that trademark law protects. *Purcell v. Summers*, 145 F.2d 979 (4th Cir. 1944), is directly on point. There, the court enjoined former members of Methodist Episcopal Church from using that church’s name after they were no longer part of the church due to the likelihood of confusion. Further, the leading trademark treatise – on which the South Carolina Supreme Court has relied for authority on trademark law (see *Super Duper Inc. v. Pa. Nat’l Mut. Cas. Ins. Co.*, 385 S.C. 201, 210 & nn. 3, 4, 683 S.E.2d 792, 798 (2009)) – could not have been more explicit when it stated that “[a] parent religious group is entitled to protection against a schismatic group or a dissident minority’s confusing use of the same name.” 1 McCarthy on Trademarks and Unfair Competition § 9:7.50, at 9-31 (2014).

names serve as notice that the church is not affiliated with The Episcopal Church. The State Episcopal Registrations include no such distinguishing elements.

The Episcopal Church in effect licenses its trademark rights to its affiliated dioceses and parishes. *See* 15 U.S.C. § 1055 (use of mark by a “related compan[y] . . . shall inure to the benefit of the registrant”); Shell Oil Co. v. Commercial Petroleum, Inc., 928 F.2d 104, 107 (4th Cir. 1991) (“The Lanham Trademark Act affords the trademark holder the right to control the quality of the goods manufactured and sold under its trademark.”); McCarthy on Trademarks and Unfair Competition §§ 18:50, 18:51, 18:52 (4th ed. 2014). Plaintiffs, who no longer claim to be affiliated with The Episcopal Church, cannot appropriate the dominant term “Episcopal” from The Episcopal Church’s federally registered marks for use by a different religious denomination. *See United States Jaycees v. Philadelphia Jaycees*, 639 F.2d 134 (3rd Cir. 1981) (“The Philadelphia Jaycees, while affiliated with the National, was licensed to use the trademarks. Once a license has expired, use of the formerly licensed trademark constitutes infringement. To say that the licensee has acquired rights that survive the legal termination of that license, destroys the entire concept of a license.”).²⁰

The State Episcopal Registrations should therefore be cancelled because they are likely to cause confusion with The Episcopal Church’s federal trademark registrations.²¹

²⁰ This is true even where the senior trademark had rights in the mark before it obtained the license from the junior user. *See, e.g., March Madness Athletic Ass’n, L.L.C. v. Netfire, Inc.*, 310 F. Supp. 2d 786 (N.D.Tex. 2003) (“A more interesting question concerns the evolution of the rights in March madness, from first use by IHSA, through dominant use in the national media by the NCAA, to the current situation where use by both inures to the MMAA. As stated by the Fifth Circuit: The first one to use a mark is generally held to be the ‘senior’ user and is entitled to enjoin other ‘junior’ users from using the mark, or one that is deceptively similar to it, subject to limits imposed by the senior user’s market and natural area of expansion. . . . In this case, that first user was IHSA. However, as noted by Judge Posner, ‘IHSA was not assiduous’ in protecting its mark, allowing the mark to be used by a ‘junior’ (i.e. later in time) party, the NCAA. . . . Ultimately, the NCAA and IHSA, to address any issues relating to their separate rights in March Madness, pooled their rights into the MMAA. MMAA now properly holds those rights.”).

²¹ The Court notes that Plaintiffs might consider adopting marks that suggest to the public their new affiliation, according to the testimony of an officer for the Plaintiff Diocese Corporation, Rev. Jim Lewis, with the “Fellowship of Confessing Anglicans” and the “Global South Primates of the Anglican Communion,” as opposed to confusing the public by suggesting a continuing affiliation with The

c. Plaintiffs' Arguments To The Contrary Fail

i. *Inclusion of additional terms in the State Episcopal Registrations*

Plaintiffs contend that the inclusion of words other than “Episcopal” serves to distinguish the State Episcopal Registrations from The Episcopal Church’s federally registered marks. The Court disagrees. “Episcopal” is the dominant term in the State Episcopal Registrations. “Episcopal” both creates a commercial impression and identifies the source of the user’s services. See In re Nat’l Data Corp., 753 F.2d 1056, 1058 (Fed. Cir. 1985). In combination with the dominant word “Episcopal,” the inclusion of sub-unit descriptive words (e.g., “Diocese,” “Church,” or “Parish”), geographically descriptive words (“in South Carolina”), or non-dominant names (e.g., “St. Michael’s” or “St. Helena’s”) does not render confusion unlikely. See, e.g., In re Chatam Int’l Inc., 380 F.3d 1340, 1343 (Fed. Cir. 2004) (“Jose Gaspar Gold” likely to be confused with “Gaspar’s Ale” notwithstanding additional terms in each); Hewlett-Packard Co. v. Packard Press Inc., 281 F.3d 1261 (Fed. Cir. 2002) (“Packard Technologies” likely to be confused with “Hewlett Packard” despite inclusion of different terms); In re Dixie Rests., Inc., 105 F.3d 1405, 1407 (Fed. Cir. 1997) (“The Delta Cafe” infringed upon “Delta” because of common dominant term).

Not only do the additional terms in the State Episcopal Registrations not eliminate the likelihood of confusion, they in fact foster that confusion. For example, the descriptive term “Diocese” implies an affiliation with a larger church organization. The mark “The Episcopal Diocese of South Carolina” thus falsely implies that the entity is affiliated with the “Episcopal” church in a certain geography, which is false.

Episcopal Church. Tr. 144. See Purcell, 145 F.2d at 983 (“They are using the precise name of the old church; and the question is, not whether they have the right to use ‘Methodist’ or ‘Episcopal’ in a new name so constructed as to avoid confusion, but whether they have the right to use the old name in a way that amounts, as we think it does, to implied misrepresentation to the damage of plaintiffs.”).

This problem is even worse with respect to the mark “The Protestant Episcopal Church in the Diocese of South Carolina,” which implies that the Diocese is a geographic subunit of The Protestant Episcopal Church, which Plaintiff Diocese Corporation no longer claims to be. Further, The Episcopal Church owns the federal registration for the mark “The Protestant Episcopal Church in the United States of America.” Plaintiff Diocese Corporation’s state registration for “The Protestant Episcopal Church in the Diocese of South Carolina” is likely to be confused with The Episcopal Church’s registered mark, because it falsely implies that the Plaintiff Diocese Corporation is a state subunit of the Church in the United States of America.

Finally, as noted above, none of the State Episcopal Registrations includes any modifier indicating that the user of the mark is *not* affiliated with The Episcopal Church, as is the case with the marks African Methodist Episcopal Church and Reformed Episcopal Church.²² The additional terms in the State Episcopal Registrations are not the kind of clarifying and distinguishing words that are necessary if a church wants to call itself “Episcopal” notwithstanding its lack of affiliation with The Episcopal Church.

ii. *Historical uses of the term Episcopal*

Plaintiffs also contend that it is significant that the term “Episcopal” predated The Episcopal Church itself. In fact, the historic origins of that term are legally irrelevant, for several

²² According to Plaintiffs’ expert witness, Dr. Guelzo, in 1873, when individuals left The Episcopal Church to form the “Reformed Episcopal Church,” they included the denominational modifier “Reformed” in the new church’s name in order to distinguish their religious services from those of The Episcopal Church. Tr. 2398-99. This testimony confirms the acquired distinctiveness of the word “Episcopal” by that time and implies that without the modifier “Reformed,” the public would have been confused. See *Purcell*, 145 F.2d at 983 (“It is said that the words ‘Methodist’ and ‘Episcopal’ are generic terms and that defendants have the right to use them for that reason, but defendants are not proposing to use either of these words in a new name so different from the old that no confusion could result. They are using the precise name of the old church; and the question is, not whether they have the right to use ‘Methodist’ or ‘Episcopal’ in a new name so constructed as to avoid confusion, but whether they have the right to use the old name in a way that amounts, as we think it does, to implied misrepresentation to the damage of plaintiffs.”).

reasons. Initially, logically, the entity that claims trademark rights in a term need not have actually created the term. No such requirement exists in federal or state trademark law. The USPTO certainly did not impose such a requirement when it conducted a substantive examination of the Church's applications and registered "The Episcopal Church" and the Church's multiple other marks that include the term "Episcopal," as well as the many thousands of other marks that include terms that were not used for the first time by the owners of the federal registrations. Thus, whether or not the term "Episcopal" was used before The Episcopal Church was founded says nothing about The Episcopal Church's present-day rights in that term.

Moreover, the origins of the word "Episcopal" have no bearing on the application of S.C. Code Ann. § 39-15-1145(3)(f), which requires that marks registered with the State be cancelled if a Court finds the registered mark to be "so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office before the date of the filing of the application for registration by the registrant under this article." Because The Episcopal Church's federal registrations pre-dated the filing of the State Episcopal Registrations, and, as noted, the State Episcopal Registrations are likely to be confused with the federal registrations, the requirements of § 39-15-1145(3)(f) have been satisfied, and Plaintiffs' State registrations should be cancelled.

Finally, as noted above, the term "Episcopal" has become synonymous with the religious services offered by entities affiliated with The Episcopal Church. To the extent Plaintiffs claim the word "Episcopal" is merely descriptive when used in a church's name, they are incorrect because, as discussed above, that term has acquired distinctiveness through its longstanding use by entities affiliated with The Episcopal Church, as the USPTO has found. That present-day

usage of the term is dispositive for purposes of determining likelihood of confusion under the federal and state trademark law discussed above.²³

2. The Other State Trademark Registrations

In addition to the State Episcopal Registrations, Plaintiffs seek a declaration that they have the exclusive right to use other marks registered by the South Carolina Secretary of State, including a Diocesan seal and the marks “The Diocese of South Carolina.”

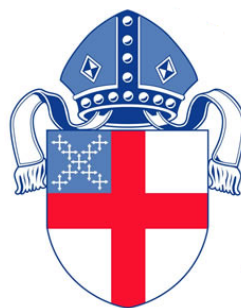
The legal effect of The Episcopal Church’s control over the nature and quality of the Diocese’s religious services is the same for these marks as it is for the marks discussed above. The rights and goodwill that have developed over the years in these marks has inured to The Episcopal Church and cannot be taken away by the schismatic Plaintiff Diocese Corporation.

Moreover, the dominant indicia in the Diocesan seal closely resembles the federally registered seal of The Episcopal Church (Reg. No. 3095437 (registered May 23, 2006)), including a shield, cross, and bishop’s mitre and stole.

Diocese



The Episcopal Church



²³ To the extent Plaintiffs contend that they have common-law rights in the marks covered by the State Episcopal Registrations separate and apart from the registrations themselves, those arguments must be rejected for the same reasons noted above. Moreover, any Plaintiff that called itself “Episcopal” before The Episcopal Church was founded effectively lost any senior user status it might otherwise have enjoyed when it agreed to be part of The Episcopal Church and thereby agreed to allow that term to be used by churches affiliated with The Episcopal Church. It cannot now, after purporting to leave The Episcopal Church, attempt to regain that senior user status when, in the intervening centuries, the term “Episcopal” has come to signify churches that are affiliated with The Episcopal Church.

D-203.

The mark “The Diocese of South Carolina” suggests a geographic affiliation with a larger church. The use of that mark, both apart from and in connection with the infringing Diocesan seal, further enhances the false suggestion of an affiliation with The Episcopal Church. See Giant Food, Inc. v. Nation's Foodservice, Inc., 710 F.2d 1565 (Fed. Cir. 1983); Specialty Brands, Inc. v. Coffee Bean Distributors, Inc., 748 F.2d 669 (Fed. Cir. 1984). For these reasons, Plaintiff Diocese Corporation’s trademark registrations for the Diocesan seal and the mark “Diocese of South Carolina” should be cancelled.

3. The Claims At Issue

a. Trademark Infringement Claims

Based on the above, the Court should conclude that Defendants have the right to use the trademarks in dispute and Plaintiffs have no such rights. S.C. Code Ann. §§ 39-15-1110, 1145, 1170, and 1180; 15 U.S.C. §§ 1114 and 1125(a); CareFirst of Maryland, Inc. v. First Care, P.C., 434 F.3d 263 (4th Cir. 2006) (trademark infringement requires proof of a protectable trademark and likelihood of confusion). Plaintiffs’ state trademark infringement claim should be dismissed in favor of the affirmative defenses and counterclaims brought by The Episcopal Church in South Carolina and the common law and federal trademark infringement counterclaims brought by The Episcopal Church. Plaintiffs should be required to discontinue their use of the marks and Plaintiffs’ State Trademark Registrations should be cancelled by the South Carolina Secretary of State.

b. Dilution Claim

The Episcopal Church is also entitled to declaratory and injunctive relief for its Lanham Act dilution claim. The Episcopal Church's federally registered marks are famous and Plaintiffs' use of marks that include the dominant term "Episcopal" is likely to impair the acquired distinctiveness of The Episcopal Church's marks. Under 15 U.S.C. § 1125(c)(2)(A), "a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner." Here, as discussed, the term "Episcopal" is widely recognized by the public as connoting an affiliation with the religious services offered by dioceses and parishes that are affiliated with The Episcopal Church. Further, 15 U.S.C. § 1125(c)(2)(A), states that trademark "dilution" is "association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark." If Plaintiffs are permitted to identify themselves as an "Episcopal" diocese and "Episcopal" parishes, without any language indicating that they are not affiliated with The Episcopal Church, per the example of "The Reformed Episcopal Church," that use would impair the distinctiveness of The Episcopal Church's federally registered marks.

c. South Carolina Unfair Trade Practices Act Claim

The Episcopal Church is also entitled to declaratory and injunctive relief under its South Carolina Unfair Trade Practices Act claim, S.C. Code Ann. § 39-5-20. By using marks that infringe upon The Episcopal Church's federally registered marks and common law rights, Plaintiffs have engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, and their actions have had an impact on the public interest that is capable of repetition. See York v. Conway Ford, Inc., 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997) (unfair trade practice claim requires act or practice that has "an impact upon the public interest," meaning that it has "the potential for repetition"); 1 J. Thomas

McCarthy, McCarthy on Trademarks and Unfair Competition § 2.7, at 2-15 (2014) (“[t]rademark infringement is a type of unfair competition”); *id.* at § 2.8, at 2-19 – 2-20 (“the keystone of that portion of unfair competition law which relates to trademarks is the avoidance of a likelihood of confusion”).

d. Improper Use Of Names Claim

In an attempt to make an end-around around the trademark laws, Plaintiffs claim that they are entitled to all rights in the marks pursuant to S.C. Code Ann. §§ 16-17-310 and 16-17-320. These criminal statutes, which do not concern trademarks, do not salvage Plaintiffs’ trademark-related claims.

Notably, these statutes have never been cited in any reported case. To apply the statutes in the manner Plaintiffs suggest would be inconsistent with the state and federal trademark statutes and common law discussed above. The statutes do not purport to allow an entity to infringe upon the trademarks of another. S.C. Code Ann. § 39-15-1145 makes clear that trademark infringement is prohibited in this State, and, because the Court has concluded that the State Episcopal Registrations infringe upon The Episcopal Church’s federally registered marks and common law rights, § 39-15-1145(3)(f) has been satisfied. Sections 16-17-310 and 16-17-320 do not permit Plaintiffs to use marks that infringe upon The Episcopal Church’s trademark rights.

Even if §§ 16-17-310 and 16-17-320 somehow mooted all of South Carolina trademark law, including § 39-15-1145, the statutes would still be preempted by the federal trademark laws. This preemption takes two forms. First, there is express federal preemption of conflicting state trademark laws. See 15 U.S.C. § 1125(c)(6) (“The ownership by a person of a valid registration . . . shall be a complete bar to an action against that person, with respect to that mark, that – (a) is

brought by another person under the common law or a statute of a State; and (b) . . . asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement.”). This provision of the Lanham Act bars any claim that would allow a party to infringe The Episcopal Church’s federally registered marks.

Second, conflict preemption applies as well. Conflict preemption exists when a state statute “actually conflicts with federal law” or “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” Am. Petroleum Inst. v. Cooper, 718 F.3d 347, 359 (4th Cir. 2013) (quotation omitted). One purpose of the Lanham Act is “to establish uniform regulation of trademarks.” Id. (quotation omitted). To the extent Plaintiffs contend that S.C. Code Ann. §§ 16-17-310 and 16-17-320 allow Plaintiffs to use marks that infringe The Episcopal Church’s federally registered marks, that claim also fails under the doctrine of conflict preemption.

Based on the facts and the law, Plaintiffs should not be entitled to recover on their trademark-related claims, and Defendants should be entitled to an Order of this Court granting the relief they seek for the reasons set forth herein as set forth below.

The parties represented here as Plaintiffs and the individuals acting on their behalf should be permanently enjoined from using following marks and that the South Carolina Secretary of State should cancel the registrations for said marks:

“The Protestant Episcopal Church in the Diocese of South Carolina”

“The Episcopal Diocese of South Carolina”

“The Diocese of South Carolina”

The following seal:



“St. Michael’s Episcopal Church”

“The Protestant Episcopal Church, The Parish of St. Michael, In Charleston, In the State of South Carolina”

“The Parish Church of St. Helena (Episcopal)”

“St. Helena’s Episcopal Church”

Furthermore, all preliminary relief granted in the consent preliminary injunction entered by the Court upon the commencement of this litigation should be vacated and dissolved.

D. The Parish Property

The Plaintiff parishes seek a declaration that Defendant The Episcopal Church (referred to in this section as the “National Church”) “has no legal, beneficial or equitable interest in any of the real and personal property of Plaintiffs”; that Defendant the National Church “and anyone claiming under any alleged interest of” Defendant the National Church “has no right, title or interest, legal, beneficial or equitable, to the real and personal property of the Plaintiffs”; and that “Plaintiffs are the lawful and rightful possessors of all of the real and personal property” at issue in the case. Second Amended Complaint for Declaratory and Injunctive Relief at 84-85.

Defendant/Counterclaim Plaintiff the National Church and Counterclaim Plaintiff The Episcopal Church in South Carolina seek a declaration that all parish property at issue in this case, both real and personal, “is held in trust for, and is and shall remain, subject to the equitable

interests of,” the National Church and TECSC, and “must be held and used solely for the mission and ministry of the [National] Church and the [National] Church Diocese”; an order enjoining the leaders of the individual plaintiff parishes “from exercising any control over any of the [parish] property that is the subject of” this lawsuit; and an order requiring those same leaders to “render an accounting of all property held by those individuals or entities under their control as of October 1, 2010.” Answer and Counterclaims of The Episcopal Church to Second Amended Complaint for Declaratory and Injunctive Relief at 98; Answer, Affirmative Defenses, and Counterclaims of The Episcopal Church in South Carolina to Second Amended Complaint for Declaratory and Injunctive Relief at 78.

1. GOVERNING LAW

a. Express Trusts

Express trusts are governed initially by South Carolina’s Trust Code, which was adopted in 2005 with an effective date of January 1, 2006. S.C. Code Ann. § 62-7-102; 2005 S.C. Act No. 66. “The common law of trusts and principles of equity supplement” the Trust Code, “except to the extent modified by [the Code] or another statute” S.C. Code Ann. § 62-7-106.

Under the Trust Code, an express trust “may be created by ... (i) transfer of property to another person as trustee” or by “(ii) written declaration signed by the owner of property that the owner holds identifiable property as trustee” S.C. Code Ann. § 62-7-401(a)(1)(i) and (ii).²⁴ “To be valid, a trust of real property, created by transfer in trust or by declaration of trust, must be proved by some writing signed by the party creating the trust. A transfer in trust of personal property does not require written evidence, but must be proven by clear and convincing evidence . . .” S.C. Code Ann. § 62-7-401(a)(2). S.C. Code Ann. § 62-7-407 (“Except as otherwise

²⁴ A trust may also be created by “exercise of a power of appointment in favor of a trustee.” S.C. Code Ann. § 62-7-401(a)(1)(iii).

required by statute, a trust need not be evidenced by a trust instrument. The creation of an oral trust and its terms may be established only by clear and convincing evidence.”); Beckham v. Short, 380 S.E.2d 826, 828, 298 S.C. 348, 351 (1989) (“...the doctrine of part performance in the context of oral trusts is well settled.”). A trust is valid if, at the time of its creation, it comports with the law where it was executed or where the settler, trustee, or property is located. See S.C. Code Ann. § 62-7-403.

The “writing” required to create a trust by declaration “need not be ... a trust instrument.” S.C. Code Ann. § 62-7-407. Rather, a trust arises when three elements are shown: “[A] declaration creating the trust, a trust *res*, and designated beneficiaries.” *Whetstone v. Whetstone*, 309 S.C. 227, 231, 420 S.E.2d 877, 879 (S.C. Ct. App. 1992); *see also Harter v. Johnson*, 122 S.C. 96, 115 S.E. 217, 230 (S.C. 1922) (express trust requires no special writing, but rather only the settlor’s intent to create a trust in its property). Further, a trust may be “piec[ed] together” from “various documents which were intended to create the trust.” *Ramage v. Ramage*, 283 S.C. 239, 244, 322 S.E.2d 22, 26 (S.C. Ct. App. 1984). Finally, the requirement that a written declaration be “signed” by the owner of the property is satisfied by the “placing in the document of words, letters, or other symbols intended to stand for the name of the party in question. The method by which these symbols are imprinted on the document is not important. ... The vital point is that the symbols shall have been placed on the document by a party competent to make the memorandum.” 2 George G. Bogert et al., *The Law of Trusts and Trustees* § 86 (3d ed. Rev. 2008) (internal citations omitted).

Express trusts created after January 1, 2006 (the Trust Code’s effective date) are revocable “[u]nless the terms of a trust expressly provide that the trust is irrevocable”; however, the presumption of revocability “does not apply to a trust created under an instrument executed

before [that] date ...” S.C. Code Ann. § 62-7-602(a). The Trust Code’s presumption of revocability for trusts created after the Code’s effective date “is a departure from former South Carolina law, which presumed that a trust was irrevocable unless a power of revocation was validly reserved and that, if a particular method of revocation was specified, it must be strictly followed.” *Id.* at Reporter’s Comment. *See also Peoples Nat’l Bank of Greenville v. Peden*, 229 S.C. 167, 92 S.E.2d 163 (S.C. 1956) (trusts presumed irrevocable).

b. Constructive Trusts

“A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding the legal title. A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. Fraud is an essential element, although it need not be actual fraud.” *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (S.C. 1987) (internal citations omitted). Evidence of a constructive trust “must be clear, definite, and unequivocal.” *Id.* at 530, 354 S.E.2d at 561 (internal citations omitted).²⁵

“The abuse of a confidential relationship is recognized by our Supreme Court as the basis of the imposition of a constructive trust.” *Chapman v. Citizens and S. Nat’l Bank of South Carolina*, 302 S.C. 469, 479, 395 S.E.2d 446, 453 (S.C. Ct. App. 1990) (citing *Lollis*). “[A] confidential or fiduciary relationship exists when one reposes a special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one reposing the confidence.” *Id.* at 477, 395 S.E.2d at 451 (citation omitted). Where one party has acted in reliance on such a relationship, the other is bound to honor it, even if the latter has become convinced of the rightness of doing otherwise. *See id.* (wife’s “struggle[]

²⁵ South Carolina’s Trust Code expressly “does not apply to constructive trusts.” S.C. Code Ann. § 62-7-102.

with her conscience between providing for her children and honoring the agreement she made with her late husband” was “to be expected” but “[did] not vitiate or excuse the responsibility she owed [her late husband] by way of the trust he reposed in her.”). *Id.* at 479, 395 S.E.2d at 452-53. Accordingly, “[w]hen matters of the conscience are decided improvidently, equity stands ready to rectify.” *Id.*

2. COMMON FACTS

The following facts are relevant to all, or nearly all, of the National Church’s and TECSC’s claims of express and constructive trust against the Plaintiff parishes:

a. Common Facts of the National Church

The National Church has regulated the control and use of parish property through various canons enacted since the late 19th Century, including a canon adopted in the 20th Century expressly providing for a trust interest in that property.

In 1871, the National Church adopted a canon that required parishes to secure the consent of Diocesan officials before alienating or encumbering consecrated real property. D-157 at 83-84 (1871 National Church Canon I.21).²⁶ This requirement was extended to cover unconsecrated real property in 1940. D-180 (1940 National Church Canon 59.IV). Both requirements remained in effect at the time the present dispute arose. D-203 at 40-41, 64 (2009 National Church Canons I.7.3 and III.6.2).

In 1904, the National Church adopted a canon stating that “the Rector [of a Parish] shall, at all times, be entitled to the use and control of the Church and Parish buildings, with the appurtenances and furniture thereof” for the purpose of carrying out his duties. D-168 at 55

²⁶ Trial exhibits are cited by exhibit number (“D-157”) and, where appropriate, page number (“at 83-84”).

(1904 National Church Canon 15.I.ii). This canon remained in effect at the time the present dispute arose. D-203 at 87 (2009 National Church Canon III.9.5(a)(2)).

In 1979, the National Church adopted a canon, commonly known as the “Dennis Canon,” which states:

“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.” D-193 at 31 (1979 National Church Canon I.6.4).

At the same time, the National Church adopted the following, parallel canon:

“Any dedicated and consecrated Church or Chapel shall be subject to the trust declared with respect to real and personal property held by any Parish, Mission, or Congregation as set forth in Section 4 of Title I, Canon 6.” D-193 at 53 (1979 National Church Canon II.7.4).

These trust canons remained in effect at the time the present dispute arose. D-203 at 41, 64 (2009 National Church Canons I.7.4 and II.6.4).

The National Church has historically required local Church leaders to adhere to the Church’s rules. Since at least 1902, the National Church’s Constitution has required any person being ordained as Bishop, Priest or Deacon to “subscribe and make the following declaration:

“I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Protestant Episcopal Church in the United States of America.”” D-167 at 12 (1902 National Church Const. art. VIII); D-203 at 7 (2009 National Church Const. art. VIII).

Since 2000, the National Church’s canons have provided:

“Any person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised.” D-200 at 53 (2000 National Church Canon I.17.8); D-203 at 58 (2009 National Church Canons I.17.8).

In March 1999, the Treasurer of the National Church wrote to invite all the Church's dioceses to be included in the National Church's group tax exemption. D-434 (Memorandum from Stephen C. Duggan) ("Duggan Memorandum"). The Treasurer's memorandum stated that, under IRS rules, "[t]o be covered under the group exemption of the National Church, a local entity must be under the general supervision and control of the National Church [or] a covered diocese." D-434 (Duggan Memorandum) at 5; *see also* Rev. Proc. 80-27, 1980-1 C.B. 677. The Diocese of South Carolina responded in May 1999, stating that the Diocese "elects to be covered" under the National Church's group exemption, "together with the congregations of the Diocese" set out in an attached list. D-435 (Letter from Nancy Armstrong) ("Armstrong Letter"). Every one of the plaintiff parishes, or their predecessor parishes, elected to be included on that list. D-435 (Armstrong Letter) at Attachment A (listing St. Helena's, Beaufort; St. Paul's, Bennettsville; The Cross, Bluffton; Cathedral of St. Luke & St. Paul, Charleston (a/k/a St. Luke and St. Paul, Radcliffeboro); Holy Trinity, Charleston; Old St. Andrew's, Charleston; St. James', Charleston (a/k/a St. James', James Island); St. Michael's, Charleston; St. Peter's, Charleston (a/k/a Good Shepherd); St. Philip's, Charleston; St. David's, Cheraw; St. Paul's, Conway; St. Matthew's, Darlington; Trinity, Edisto Island; Epiphany, Eutawville; All Saints', Florence; St. John's, Florence; St. Matthew's, Fort Motte; Prince George (Winyah), Georgetown; St. Bartholomew's, Hartsville; St. Luke's, Hilton Head; Our Saviour, Johns Island; St. John's, Johns Island; Christ Church, Mt. Pleasant; St. Andrew's, Mt. Pleasant; Trinity, Myrtle Beach; Redeemer, Orangeburg; All Saints', Pawley's Island (predecessor to Christ the King); Trinity, Pinopolis; Holy Cross, Statesburg; St. Matthias', Summerton; St. Paul's, Summerville; Holy Comforter, Sumter; Resurrection, Surfside Beach; St. Jude's, Walterboro; Christ St. Paul's, Yorges Island).

Since 1916, the National Church has had a canon requiring all parishes to contribute to retirement accounts managed by the Church Pension Fund on behalf of their employed clergy. D-172 at 142-45 (1916 National Church Canons 56); D-203 at 41-44 (2009 National Church Canons I.8).

Since 1973, the National Church has had canons prohibiting the remarriage of divorced persons without the consent of the Bishop. D-191 at 40-41 (1973 National Church Canon I.18.3); D-203 at 60 (2009 National Church Canon I.19.3). Since 1967, the National Church has had canons requiring parishes to have their lay eucharistic ministers licensed by their diocese. D-189 at 129 (1967 National Church Canon 49.5); D-203 at 66 (2009 National Church Canon III.4.1(a)).

b. Common Facts of the Diocese

In 1822, the Diocese adopted a canon which stated:

“Whenever a Church, or Parish, not now entitled to a representation [in the Diocesan Convention], shall be desirous of uniting with the Convention of the Church in this Diocese, they shall apply by letter to the Bishop, or when there is no Bishop, to the Standing Committee, stating the due organization of their Church, the election of their Vestrymen and Church Wardens, their means, or prospects, for the support of a Minister, *and their willingness to conform to the Constitution and Canons of the General Convention, and the Constitution and Canons of the Convention of this Diocese, which are now, or hereafter may be enacted by authority of the same. ...*” D-237A at 5 (1822 Diocesan Canon I) (emphasis added).

In 1824, that provision became Article XII of the Diocese’s Constitution. D-239B at 39 (1824 Diocesan Const. art. XII). The requirement that, in order to be admitted into union with the Diocesan Convention, a new parish pledge “its willingness to conform to the Constitution and Canons of the [National Church] and the Constitution and Canons of the ... Diocese” remained in the Diocesan Constitution until 2009. D-423B at A-4 (2009 Diocesan Const. art. VIII, sec. 1.A(2)e).

In 1841, the Diocese adopted a provision in its Constitution that stated:

“The Protestant Episcopal Church in South-Carolina accedes to, recognizes and adopts the general Constitution and Canons of the Protestant Episcopal Church in the United States of America, and acknowledges their authority accordingly.” D-256B at 7 (1841 Diocesan Const. art. I).

Nearly identical language remained in the Diocesan Constitution through 2009, when the Diocesan Constitution stated:

“The Church in the Diocese of South Carolina accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church in the United States of America and acknowledges this authority accordingly.” D-423B at A-1 (2009 Diocesan Const. art. I).

By 1996, the Diocese of South Carolina had adopted its own version of the Dennis Canon, which stated:

“All real and personal property held by or for the benefit of any Parish, Mission, or Congregation is held in trust for the Episcopal Church and the Protestant Episcopal Church in the Diocese of South Carolina. 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, the Episcopal Church and the Protestant Episcopal Church in the Diocese of South Carolina.” D-410B at C-30 (1996 Diocesan Canon XXX.5).

That provision remained in effect through 2009. D-423B at C-28 (2009 Diocesan Canon XXX.5).

From time to time, the Diocese published a “Vestry Handbook” containing the following statements:

“This handbook is intended for the use of vestry members of parishes and missions to enable elected members understand their role and work that lies before them.” D-CSP-17 (Vestry Handbook: The Episcopal Diocese of South Carolina 2006, 3rd Edition) (“Vestry Handbook”) at 1.

“[A] congregation may call itself “Episcopal” only because it is in union with the bishop, the diocese and the Episcopal Church in the United States of America.” D-CSP-17 (Vestry Handbook) at 4.

“The title to parish property is held by the vestry in trust for the Episcopal Diocese of South Carolina and is secured against alienation from the Episcopal Church in the Diocese of South Carolina. This includes both real estate and financial resources.” D-CSP-17 (Vestry Handbook) at 4.

“Canon VIII of the Canons of the Episcopal Church authorizes the Church Pension Fund to administer the clergy pension system, which is mandatory for all active, parochial clergy.” D-CSP-17 (Vestry Handbook) at 6.

“The responsibility and accountability for stewardship of church money and property is delineated in Title I, Canon 7, [including the Dennis Canon] of the Canons of the Episcopal Church.” D-SCP-17 (Vestry Handbook) at 13.

“Each congregation is required to submit an annual report on the appropriate parochial report form by March 1st of each year. (*National Canon I.6.1*)” D-CSP-17 (Vestry Handbook) at 13.

“Parish trust funds, permanent funds and securities must be deposited with a bank, diocesan corporation or other approved agencies. Two signatures must be required for withdrawal. Records of trust funds must be kept, showing source and date, terms governing use of principal and income, frequency and recipients of reports of condition, and how the funds are invested. (*National Canon I.7.1.b-c*)” D-CSP-17 (Vestry Handbook) at 13.

“Treasurers and custodians for any funds, which exceed \$500 during any year, shall be bonded. (*National Canon I.7.1.d*)” D-CSP-17 (Vestry Handbook) at 13.

“All parishes must pay the Church Pension Fund assessments due on the salaries and other compensation of the clergy. (*National Canon I.8.3*)” D-CSP-17 (Vestry Handbook) at 14.

“No real property may be encumbered or alienated by a parish without the written consent of the bishop and Standing Committee of the diocese. (*National Canon I.7.3*)” D-CSP-17 (Vestry Handbook) at 16.

“All parish and mission property is to be held in trust for the Episcopal Church and the diocese, with the local congregation retaining control only so long as it remains part of and subject to the Constitution and Canons of the Church. (*National Canon I.7.4*)” D-CSP-17 (Vestry Handbook) at 16.

3. PARISH-SPECIFIC FACTS

The following parish-specific facts are relevant to the National Church’s and TECSC’s claims of express and constructive trust against the Plaintiff parishes.

a. All Saints

Express trust. At its annual meeting in January 1985, the congregation of All Saints adopted “By-Laws of All Saints’ Episcopal Church” that included the following Preamble:

“The By-Laws of All Saints’ Church are drawn with the recognition that as a part of the Episcopal Church in the United States of America, we are bound by the Constitution and Canons of the National Church and the Constitution and Canons of the Diocese of South Carolina.” D-AS-24.

Constructive trust. In 1958, All Saints incorporated under the name “All Saints Protestant Episcopal Church, Inc.,” AS-1, and weeks later, St. John’s Episcopal Church conveyed real property to it in the name of “All Saints Episcopal Church, Inc.” AS-2. In 1960, the new congregation of All Saints signed “Articles of Association” stating that it was “assembled for the purpose of organizing a Parish of the Protestant Episcopal Church” and that its members “do hereby acknowledge, accede to and adopt the doctrine, discipline and worship, the Constitution and Canons of the Protestant Episcopal Church in the United States of America, and the Constitution and Canons of the same Church in the Diocese of South Carolina ...” D-AS-6. In 1961, the Diocese accepted an application from All Saints to be admitted as a parish of the Diocese, D-375A at 24, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese.

Between 1958 and 2005, All Saints sought and received the consent of the Diocese to alienate or encumber its real property at least nine times, as required by National Church canons. D-AS-16; D-AS-32; D-AS-36; D-378A at 74; D-380A at 68; D-382A at 79; D-374A at 85; D-388A at 8; and D-416A at 69.

Moreover, the evidence shows that:

All Saints used the Vestry Handbook published by the Diocese. AS dep. at 16.²⁷

All Saints made pension payments to the Church Pension Fund for its clergy as required by National Church canons. AS dep. at 36.

All Saints availed itself of liability insurance provided by an affiliate of the Church Pension Fund. AS dep. at 40-41.

All Saints regularly used the National Church's *Prayer Book* and Hymnal, AS dep. at 45, and Minutes from a meeting of the All Saints vestry in 1979, noted, "Directive from Bishop on Prayer Book. General Convention has adopted Prayer Book. It must be used unless special permission is obtained from the Bishop. Effective January 1, 1980." D-AS-44.

All Saints posted signs containing the parish name and "The Episcopal Church Welcomes You" in the community. AS dep. at 41.

In 1959, All Saints received a \$7,000 grant from the National Church's Home Missions Department, D-AS-11; *see also* D-AS-19. In 1995, the Bishop "informed the vestry that our bylaws need to be revised to bring them into agreement with national and diocesan bylaws." In response, the vestry adopted a motion to call "a special congregational meeting ... to elect vestry persons and announce that the bylaws are going to be revised." D-AS-27 at 3.

b. Christ Church

Express trust. In 1980, the congregation of Christ Church adopted "By-Laws, Christ Church, Mount Pleasant, S.C.," which included the following:

"ARTICLE I – GENERAL

"Section 1: The Episcopal Church of the Parish of Christ Church, known as Christ Church, Mount Pleasant, does acknowledge and accede to the doctrine,

²⁷ Excerpts from depositions taken pursuant to Rule 30(b)(6) are cited by the acronym used for each parish ("AS" for All Saints); "dep." indicating deposition; and page number ("at 16").

discipline and worship, the Constitution and Canons of the Protestant Episcopal Church in the United States of America and the Constitution and Canons of the same Church in the Diocese of South Carolina.”

...

“Section 3: The terms of these By-laws which may be in conflict with the Canons of the Protestant Episcopal Church in the United States of America and/or the Diocese of South Carolina are hereby amended to conform to such canons.”

...

“ARTICLE IV – VESTRY

“Section 1: The duties of the Vestry and Wardens are those as set forth by the Canons of the Protestant Episcopal Church in the United States of America and of the Diocese of South Carolina.” CC-25.

Also in 1980, the Wardens and Vestry of Christ Church, “on behalf of the congregation ... reaffirm[ed] our willingness to conform to the Constitutions and Canons of the General Convention [of The Episcopal Church] and the Conventions of this Diocese, which are, or thereafter may be, enacted by the authority of the same.” D-CC-6.

Constructive trust. In 1787, the South Carolina General Assembly, in response to a “petition” from “members of the Episcopal Church in the parish of Christ Church,” declared “That the vestry and church-wardens of the said church, elected or to be elected, in manner as heretofore accustomed, and their successors in office forever hereafter, shall be, and they are hereby declared to be, incorporated by the name of ‘The Vestry and Church-Wardens of the Episcopal Church in the Parish of Christ Church.’” No. 1363, An Act to Incorporate the Vestry and Church-Wardens of the Episcopal Church of the Parish of Christ Church (1787) at CC-24.

In 1942, real property was conveyed to “THE VESTRY AND CHURCH WARDENS OF THE EPISCOPAL CHURCH OF THE PARISH OF CHRIST CHURCH, a Corporation.” CC-18. In 1968, real property was conveyed to “The Vestry and Church Wardens of the Episcopal Church of the Parish of Christ Church.” CC-21. In 1970, real property was conveyed

to “The Vestry and Wardens of the Episcopal Church of the Parish of Christ Church, Mount Pleasant, South Carolina.” CC-22.

Between 1969 and 1997, Christ Church sought and received consent from the Diocese to alienate or encumber real property at least four times, as required by National Church canons. D-383A at 106-7; D-392A at 6; D-405A at 113; D-411A at 77.

Moreover, the evidence shows that:

Christ Church made pension payments to the Church Pension Fund for its clergy as required by National Church canons. CC dep. at 18.

Christ Church regularly used the National Church’s *Prayer Book* and Hymnal. CC dep. at 21.

Christ Church posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. CC dep. at 20.

In May 1999, Christ Church elected to be included in The Episcopal Church’s group tax exemption from the IRS. CC dep. at 18.

In 2004, 2005, and again in 2009, a member of the Audit Committee of Christ Church reported that his inspection of the parish’s financial records was “made in accordance with ... the [National Church’s] Manual of Business Methods in Church Affairs,” that the “financial statements are prepared ... in accordance with principles adopted by the [National] Church and approved by its General Convention,” and that he had “taken steps to see that” further bookkeeping was “in accordance with the principles authorized by General Convention of the [National] Church.” D-CC-57; D-CC-59; D-CC-60.

c. Christ St. Paul’s

Express trust. Christ St. Paul’s adopted new parish bylaws in 1980, which remained in effect until 2013. Tr. at 337.²⁸ Those bylaws provided that the Parish was organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of the Episcopal Church in the Diocese of South Carolina and of the Episcopal Church in the United States. Tr. at 337.

Constructive trust. In 1968, real property was conveyed to “the Vestry and Wardens of Christ St. Paul’s Episcopal Church, and their successors in office, as Trustees, for the use and benefit of Christ St. Paul’s Episcopal Church.” CSP-6 (at Bates CSP-313-1340). In 1980, real property was conveyed to “Christ-St. Paul’s Episcopal Church.” CSP-7 (at Bates CSP-313-1198). In 1985, real property was conveyed to “Christ-St. Paul’s Episcopal Church.” CSP-4 (at Bates CSP-313-1367). In 1989, real property was conveyed to “Christ-St. Paul’s Episcopal Church.” CSP-3 (at Bates CSP-313-1223).

Between 1969 and 1974, Christ St. Paul’s sought and received the consent of the Diocese to alienate or encumber real property at least three times, as required by National Church canons. D-383A at 106; D-384A at 69; D-CSP-8. In 1977, the parish vestry reported that it had an audit committee review the parish’s financial records “[a]s newly required by National Church and Diocesan Canons.” D-CSP-9. A similar report was made in 1978. D-CSP-12 (at 2).

On December 3, 1999, Articles of Incorporation were filed under the name of “Christ St. Paul’s Episcopal Parish.” CSP-2. The parish had previously been formally established by the 1706 Church Act, under the name “Christ Church.” CSP-1.

Moreover, the evidence shows that:

²⁸ Excerpts from the trial transcript are cited as “Tr.” followed by the page number.

Christ St. Paul's posted signs containing the parish name and "The Episcopal Church Welcomes You" in the community. CSP dep. at 50.

Christ St. Paul's made pension payments to the Church Pension Fund for its clergy as required by National Church canons. CSP dep. at 47.

Christ St. Paul's availed itself of liability insurance provided by an affiliate of the Church Pension Fund. CSP dep. at 48.

Christ St. Paul's regularly used the National Church's *Prayer Book* and Hymnal. CSP dep. at 57, 58.

Christ St. Paul's kept the Vestry Handbook published by the Diocese in its files. D-CSP-17.

Christ St. Paul's sought the Bishop's approval for remarriage, as required by National Church canons. CSP dep. at 59.

d. Christ the King

Constructive trust. Christ the King was a parish of the Diocese by sometime in 2010. Tr. at 376-97; D-CTK-1 at 1-2. Christ the King adopted bylaws in 2010 that stated it "accede[d] to the Constitution and Canons of the Diocese of South Carolina as those respective documents may be duly amended from time to time." CTK-6 (art. III).

Vestry Minutes from August and September 2010; April, October and November 2012; August, September, October and December 2013; and January 2014 were titled "Christ the King Waccamaw Episcopal Church Vestry Minutes." CTK-4; CTK-5; CTK-7; CTK-10; CTK-11; CTK-16 (at Bates CTK-730-00216; CTK-730-00218; CTK-730-00220; CTK-730-00226); CTK-17. The service bulletin for the Institution of a new rector for the parish described the rector as "Rector of Christ the King, Waccamaw Episcopal Church." D-CTK-1 (at 1, 2).

Moreover, the evidence shows that:

Christ the King used the Vestry Handbook provided by the Diocese. CTK dep. at 17.

Christ the King sought and received approval from the Diocese to encumber its property, as required by National Church canons. D-CTK-17.

Christ the King sought and received licenses for its eucharistic ministers, as required by National Church canons. CTK dep. at 38.

Christ the King made pension payments to the Church Pension Fund for its clergy as required by National Church canons. CTK dep. at 32.

Christ the King regularly used the National Church's *Prayer Book* and Hymnal. CTK dep. at 37.

e. Church of the Cross

Express trust. In 1979, a Petition for Incorporation was filed with the Secretary of State, for "The Church of the Cross, an Episcopal Church," which resulted in the parish's incorporation. TC-1. The petition identified the purpose of the corporation as "operation of 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 hereafter may be amended." TC-1. In 1990, Church of the Cross was admitted as a parish of the Diocese, D-404A at 31, which according to the Diocesan Constitution required the parish to pledge its "willingness to conform" to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese.

In 2003, Church of the Cross issued bylaws which stated that "[t]he object and purpose of the [parish] corporation is for the support and maintenance of a Church in the general area of Bluffton, South Carolina, in the Episcopal Diocese of South Carolina for the public worship of

Almighty God in accordance with the doctrine and practices of The Episcopal Church in the United States of America and of the Diocese of South Carolina” TC-12 (art. II).

Constructive trust. In 1989, the Court of Common Pleas for the Fourteenth Judicial Circuit issued an Order of Judgment stating that Church of the Cross, Inc., had adversely possessed certain real property for over 100 years. TC-14 at 4. One basis the court gave for its conclusion was that “[t]he public records of this county show an Episcopal Church located at this location ... for a period of time in excess of one hundred (100) years.” TC-14 at 3.

At its meeting in October 1994, the vestry noted that “we will need permission from the Bishop and the Standing Committee to mortgage the Rectory,” a requirement found in National Church canons. D-TC-8. Between 2004 and 2008, the parish sought and received the canonically-required consent to alienate or encumber property three times, as required by National Church canons. D-TC-42; D-TC-33; D-TC-34; D-TC-35; D-TC-36; TC dep. at 74-75.

At its meeting in October 2000, the vestry acknowledged the authority of the “Vestry Handbook.” D-TC-14 at 3; *see also* TC dep. at 39, 41.

Moreover, the evidence shows that:

Church of the Cross availed itself of liability insurance provided by an affiliate of the Church Pension Fund. Tr. at 1105.

Church of the Cross regularly used the National Church’s *Prayer Book* and Hymnal. TC dep. at 99.

Church of the Cross posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. TC dep. at 96.

Church of the Cross sought the Bishop’s approval for remarriage, as required by National Church canons. TC dep. at 103.

f. Epiphany

Express trust. In 2002, Epiphany issued bylaws which stated that “[t]he object and purpose of the [parish] corporation is for the support and maintenance of a Church in the general area of Eutawville, South Carolina, in the Protestant Episcopal Diocese of South Carolina for the public worship of Almighty God in accordance with the doctrine and practices of the Protestant Episcopal Church in the United States of America and the Diocese of South Carolina.” E-4B (art. II).

Constructive trust. In 1869, Epiphany was admitted as a parish of the Diocese, D-279A at 30, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese. At the Diocesan Convention at which such admission was granted, a committee recited that “the requirements of the [Diocesan] Constitution [have] been fully complied with by the Vestry and Wardens of the Church of the Epiphany.” D-279A at 30.

In 1911, “The Church of the Epiphany, St. Johns, Berkeley,” filed articles of incorporation describing its purpose as “to maintain and conduct the doctrine, discipline and worship of the Protestant Episcopal Church, in the Diocese of South Carolina.” E-1. In 1987, the parish corporation changed its name to “The Church of the Epiphany (Episcopal),” and amended its stated purpose to “operating a mission or Parish organized pursuant and subject to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina as now in force or as hereafter may be amended.” E-1 (as Bates E-313-00002-00003); E-9 (53rd page).

In 1957, real property was conveyed to “W.S. Gaillard and W.H. Sinkler, Wardens of the CHURCH of the EPIPHANY PROTESTANT EPISCOPAL CHURCH of Eutawville, S.C., and their Successors.” E-9 (24th page). In 1958, real property was conveyed to “W.S. Gaillard and

W.H. Sinkler and their Successors of the Epiphany Episcopal Church of the Eutawville Church.” E-9 (21st page). In 1983, real property was conveyed to “Richard K. Gaillard and James Simmons, Vestrymen of the Epiphany Episcopal Church, Eutawville, S.C., and their successors in office.” E-9 (17th page).

In 2007, the vestry acknowledged that their rector’s retirement was “mandatory” because he was reaching age 72, a requirement imposed by National Church canons. D-E-8; D-202 at 89 (2006 National Church Canon III.9.7). In 2010, the vestry formed a committee to “review the church’s by-laws” by using “the Vestry Handbook and Church Cannons [sic].” D-E-11.

Between 1964 and 1994, Epiphany sought and received from the Diocese consent to alienate or encumber real property at least three times, as required by National Church canons. D-378A at 74; D-407A at 137; D-408A at 81.

g. Good Shepherd

Express trust. In 2001, “The St. Peter’s Church of Charleston” (later known as Church of the Good Shepherd) amended its corporate articles to state that the parish 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,” GS-7 at 4, at a time when the Diocese’s Constitution “adopt[ed]” the National Church’s Constitution.

In 2004, The St. Peter’s Church of Charleston and St. John’s Episcopal Church filed Articles of Merger, describing both entities as having been 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 (the ‘Diocese’), to uphold and propagate the historic Faith and Order as set forth in [the National Church’s] Book of Common Prayer,” and naming

the merged corporation as “The Episcopal Church of St. Peter and St. John.” GS-8 at 3, 4-5.

The corporation amended its articles to change its name to “The Church of the Good Shepherd” in 2006. GS-9. At that time, the parish’s constitution stated that “This Church ... adopts the by-laws and canons of the Protestant Episcopal Church of the United States of America and of the Diocese of South Carolina.” GS-9 at 6 (Preamble).

In addition, in 1996, real property was conveyed to “GERALD R. MORGAN AS SENIOR WARDEN OF THE VESTRY OF THE ST. PETER’S CHURCH OF CHARLESTON IN TRUST NEVERTHELESS FOR THE ST. PETER’S CHURCH OF CHARLESTON.” D-GS-10. The deed stated that “THIS CONVEYANCE is made to the grantee upon the grantee’s agreement that it is subject to the Constitution and Canons of the Protestant Episcopal Church in the United States and the Protestant Episcopal Church in the Diocese of South Carolina, as now in force or as may hereafter be amended” D-GS-10 at 2.

Constructive trust. Good Shepherd began under the name of St. Peter’s Church of Charleston. After having been chartered by the General Assembly in the 19th Century, *see* GS-1; GS-2; GS-3, in 1927 the General Assembly amended the charter to, *inter alia*, state that “[t]he corporation hereby created are [sic] hereby vested with all the powers and authorities which are vested in any Episcopal Church in this State ... [including the power] to merge the said corporation with any other corporation of an Episcopal Church in” Charleston. GS-4 at 2.

In 1966, property was conveyed to “THE WARDENS AND VESTRY OF ST. PETER’S EPISCOPAL CHURCH, CHARLESTON, S.C.” GS-5 at 2.

Between 1966 and 1989, Good Shepherd sought and received the consent of the Diocese to alienate or encumber real property at least three times, as required by National Church canons. D-380A at 68; D-382A at 79; D-383A at 106-7. In 1999, on letterhead entitled “St. Peter’s

Episcopal Church,” the parish sought the canonically-required consent of the Diocese to sell real property. D-GS-7.

Moreover, the evidence shows that:

Good Shepherd used the Vestry Handbook published by the Diocese. GS dep. at 13-14.

Good Shepherd elected to be covered by the National Church’s group tax exemption. GS dep. at 29-30.

Good Shepherd made pension payments to the Church Pension Fund for its clergy as required by National Church canons. GS dep. at 30.

Good Shepherd availed itself of liability insurance provided by an affiliate of the Church Pension Fund. GS dep. at 31-32.

Good Shepherd regularly used the National Church’s *Prayer Book* and Hymnal. GS dep. at 34-35.

Good Shepherd sought and received licenses for its eucharistic ministers, as required by National Church canons. GS dep. at 36-37.

h. Holy Comforter

Express trust. In 1985, Holy Comforter issued a Constitution and bylaws which provided, “We, the congregation of the Protestant Episcopal Church of the Holy Comforter, Sumter, South Carolina, County of Sumter, Diocese of South Carolina, as such do hereby acknowledge, accede to and adopt the doctrine, discipline and worship, the Constitution and Canons of the Protestant Episcopal Church in the United States of America and the Constitution and Canons of the same Church in the Diocese of South Carolina.” D-HC-6 at 1 (Preamble); Tr. at 559. Article II of the parish Constitution (“Oath”) provided that “[e]very person chosen as Warden or Vestryman shall qualify by subscribing to the following declaration and promise: ‘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 yield to the doctrine, worship and discipline of the Protestant Episcopal Church in these United States” D-HC-6 at 2-3 (art. II); Tr. at 560. Finally, Article XIII provided that “[a]ny provisions in these By-Laws and Constitution repugnant to or in conflict with any of the Canons of the Diocese of South Carolina or of the Protestant Episcopal Church in the United States of America shall be null and void.” D-HC-6 at 6 (art. XIII). These same provisions had been contained in the parish’s Constitution of 1974. HC-26 at 1 (Preamble), 5 (art. IV “Oath”), and 8 (art. IX, sec. 3 “Conflicts with Canons”). They remained in the parish Constitution until November 2010. HC-14 (at HC-730-000637, Preamble; HC-730-000641, Oath; HC-730-00643).

Constructive trust. In 1858, Holy Comforter sought and was granted admission as a parish of the Diocese, D-273A at 19-20, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese. In 1984, real property was conveyed to “Church of the Holy Comforter (Episcopal).” D-HC-34. In 1985, real property was conveyed to “the Church of the Holy Comforter (Episcopal).” D-HC-35. In 1996, real property was conveyed to “THE CHURCH OF THE HOLY COMFORTER (EPISCOPAL).” HC-5. A Corrective Title to Real Estate was executed in 2010, changing the name of the grantee to “The Church of the Holy Comforter.” HC-5A.

Between 1959 and 2011, Holy Comforter sought and received consent from the Diocese to alienate or encumber real property at least nine times, as required by National Church canons. D-HC-29; D-373A at 106; D-379A at 87; D-384A at 69; D-373A at 106; D-407A at 137; D-411A at 77; D-413A at 64; D-415A at 72; D-HC-15; D-HC-16; D-HC-13; D-HC-14; D-HC-19.

An audit of the parish in 2010 was “made in accordance with the audit guidelines of [The National Church’s] *Manual of Business Methods in Church Affairs*, and the [parish’s] financial statements are prepared on a cash basis in accordance with principles adopted by the [National] Church and approved by its General Convention.” D-HC-21.

Moreover, the evidence shows that:

Holy Comforter used the Vestry Handbook published by the Diocese. HC dep. at 16.

Holy Comforter made pension payments to the Church Pension Fund for its clergy as required by National Church canons. HC dep. at 38.

Holy Comforter availed itself of liability insurance provided by an affiliate of the Church Pension Fund. HC dep. at 41.

Holy Comforter regularly used the National Church’s *Prayer Book* and Hymnal. HC dep. at 49.

Holy Comforter posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. HC dep. at 43-44.

Holy Comforter sought the Bishop’s approval for remarriage, as required by National Church canons. HC dep. at 50.

Holy Comforter sought and received licenses for its eucharistic ministers, as required by National Church canons. HC dep. at 49-50.

i. Holy Cross (Statesburg)

Express trust. In 1980 and 1981, Holy Cross issued bylaws which contained the following language: “This parish, known as the Church of the Holy Cross, Statesburg having resolved to accept the rules and regulations of the Episcopal Church, in effect, accedes to the doctrine, discipline and worship, the Constitution and Canons of the Protestant Episcopal Church

in the United States of America, and the Constitution and Canons in of [sic] the same Church in the Diocese of South Carolina.” HCS-11 (art. I); HCS-11 (asterisk following art. XI, indicating amendment to art. 4 and demonstrating that the quoted language was in effect in 1980 and 1981). It also provided that “[t]he authority, duties, and responsibility of the Vestry are those set forth by the Charter of this Church enacted and modified by the legislature of the State of South Carolina and by the Canons of the Protestant Episcopal Church in the United States of America and of the Diocese of South Carolina,” and that “[e]ligibility to serve on the Vestry is set forth in the Canons of the Protestant Episcopal Church in the United States of America and of the Diocese of South Carolina.” HCS-11(art. IV, sec. 1, 2).

Constructive trust. In December 1787, a petition was filed with the Speaker of South Carolina’s House of Representatives by “sundry Inhabitants of Claremont County” asking “that a Law may be passed to incorporate them under the name of the Vestry & Church Wardens of the Episcopal Church of Claremont.” HCS-1. The General Assembly adopted legislation in 1788 incorporating them under that name. HCS-2. In 1882, the General Assembly adopted legislation changing the name of the corporation “heretofore known as ‘The Episcopal Church of Claremont’” to “The Church of the Holy Cross.” HCS-3.

In 1819, real property was conveyed to “Claremont Episcopal Church.” HCS-4.

In 2000, Holy Cross sought and received permission from the Diocese to sell real property as required by National Church canons. D-HCS-29, D-HCS-30, D-HCS-31.

Moreover, the evidence shows that:

Holy Cross used the Vestry Handbook published by the Diocese. HCS dep. at 11-13.

Holy Cross made pension payments to the Church Pension Fund for its clergy as required by National Church canons. HCS dep. at 23.

Holy Cross availed itself of liability insurance provided by an affiliate of the Church Pension Fund. HCS dep. at 23-24.

Holy Cross regularly used the National Church's *Prayer Book* and Hymnal. HCS dep. at 25.

Holy Cross posted signs containing the parish name and "The Episcopal Church Welcomes You" in the community. HCS dep. at 24.

j. Holy Trinity

Express trust. In 1985, Holy Trinity issued bylaws which stated: "This Parish, known as Holy Trinity Episcopal Church, does acknowledge and accede to the doctrine, discipline and worship, the Constitution and Canons of the Protestant Episcopal Church in the United States of America and the Constitution and Canons of the same Church in the Diocese of South Carolina." D-HT-38 (art. I). They further provided that "[t]he duties of the Vestry and Wardens are those as set forth by the Canons of the Protestant Episcopal Church in the United States of America and of the Diocese of South Carolina," and that "[e]ligibility to serve as a Vestryperson is that set forth by the Canons of the Protestant Episcopal Church in the United States of America [and of] the Diocese of South Carolina." D-HT-38 (art. IV, sec. 1-2). They also provided that "the Vestry shall not sell, alienate, mortgage or otherwise encumber the Church property without the written consent of the Bishop and the Standing Committee of the Diocese as provided in Canon IV, Section 3 of the General Church Canons." D-HT-38 (art. IV, sec. 9). These same provisions remained in the parish bylaws when they were restated in 1988 (D-HT-35, arts. I, IV); 1993 (D-HT-34, arts. I, IV); 2001 (D-HT-33, arts. I, IV); 2006 (D-HT-30, arts. I, IV); and 2008 (HT-16, arts. I, IV).

Constructive trust. In 1957, “The Holy Trinity Mission (St. Andrews Parish, Charleston County, S.C.)” was incorporated. HT-1. In 1959, the corporation filed papers with the Secretary of State changing its name to “Holy Trinity Episcopal Church.” HT-2. That same year, Holy Trinity sought and was granted admission as a parish in the Diocese, D-373A at 35, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese.

In 1964, a corrective deed was issued conveying property previously conveyed to Holy Trinity Mission to “Holy Trinity Episcopal Church.” HT-3.

In 1994, “Holy Trinity Episcopal Church” held a “Celebration of a New Ministry” for its new rector, at which the rector was presented with “The [Episcopal Church’s] Constitution and Canons” and was directed by the bishop to “obey these canons” as required by the Church’s *Book of Common Prayer*. D-HT-43 at Bates HT-730-00504, -00508, -00511; D-512 at 562. In 1986, “[t]he People of Holy Trinity Episcopal Church” again celebrated the installation of a new rector, where “[r]epresentative clergy of the diocese present[ed the new rector with] the Constitution and Canons of this [the Episcopal] Church” and the bishop directed him to “obey these Canons,” as required by the Church’s *Book of Common Prayer*. D-HT-44 at Bates HT-730-00512, -00522; D-512 at 562. And again in 2010, the parish celebrated the installation of a new rector, where “[r]epresentative clergy of the diocese present[ed the new rector with] the Constitution and Canons of this [the Episcopal] Church” and the bishop directed him to “obey these Canons,” as required by the Church’s *Book of Common Prayer*. D-HT-45 at Bates HT-730-00524, -00528; D-512 at 562.

Between 1964 and 1968, Holy Trinity sought and received consent of the Diocese to alienate or encumber real property at least three times, as required by National Church canons. D-378A at 74; D-381A at 72; D-382A at 79.

In about 1963, Holy Trinity sought and received the consent of the Diocese to accept a loan from the Episcopal Church Building Fund, such loans being available only to congregations of the National Church. D-377A at 108.

Moreover, the evidence shows that:

Holy Trinity made pension payments to the Church Pension Fund for its clergy as required by National Church canons. HT dep. at 48.

Holy Trinity availed itself of liability insurance provided by an affiliate of the Church Pension Fund. HT dep. at 48.

Holy Trinity regularly used the National Church's *Prayer Book* and Hymnal. HT dep. at 34-35.

Holy Trinity posted signs containing the parish name and "The Episcopal Church Welcomes You" in the community. HT dep. at 33.

Holy Trinity sought and received licenses for its eucharistic ministers, as required by National Church canons. HT dep. at 36.

k. Our Saviour

Express trust. In 1980, certain persons wrote the Bishop of their "desire to organize and be accepted as a Mission of the Diocese of South Carolina ... under the name of The Church of Our Saviour." D-OS-52. "Aware of our responsibilities," they wrote, "we promise to conform to the Constitution, Canons, Doctrine, and Worship of the Episcopal Church in the United States, and the rules regulating Missions as stated in Canon II of the Diocese of South Carolina." D-OS-

52. In 1981, “The Church of Our Saviour (Episcopal)” adopted bylaws stating that “[t]his mission is organized for the purpose of operating an Episcopal Church (mission) pursuant to the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina and of the Protestant Episcopal Church in the United States now in force or as hereafter may be adopted.” D-OS-63 (art. I, sec. 1). The bylaws also provided that “[a]ny article or part of any article of these By-Laws which may be in conflict with the constitution or Canons of the Diocese of South Carolina or the Protestant Episcopal Church in the United States is void.” D-OS-63 (art. VIII, sec. 2). Also in 1981, “THE CHURCH OF OUR SAVIOUR OF THE DIOCESE OF SOUTH CAROLINA” was incorporated, with its purpose described as “operating a 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 hereafter may be amended.” OS-1.

In 1984, the “Congregation of the Church of Our Saviour” sent a letter to the Diocese’s Committee on New Parishes and Missions, stating, “[i]n accordance with Article VIII, Section 1, of the Constitution and Canon of the Episcopal Diocese of South Carolina, we ... desire to be received as a Parish by the Convention of the Diocese of South Carolina,” and further stated, “[w]e agree to conform to the Constitution and Canon of the [National Church’s] General Convention and the Canon of the Convention of the Diocese.” D-OS-51.

In 1992, Our Saviour adopted new bylaws, which stated: “The Parish Church of Our Saviour acknowledges the authority of the Protestant Episcopal Church in the United States of America in accordance with the Constitution and Canons thereof and the authority of the Protestant Episcopal Diocese of South Carolina in accordance with the Constitution and Canons thereof.” D-OS-65 (art I). This same language remained in the bylaws in 2003. D-OS-66 (art. I).

Constructive trust. In 1980, Our Saviour’s vestry “discussed our constitution and made sure it followed the canons of the Episcopal Church.” D-OS-22. In 1981, the vestry minutes stated, “Article 9 – If any of our articles are at odds with the national church they will be null and void.” D-OS-24. In 2000, the parish vestry voted to “apply to the National Episcopal Church for formal recognition as a Jubilee Center.” D-OS-43 at Bates OS-730-02190.

Between 2002 and 2003, Our Saviour sought and received consent from the Diocese to alienate or encumber its real property, as required by National Church canons. D-OS-13; D-OS-14; D-OS-16; D-OS-17; D-OS-18.

Moreover, the evidence shows that:

Our Saviour made pension payments to the Church Pension Fund for its clergy as required by National Church canons. OS dep. at 55.

Our Saviour sought the Bishop’s approval for remarriage, as required by National Church canons. OS dep. at 44.

1. Old St. Andrew’s (aka St. Andrew’s, Charleston)

Constructive trust. In 1785, the General Assembly adopted “AN ORDINANCE for vesting powers in the respective Vestries and Churchwardens of the Episcopal Churches in the Parishes of St. Paul and St. Andrew, and their successors for the time being, for the benefit of the said respective churches and congregations.” OSA-3.

In 1955, “the Wardens and Vestry of Old St. Andrew’s Parish Episcopal Church ... petition[ed] to be admitted into union with the Convention of the Diocese of South Carolina as a Parish.” D-OSA-43. The congregation submitted a statement, required by diocesan rules, stating that they “hereby agree to organize a Parish, to be known by the name of Old Saint Andrew’s Parish Episcopal Church, Charleston” and that they “hereby acknowledge, accede to

and adopt the doctrine, discipline and worship, the Constitution and Canons of the Protestant Episcopal Church in the United States of America, and the Constitution and Canons of the same Church in the Diocese of South Carolina.” D-OSA-43 at Bates 0100946. The parish was admitted. D-369A at 17-18.

As of 1970, “THE CONSTITUTION AND CANONS OF ST. ANDREW’S PARISH CHURCH[,] CHARLESTON S.C.,” provided “SAINT ANDREW’S PARISH CHURCH IN THE DIOCESE OF SOUTH CAROLINA, ACCEDES TO AND ADOPTS THE CONSTITUTION AND CANONS OF THE EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA, AND THE CONSTITUTION AND CANONS OF THE DIOCESE OF SOUTH CAROLINA, AND ACKNOWLEDGES THE AUTHORITY ACCORDINGLY.” D-OSA-6 (art. I). It further provided, “THE RECTOR, WARDENS, ELECTED VESTRY, AND CONGREGATION OF THIS PARISH CHURCH DO HEREBY RESOLVE THAT ANY FUTURE CHANGES IN THE CONSTITUTION AND CANONS OF THE EPISCOPAL CHURCH IN THE UNITED STATES AND THE DIOCESE OF SOUTH CAROLINA, WHICH MAY CONFLICT WITH ANY ARTICLE OF THIS PARISH CONSTITUTION OR CANONS, SAID PARISH ARTICLES SHALL AUTOMATICALLY BE CHANGED TO CONFORM.” D-OSA-6 (art. II). These same provisions remained in the parish constitution and canons until 2010. D-OSA-8 (2007 arts. I & II); D-OSA-11 (2010 arts. I & II).

In April 1974, real property was conveyed to “THE WARDENS AND VESTRY OF ST. ANDREW’S PARISH (EPISCOPAL).” D-OSA-36.

Between 1951 and 2009, Old St. Andrew’s sought and received the consent of the Diocese to alienate or encumber real property at least five times, as required by National Church canons. D-365A at 59; D-OSA-37 at Bates 0100633; D-383A at 106; D-405A at 114; D-OSA-

31; D-OSA-32. In 2009, after the Diocese gave its consent, the parish rector sought advice from the Diocesan Chancellor regarding “what documents the rector of a parish should, or should not, sign on behalf of the parish.” D-OSA-33 at Bates 0100585. The Chancellor responded with a discussion of the impact of certain “National Canons,” among other things, on the parish, and including copies of specific National Church canons as attachments. D-OSA-33 at Bates 0100565, 0100569-572, 0100585.

Moreover, the evidence shows that:

Old St. Andrew’s regularly used the National Church’s *Prayer Book* and Hymnal. OSA dep. at 49.

Old St. Andrew’s posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. OSA dep. at 38-39. The Rector testified that he “associate[ed] that sign with something that the National Church puts out.” OSA dep. at 41.

Old St. Andrew’s sought the Bishop’s approval for remarriage, as required by National Church canons. OSA dep. at 46.

m. Prince George Winyah

Constructive trust. In 1788, the General Assembly adopted “AN ACT to incorporate the Vestries and Church Wardens of the Episcopal Churches in the Parish[] of ... Prince George Winyaw.” PG-4. In March 2006, real property was conveyed to “Prince George Winyah Episcopal Church” by the “Trustees of The Protestant Episcopal Church in South Carolina,” “subject to the Conditions and Cannons [sic] of the Protestant Episcopal Church in the Diocese of South Carolina.” PG-6. In May 2007, real property was conveyed to “The Vestry and Church Wardens of the Episcopal Church of the Parish of Prince George Winyaw.” PG-7. In June 2008, real property was conveyed to “The Vestry and Church Wardens of the Episcopal Church of the

Parish of Prince George Winyaw.” PG-8. The parish’s senior warden testified at trial that all the deeds that the Parish has use this language to describe the parish as grantee. Tr. at 1035.

Minutes of the parish vestry in 1985 declared that “[s]everal years ago it was decreed by the national Church that all Episcopal Churches would use a standard method of accounting and reporting,” and discussed steps to conform with those rules. D-PG-14. Again in that year, vestry minutes discussed “maintenance of the Church’s financial records and the ultimate requirement to conform to churchwide accounting standards.” D-PG-15.

Between 1968 and 2007, Prince George Winyah sought and received the consent of the Diocese to alienate or encumber real property at least six times, as required by National Church canons. D-PG-6; D-PG-7; D-387A at 79; D-401A at 44; D-406A at 111; D-417A at 76.

Moreover, the evidence shows that:

Prince George Winyah used the Vestry Handbook published by the Diocese. PG dep. at 104-05.

Prince George Winyah availed itself of liability insurance provided by an affiliate of the Church Pension Fund. PG dep. at 131-32.

Prince George Winyah regularly used the National Church’s *Prayer Book* and Hymnal. PG dep. at 134.

Prince George Winyah posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. PG dep. at 132-33.

Prince George Winyah sought the Bishop’s approval for remarriage, as required by National Church canons. PG dep. at 135-36.

Prince George Winyah sought and received licenses for its eucharistic ministers, as required by National Church canons. PG dep. at 135.

n. Redeemer

Express trust. In 2000, Redeemer issued bylaws which stated: “This Church shall conform to the Constitution and Canons of the General Convention of the Protestant Episcopal Church of the United States of America, and the Constitution and Canons of the Convention of the Diocese of South Carolina, which are now, or hereafter may be enacted by the authority of the same.” R-24 (art. I). The identical language had also been in the parish’s 1959 bylaws. D-R-15 (art. 2nd). The 2000 Constitution also stated, “[t]he Vestry ... is ... empowered ... to sell, mortgage or otherwise dispose of such corporate real property, in compliance with the National and Diocesan canons of the Episcopal Church.” R-24 (art. VII, sec. 4).

Constructive trust. In 1885, Redeemer applied for and was granted parish status by the Diocese, D-266A at 13-14, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese.

In 1891, real property was conveyed to “The Church of the Redeemer (Episcopal).” R-2. In 1922, “Church of the Redeemer” was incorporated, with its purpose described as “be[ing] a church conducted subject to the Constitution and Canons of the Protestant Episcopal Church of the Diocese of South Carolina as they may exist from time to time,” R-1, at a time when the Diocese’s Constitution “adopt[ed]” the National Church’s Constitution and Canons. In 1941, a corporate charter was filed with the Secretary of State for “CHURCH OF THE REDEEMER,” whose purpose was described as “to be a Church conducted subject to the Constitution and

Canons of the Protestant Episcopal Church of the Diocese of South Carolina as they may exist from time to time.” D-R-10.

In 1950, real property was conveyed to “Church of the Redeemer, a corporation (an Episcopal Church).” R-4. In 1982, real property was conveyed to “Episcopal Church of the Redeemer.” R-5. In 1987, real property was conveyed to “The Episcopal Church of the Redeemer.” D-R-27.

In 2004, the Bishop issued a Godly Judgment dissolving the pastoral relationship between the Rector and the vestry of Redeemer, a process dictated by National Church canons. D-R-2; D-201 at 87-88 (2003 Church Canon III.15).

Between 1893 and 1966, Redeemer sought and received the consent of the Diocese to alienate or encumber real property at least four times, as required by National Church Canons. D-307A at 52; D-368A at 65; D-369A at 72; D-380A at 68.

Moreover, the evidence shows that:

Redeemer used the Vestry Handbook published by the Diocese. R dep. at 16-17.

Redeemer elected to be covered under the Church’s group tax exemption. R dep. at 31-32.

Redeemer made pension payments to the Church Pension Fund for its clergy as required by National Church canons. R dep. at 32.

Redeemer availed itself of liability insurance provided by an affiliate of the Church Pension Fund. R dep. at 33.

Redeemer regularly used the National Church’s *Prayer Book*. R dep. at 43.

Redeemer posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. R dep. at 39. The Senior Warden testified at trial that to be

associated with such signs indicated that the congregation “had something to do with the national Episcopal Church.” Tr. at 675.

Redeemer sought and received licenses for its eucharistic ministers, as required by National Church canons. R dep. at 45.

o. Resurrection

Express trust. In 1983, the parish adopted “BY-LAWS: The Episcopal Church of the Resurrection, Surfside Beach, South Carolina,” which stated: “The parish is organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina and of the Protestant Episcopal Church in the United States of America now in force or as hereafter may be amended.” RS-11 (art. I). The bylaws also provided that “[a]ny article or part of any article or [sic] these by-laws which may be in conflict with the Constitution and Canons of the Diocese of South Carolina or with the Protestant Episcopal Church in the United States are void.” RS-11 (art. IX, sec. 1).

Constructive trust. In 1971, “THE EPISCOPAL CHURCH OF THE RESURRECTION” was incorporated, with its certificate of incorporation describing its purpose as “operation of a 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 hereafter may be amended.” RS-1. In 1978, Resurrection applied for and was granted parish status by the Diocese, D-392A at 138, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese. The committee that received the congregation’s application “found that all canonical requirements had been met.” D-392A at 138.

In 1998, real property was conveyed to “Episcopal Church of the Resurrection.” RS-6. In that same year, real property was conveyed to “THE EPISCOPAL CHURCH OF THE RESURRECTION.” RS-7. In 2011, the parish’s vestry minutes were titled “Episcopal Church of the Resurrection (COR) Vestry Minutes,” RS-8; and minutes of the parish meeting were titled “Episcopal Church of the Resurrection Parish Meeting Minutes – FINAL.” RS-9.

Moreover, the evidence shows that:

Resurrection used the Vestry Handbook published by the Diocese. RS dep. at 20.

Resurrection made pension payments to the Church Pension Fund for its clergy as required by National Church canons. RS dep. at 53.

Resurrection availed itself of liability insurance provided by an affiliate of the Church Pension Fund. RS dep. at 54.

Resurrection regularly used the National Church’s *Prayer Book* and Hymnal. RS dep. at 36-37.

Resurrection sought and received licenses for its eucharistic ministers, as required by National Church canons. RS dep. at 38.

p. St. Andrew’s, Mount Pleasant

Constructive trust. In 1954, the congregation of St. Andrew’s, Mt. Pleasant applied for and was granted parish status by the Diocese, D-368A at 18, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese. That same year, “THE VESTRY AND CHURCH WARDENS OF THE EPISCOPAL CHURCH OF THE PARISH OF ST. ANDREWS CHURCH, MT. PLEASANT” was incorporated, with its certificate of incorporation describing its purpose as “transact[ing] all business and handl[ing] all

matters connected with the Episcopal Church of the Parish of St. Andrews Church, Mt. Pleasant.” SAMP-1.

Parish bylaws adopted in 1954 stated: “The Book of Common Prayer, and administration of the Sacraments, and other rites and ceremonies of the Church, according to the use of the Protestant Episcopal Church in the United States of America, shall be used in this Church.” SAMP-2 (art. I). This identical provision remained in the bylaws after they were amended in 1996 and again in 2004. SAMP-4 (1996 art. I); SAMP-6 (2004 art. I).

Between 1962 and 1996, St. Andrew’s, Mt. Pleasant sought and received the consent of the Diocese to alienate or encumber real property at least seven times, as required by National Church canons. D-376A at 73; D-377A at 108; D-378A at 74; D-382A at 79; D-398A at 6; D-410A at 61; SAMP dep. at 27-28.

“Minutes of the Vestry [--] St. Andrew’s Episcopal Church” for September 1977 stated that certain monies would be “deposited in a special account, designated a[s] the Rector’s Discretionary Fund,” “[i]n accordance with Title III, Canon 20, Section 2(e), General Church.” D-SAMP-57.

Moreover, the evidence shows that:

St. Andrew’s, Mt. Pleasant elected to be covered under the Church’s group tax exemption. SAMP dep. at 31.

St. Andrew’s, Mt. Pleasant made pension payments to the Church Pension Fund for its clergy as required by National Church canons. SAMP dep. at 31.

St. Andrew’s, Mt. Pleasant availed itself of liability insurance provided by an affiliate of the Church Pension Fund. SAMP dep. at 32.

St. Andrew's, Mt. Pleasant regularly used the National Church's *Prayer Book* and Hymnal. SAMP dep. at 34-35.

q. St. Bartholomew's

Express trust. In 2005, St. Bartholomew's issued bylaws which stated: "St. Bartholomew's Episcopal Church accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church and of the Diocese of South Carolina and acknowledges this authority accordingly. Any article or section of these By-Laws which may at any time be in conflict with such Canons shall be null and void." D-SB-12 (art. I). This identical provision had existed in the By-Laws when they were adopted in 1966. D-SB-14 (art. I).

In addition, in 1855, the Vestry of St. Bartholomew's parish adopted the following resolution "relative to a Division of the Parish, and the organization of St. Jude's Church, at Walterborough": "Resolved, That the Property & Funds, belonging to the Episcopal Church of St. Bartholomews Parish, be divided into Two equal parts (with the exception of the Service of Plate, which was given by James Skirving, Esquire, to St. Bartholomews Parish, and which Shall remain the property of the Church of St. Bartholomews) One half of which (with the above specified exception) Shall be held in Trust for the Episcopal Church, by the vestry of St. Bartholomews Parish; -- and the other half, Shall be held in Trust for the Episcopal Church, by the Vestry of St. Judes Church, as Soon as they have been Elected, and received as an Independent Parish, by the Convention of the Diocese of South Carolina." D-SJ-58.

Constructive trust. In 1922, "ST. BARTHOLOMEW'S EPISCOPAL CHURCH" was incorporated. SB-1.

In 1922, "The Trustees of the Protestant Episcopal Church in South Carolina" conveyed real property to "St. Bartholomew's Episcopal Church." SB-2. In two separate transactions in

1966, real property was conveyed to “St. Bartholomew’s Episcopal Church.” D-SB-8; D-SB-9. In 1977, real property was conveyed to “St. Bartholomew’s Episcopal Church.” SB-3. In 1987, real property was conveyed to “St. Bartholomew’s Episcopal Church.” SB-4. In 2001, real property was conveyed to ST. BARTHOLOMEW’S EPISCOPAL CHURCH.” SB-5.

Between 1962 and 2002, St. Bartholomew’s sought and received the consent of the Diocese to alienate or encumber real property at least five times, as required by National Church canons. D-376A at 73; D-378A at 74; D-380A at 68; D-403A at 67; D-416A at 69.

Moreover, the evidence shows that:

St. Bartholomew’s used the Vestry Handbook published by the Diocese. SB dep. at 12-13.

St. Bartholomew’s made pension payments to the Church Pension Fund for its clergy as required by National Church canons. SB dep. at 26.

St. Bartholomew’s availed itself of liability insurance provided by an affiliate of the Church Pension Fund. SB dep. at 27.

St. Bartholomew’s regularly used the National Church’s *Prayer Book* and Hymnal. SB dep. at 29.

St. Bartholomew’s posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. SB dep. at 28.

r. St. David’s

Express trust. The “Constitution and By-Laws” of “Saint David’s Episcopal Church” revised on April 4, 1982, stated: “The organized Parish of St. David’s Church, Cheraw, South Carolina, accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church in the United States of America, and also the Constitution and Canons of the Diocese of South

Carolina.” D-SD-3 (Const. sec. 1). It also stated: “This Constitution and By-Laws are based on compliance with the with the [sic] Constitution and Canons of the Diocese of South Carolina as published in the Journal of the 177th Annual Convention of said Diocese and the latest available information of the National Church.” D-SD-3 (Const. sec. 2.A.) The identical language remained after the parish revised its constitution and bylaws in May 1992. D-SD-4 (Const. sec. 1; sec. 2.A).

Constructive trust. In 1815, the Secretary of State issued a Certificate of Incorporation for “St. David’s Church, Cheraw” which stated that “the purpose of the said proposed Corporation is For the continuance and renewal of religious worship, according to the forms, rules, cannons and practices of the Protestant Episcopal Church in the United States of America, and for the conduct and promotion of educational, social, fraternal, charitable and general eleemosynary purposes, as recognized and authorized by the laws of said church, under the conduct, control and direction of said church.” SD-2; D-SD-5 at 2-3 (containing transcription of language in original document). In 1885, the State issued a corporate charter to “Saint David’s Church of Cheraw, Chesterfield County,” designating the parish as a member of the “Protestant Episcopal Church.” *See* D-SD-5 at 2.

In 1924, real property was conveyed to officers of “St. David’s Episcopal Church, Cheraw, S.C.” SD-10. In 1952, real property was conveyed to “St. Davids Protestant Episcopal Church, Cheraw, South Carolina.” SD-6. In 1965, real property was conveyed to “Saint David’s Episcopal Church, Cheraw, South Carolina.” SD-9. In 1982, real property was conveyed to “St. David’s Episcopal Church.” SD-7. In 1997, real property was conveyed to “St. David’s Protestant Episcopal Church.” SD-4. In 2007, real property was conveyed to ‘ST. DAVID’S PROTESTANT EPISCOPAL CHURCH.’ SD-5. In 2009, “ST. DAVID’S CHURCH A/K/A

ST. DAVID’S PROTESTANT EPISCOPAL CHURCH A/K/A ST. DAVID’S EPISCOPAL CHURCH, A SOUTH CAROLINA NONPROFIT ORGANIZATION” conveyed real property “after receiving approval and consent from the Bishop and the Standing Committee of the Diocese of South Carolina, all done in accordance with the requirements of the Canons of the Diocese of South Carolina.” SD-8.

Between 1966 and 2012, St. David’s sought and received the consent of the Diocese to alienate or encumber real property at least six times, as required by National Church canons. D-380A at 68; D-390A at 4-5; D-391A at 4; D-391A at 4; D-SD-10; D-SD-11; D-SD-12. St. David’s sought Diocesan approval again in 2012, for a line of credit. D-SD-13.

Minutes of the “St. David’s Episcopal Church Vestry Retreat, February 27-March 1, 2009” stated “we have four copies of [the National Church’s] The Manual of Business Methods in Church Affairs in our church office. This was printed by the National Church. We, as Episcopalians, are required to follow the guidelines of this manual.” D-SD-6 at 3.

Moreover, the evidence shows that:

St. David’s made pension payments to the Church Pension Fund for its clergy as required by National Church canons. Tr. at 731-32.

St. David’s availed itself of liability insurance provided by an affiliate of the Church Pension Fund. SD dep. at 41.

St. David’s regularly used the National Church’s *Prayer Book* and Hymnal. SD dep. at 49-50.

St. David’s posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. SD dep. at 43-44.

St. David's sought the Bishop's approval for remarriage, as required by National Church canons. SD dep. at 51.

s. St. Helena's

Express trust. In 1987, St. Helena's issued bylaws which stated: "[T]his parish from henceforth pledges to adhere to the doctrine, discipline, and worship of the Protestant Episcopal Church in the United States of America." D-PCSH-42 (Preface). The bylaws also provided that "[a]ny article or section of these By-Laws which may be in conflict with the canons of the Diocese of South Carolina and of the Protestant Episcopal Church of the United States of America, shall be considered null and void." D-PCSH-42 (art. VI, sec. 1). These identical provisions had existed in earlier versions of the bylaws in 1966 and 1972. D-PCSH-39 (preface); D-PCSH-40 (arts. I and VI).

Constructive trust. In 1786, certain members of "the Episcopal Church of Saint Helena Parish" petitioned the General Assembly for incorporation of their church. PCSH-4. In response, the General Assembly incorporated "The Vestry and Church-wardens of the Episcopal Church of the parish of St. Helena." PCSH-5 at 137.

In 1972, the Secretary of State issued a Certificate of Incorporation for "ST. HELENA'S PARISH, INC.," describing the purpose of the corporation as "to minister the Gospel of Our Lord Jesus Christ, adhering to the doctrine, discipline, and worship of the Protestant Episcopal Church in the United States of America, and governing the corporation according to the Canons of the Protestant Episcopal Church of the United States and the Diocese of South Carolina." D-PCSH-36.

In 1895, real property was conveyed to "The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Helena." PCSH-9. In 1957, real property was conveyed to

“the Rector, Wardens and Vestry of St. Helena’s Episcopal Church.” PCSH-10. In 1967, real property was conveyed to “the Rector, Wardens and Vestry of St. Helena’s Episcopal Church.” PCSH-11. In two separate transactions in 1971, the “Trustees of the Protestant Episcopal Church in South Carolina” conveyed real property to “St. Helena’s Episcopal Church, Beaufort, South Carolina.” PCSH-12; PCSH-13. In 1977, real property was conveyed to “St. Helena’s Episcopal Church.” PCSH-14. In 1998, real property was conveyed to “St. Helena’s Episcopal Church.” PCSH-15.

In 1988, the parish vestry minutes were entitled, “ST. HELENA’S EPISCOPAL CHURCH.” D-PCSH-6. In 2006, the parish’s revised bylaws stated that “[t]he duties and responsibilities of Vestry members shall be in accordance with the National and Diocesan Canons,” and “[t]he authority and responsibilities of the Rector shall be as delineated in the National and Diocesan Canons” D-PCSH-45 (art. III, sec. 7; art. IV, sec. 1). These same provisions remained after amendments in 2011. D-PCSH-46 (art. III, sec. 7; art. IV, sec. 1).

Between 1950 and 1989, St. Helena’s sought and received the consent of the Diocese to alienate or encumber real property at least four times, as required by National Church canons. D-364A at 56; D-375A at 61; D-377A at 108; D-403A at 68.

Moreover, the evidence shows that:

St. Helena’s used the Vestry Handbook published by the Diocese. SH dep. at 15.

St. Helena’s regularly used the National Church’s *Prayer Book* and Hymnal. SH dep. at 38-39.

St. Helena’s posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. SH dep. at 31; Tr. at 732-33.

St. Helena's sought the Bishop's approval for remarriage, as required by National Church canons. SH dep. at 41.

t. St. James'

Express trust. In 1993, the congregation of St. James' approved a Constitution for the Parish which stated: "The Parish of St. James' accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church in the United States of America (PECUSA) and to the Constitution and Canons of the Diocese of South Carolina (Diocese of S.C.). This Constitution incorporates [the National Church's Constitution] 'Revised by the [General] Convention of 1988' and [the] Diocese[']s Constitution' 'amended and revised through 1989'." D-SJJI-36 (art. I). It also included language quoting directly from the National Canons at length, including the following: "All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for the Church and the Diocese thereof . . ." D-SJJI-36 (art. VII, sec. V). The identical provisions remained after the parish Constitution was amended in 1995 and again in 2001. D-SJJI-37 (1995 art. I; art. VII, sec. V); D-SJJI-38 (2001 art. I; art. VII, sec. V).

Constructive trust. In 1886, a deed was executed containing the following language: "Whereas on [November 12, 1831] the Vestry of the parish Church of Saint Andrews did make their deed under seal whereby they did authorize certain persons residing on James Island in said parish constituting the Vestry of the Episcopal Chapel there to take possession of a certain Chapel of Ease . . . And Whereas the said grant was coupled with a condition that should the said Vestry of the Episcopal Chapel or their successors be unable to support a minister during the space of Three years or should they attempt at any time to appropriate or use the said chapel as a place of worship other than that of the Protestant Episcopal Church then it should be lawful for

the said Vestry of the Parish Church of Saint Andrews to take possession of the chapel ... Now ... the Vestry and Church Wardens of the Parish of Saint Andrews [in consideration of having received \$708] ... do... remise release and forever Quit-Claim unto Saint James' Church of James Island ... their successors and assigns ... [the said property] To Have and To Hold the said premises unto the said Vestry of the Episcopal Chapel their successors and assigns." SJJ-1.

In 1903, the Secretary of State issued a Certificate of Incorporation for "St. James Church, James Island, S.C." which described the corporation's purpose as "the conduct of Church service and worship according to the rules of the Protestant Episcopal Church in the Diocese of South Carolina." SJJ-2.

Minutes of a congregational meeting in 1991, and of two vestry meetings in 1995 and 1996, referred to the parish as "St. James' Episcopal Church." D-SJJ-23; D-SJJ-29; D-SJJ-30.

In the spring of 2000, St. James' sought consent from the Diocese to sell real property, as required by National Church canons. D-SJJ-33.

In 2004, real property was conveyed to the "Senior Warden for the St. James Episcopal Church." SJJ-4. In 2005, real property was conveyed to "ST. JAMES EPISCOPAL CHURCH." SJJ-3.

Between 1958 and 2000, St. James' sought and received the consent of the Diocese to alienate or encumber real property at least eight times, as required by National Church canons. D-372A at 77; D-383A at 106-7; D-405A at 113; D-406A at 111; D-407A at 137; D-409A at 75; D-412A at 75; D-414A at 77.

The Rector of St. James' testified that he understood that "clergy are supposed to follow" the Constitution and canons of the National Church and that clergy who fail to do so "can be disciplined," and "you [could] lose your job" and "lose your career." SJJ dep at. 14-15.

Moreover, the evidence shows that:

St. James' used the Vestry Handbook published by the Diocese. SJJJ dep. at 25.

St. James' made pension payments to the Church Pension Fund for its clergy as required by National Church canons. SJJJ dep. at 46.

St. James' availed itself of liability insurance provided by an affiliate of the Church Pension Fund. SJJJ dep. at 46.

St. James' posted signs containing the parish name and "The Episcopal Church Welcomes You" in the community. SJJJ dep. at 49-50. The Rector of the parish testified that when he saw "The Episcopal Church Welcomes You" signs outside of his parish, he "thought they meant that there was an Episcopal Church there." Tr. at 880.

St. James' sought the Bishop's approval for remarriage, as required by National Church canons. SJJJ dep. at 51.

u. St. John's, Florence

Express trust. In 1990, real property was conveyed to "St. John's Episcopal Church," by deed that stated, "This is a bona fide gift to the Episcopal Church." D-SJF-61.

Constructive trust. In 1868, St. John's, Florence sought and was granted admission to the Diocese as a parish, D-278A at 19, which according to the Diocesan Constitution required the parish to pledge its "willingness to conform" to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese. A committee of the Diocese reported that the parish's "papers are all that they should be." D-287A at 19.

In 1875, a charter was issued for "St. John's Episcopal Church." SJF-1. In 1915, a Certificate of Incorporation was filed for "St. John's Episcopal Church of Florence, S.C." which

described the corporation's purpose as "To establish and maintain an Episcopal Church or Churches in Florence County, South Carolina." SJF-2.

In 1884, real property was conveyed to "the Vestry of St. John's Episcopal Church." SJF-3. In 1889, real property was conveyed to "the St. John's Episcopal Church of Florence South Carolina." SJF-4. In that same year, real property was conveyed to "St. John's Episcopal Church of Florence South Carolina." SJF-5. In 1919, real property was conveyed to "Saint Johns Episcopal Church of Florence." SJF-6. In 1947, real property was conveyed to "St. John's Episcopal Church of Florence." SJF-7. In 1965, real property was conveyed to "St. John's Episcopal Church of Florence, S.C. its successors and assigns." SJF-8. In 1968, real property was conveyed to "St. John's Episcopal Church of Florence, S.C. its successors and assigns." SJF-9. In two separate transactions in 1991, real property was conveyed to "St. John's Episcopal Church." SJF-10; SJF-11. In 1991, real property was conveyed to "St. John's Episcopal Church." SJF-12. In 1994, real property was conveyed to "ST. JOHN'S EPISCOPAL CHURCH." SJF-13. In 1997, real property was conveyed to "St. John's Episcopal Church of Florence, Inc." SJF-14. In 2006, real property was conveyed to "St. John's Episcopal Church of Florence." SJF-15.

Undated parish by-laws refer to the parish as "St. John's Protestant Episcopal Church." D-SJF-10. On its letterhead, in the title of its vestry minutes and the minutes of its congregational meetings, the parish consistently referred to itself as "St. John's Episcopal Church." D-SJF-1; D-SJF-4; D-SJF-6; D-SJF-64; D-SJF-69; D-SJF-70; D-SJF-72; D-SJF-82; D-SJF-83; D-SJF-84.

Between 1920 and 1992, St. John's, Florence sought and received the consent of the Diocese to alienate or encumber property at least six times, as required by National Church

Canons. D-336A at 95; D-367A at 62; D-379A at 82; D-380A at 68; D-SJF-64; D-SJF-65; D-SJF-66; D-406A at 113.

In 2008, a Letter of Agreement with the parish's new rector stated that "[t]he Rector is expected to follow all By-Laws of St. John's Episcopal Church and the Diocese of South Carolina and the canonical law of the Episcopal Church." D-SJF-69 at Bates SJF 730-01371.

Moreover, the evidence shows that:

St. John's, Florence used the Vestry Handbook published by the Diocese. SJF dep. at 14.

St. John's, Florence made pension payments to the Church Pension Fund for its clergy as required by National Church canons. SJF dep. at 26.

St. John's, Florence regularly used the National Church's *Prayer Book* and Hymnal. SJF dep. at 33.

St. John's, Florence posted signs containing the parish name and "The Episcopal Church Welcomes You" in the community. SJF dep. at 31; Tr. at 672-75.

v. St. John's, John's Island (Charleston)

Express trust. In 1996, St. John's, John's Island filed "Articles of Amendment and Restatement of [a 1786 Act of the General Assembly] Incorporating the Vestry and Church Wardens of the Episcopal Church of the Parish of St. John's, Colleton County," in which the "SIXTH" article stated: "The corporation is subject to the Constitution and Canons of the Protestant Episcopal Church in the United States and the Protestant Episcopal Church in the Diocese of South Carolina, as now in force or as hereafter be amended." D-SJC-25.

In 2001, St. John's, John's Island's issued a Constitution and by-laws which stated, "St. John's Church, John's Island, S.C., accedes to and adopts the Constitution and Canons of the Diocese of South Carolina and of the Protestant Episcopal Church in the United States of

America and acknowledges these authorities accordingly.” D-SJC-21 (art. I); *see also* D-SJC-32 (art. I) (undated).

Constructive trust. In 1786, a petition was made to the General Assembly by persons in the “Episcopal Church in Saint John’s parish Colleton County” to “be Incorporated under the Denomination of the Episcopal Church in Saint John’s Parish Colleton County.” SJC-3. In response, the General Assembly passed “AN ACT to Incorporate the Vestries and Church-wardens of the Episcopal Church[] in the Parish[] of ... Saint John’s Colleton County,” in which it incorporated “The Vestry and Church-wardens of the Episcopal Church of the parish of St. John’s Colleton County.” SJC-2.

In 1920, St. John’s, John’s Island sought and was granted admission as a parish of the Diocese, D-334A at 22, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese. A committee reported that the congregation has “fulfilled the provisions of [Diocesan rules].” D-334A at 22.

In 1997, real property was conveyed by “THE TRUSTEES OF THE PROTESTANT EPISCOPAL CHURCH IN SOUTH CAROLINA” to “THE VESTRY AND CHURCH WARDENS OF THE EPISCOPAL CHURCH OF THE PARISH OF ST. JOHN’S, COLLETON COUNTY.” SJC-7.

Between 1995 and 2002, St. John’s, John’s Island sought and received the consent of the Diocese to alienate or encumber real property at least five times, as required by National Church canons. D-377A at 108; D-398A at 6; D-412A at 75; D-416A at 69; D-SJC-45.

Articles of Amendment were filed in 2012, changing the corporation's name to the "VESTRY AND CHURCH WARDENS OF THE EPISCOPAL CHURCH OF THE PARISH OF ST. JOHN'S, CHARLESTON COUNTY (formerly COLLETON COUNTY)." SJC-13.

Moreover, the evidence shows that:

St. John's, John's Island made pension payments to the Church Pension Fund for its clergy as required by National Church canons. SJC dep. at 24.

St. John's, John's Island availed itself of liability insurance provided by an affiliate of the Church Pension Fund. SJC dep. at 25.

St. John's, John's Island regularly used the National Church's *Prayer Book*. SJC dep. at 27.

St. John's, John's Island sought the Bishop's approval for remarriage, as required by National Church canons. SJC dep. at 28.

w. St. Jude's

Express trust. In 1990, St. Jude's issued a Constitution which stated, "[t]he Church of St. Jude's accedes to and adopts the Constitution and Canons of the Episcopal Church in the United States of America and also the Constitution and Cannons [sic] of the Church in the Diocese of South Carolina and acknowledges their authority accordingly," D-SJ-37 at Bates SJ-313-00175 (art. II), and provided that the parish vestry "shall ... execute all duties which are now, or may hereafter be, imposed upon them by any General Convention or Convention of the Diocese." D-SJ-37 at Bates SJ-313-00178 (Canon II, sec. 6). The same provisions remained in the parish's Constitution and canons after revisions in 2006. D-SJ-37 at Bates SJ-313-00185 (art. II); D-SJ-37 at Bates SJ-313-00188 (Canon II, sec. 6).

In addition, in 1855, the Vestry of St. Bartholomew's parish adopted the following resolution "relative to a Division of the Parish, and the organization of St. Jude's Church, at Walterborough": "Resolved, That the Property & Funds, belonging to the Episcopal Church of St. Bartholomews Parish, be divided into Two equal parts (with the exception of the Service of Plate, which was given by James Skirving, Esquire, to St. Bartholomews Parish, and which Shall remain the property of the Church of St. Bartholomews) One half of which (with the above specified exception) Shall be held in Trust for the Episcopal Church, by the vestry of St. Bartholomews Parish; -- and the other half, Shall be held in Trust for the Episcopal Church, by the Vestry of St. Judes Church, as Soon as they have been Elected, and received as an Independent Parish, by the Convention of the Diocese of South Carolina." D-SJ-58.

. *Constructive trust.* In 1905, the Secretary of State issued a Certificate of Incorporation for "The Church Wardens and Vestry of St. Jude's Episcopal Church, Walterboro," which described the corporation's purpose as "to provide a local government for the congregation of St. Jude's Episcopal Church, Walterboro, S.C., under the canons and constitution of the Protestant Episcopal Church in South Carolina." SJ-1.

In 1975, St. Jude's issued a Constitution which stated, "[t]he Church of St. Jude's accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church in the United States of America and also the Constitution and Canons of the Church in the Diocese of South Carolina and acknowledges their authority accordingly." D-SJ-37 at Bates SJ-313-00170 (art. II). At that same time, St. Jude's canons provided that the parish vestry "shall ... execute all duties which are now, or may hereafter be, imposed upon them by any General Convention or Convention of the Diocese." D-SJ-37 at Bates SJ-313-00172 (Canon II, sec. 6).

In 1993, real property was conveyed to “ST. JUDE’S EPISCOPAL CHURCH.” SJ-3. In two separate transactions in 2007, real property was conveyed to “Vestry and Warden of St. Jude’s Episcopal Church of Walterboro, South Carolina.” SJ-4; SJ-5. In 2009, real property was conveyed to “Vestry and Warden of St. Jude’s Episcopal Church of Walterboro, South Carolina.” SJ-6.

Minutes of a 2004 vestry meeting state, “[n]ation[al] church canonical change now requires that the annual Parochial Report be reviewed and certified by the Vestry. It was approved as presented and Vestry members signed the report.” D-SJ-20.

Between 1954 and 1998, St. Jude’s sought and received the consent of the Diocese to alienate and encumber real property at least five times, as required by National Church canons. D-368A at 65; D-369A at 72; D-376A at 73; D-387A at 8; D-412A at 75.

Until 2012, the name used by the parish to describe itself was “St. Jude’s Episcopal Church.” SJ dep. at 21.

Moreover, the evidence shows that:

St. Jude’s made pension payments to the Church Pension Fund for its clergy as required by National Church canons. SJ dep. at 32-33.

St. Jude’s availed itself of liability insurance provided by an affiliate of the Church Pension Fund. SJ dep. at 34.

St. Jude’s regularly used the National Church’s *Prayer Book*. SJ dep. at 23.

St. Jude’s posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. SJ dep. at 22.

St. Jude’s sought the Bishop’s approval for remarriage, as required by National Church canons. SJ dep. at 24.

St. Jude's sought and received licenses for its eucharistic ministers, as required by National Church canons. SJ dep. at 23-24.

x. St. Luke's

Express trust. In 2000, St. Luke's issued bylaws which stated, "This church accedes to and adopts the Constitution, canons, doctrine, discipline, and worship of the Protestant Episcopal Church in the State of South Carolina, and the Protestant Episcopal Church in the United States of America, and acknowledges their authority accordingly. Any member of this Church or corporation who disclaims or refuses conformity to said authority shall cease to be a member of the corporation and shall not be elected to, or vote in the election of the Vestry, or exercise any office or function in, concerning or, connected with said Church or corporation." SL-6 (2000 art. II). This identical language had existed in a 1973 version of the bylaws, and remained after revisions in 2009. SL-5 (1973 art. II); SL-7 (2009 art. II).

Constructive trust. In 1969, the Secretary of State issued a Certificate of Incorporation for "SAINT LUKE'S EPISCOPAL CHURCH, HILTON HEAD ISLAND," which described the corporation's purpose as "operat[ing] a Parish or Mission, organized pursuant and subject to the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina as now in force or as hereafter may be amended." SL-1. In 1971, the congregation of St. Luke's applied for and was granted parish status by the Diocese, D-385A at 20, which according to the Diocesan Constitution required the parish to pledge its "willingness to conform" to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese. A committee of the Convention stated that the "application ... met all the requirements of the Constitution and Canons." D-385A at 20.

In 1970, “TRUSTEES OF THE PROTESTANT EPISCOPAL CHURCH IN SOUTH CAROLINA” conveyed real property to “ST. LUKE’S EPISCOPAL CHURCH, HILTON HEAD ISLAND.” SL-2. In 1993, real property was conveyed to “SAINT LUKE’S EPISCOPAL CHURCH.” SL-3. In 1996, real property was conveyed to “SAINT LUKE’S EPISCOPAL CHURCH.” SL-4. In 2002, real property was conveyed to “ST. LUKE’S EPISCOPAL CHURCH.” SL-15.

According to 2012 vestry minutes, the St. Luke’s vestry created the “St. Luke’s Foundation of Hilton Head” in September 2000. D-SL-38 at 2. For some time, the Foundation “operated under the umbrella of The National Church,” using its group tax exemption. D-SL-38 at 2.

Between 1974 and 1992, St. Luke’s sought and received the consent of the Diocese to alienate or encumber real property at least twice, as required by National Church canons. D-388A at 8; D-406A at 112. In 1915, St. Luke’s sought and received the consent of the Diocese to receive a loan from the “Episcopal Foundation.” D-379A at 82.

Moreover, the evidence shows that:

St. Luke’s used the Vestry Handbook published by the Diocese. SL dep. at 10-11.

St. Luke’s availed itself of liability insurance provided by an affiliate of the Church Pension Fund. SL dep. at 35.

St. Luke’s regularly used the National Church’s *Prayer Book* and Hymnal. SL dep. at 20.

St. Luke’s sought the Bishop’s approval for remarriage, as required by National Church canons. SL dep. at 22.

St. Luke’s elected to be covered under the National Church’s group tax exemption. SL dep. at 27, 34.

y. St. Luke and St. Paul

Express trust. In 1995, “THE CATHEDRAL CHURCH OF ST. LUKE & ST. PAUL” adopted bylaws which stated, “[t]his Parish is organized for the purpose of operating an Episcopal church pursuant to the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina and of the Protestant Episcopal Church in the United States now in force or as hereafter may be adopted.” D-SLP-13 (art. I, sec. 1). They stated further, “[t]he duties of Wardens and vestrypersons shall be prescribed and directed by these by-laws and the Constitution and Canons of the Protestant Episcopal Church in South Carolina and of the Protestant Episcopal Church in the United States of America as they now exist and may hereafter [be] altered or amended,” D-SLP-13 (art. IV, sec. 6), and “no alienation of property shall be made without compliance with the Canons of the Church as they now or hereafter provide.” D-SLP-13 (art. IV, sec. 7). Finally, the by-laws provided, “[a]ny article or part of any article or [sic] these By-Laws which may be in conflict with the Constitution or Canons of the Diocese of South Carolina or the Protestant Episcopal Church in the United States are void.” D-SLP-13 (art. X, sec. 1). These identical provisions remained in effect in 2011. SLP-11 (art. I, sec. 1; art. IV, sec. 6; art. IV, sec. 7; art. X, sec. 1).

Constructive trust. In 1814, the General Assembly adopted an act incorporating “the Episcopal Church in Ratcliffborough” under the name “The Protestant Episcopal Church of Saint Paul, in Ratcliffborough,” and “vest[ing the corporation] with all the powers and authorities which are vested in any other established Episcopal Church in this State.” SLP-1 at 272. In March 1842, real property was conveyed to “The Protestant Episcopal Church of Saint Paul, in Radcliff Borough.” SLP-6. In 1926, the “CONSTITUTION and BY-LAWS of the PROTESTANT EPISCOPAL CHURCH of SAINT PAUL IN RADCLIFFBOROUGH

CHARLESTON, SOUTH CAROLINA” stated, “[t]he purpose of the [parish] Corporation is to encourage, educate and assist citizens in the Christian Religion, together with all incidental Religious, Educational, Social, Fraternal, Charitable or other eleemosynary purposes, and to carry on all the functions of a Protestant Episcopal Church.” D-SLP-7 (art.I, sec. II). In 1951, “The Protestant Episcopal Church of St. Paul in Radcliffeboro, an unincorporated religious association,” conveyed real property and “all other [of its] assets, real and personal” to “The Protestant Episcopal Church of St. Paul in Radcliffeboro, a corporation.” SLP-7.

“St. Luke’s Church, in the city of Charleston” was incorporated by legislative act in 1858. SLP-2 at 606.

In 1950, the congregation of St. Luke’s applied for and was granted parish status by the Diocese, D-364A at 19, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese.

St. Luke’s and St. Paul’s merged in April 1951, under the corporate name “THE CHURCH OF ST. LUKE AND ST. PAUL, RADCLIFFEBORO.” SLP-3, SLP-4. In 1958, “The Church of St. Luke and St. Paul, Radcliffeboro,” adopted a Constitution stating that it “accedes to the Constitution and Canons of the Protestant Episcopal Church in the United States of America and of the Church in the Diocese of South Carolina, and acknowledges their authority accordingly.” D-SLP-9 (art. I).

In 1990, the parish received a letter from the Diocese “remind[ing]” the vestry of its “canonical responsibility to provide for an annual audit of all [its] accounts as required in Section 5 of Title I Canon 7 of our National Church Canons.” D-SLP-22. Also in 1990, the parish Finance Committee “recommended to the Vestry that the Vestry instruct the Finance Committee

to proceed with a canonically required audit ... A copy of Canon XXXII and Canon 7 was distributed ... with Sections 5 stating the requirement of such an audit.” D-SLP-24 at 2.

Between 1948 and 1988, St. Luke and St. Paul and its predecessor parishes sought and received the consent of the Diocese to alienate or encumber real property at least twelve times, as required by National Church canons. D-362A at 81; D-365A at 58; D-366A at 63; D-368A at 65; D-370A at 61; D-386A at 8; D-390A at 5; D-391A at 4; D-392A at 6; D-393A at 8; D-SLP-15; D-SLP-16; D-SLP-17.

In 1887, St. Luke’s, Charleston received \$1787 from contributions to the parish from other Episcopal Church dioceses and churches for earthquake relief. D-301A at 33-35, 54-55.

Moreover, the evidence shows that:

St. Luke and St. Paul used the Vestry Handbook published by the Diocese. SLP dep. at 15.

St. Luke and St. Paul made pension payments to the Church Pension Fund for its clergy as required by National Church canons. SLP dep. at 41.

St. Luke and St. Paul availed itself of liability insurance provided by an affiliate of the Church Pension Fund. SLP dep. at 42.

St. Luke and St. Paul regularly used the National Church’s *Prayer Book* and Hymnal. SLP dep. at 46.

z. St. Matthew’s, Darlington

Constructive trust. St. Matthew’s, Darlington, sought and was granted admission as a parish of the Diocese in 1902, D-316A at 23, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese.

At a 1986 meeting, the St. Matthew's vestry passed a motion "that the by-laws be updated to conform to the Canons." D-SM-20 at Bates SM-730-00706.

Minutes of a 1975 congregational meeting of St. Matthew's, and amended by-laws of the same date, refer to the parish as "St. Matthew's Episcopal Church." SM8; SM-9. A "Parish Profile" dated September 1987, referred to the parish as "St. Matthew's Episcopal Church." D-SM-25. In October 1988, real property was conveyed to "ST. MATTHEW'S EPISCOPAL CHURCH." SM-5. The "Annual Parish Report 1994" referred to the parish as "Saint Matthew's Episcopal Church, Darlington, South Carolina," SM-10, as did the annual report to the congregation of January 1990. D-SM-12.

Between 1950 and 1969, St. Matthew's, Darlington sought and received the consent of the Diocese to alienate or encumber real property at least three times, as required by National Church canons. D-364A at 56; D-377A at 108; D-383A at 106-7.

Moreover, the evidence shows that:

St. Matthew's, Darlington made pension payments to the Church Pension Fund for its clergy as required by National Church canons. SM dep. at 21-22.

St. Matthew's, Darlington availed itself of liability insurance provided by an affiliate of the Church Pension Fund. SM dep. at 22.

St. Matthew's, Darlington regularly used the National Church's *Prayer Book* and Hymnal. SM dep. at 26-27.

St. Matthew's, Darlington posted signs containing the parish name and "The Episcopal Church Welcomes You" in the community. SM dep. at 24-25. Vestry minutes from 1990 contain a discussion of placing "Episcopal Church Welcomes You" signs "on the outskirts of town." D-SM-24 at 4.

St. Matthew's, Darlington sought the Bishop's approval for remarriage, as required by National Church canons. SM dep. at 29-30.

St. Matthew's, Darlington sought and received licenses for its eucharistic ministers, as required by National Church canons. SM dep. at 27-28.

aa. St. Matthew's, Fort Motte

Express trust. In 1982, St. Matthew's, Fort Motte adopted a Constitution and bylaws which stated, "St. Matthew's Parish ... accedes to the Constitution and Canons of the Protestant Episcopal Church in the United States of America, and in the Diocese of South Carolina." D-SM-FM-3 (art. I; art. XIII). In 1998, the congregation applied for and was granted parish status by the Diocese, D-402A at 32, which according to the Diocesan Constitution required the parish to pledge its "willingness to conform" to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese. In 2004, the parish adopted a revised Constitution and bylaws which stated, "Saint Matthew's Parish Episcopal Church ... accedes to the Constitution and Canons of the Episcopal Church in the United States of America, and in the Episcopal Diocese of South Carolina; whenever a conflict exists between the Constitution and By-Laws and the Canons of the Church and Diocese the Canons take precedence." SM-FM-2 (art. I).

Constructive trust. In 1788, the General Assembly adopted "AN ACT to incorporate the Vestries and Church Wardens of the Episcopal Churches in the Parish[] of ... St. Matthew." SM-FM-1 at 145. In 1986, "The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Matthew" filed an Application for Amendment of Eleemosynary Charter to records the adoption of a resolution setting out provisions in the event of dissolution of the corporation. D-SM-FM-5.

In 1954, real property was conveyed to “SAINT MATTHEWS EPISCOPAL PARISH.” SM-FM-11. In 1973, real property was conveyed to “St. Matthew’s Parish Episcopal Church of Fort Motte.” SM-FM-12. In 1985, real property was conveyed to “ ST. MATTHEW’S PARISH EPISCOPAL CHURCH.” SM-FM-13. In 2003, real property was conveyed to “ST. MATTHEWS PARISH EPISCOPAL CHURCH.” SM-FM-14. In 2012, real property was conveyed to “The Vestry and Church Wardens of the Episcopal Church of the Parish of St. Matthews.” SM-FM-15.

Between 1973 and 1974, St. Matthew’s, Fort Motte sought and received the consent of the Diocese to alienate or encumber real property at least three times, as required by National Church canons. D-387A at 8; D-388A at 8.

Moreover, the evidence shows that:

St. Matthew’s, Fort Motte used the Vestry Handbook published by the Diocese. SM-FM dep. at 18.

St. Matthew’s, Fort Motte made pension payments to the Church Pension Fund for its clergy as required by National Church canons. SM-FM dep. at 44.

St. Matthew’s, Fort Motte regularly used the National Church’s *Prayer Book* and Hymnal. SM-FM dep. at 49.

St. Matthew’s, Fort Motte posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. SM-FM dep. at 46-47.

bb. St. Matthias

Express trust. In 1984, the Secretary of State issued a Certificate of Incorporation to “ST. MATTHIAS EPISCOPAL CHURCH, INC.” which described the corporation’s purpose as “operating a Mission (Church), organized pursuant and subject to the Canons of the Protestant

Episcopal Church in the Diocese of South Carolina as now in force or as hereafter may be amended” STM-3.

In 1992, “The Trustees of the Protestant Episcopal Church in South Carolina” conveyed real property to “St. Matthias Episcopal Church, Summerton, S.C.,” in a deed stating, “[t]his Conveyance is made to the grantee upon the agreement by the grantee that it is subject to the Constitution and Canons of Protestant Episcopal Church in the United States and the Protestant Episcopal Church in the Diocese of South Carolina, as now in force or as may hereafter be amended” STM-13.

In 2005, the congregation applied for and was granted parish status by the Diocese, D-419A at 26; STM-5, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese.

In 2013, the Trustees of Diocese adopted a resolution stating, “Whereas the Trustees conveyed certain real property to St. Matthias Episcopal Church, Summerton, South Carolina, on September 17, 1992, and whereas the deed contained a restriction pertaining to the use of that property. *Whereby it was subject to the Constitution and Canons of the Protestant Episcopal Church in the United States, and of those of the Protestant Episcopal Church in the Diocese of South Carolina.* Now therefore, be it resolved, that these restrictions are hereby removed from this contract between the trustees and St. Matthias.” STM-8 (emphasis added).

Constructive trust. According to the parish’s 2006 bylaws, “St. Matthias Episcopal Church was established in Summerton, South Carolina, and consecrated by Bishop Capers on St. Matthias Day, February 26, 1899.” STM-5 (art. I, sec. 1). In July 1999, real property was conveyed to “Saint Matthias Episcopal Church.” STM-15. December 2000 minutes of a

meeting of the vestry of “ST. MATTHIAS’ EPISCOPAL CHURCH” state that “the Church Canons ... are specific about the responsibilities of the Vestry and the Rector. The Vestry has a responsibility to report to the Rector and the Rector maintains authority over the ministry of the Church.” D-SMT-21.

In 2006, the parish adopted bylaws quoting the corporation’s purpose set out in its 1984 corporate charter, STM-5 (art. I, sec. 1), and stating that “[t]he duties of the Wardens and Vestry persons shall be prescribed and directed by these by-laws and the Constitution and Canons of the Protestant Episcopal Church in South Carolina as they now exist or may hereafter be altered.” STM-5 (art. III, sec. 4).

In 2011, the parish dedicated its “New Parish Hall” under the name “St. Matthias Episcopal Church.” STM-12.

Between 1986 and 2000, St. Matthias sought and received the consent of the Diocese to alienate and encumber real property at least four times, as required by National Church canons. D-401A at 44; D-407A at 137; D-414A at 77.

Moreover, the evidence shows that:

St. Matthias used the Vestry Handbook published by the Diocese. STM dep. at 26-27.

St. Matthias made pension payments to the Church Pension Fund for its clergy as required by National Church canons. STM dep. at 67-68.

St. Matthias availed itself of liability insurance provided by an affiliate of the Church Pension Fund. Tr. at 1026.

St. Matthias regularly used the National Church’s *Prayer Book* and Hymnal. STM dep. at 38-41.

St. Matthias posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. STM dep. at 35.

St. Matthias sought the Bishop’s approval for remarriage, as required by National Church canons. STM dep. at 43-44.

cc. St. Michael’s

Express trust. In 1989, St. Michael’s issued bylaws which stated, “[t]he name of the Church shall be St. Michael’s Church (“St. Michael’s,” the “Church,” or the “Parish.”) The designation “Episcopal” may be used as part of the official name on printed material or as otherwise needed for clarifying that St. Michael’s is a member of the Protestant Episcopal Church in the United States.” D-SMI-23 (art. I, sec. 1.1). The bylaws also provided, “St. Michael’s acknowledges the authority of the Protestant Episcopal Church in the Diocese of South Carolina (the “Diocese”) and of The Protestant Episcopal Church in the United States of America (the “National Church”).” D-SMI-23 (art. II, sec. 2.1). These identical provisions remained after the bylaws were amended and restated in December 2009. D-SMI-28 (art. I, sec. 1.1; art. II, sec. 2.1).

Constructive trust. In 1785, the General Assembly adopted an act “to Incorporate the Vestries and Church Wardens of the Episcopal Churches in the Parishes of St. Philip and St. Michael, in Charleston.” SMI-2. In 1791, the General Assembly adopted an act “to make and establish the Vestries and Church Wardens of the Episcopal Churches of the Parishes of St. Philip and St. Michael, in Charleston, two separate and distinct Bodies Politic and Corporate.” SMI-5. In 2010, “The Protestant Episcopal Church, the Parish, of St. Michael, in Charleston, in the State of South Carolina” filed Restated Articles of Incorporation seeking to have “Articles of

Restatement of the Incorporating Act of 1791 recorded in the office of the Secretary of State” under that name. SMI-14.

In 1923, real property was conveyed to “The Protestant Episcopal Church of the Parish of St. Michael, in Charleston.” SMI-8. In 1942, real property was conveyed to “Protestant Episcopal Church of the Parish of St. Michael in Charleston in the State of South Carolina.” SMI-10. In 1996, real property was conveyed by “deed of gift” to “St. Michael’s Episcopal Church.” SMI-12. In 2003, real property was conveyed to “The Protestant Episcopal Church, of the Parish of St. Michael, in Charleston, in the State of South Carolina.” SMI-11. In 2011, real property was conveyed to “THE PROTESTANT EPISCOPAL CHURCH OF THE PARISH OF ST. MICHAEL’S IN CHARLESTON, IN THE STATE OF SOUTH CAROLINA.” SMI-13.

In 2003, the parish sought and received the consent of the Diocese to sell real property, as required by National Church canons. D-418A at 71; D-SMI-32; D-SMI-35.

dd. St. Paul’s, Bennettsville

Express trust. In 2002, Articles of Incorporation were filed for “St. Paul’s Episcopal Church of Bennettsville, Inc.” SPB-1. They described the purpose of the corporation as “to operate a Parish organized under and subject to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina, as amended from time to time.” SPB-1. In January 2004, “St. Paul’s Episcopal Church of Bennettsville, Inc.” adopted bylaws which stated, “[t]he duties of the Wardens and the Vestry persons shall be as prescribed in Sections 4 SL 5 of Canons VII of the Episcopal Church in the Diocese of South Carolina.” D-SPB-19; D-SPB-28 (art. III, sec. 5); D-SPB-76. Under the canon relating to vestries, all members were required to be “confirmed Communicants of the Church.” *See* D-418B at C-4; D-419B at C-4. The parish bylaws further authorized the vestry to “acquire and purchase” and to “sell, transfer, mortgage or authorize

disposition of” real property “so long as such acts are in accord with the Canons of the Episcopal Church.” D-SPB-28 (art. III, sec. 6).

Constructive trust. In 1910, the congregation of St. Paul’s, Bennettsville applied for and was granted parish status by the Diocese, D-328A at 22-25, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese. The relevant committee found that all the canonical requirements for parish status had been met. D-328A at 22-25.

In 1913, real property was conveyed to certain persons “the Trustees of St. Paul’s Episcopal Church of Bennettsville.” SPB-9. In 1932, real property was conveyed to certain persons identified as wardens and vestrymen of “St. Paul’s Parish of the Protestant Episcopal Church of Bennettsville, S.C..” SPB-8. In 1993, real property was conveyed to certain persons as “Wardens and Vestrymen of St. Paul’s Episcopal Church.” SPB-7. In two separate transactions in 1995, real property was conveyed to certain persons “as vestrymen of St. Paul’s Parish of the Episcopal Church of Bennettsville, South Carolina.” SPB-5; SPB-6. In 1996, real property was conveyed to certain persons “as vestrymen of St. Paul’s Parish of the Episcopal Church of Bennettsville, South Carolina.” SPB-4. In 2000, real property was conveyed to certain persons described as the “Vestery [sic] of St. Paul’s Episcopal Church.” SPB-3. In 2003, real property was conveyed to “St. Paul’s Episcopal Church of Bennettsville, Inc.” SPB-11. In 2009, real property was conveyed to “ST. PAUL’S EPISCOPAL CHURCH OF BENNETTSVILLE, INC.” SPB-2.

Vestry minutes from 1977 stated that “national canons require that every church treasurer be bonded and an audit made of every church account over \$500.00.” D-SPB-9. The same was

noted again in 1984. D-SPB-10. Minutes of a 1998 vestry retreat state, “Discussed Vestry Responsibility referencing the Bible, BCP, Vestry Resource Guide, and The Canons on the Church. ... Our role as Vestry: Vestry Guide and The Canons of the Church. 1. Stewardship of money and property. ...” D-SPB-17. Minutes of a 2002 vestry meeting state, “the By-Laws need to be revised and accepted/adopted since incorporation. ... Henry will look at what we have and compare to the Canons of the Church [and] list revisions necessary” D-SPB-18.

Between 1949 and 1958, St. Paul’s, Bennettsville sought and received the consent of the Diocese to alienate or encumber real property at least twice, as required by National Church canons. D-363A at 106; D-372A at 76.

Moreover, the evidence shows that:

St. Paul’s, Bennettsville used the Vestry Handbook published by the Diocese. SPB dep. at 18.

St. Paul’s, Bennettsville made pension payments to the Church Pension Fund for its clergy as required by National Church canons. SPB dep. at 39.

St. Paul’s, Bennettsville regularly used the National Church’s *Prayer Book* and Hymnal. SPB dep. at 42-43.

St. Paul’s, Bennettsville sought and received licenses for its eucharistic ministers, as required by National Church canons. SPB dep. at 43.

ee. St. Paul’s, Conway

Constructive trust. In 1947, certain persons “assembled for the purpose of organizing a Parish of the Protestant Episcopal Church at Conway, South Carolina, County of Horry, in the Diocese of South Carolina” signed “Articles of Association” stating that they “do hereby agree to organize a Parish, to be known by the name of ST. PAUL’S EPISCOPAL CHURCH,

CONWAY, SOUTH CAROLINA; and as such do hereby acknowledge, accede to and adopt the doctrine, discipline and worship, the Constitution and Canons of the Protestant Episcopal Church in the United States of America, and the Constitution and Canons of the same Church in the Diocese of South Carolina ...” D-SPC-17.

In 1979, the Secretary of State issued a Certificate of Incorporation for “ST. PAUL’S EPISCOPAL CHURCH OF CONWAY” whose purpose was described as “operation of a Parish or mission, organized pursuant and subject to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina.” SPC-1.

Between 1979 and 1995, St. Paul’s, Conway sought and received the consent of the Diocese to alienate or encumber real property at least three times, as required by National Church canons. D-393A at 8; D-404A at 38; D-409A at 75.

Moreover, the evidence shows that:

St. Paul’s, Conway made pension payments to the Church Pension Fund for its clergy as required by National Church canons. SPC dep. at 60-61.

St. Paul’s, Conway elected to be covered under the National Church’s group tax exemption. SPC dep. at 60.

St. Paul’s, Conway regularly used the National Church’s *Prayer Book* and Hymnal. SPC dep. at 22-23.

St. Paul’s, Conway sought the Bishop’s approval for remarriage, as required by National Church canons. SPC dep. at 45.

St. Paul’s, Conway sought and received licenses for its eucharistic ministers, as required by National Church canons. SPC dep. at 45.

ff. St. Paul’s, Summerville

Express trust. In 1992, St. Paul's, Summerville issued bylaws which stated, "the Parish is organized pursuant to the Constitution and Canons of the Episcopal Church in the United States of America (ECUSA) and of the Protestant Episcopal Church in the Diocese of South Carolina now in force or as hereafter may be adopted." SPS-26. In 2005, the parish bylaws stated, "[t]he purpose of the [parish] corporation is for the mission, support and maintenance of the Christian Church in Summerville in the Episcopal Diocese of South Carolina and for the public worship of almighty God in accordance with the doctrine, discipline and practices of the worldwide Anglican Communion, the Episcopal Church in the United States of America and the Diocese of South Carolina." SPS-23 (art. 2).

Constructive trust. In 1855, the General Assembly adopted an act incorporating "the Vestry and Wardens of the Protestant Episcopal Church of Summerville" under the name "The Vestry and Wardens of St. Paul's Church, Summerville." SPS-4 at 359. In 1951, real property was conveyed to "The Wardens and Vestry of Saint Paul's Episcopal Church, Incorporated, Summerville, S.C." SPS-9. In 1998, real property was conveyed to "ST. PAUL'S EPISCOPAL CHURCH, SUMMERVILLE, S.C." SPS-12. In 1996, real property was conveyed to "ST. PAUL'S EPISCOPAL CHURCH, SUMMERVILLE, S.C." SPS-13.

In 1887, St. Paul's, Summerville received \$4679 in earthquake relief assistance from other Episcopal Church dioceses and congregations. D-301A at 33-35, 54-55.

Between 1946 and 1998, St. Paul's, Summerville sought and received the consent of the Diocese to alienate or encumber real property at least six times, as required by National Church canons. D-360A at 79-80; D-388A at 8; D-394A at 6; D-402A at 41; D-410A at 61; D-412A at 75; D-SPS-18; D-SPS-45 at 6. Minutes of a 1995 vestry meeting note that "the first contingency" for taking on a mortgage is "approval by Bishop and Council." D-SPS-43 at 2, 4.

Moreover, the evidence shows that:

St. Paul's, Summerville used the Vestry Handbook published by the Diocese. SPS dep. at 15-16.

St. Paul's, Summerville elected to be covered under the National Church's group tax exemption. SPS dep. at 29-30.

St. Paul's, Summerville availed itself of liability insurance provided by an affiliate of the Church Pension Fund. SPS dep. at 32-33.

St. Paul's, Summerville regularly used the National Church's *Prayer Book* and Hymnal. SPS dep. at 37-38.

St. Paul's, Summerville sought the Bishop's approval for remarriage, as required by National Church canons. SPS dep. at 39.

St. Paul's, Summerville sought and received licenses for its eucharistic ministers, as required by National Church canons. SPS dep. at 39.

gg. St. Philip's

Express trust. In 1987, "THE PROTESTANT EPISCOPAL CHURCH OF THE PARISH OF SAINT PHILIP, IN CHARLESTON IN THE STATE OF SOUTH CAROLINA" filed Articles of Restatement stating that "The name of the said corporation is THE PROTESTANT EPISCOPAL CHURCH OF THE PARISH OF ST. PHILIP, IN CHARLESTON, IN THE STATE OF SOUTH CAROLINA" and that "[t]he purposes of the said corporation include the preaching and teaching of the Gospel of our Lord and Saviour, Jesus Christ, in accord with the Articles of Religion of the Protestant Episcopal Church in the United State of America" SPH-30.

Constructive trust. In 1785, the General Assembly adopted an act “to Incorporate the Vestries and Church-wardens of the Episcopal Churches in the Parishes of Saint Philip and Saint Michael, in Charleston.” SPH-3. In 1791, the General Assembly adopted an act “to make and establish the Vestries and Church Wardens of the Episcopal Churches of the Parishes of St. Philip and St. Michael, in Charleston, two separate and distinct Bodies Politic and Corporate.” SPH-5.

In 1870, real property was conveyed to “The Protestant Episcopal Church of the Parish of St. Phillip in Charleston in the State of South Carolina.” SPH-12. In 1875, real property was conveyed to “The Protestant Episcopal Church of the Parish of St. Philip in Charleston.” SPH-11. In 1908, real property was conveyed to “The Protestant Episcopal Church of the Parish of St. Philip in Charleston in the State of South Carolina.” SPH-16. In 1914, real property was conveyed to “The Protestant Episcopal Church of the Parish of St. Philip in Charleston in the State of South Carolina.” SPH-13. In 1920, real property was conveyed to “The Protestant Episcopal Church of the Parish of St. Philip, in Charleston, in the State of South Carolina.” SPH-14. In 1939, real property was conveyed to “The Protestant Episcopal Church of the Parish of St. Philip in Charleston, in the State of South Carolina.” SPH-15. In 1966, real property was conveyed to “THE PROTESTANT EPISCOPAL CHURCH OF THE PARISH OF ST. PHILIP’S IN CHARLESTON, SOUTH CAROLINA.” SPH-17. In 1996, real property was conveyed to “THE PROTESTANT EPISCOPAL CHURCH, OF THE PARISH OF ST. PHILIP, IN CHARLESTON, IN THE STATE OF SOUTH CAROLINA.” SPH-18.

In 1887, St. Philip’s received some \$4700 in earthquake relief aid from other dioceses of the National Church. D-301A at 33-35, 54-59.

Between 1988 and 2001, St. Philip's sought and received the consent of the Diocese to alienate or encumber real property at least four times, as required by National Church canons. D-SPH-27; D-SPH-59; D-SPH-60; D-SPH-61; D-SPH-62; D-SPH-64; D-SPH-65; D-402A at 41; D-411A at 77; D-416A at 69.

Moreover, the evidence shows that:

St. Philip's used the Vestry Handbook published by the Diocese. SPH dep. at 15.

St. Philip's made pension payments to the Church Pension Fund for its clergy as required by National Church canons. SPH dep. at 29.

St. Philip's availed itself of liability insurance provided by an affiliate of the Church Pension Fund. SPH dep. at 30.

St. Philip's regularly used the National Church's *Prayer Book* and Hymnal. SPH dep. at 22.

St. Philip's sought the Bishop's approval for remarriage, as required by National Church canons. SPH dep. at 23.

hh. Trinity, Edisto Island

Express trust. "BY-LAWS FOR TRINITY PARISH CHURCH" adopted in 1980 and revised in 1988, 1991, 1992, and 1998, contained the following language throughout the various revisions: "This parish is organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of the Diocese of South Carolina and of the Episcopal Church now in force or as hereafter may be adopted." D-TED-13 (art. I, sec. I). They further provided, "[t]he duties of the wardens and vestry persons shall be prescribed and directed by the By-Laws and the constitution and Canons of the Diocese of South Carolina and the Episcopal Church as they now exist and may hereafter be altered or amended," D-TED-13 (art. IV, sec. 6), and "no

alienation of property shall be made without compliance with the Canons of the Church as they now or hereafter provide.” D-TED-13 (art. IV, sec. 7). Finally, the bylaws also provided, “[a]ny article of part of any article of these By-Laws which may be in conflict with the Constitution or Canons of the Diocese of South Carolina or the Episcopal Church are void.” D-TED-13 (art. IX, sec. 1).

Constructive trust. In 1793, the General Assembly adopted an act “to incorporate the Episcopal Church on Edisto Island” under the name “The Protestant Episcopal Church of Edisto Island.” TED-2. In 1995, “Trinity Episcopal Church” filed Articles of Incorporation with the Secretary of State. TED-4. In 2012, “Trinity Episcopal Church” filed Restated Articles of Incorporation indicating that the parish had used the names “The Episcopal Church on Edisto Island” and “Trinity Episcopal Church” during its history. TED-5.

In 1987, real property was conveyed to “Trinity Episcopal Church, Edisto Island, South Carolina.” TED-7. In 1995, real property was conveyed to “Trinity Episcopal Church.” TED-8. Minutes of a 2012 vestry meeting state that a mortgage being considered by the vestry “will now need to go to the Diocese for authorization.” D-TED-9 at Bates TED-313-00258.

Between 1947 and 1955, Trinity, Edisto Island sought and received the consent of the Diocese to alienate or encumber real property at least two times, as required by National Church canons. D-361A at 90; D-409A at 75.

Moreover, the evidence shows that:

Trinity, Edisto Island regularly used the National Church’s *Prayer Book* and Hymnal. TED dep. at 38, 40.

Trinity, Edisto Island posted signs containing the parish name and “The Episcopal Church Welcomes You” in the community. TED dep. at 29.

Trinity, Edisto Island sought and received the approval of the Bishop to call a rector, as required by National Church canons. TED dep. at 12.

ii. Trinity, Myrtle Beach

Express trust. In 1993, Trinity, Myrtle Beach issued bylaws which stated: “We, the undersigned, assembled for the purpose of organizing a congregation of the Protestant Episcopal Church at Myrtle Beach, County of Horry, of the Diocese of South Carolina, after due notice given, do hereby agree to organize a Parish to be known by the name of Trinity Episcopal Church; and as such do hereby acknowledge, accede to and adopt the doctrine, discipline and worship, the Constitution and Canons of the Protestant Episcopal Church in the United States of America and the Constitution and Canons of the same Church in the Diocese of South Carolina.” D-TMB-26 (preamble). This same language had existed in a 1972 version. D-TMB-27 (preamble).

In 2002, the vestry adopted bylaws for “THE TRINITY EPISCOPAL CHURCH FOUNDATION,” which stated that “[t]he purpose of the Trinity Episcopal Church Foundation is to further the work of Trinity Church in Myrtle Beach and its mission as defined by the Vestry ... This will be accomplished by and through an irrevocable gift made to the Foundation by the Vestry of \$1,000,000 and by any additional gifts” D-TMB-46 at Bates TMB-713-0876 (art. II). The bylaws further provided that “[t]he custody of ... property [invested by the Foundation] shall at all times be in accordance with the requirements of the Constitution and Canons of the Protestant Episcopal Church, the Episcopal Diocese of South Carolina, and Trinity Church.” D-TMB-46 at Bates TMB-713-0877 (art. III, sec. 3).

Constructive trust. In 1939, certain persons signed a document entitled, “ORGANIZATION MEETING – TRUSTEES OF THE CHURCH OF THE MESSIAH OF

MYRTLE BEACH, HORRY COUNTY, S.C.” which stated, “The undersigned, all of whom are members of the Protestant Episcopal Church in the State of South Carolina, being desirous of establishing a Mission Church in the Town of Myrtle Beach, Horry County, S.C. ... do hereby organize ourselves under the designation of Trustees of the Church of the Messiah of Myrtle Beach, Horry County, S.C. for the purpose of erecting, maintaining, supervising and operating under the constitution and canons of the Protestant Episcopal Church and under the direction and control of the Bishop of the Diocese of South Carolina a Mission Church or Chapel in the Town of Myrtle Beach, Horry County, South Carolina and of holding property in common for such religious purposes.” D-TMB-29. Also in 1939, the Secretary of States issued a Certificate of Incorporation for “TRUSTEES OF THE CHURCH OF THE MESSIAH, MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA,” which described the corporation’s purpose as “erecting, maintaining, supervising and operating under the constitution and canons of the Protestant Episcopal Church and under the ... direct control of the Bishop of the Diocese of South Carolina a Mission Church or Chapel in the Town of Myrtle Beach, Horry County, South Carolina.” TMB-1. And further in 1939, the Bishop approved an application which stated, “We the undersigned desiring to be organized as a mission of the Diocese hereby apply to you in accordance with Canon II of the Diocese of South Carolina, to be organized as such a mission. We do hereby acknowledge, accede to, and adopt the doctrine, discipline, and worship, the constitution and canons of the Protestant Episcopal Church in the United States of America and the constitution and canons of the same church in the Diocese of South Carolina. We propose that the name of this mission shall be “The Church of the Messiah, Myrtle Beach” D-TMB-34.

In 1949, the Secretary of State issued a Certificate of Incorporation for “TRUSTEES OF THE CHURCH OF THE MESSIAH OF MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA,” which described the corporation’s purpose as “to manage the business affairs of this Church, to borrow money, to make repairs and improvements and to operate this Church under the constitution and canons of the Protestant Episcopal Church and of the Diocese of South Carolina.” TMB-2. In 1951, “TRUSTEES OF THE CHURCH OF THE MESSIAH OF MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA” changed its corporate name to “TRINITY EPISCOPAL CHURCH OF MYRTLE BEACH.” TMB-3. These articles remained in effect until amended in 2009. TMB-4.

In 1980, real property was conveyed to “Trinity Episcopal Church of Myrtle Beach, a S.C. Corporation.” TMB-11. In 1981, real property was conveyed to “TRINITY EPISCOPAL CHURCH OF MYRTLE BEACH, a South Carolina Corporation.” TMB-12. In 1984, real property was conveyed to “Trinity Episcopal Church of Myrtle Beach.” TMB-6. In 1993, real property was conveyed to “Trinity Episcopal Church.” TMB-9. In 1994, real property was conveyed to “Trinity Episcopal Church.” TMB-10. In 1998, real property as conveyed to “Trinity Episcopal Church.” TMB-13. In 2000, real property was conveyed to “TRINITY EPISCOPAL CHURCH OF MYRTLE BEACH.” TMB-5.

Between 1951 and 1999, Trinity, Myrtle Beach sought and received the consent of the Diocese to alienate or encumber real property at least none times, as require by National Church canons. D-TMB-9; D-365A at 58; D-369A at 72; D-373A at 106; D-380A at 68; D-386A at 8; D-387A at 8; D-409A at 75; D-413A at 64.

Moreover, the evidence shows that:

Trinity, Myrtle Beach made pension payments to the Church Pension Fund for its clergy as required by National Church canons. TMB dep. at 31-32.

Trinity, Myrtle Beach availed itself of liability insurance provided by an affiliate of the Church Pension Fund. TMB dep. at 31-32.

Trinity, Myrtle Beach regularly used the National Church's *Prayer Book* and Hymnal. TMB dep. at 33.

Trinity, Myrtle Beach posted signs containing the parish name and "The Episcopal Church Welcomes You" in the community. TMB dep. at 33.

Trinity, Myrtle Beach sought the Bishop's approval for remarriage, as required by National Church canons. TMB dep. at 37.

jj. Trinity, Pinopolis

Express trust. In 1985, the Bishop authorized the organization of Trinity as a parish. D-TP-30. In order "to be admitted in union with the [Diocesan] convention as a parish," the Trinity, Pinopolis was required to state its "willingness to conform to the Constitution and Canons of the General Convention and the Constitution and Canons of this Diocese." D-TP-31. The Diocese admitted Trinity, Pinopolis as a parish in 1986. D-401A at 32-33.

In 1992, the bylaws of "TRINITY EPISCOPAL CHURCH" stated, "[t]he duties of the Wardens and Vestry Persons shall be as prescribed in Sections 4 and 5, Canon 7 of the Protestant Episcopal Church in the Diocese of South Carolina," D-TP-20 (art. III, sec. 7), which, in turn, charged the Vestry with "execut[ing] all duties ... imposed upon them by ... the Diocese." D-398B at 20 (1983 Diocesan Canon VII.4); D-410B at C-4 (1995 Diocesan Canon VII.4(7)).

They also provided, "[a]ny article or change in these by-laws which may be in conflict with the

present or future canons of the Episcopal Diocese of South Carolina shall be considered null and void.” D-TP-20 (art. IX, sec. 1).

Constructive trust. In 1856, the Trinity, Pinopolis congregation was admitted as a parish of the Diocese, D-271A at 22-23, which according to the Diocesan Constitution required the parish to pledge its “willingness to conform” to the Constitution and Canons of the National Church as well as the Constitution and Canons of the Diocese. (As noted above, the parish was admitted again in 1986.)

In 1971, the Secretary of State issued a Certificate of Incorporation for “TRINITY EPISCOPAL CHURCH, PINOPOLIS” which described the corporation’s purpose as “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 hereafter may be amended”

TP-1. In 1981, real property was conveyed to “Trinity Episcopal Church, Pinopolis, South Carolina.” TP-3. In 1984, real property was conveyed to “TRINITY EPISCOPAL CHURCH.” TP-4. In 1996, real property was conveyed to “Trinity Episcopal Church in Pinopolis, Berkeley County, South Carolina.” TP-5. In 2000, real property was conveyed to “TRINITY EPISCOPAL CHURCH.” D-TP-25. In 2009, real property was conveyed to “Trinity Episcopal Church.” TP-6.

Between 1961 and 1996, Trinity, Pinopolis sought and received the consent of the Diocese to alienate or encumber real property at least three times, as required by National Canons. D-375A at 61; D-377A at 108; D-398A at 6.

Moreover, the evidence shows that:

Trinity, Pinopolis used the Vestry Handbook published by the Diocese. TP dep. at 14-15.

Trinity, Pinopolis made pension payments to the Church Pension Fund for its clergy as required by National Church canons. TP dep. at 36.

Trinity, Pinopolis availed itself of liability insurance provided by an affiliate of the Church Pension Fund. TP dep. at 37-40.

Trinity, Pinopolis regularly used the National Church's *Prayer Book* and Hymnal. TP dep. at 27.

Trinity, Pinopolis posted signs in the community that had the words "Trinity Episcopal Church." TP dep. at 25.

Trinity, Pinopolis sought the Bishop's approval for remarriage, as required by National Church canons. TP dep. at 29.

Trinity, Pinopolis sought and received licenses for its eucharistic ministers, as required by National Church canons. TP dep. at 28.

4. CONCLUSIONS

a. Express trust

1. Each of the following parishes holds "[a]ll [its] real and personal property ... in trust for [the National Church]" and its "Diocese thereof," D-193 at 31 (1979 National Church Canon I.6.4), TECSC, as the result of having executed one or more writings before January 1, 2006, described in full above and outlined briefly below, that expressly accepted the National Church's governance sometime after the National Church adopted the Dennis Canon in 1979, or that expressly accepted the Diocese's governance sometime after 1996, at which point the Diocese had adopted its version of the Dennis Canon, or both. As a result of these writings having been made before January 1, 2006, and because there has been no evidence showing that

at the time the writings were made the parishes intended the trusts to be revocable, the trusts are irrevocable.

All Saints: 1985 bylaws stating “we are bound by the Constitution and Canons of the National Church” D-AS-24.

Christ Church: 1980 bylaws stating that the parish “does acknowledge and accede to . . . the Constitution and Canons of the Protestant Episcopal Church in the United States of America,” CC-25, and vestry statement “reaffirming our willingness to conform to the Constitutions and Canons of the [National Church].” D-CC-6.

Christ St. Paul’s: 1980 bylaws providing that the parish was organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of the National Church. Tr. at 337.

Church of the Cross: 2003 bylaws describing the purpose of the parish corporations as “the support and maintenance of a Church . . . in accordance with the doctrine and practices of [the National Church] and of the Diocese of South Carolina.” TC-12 (art. II).

Epiphany: 2002 bylaws stating “[t]he object and purpose of the [parish] corporation is for the support and maintenance of a Church . . . in accordance with the doctrine and practices of the [National Church] and the Diocese of South Carolina.” E-4B (art. II).

Good Shepherd: 2001 amended corporate articles describing the parish corporation as “organized pursuant and subject to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina . . . ,” GS-7 at 4; and 2004 Articles of Merger describing St. Luke’s and St. Paul’s as “organized pursuant and subject to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina (The “Diocese”). GS-8 at 3, 4-5.

Holy Comforter: 1985 Constitution and bylaws providing that the parish “acknowledge[s], accede[s] to and adopt[s] ... the Constitution and Canons of the [National Church]” D-HC-6 at 1 (Preamble); Tr. at 559.

Holy Cross (Stateburg): 1980 and 1981 bylaws stating that the parish, “having resolved to accept the rules and regulations of the [National] Church, in effect, accedes to ... the Constitution and Canons of the [National Church].” HCS-11 (art. I).

Holy Trinity: 1985, 1988, 1993, and 2001 bylaws stating that the parish “does acknowledge and accede to ... the Constitution and Canons of the [National Church] and the Constitution and Canons of ... the Diocese of South Carolina.” D-HT-38 (1985 art. I); D-HT-35 (1988 art. I); D-HT-34 (1993 art. I); D-HT-33 (2001 art. I).

Our Saviour: 1980 “promise to conform to the Constitution [and] Canons ... of the [National Church],” D-OS-52; 1981 bylaws stating the parish was “organized for the purpose of operating an Episcopal Church (mission) pursuant to the Constitution and Canons of ... the [National Church],” D-OS-63 (art. I, sec. 1); 1984 letter stating, “[w]e agree to conform to the Constitution and Canons of the [National Church],” D-OS-51; and 1992 and 2003 bylaws stating that the parish “acknowledges the authority of the [National Church] in accordance with the Constitution and Canons thereof and the authority of the [Diocese of South Carolina] in accordance with the Constitution and Canons thereof.” D-OS-65 (1992 art I); D-OS-66 (2003 art. I).

Redeemer: 2000 bylaws stating that the parish “shall conform to the Constitution and Canons of the [National Church], and the Constitution and Canons of ... the Diocese of South Carolina.” R-24 (art. I).

Resurrection: 1983 bylaws stating that the “parish is organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of ... the [National Church].” RS-11 (art. I).

St. Bartholomew’s: 2005 bylaws stating that the parish “accedes to and adopts the Constitution and Canons of the [National Church] and of the Diocese of South Carolina.” D-SB-D-SB-12 (art. I).

St. David’s: 1982 and 1992 parish Constitution and bylaws stating that the parish “accedes to and adopts the Constitution and Canons of the [National Church], and also the Constitution and Canons of the Diocese of South Carolina .” D-SD-3 (1982 Const. sec. 1); D-SD-4 (1992 Const. sec. 1; sec. 2.A).

St. Helena’s: 1987 bylaws stating that the parish “pledges to adhere to the doctrine, discipline, and worship of the [National Church],” D-PCSH-42 (art. I), and that any bylaws provision “which may be in conflict with the canons of the ... [National Church] shall be considered null and void.” D-PCSH-42 (art. VI).

St. James’: 1993, 1995 and 2001 parish Constitution stating that the parish “accedes to and adopts the Constitution and Canons of the [National Church] and to the Constitution and Canons of the Diocese of South Carolina.” D-SJJI-36 (1993 art. I), D-SJJI-37 (1995 art. I); D-SJJI-38 (2001 art. I), and that “[a]ll real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for the Church and the Diocese thereof” D-SJJI-36 (1993 art. VII, sec. V); D-SJJI-37 (1995 art. VII, sec. V); D-SJJI-38 (2001 art. VII, sec. V).

St. John’s, John’s Island (Charleston): 1996 amended corporate articles stating that the parish corporation “is subject to the Constitution and Canons of the [National Church] and ... the

Diocese of South Carolina,” D-SJC-25; and 2001 parish Constitution and by-laws stating that the parish “accedes to and adopts the Constitution and Canons of the Diocese of South Carolina and of the [National Church].” D-SJC-21 (art. I).

St. Jude’s: 1990 parish Constitution stating that the parish “accedes to and adopts the Constitution and Canons of the [National Church] and also the Constitution and Cannons [sic] of ... the Diocese of South Carolina.” D-SJ-37 at Bates SJ-313-00175 (art. II

St. Luke’s: 2000 bylaws stating that the parish “accedes to and adopts the Constitution [and] canons ... of the [Diocese of South Carolina], and the [National Church].” SL-6 (2000 art. II).

St. Luke and St. Paul: 1995 bylaws stating that the parish is organized for the purpose of “operating an Episcopal church pursuant to the Constitution and Canons of ... the Diocese of South Carolina and of the [National Church].” D-SLP-13 (art. I, sec. 1).

St. Matthew’s, Fort Motte: 1982 and 2004 parish Constitution and bylaws stating that the parish “accedes to the Constitution and Canons of the [National Church], and [of] the Diocese of South Carolina.” D-SM-FM-3 (1982 art. I; art. XIII); SM-FM-2 (2004 art. I).

St. Michael’s: 1989 bylaws stating that the parish “acknowledges the authority of ... the Diocese of South Carolina ... and of the [National Church].” D-SMI-23 (art. II, sec. 2.1).

St. Paul’s, Bennettsville: 2002 corporate articles describing the purpose of the parish corporation as “operat[ing] a Parish organized under and subject to the Canons of ... the Diocese of South Carolina,” SPB-1; and 2004 bylaws which authorized the vestry to “acquire and purchase” and to “sell, transfer mortgage or authorize disposition of” real property “so long as such acts are in accord with the Canons of the [National Church].” D-SPB-28 (art. III, sec. 6).

St. Paul's, Summerville: 1992 bylaws stating that the parish “is organized pursuant to the Constitution and Canons of [the National Church] and of ... the Diocese of South Carolina.” SPS-26.

St. Philip's: 1987 Articles of Restatement describing the purpose of the parish corporation as “in accord with the Articles of Religion of the Protestant Episcopal Church in the United State of America” SPH-30.

Trinity, Edisto Island: 1980, 1988, 1991, 1992, and 1998 bylaws stating that the parish “is organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of the Diocese of South Carolina and of the [National Church].” D-TED-13 (art. I, sec. I).

Trinity, Myrtle Beach: 1993 bylaws stating that the congregants seeking parish status “do hereby acknowledge, accede to and adopt ... the Constitution and Canons of the [National Church] and the Constitution and Canons of the ... Diocese of South Carolina.” D-TMB-26 (preamble).

Trinity, Pinopolis: 1985 admission as a parish of the Diocese which required the parish to state its “willingness to conform to the Constitution and Canons of the [National Church].” D-TP-31; D-401A at 32-33.

2. In addition, St. Matthias holds all its real and personal property in trust for the National Church and its local Diocese, TECSC, as the result of having executed corporate articles in 1984 expressly describing the parish corporation’s purpose as “operating a Mission (Church), organized pursuant and subject to the Canons of ... the Diocese of South Carolina as now in force or as hereafter may be amended” STM-3. At that time, the Constitution of the Diocese of South Carolina “adopt[ed]” the National Church’s Constitution and Canons, D-398B

at 2 (1983 Diocesan Const. art. I), and thereby incorporated the Dennis Canon into its governance, which accordingly was accepted by St. Matthias in its 1983 corporate articles. Moreover, because the parish's 1984 corporate articles made the corporation "subject to" the Diocese's canons "as hereafter may be amended," when the Diocese adopted its version of the Dennis Canon in 1987 the parish corporation became "subject to" it. As above, the fact that the Diocese repealed its trust canon sometime later did not "revoke" the trust, because it was irrevocable when made.

3. In addition, in the following instances, express trusts were created with regard to specific assets, and the subject property is held in trust as follows:

Good Shepherd: A 1996 conveyance of real property to the parish was "made ... upon the grantee's agreement that it is subject to the Constitution and Canons of the [National Church] and ... the Diocese of South Carolina." D-GS-10 at 2. Both the National Church's and the Diocese's Dennis Canons were in effect at the time. Accordingly, the property that was the subject of this conveyance is held in trust for the National Church and TECSC.

St. Bartholomew's and St. Jude's: In 1855, St. Bartholomew's adopted a resolution to divide the parish and its assets and to organize St. Jude's as a mission, and resolving "That the Property & Funds, belonging to the Episcopal Church of St. Bartholomews Parish, be divided into Two equal parts (with the exception of the Service of Plate ... and which Shall remain the property of the Church of St. Bartholomews) One half of which (with the above specified exception) *Shall be held in Trust for the Episcopal Church*, by the vestry of St. Bartholomews Parish; -- and the other half, *Shall be held in Trust for the Episcopal Church*, by the Vestry of St. Judes Church." D-SJ-58 (emphasis added). The property that was the subject of the resolution is held in trust for the National Church.

St. John's, Florence: A deed conveying real property to St. John's Florence in stated, "This is a bona fide gift to the Episcopal Church." D-SJF-61. The property conveyed by that deed is held in trust for the National Church.

St. Matthias: The 1992 deed conveying real property from The Trustees of the Protestant Episcopal Church in South Carolina to St. Matthias provided that the conveyance was made "upon the agreement by the grantee that it is subject to the Constitution and Canons of [the National Church] and ... the Diocese of South Carolina." STM-13. Both the National Church's and the Diocese's Dennis Canons were in effect at the time. Accordingly, the property that was the subject of this conveyance is held in trust for the National Church and TECSC.

Trinity, Myrtle Beach: 2000 bylaws of the Trinity Episcopal Church Foundation, whose purpose is "to further the work of Trinity Church in Myrtle Beach and its mission as defined by the Vestry," D-TMB-46 at Bates TMB-713-0876 (art. II), provided that "[t]he custody of ... property [invested by the Foundation] shall at all times be in accordance with the requirements of the Constitution and Canons of the [National Church], the Episcopal Diocese of South Carolina, and Trinity Church." D-TMB-46 at Bates TMB-713-0877 (art. III, sec. 3). By subjecting the Foundation to the rules of the National Church and the Diocese in 2002, those bylaws created an irrevocable trust that could not later be undone by Trinity, Myrtle Beach. Accordingly, the assets of the Foundation are held in trust for the National Church and TECSC.

b. Constructive trust

Even if there were no express trusts here, the evidence demonstrates that a constructive trust should be imposed on the property held by each of the parishes in favor of the National Church and TECSC. The facts set out above, including but not limited to those that support the finding of express trusts, show that each parish had, as the result of its own actions, established a

“confidential or fiduciary relationship” with the National Church and its Diocese, now TECSC, which required it to “act in good faith with due regard to the interest of” the National Church and TECSC. *Chapman*, 395 S.E.2d at 451, 302 S.C. at 477. Each parish engaged in some combination of the following activities:

- pledging to comply with the Constitution and Canons of the National Church and/or its Diocese in corporate articles, bylaws, parish Constitutions, and applications for parish status;
- complying with the National Church’s and/or the Diocese’s rules regarding property by seeking the consent of the Diocese to alienate or encumber real property;
- complying with the National Church’s requirements regarding audits and other business methods;
- complying with other National Church rules, such as those regarding remarriage, licensure of lay eucharistic ministers, and the mandatory retirement age for priests;
- participating in the Church Pension Fund, in compliance with National Church canons and to the benefit of each parish’s clergy;
- acquiring liability insurance through the Church Pension Group;
- receiving grants and loans from National Church entities and affiliates;
- using the Vestry Handbook, which is replete with instructions to obey the National Church’s canons;
- regularly using the National Church’s *Prayer Book* and Hymnal;
- receiving conveyances of real property as an “Episcopal” church; and
- holding itself out to the world as a parish of the National Church in a variety of ways, including using the word “Episcopal” in its corporate name and on official parish

documents, and posting “The Episcopal Church Welcomes You” signs in the community linking the parish to the National Church.

As the result of these and other actions outlined in detail above, each parish established a “confidential or fiduciary relationship” with the National Church and its Diocese. It did so by leading the National Church and its Diocese to believe that the parish would remain loyal to the National Church and its Diocese, and would carry out their obligations to the National Church and the Diocese. At the same time, each benefitted from its relationship with the National Church and its Diocese, by having taken advantage, for years, decades, and in some instances, centuries, of the “Episcopal Church” brand, and participating in the National Church’s tax exemption, Pension Fund and liability insurance offerings.

On similar facts, the Supreme Court of Virginia recently imposed a constructive trust on property held by parishes that voted to leave the National Church and its Diocese of Virginia, even where, under Virginia law, the Church’s Dennis Canon was ineffective to create an express trust. *Falls Church v. Protestant Episcopal Church in the United States*, 740 S.E.2d 530 (Va. 2013). Accordingly, as the result of the facts set out above and in the complete trial record, this Court finds that a constructive trust exists in favor of the National Church and TECSC on all the real and personal property held by or for the benefit of each of the plaintiff parishes, regardless of whether each parish corporation effectively removed itself from the National Church.

c. Trustees

In the light of (1) the above conclusions that all property held by or for the 36 parish plaintiffs is held in trust for the National Church and TECSC; and (2) the undisputed fact that each of the 36 parish plaintiffs regards itself as no longer having an relationship to, or affiliation with, the National Church and TECSC; and (3) the undisputed fact that each of the 36 parish

plaintiffs has, since at least the filing of the present lawsuit, been using the property for purposes other than in affiliation with the National Church and TECSC, and instead in furtherance of a denomination other than the National Church, this Court should conclude that each of the 36 parish plaintiffs has violated its duties as trustee, and should be replaced as trustees as set out below. *Wallace v. Foster*, 15 S.C. 214, 217 (1881) (courts have “full power ... to remove trustees of all kinds, whether appointed by deed, will or order of court, upon good cause shown and when the exigency requires; and to substitute another instead of the one removed, and to invest him with title to and control over the trust estate”).

For the reasons stated above, this Court should declare that all real and personal property held by or for the benefit of each of the 36 parish plaintiffs in this action is held in trust for the National Church and TECSC; that each of the 36 parish plaintiffs is removed from the position of trustee for all of the said property; that each of the 36 parish plaintiffs to cease and desist from using the said property, and from acting or holding themselves out as trustees for said property; that each of the 36 plaintiff parishes to render an accounting to the National Church and TECSC, within 90 days of the date of this Order, of all property held or controlled by it from October 1, 2010 to the date of this Order; and that the National Church and TECSC propose substitute trustees for the subject property for consideration for appointment by the Court.

III.

Additional Statement Of Grounds For Reconsideration

In addition to and in further support of all of the above grounds for reconsideration, Defendants provide the following additional statement of grounds for reconsideration, which if properly considered would have required a decision in favor of Defendants.

The Court erred in making numerous evidentiary rulings excluding testimony and evidence at trial, which prejudicially restricted Defendants' ability to present many aspects of their case that would have supported a decision in favor of Defendants.

The Order does not adequately address First Amendment limitations and U.S. Supreme Court jurisprudence in its application of neutral principles of law.

The Order does not adequately address virtually universal precedent holding that TEC is a hierarchical church.

The Order does not adequately address evidence introduced by the parties that TEC is a hierarchical church.

The Order does not adequately address the issue of deference to the decisions of TEC, as a hierarchical church, on issues of church polity, including TEC's decisions regarding the limits of Bishop Lawrence's authority as one of its own bishops and whether its dioceses and parishes can disaffiliate from TEC under its own canonical law.

The Order does not address the enforceable promises, representations, and oaths by Bishop Lawrence and other clergy of TEC, which restricted the scope of their ecclesiastical and corporate authority.

The Order does not adequately address the 1880 and 1902 Acts of the General Assembly of South Carolina. These Acts have not been further amended and are controlling with regard to the Trustees. They plainly state that the Trustees hold property in trust for the benefit of The Episcopal Church's diocese, which is undisputedly The Episcopal Church in South Carolina, and that the members of the Trustees are to be elected by The Episcopal Church's diocese's Convention, which is The Episcopal Church in South Carolina's Convention.

The Order does not adequately address the evidence and authorities presented that the recent articles of amendment, bylaws, and acts of disaffiliation taken on behalf of a corporation chartered in 1973 in the name of TEC's diocese were made without authority and were inconsistent with and contravened that corporation's founding corporate charter.

The Order does not address why the Court commented on Prof. McWilliams' expert testimony based on his religious affiliation with Defendants, but did not comment on Dr. Guelzo's expert testimony based on his religious affiliation with Plaintiffs, as well as many of Plaintiffs' other witnesses who all offered testimony in favor of their own personal religious affiliation.

The Order does not address how Defendants were prejudiced at trial by the Court's decision to completely bar the testimony of their expert witness, Bob Klein.

The Order does not address how Defendants were prejudiced at trial by the Court's decision to exclude evidence of a likelihood of confusion survey that is crucially important to the trademark issues in this case.

The Court did not consider evidence and authorities presented that TEC and its diocese, TECSC, have exclusive rights to use trademarks and names that suggest an affiliation with The Episcopal Church and are confusingly similar to The Episcopal Church's federally registered marks.

The Court did not adequately consider evidence and authorities presented that The Episcopal Church has an express trust in the parish property.

The Court did not adequately consider evidence and authorities presented that The Episcopal Church and The Episcopal Church in South Carolina are entitled a constructive trust in all of the property at issue.

The Court erred in presupposing that Plaintiffs are the corporate identities that are in dispute in this case before hearing the evidence.

The Order does not address how Defendants were prejudiced at trial by the Court's earlier decision to deny their motion to join individuals whom Defendants alleged carried out the acts alleged in the complaint *ultra vires* and filed this action in the name of Plaintiffs *ultra vires*.

The Order does not address how Defendants were prejudiced at trial by the Court's earlier decision to deny their motion to compel production of communications between the then-unified diocese's bishop and the then-unified diocese's lawyer prior to the schism in late 2012.

The Order does not address how Defendants were prejudiced at trial by the Court's earlier decisions to deny their motions for continuance of the trial date to allow for reasonable discovery to be undertaken.

The Order does not address how Defendants were prejudiced at trial by the Court's earlier decision to grant Plaintiffs' *ex parte* motion for a preliminary injunction.

The Order does not address how Defendants were prejudiced at trial by the Court's earlier decision to deny their motion to vacate or amend the consent temporary injunction.

The Court did not adequately consider evidence and authorities presented that establish that the quitclaim deeds were unlawful, unauthorized, and null and void.

The Court erred by failing to recognize that the parties are all part of a religious organization and that their status as incorporated or unincorporated entities does not eradicate the application of First Amendment legal protections.

The Court erred by applying corporate definitions of membership to the relationship between The Episcopal Church and the Diocese, and by failing to recognize clear evidence

establishing that the Diocese is in union with and part of The Episcopal Church, which is a hierarchical religious organization.

The Order does not adequately address the arguments submitted to the Court, pursuant to the Court's instructions, in Defendants' pre-trial position papers and post-trial submissions and proposed orders.

The Order does not adequately address each of Defendants' defenses and counterclaims and requests for relief; rather, the Order appears to dismiss them collectively as a whole. Defendants request that each of their defenses and counterclaims and requests for relief be reconsidered specifically and independently.

The Order does not identify what evidence it relies upon in making its findings and conclusions.

The Order does not adequately address the expert testimony of Prof. McWilliams.

The Order does not address the expert testimony of Ms. Lott and Mr. Derfner.

The Order does not adequately address the testimony of Dr. Edgar, Bishop vonRosenberg, Bishop Daniel, Father Sanderson, Mr. Mersereau, or any of Defendants' other witnesses.

The Order does not adequately address the legal arguments and authorities advanced by Defendants prior to and during trial. Defendants request that the Court reconsider all legal arguments and authorities contained in the record in this matter.

THREFORE, as set forth herein, Defendants respectfully submit that the Court reconsider its Order, reverse its rulings, and enter judgment in favor of Defendants on all claims and defenses at issue in this case.

(Signature page to follow)

Dated: February 13, 2015

Respectfully submitted,

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