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

The Right Reverend Charles G. vonRosenberg, individually and in his capacity as Provisional Bishop of the Protestant Episcopal Church in the Diocese of South Carolina, Plaintiff, v. The Right Reverend Mark J. Lawrence and John Does numbers 1-10, being fictitious defendants whose names presently are unknown to Plaintiff and will be added by amendment when ascertained, Defendants.	)	Case No.: 2:13-cv-00587-CWH

REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

Defendant, Bishop Mark J. Lawrence, does not dispute that, if he is not the true Bishop of the Protestant Episcopal Church in the Diocese of South Carolina (the "Diocese"), then his use of the names and marks of the Diocese falsely suggests to consumers of religious services and charitable donors that he is the ecclesiastical authority of the Diocese. He accordingly does not deny that, if he is not the true Bishop of the Diocese, then his use of the names and marks of the Diocese constitutes a violation of the Lanham Act.

Bishop Lawrence's opposition to Plaintiff's requested injunctive relief instead rests entirely on the notion that he remains the true Bishop of the Diocese notwithstanding his renunciation of The Protestant Episcopal Church in the United States of America ("The Episcopal Church" or the "Church"), his removal, by the Presiding Bishop of The Episcopal Church, from the ordained ministry of the Church, and the Church's recognition of only Bishop vonRosenberg as the Bishop of the Diocese. He argues that he remains the Bishop of the Diocese because the Diocese purported to secede from The Episcopal Church before Bishop Lawrence was removed.

But as demonstrated in the opening memorandum, the question whether a diocese of The Episcopal Church validly may secede from the Church is a quintessential question of "church polity and church administration" on which civil courts must defer to "the highest ecclesiastical tribunals in which the church law vests authority to make that interpretation." *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710, 721 (1976).

Bishop Lawrence contends that this First Amendment principle is irrelevant because South Carolina has adopted a "neutral principles of law" approach to disputes over ownership of church property. *See All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina*, 685 S.E. 2d 163, 171 (S.C. 2009). But this is not a dispute over ownership of church ***property***; rather, it is a dispute about church ***polity***. In that sector, as Bishop

Lawrence's principal authorities themselves recognize, the First Amendment commands deference to church authorities. *See Jones v. Wolf*, 443 U.S. 595, 602 (1979) ("[T]he [First] 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 E. Orthodox*, 426 U.S. at 724-725."); *All Saints Parish*, 685 S.E.2d at 172 ("'Courts may not engage in resolving disputes as to religious law, principle, doctrine, discipline, custom or administration.'" (quoting *Pearson v. Church of God*, 478 S.E.2d 849, 854 (1996)).

That the Diocese manages certain of its temporal affairs through a non-profit corporation changes nothing. It was not state corporations law, but religious doctrine and polity, that made the Diocese a sub-unit of The Episcopal Church. Indeed, the Diocese's non-profit corporation was only formed in the 1970's—almost 200 years after the Diocese first was organized as a sub-unit of the Church. And whatever the corporation's newly minted by-laws may provide about the identity of its officers, those by-laws could not determine who is the Bishop of the Diocese, because that position is not a corporate position, but an ecclesiastical one. The appointment of clergy "is a canonical act," "purely ecclesiastical" in nature. *Gonzalez v. Archbishop*, 280 U.S. 1, 16 (1929).

Bishop Lawrence thus offers the alternative argument that ***he*** actually is the "highest authority" within The Episcopal Church's hierarchical structure, and that any judicial scrutiny of his implausible assertion would constitute "a searching and therefore impermissible inquiry into church polity." Def.'s Resp., Doc. No. 20, at 19 (citing *Jones*, 443 U.S. at 605). On Bishop Lawrence's view, any dissident cleric's Haigian assertion that he is in charge is enough to require the First Amendment to chase its tail, commanding deference to church authorities while at the same time prohibiting any determination as to who is the authority to which courts must de-

fer. That is the opposite of the law, as demonstrated by the Fourth Circuit's decision in *Dixon v. Edwards*, 290 F.3d 699 (4th Cir. 2002), which said that "[b]ecause the Episcopal Church is hierarchical, we must next assess . . . [who] is its highest ecclesiastical authority." *Id.* at 718. In any event, no "searching . . . inquiry" is necessary to expose Bishop Lawrence's self-proclaimed authority as illegitimate. *Dixon* itself recognized that the Bishop of the Diocese of Washington was subject to the review and discipline of "the Episcopal Church." *Id.* And it is even more clearly demonstrated by the numerous ways in which bishops are subordinate to the national Church, including the oath Bishop Lawrence swore upon his ordination as Bishop of the Diocese, "to conform to the Doctrine, Discipline, and Worship of the Episcopal Church."

In the absence of a serious argument that he remains the Bishop of the Diocese, Bishop Lawrence hardly can dispute that Bishop vonRosenberg is likely to prevail on his Lanham Act claims; he offers no other defense to Bishop vonRosenberg's claims. And his remaining arguments against injunctive relief are makeweight. Bishop Lawrence's false claims that he remains Bishop plainly impede Bishop vonRosenberg in the exercise of his religious office, and therefore cause him irreparable harm, and Bishop Lawrence points to no harm that he will suffer if the injunction is granted. For these reasons, supported further below, the Court respectfully should grant Bishop vonRosenberg's motion for a preliminary injunction.

ARGUMENT

I. The Standard Four-Factor Test For Preliminary Injunctions Applies

Bishop Lawrence argues that the "higher standard" for "mandatory" injunctive relief, under which Bishop vonRosenberg's right to relief must be "indisputably clear," applies here because Bishop vonRosenberg (he claims) is seeking to change the status quo. *See* Def.'s Resp., Doc. No. 20, at 14, 15. Bishop Lawrence is wrong, but it makes no difference here, because

Bishop vonRosenberg's case, which rests on undisputed facts and binding decisions of the Supreme Court and the Fourth Circuit, meets even the heightened standard.

The injunction Bishop vonRosenberg seeks is purely prohibitory in nature. It would order Bishop Lawrence to cease the unlawful conduct that is causing irreparable harm to Bishop vonRosenberg; the injunction does not "compel[] action." *McDaniels v. Zagula*, No. 12-6, 2012 WL 3612594, at *1 (D.S.C. July 3, 2012). Bishop Lawrence insists that his cessation of unlawful conduct nevertheless would "alter[] the status quo" and therefore is "mandatory." Def.'s Resp., Doc. No. 20, at 14. But in the Fourth Circuit the "status quo" is defined as the "last uncontested status between the parties which preceded the controversy." *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013). Here, the last uncontested status between these parties was the moment when Bishop vonRosenberg was installed as Bishop of the Diocese, before Bishop Lawrence began causing harm to Bishop vonRosenberg by thereafter continuing to hold himself out as Bishop of the Diocese.[1]

Bishop vonRosenberg's injunction seeks only a return to that "status quo"—the state of affairs before Bishop Lawrence undertook unlawful conduct that harmed Bishop vonRosenberg. In countless similar circumstances this Court has granted preliminary injunctive relief, without reference to any "higher standard," to prevent continued and threatened unlawful conduct during the pendency of an action. *See, e.g.*, *Occupy Columbia v. Haley*, No. 11-03253, 2013 WL 496334, at *3 (D.S.C. Feb. 7, 2013); *U.S. Commodity Futures Trading Comm'n v. Harrison*, No.

[1] Bishop Lawrence suggests that the relevant "status quo" is "the Fall of 2012"—a state of affairs he asserts is "maintained" by a state-court injunction to which Bishop vonRosenberg is not a party. But as the Fourth Circuit's decision in *Pashby* makes clear, it is the "last uncontested status ***between the parties***" that matters. *Pashby* 709 F.3d at 319. The only "parties" to this case are Bishop Lawrence and Bishop vonRosenberg, and ***their*** dispute did not arise until Bishop vonRosenberg was installed as Bishop of the Diocese.

13-00327, 2013 WL 101356, at *1 (D.S.C. Feb. 7, 2013). That is all Bishop vonRosenberg seeks here. The standard test for preliminary injunctions therefore applies.

II. Bishop vonRosenberg Has Established A Clear Likelihood Of Success On The Merits Of His Lanham Act Claims.

Bishop Lawrence's only defense to liability under the Lanham Act is his assertion that he remains the Bishop of the Diocese. In support, he argues first that, under state law of "corporate control," the Diocese validly seceded from the Church. Alternatively, he argues that the Diocese validly seceded under *church law* because in the indisputably hierarchical structure of The Episcopal Church, "the highest authority is the diocese and its bishop," and that the First Amendment bars any court from scrutinizing his imagination of the Church's polity. Def.'s Resp., Doc. No. 20, at 19. These arguments are foreclosed by controlling decisions of the Supreme Court and the Fourth Circuit and accordingly should be rejected.

A. State Law Of Corporate Control Has No Relevance To Matters Of Church Polity.

Bishop Lawrence contends that "[u]nder South Carolina's Non-Profit Corporations Act, it is clear that nothing could prevent the Diocese's withdrawal." Def.'s Resp., Doc. No. 20, at 16. But the question whether a Diocese can secede from The Episcopal Church undeniably is a question of ***church polity*** as to which the First Amendment commands deference to the decisions of the highest authorities of a hierarchical church. In *Serbian Eastern Orthodox*, the Supreme Court addressed the contention of a diocese (which also employed a non-profit corporation) that it was autonomous from the mother church, and held the relationship of a diocese to the parent church "involves a matter of internal church government, an issue at the core of ecclesiastical affairs" as to which civil courts must "accept . . . as binding upon them" the decisions of the highest ecclesiastical tribunal. 426 U.S. at 721, 725; *see also Schofield v. Superior Ct. of Fresno Cnty.*, 118 Cal. Rptr. 3d 160, 162 (Cal. Ct. App. 2010) ("The continuity of the diocese as an enti-

ty within the Episcopal Church is . . . a matter of ecclesiastical law . . . .”). The fact that the Diocese employs a corporate form to manage certain of its temporal affairs does not alter the Diocese’s relationship to The Episcopal Church or make that relationship any less a matter of church polity. State law of corporate control thus has no role to play here.

Bishop Lawrence insists that this case is actually a “dispute over property” and that therefore neutral principles of corporate control articulated in the South Carolina Supreme Court’s decision in *All Saints Parish* dictate the outcome. Def.’s Resp., Doc. No. 20, at 5. But his premise is incorrect. As is clear from Bishop vonRosenberg’s complaint, this case does not challenge the Diocese’s non-profit corporation’s ownership of property. Instead, it seeks simply to enjoin Bishop Lawrence from continuing to interfere with Bishop vonRosenberg’s ability to carry out his spiritual mission as the ecclesiastical leader of the Diocese. The dispute here is not “over property,” but instead who is the true Bishop of the Diocese. State-law principles of corporate control have nothing to say on that question because it is “purely ecclesiastical.” *Gonzalez v. Archbishop*, 280 U.S. 1, 16 (1929). “Thus, this case essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals.” *Serbian Eastern Orthodox*, 426 U.S. at 709.

Indeed, *Jones v. Wolf*, on which Bishop Lawrence chiefly relies, reaffirmed that the First 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.” 443 U.S. at 602. In accordance with *Jones*, states may use “neutral principles of law” to resolve disputes over “*ownership* of church property,” *Jones v. Wolf*, 443 U.S. 595, 603, 604 (1979) (emphasis added), but not religious disputes concerning who holds a religious office. *See Episcopal Diocese of Mass. v. Devine*, 797 N.E.2d 916, 921-22 (Mass. 2003) (explaining that the “neutral principles of law”

approach applies only "where a dispute directly concerns a purely secular matter (such as rights to church property) and does not implicate matters of church doctrine, discipline, or authority," including the "question of which individuals hold authority to act on behalf of" the church); *Schofield*, 118 Cal. Rptr. 3d at 162 ("[I]f the dispute does not involve the ownership of property—if it concerns issues such as church doctrine, membership, credentials of clergy, discipline of clergy and members, or church governance and organization—the matter is to be left to internal decision-making processes of the church itself.").

No less than the question of who is the true Bishop of the Diocese, the question whether a Diocese may withdraw from the Church is an issue of "religious . . . polity," on which the First Amendment prohibits state law from intruding. Just as the Bishop of the Diocese is, first and foremost, a religious position, the Diocese is, first and foremost, a religious body. State corporations law cannot dictate the relationship of that religious body to the Church any more than corporations law could be allowed to determine the holder of a religious office. Under the First Amendment, state corporations law may govern the actions of corporations and selection of corporate officers, but its domain does not extend to the canonical actions of religious bodies and their selection of clergy.

B. This Court Can And Should Reject Bishop Lawrence's Claim That He And Every Other Diocesan Bishop Is The Highest Ecclesiastical Authority Within The Church On Matters Of Church Polity.

Bishop Lawrence alternatively argues that, if the First Amendment requires deference to the highest ecclesiastical authority in the Church on the issue of whether a Diocese validly may secede from The Episcopal Church, then he is that "highest authority." Def.'s Resp., Doc. No. 20, at 19. This is an audacious claim of power, and all the more so after Bishop Lawrence couples it with his contention that the First Amendment (at the same time as it requires deference to

Church authorities) precludes a court from determining where, in the church polity, the "highest authority" resides. But that is not the law.

In *Dixon v. Edwards*, the Fourth Circuit addressed two arguments from the defendants: "First, they maintain that the Episcopal Church is not hierarchical, and second, they contend that Bishop Dixon is not the final ecclesiastical decisionmaker on Father Edward's licensure in the Diocese." 290 F.3d at 715. After holding that "The Episcopal Church is hierarchical," *id.* at 716, the Court "next assess[ed] whether Bishop Dixon, in the context of this dispute, is its highest ecclesiastical authority," *id.* at 717, and looked to the Church's Canons to resolve that question. *Id.* at 717. *Dixon* thus forecloses Bishop Lawrence's argument that the First Amendment forbids a court from examining a Church's foundational documents to determine where, within a hierarchical church, the highest ecclesiastical authority resides. Indeed, *Dixon* makes clear that a court is ***required*** to locate that authority.[2]

So, as in *Dixon*, this Court must assess, whether "in the context of this dispute," (*i.e.*, whether the Diocese may secede from the Church), the highest ecclesiastical authority resides in The Episcopal Church, which has determined that Dioceses may not secede, *see infra* at 13, or in Bishop Lawrence, who apparently has determined that Dioceses may secede. That is not a hard question; no "searching . . . inquiry" is necessary to refute Bishop Lawrence's startling view that he was the supreme authority within The Episcopal Church on matters of Church polity. Def.'s Resp., Doc. No. 20, at 29.

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[2] Bishop Lawrence's reliance on Justice Brennan's concurring opinion in *Maryland & Virginia Churches v. Sharpsburg Church*, 396 U.S. 367 (1970), is misplaced. Justice Brennan in fact recognized that "the identification of the governing body" does *not* "frequently necessitate[] the interpretation of ambiguous religious law and usage." *Id.* 369. And his subsequent opinion ***for the Court*** in *Serbian Eastern Orthodox* made clear that civil courts can look to church law to confirm the existence of a hierarchical relationship between national and local churches. *See* 426 U.S. at 715-17 & n.9, 721.

At the threshold, Bishop Lawrence's view immediately is confronted by the fact that American courts universally have recognized that the "Episcopal Church polity"—from top to bottom—is hierarchical. The Supreme Court said as much as early as 1872. *See Watson v. Jones*, 80 U.S. (13 Wall.) 679, 729 (1872). The Fourth Circuit examined "the Canons of the Episcopal Church" and found that they "clearly establish that it is a hierarchy." *Dixon v. Edwards*, 290 F.3d 699, 716 (4th Cir. 2002). Indeed, ***every*** court—federal or state—that has examined the three-tiered structure of The Episcopal Church has held that it is hierarchial. *See*, *e.g.*, *The Falls Church v. The Protestant Episcopal Church in the United States of America*, No. 120919, at 2 (Va. Apr. 18, 2013); *Episcopal Church Cases*, 198 P.3d 66, 71, 80-81 (Cal. 2009); *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 921, 925 (N.Y. 2008); *Devine*, 797 N.E.2d at 921; *Daniel v. Wray*, 580 S.E.2d 711, 718 (N.C. Ct. App. 2003); *Bennison v. Sharp*, 329 N.W.2d 466, 473 (Mich. Ct. App. 1982); *Tea v. Protestant Episcopal Church in the Diocese of Nev.*, 610 P.2d 182, 183-84 (Nev. 1980); *Protestant Episcopal Church in the Diocese of N.J. v. Graves*, 417 A.2d 19, 24 (N.J. 1980). Bishop Lawrence's contention that there is no "hierarchy higher than the Diocese (and its Bishop) in [The Episcopal Church]," is flatly contrary to this body of precedent.[3]

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[3] Nothing in *Dixon* supports Bishop Lawrence's claim that the bishop is the highest authority in The Episcopal Church on questions of church polity. As *Dixon* makes clear, the task of a court is to identify the "highest ecclesiastical authority" for the "context of th[e] dispute." 290 F.3d at 717. In *Dixon*, the "dispute" arose from the refusal of the Bishop of the Diocese of Washington to approve the appointment of the defendant as rector of a parish. Because in the Church's polity, the bishop of a diocese governs "the priests and laity of a diocese," the Fourth Circuit held that the bishop was "the highest ecclesiastical tribunal of the Church ***for the purposes of this dispute***." 290 F.3d at 717 (emphasis added). But the Fourth Circuit also recognized that any questions as to whether the bishop "was acting within the bounds of her role as Bishop," "was for the Episcopal Church to determine." *Id.* at 718. *Dixon* thus refutes, rather than supports Bishop Lawrence's notion that there is no "hierarchy higher than the Diocese (and its Bishop)."

Not surprisingly, the conclusions embodied in these precedents are amply supported by the governing documents of The Episcopal Church, which plainly refute Bishop Lawrence's and his declarants' view of "diocesan autonomy" and establish that questions concerning the relationship between the Church and its Dioceses are committed to authorities in the Church—particularly its General Convention (a legislative body of which each diocesan bishop is a member) and its Executive Council and Presiding Bishop. The provisions that establish this fact are abundant, and those cited herein are attached as Exhibit A.

Dioceses' subordinate status is apparent from their initial formation, as all dioceses are "formed, with the consent of the General Convention and under such conditions as the General Convention shall prescribe by General Canon or Canons." Const. art. V.1. As a condition of their formation, all dioceses must promise "an unqualified accession to the Constitution and Canons of [the] Church." *Id.* And dioceses are prohibited from adopting canons and constitutional provisions that are inconsistent with the Church's Constitution and Canons. *Id.*; Statement of Robert Bruce Mullin, Doc. No. 6-19, ¶ 33.

Of particular relevance here, the Church's Constitution and Canons govern the installation of bishops within dioceses. All clergy, including bishops, must promise "to conform to the Doctrine, Discipline, and Worship of the Episcopal Church." Const. art. VIII. And all persons accepting any office of the Church must "perform the duties of that office in accordance with the Constitution and Canons of [the] Church and of the Diocese in which the office is being exercised." Canon I.17.8.

Article II, section 2, of the Constitution further provides, "No one shall be ordained and consecrated Bishop . . . without the consent of a majority of the Standing Committees of all of the Dioceses, and the consent of a majority of the Bishops of this Church exercising jurisdic-

tion." Throughout the Church's history, multiple individuals, although having been elected bishop by a diocese, were not ordained as bishop—and therefore did not serve as bishop—because they failed to receive the required consent. Aff. of Mark J. Duffy ("Duffy Aff.") ¶¶ 5-7. Far from a "fundamental mischaracterization" of how bishops are selected, Def.'s Resp., Doc. No. 20, at 28, the central role the national Church holds in the selection process is highlighted by Bishop Lawrence's own path to ordination: Bishop Lawrence failed to receive the requisite consent after first being elected bishop in 2006. Duffy Aff. ¶ 6. The Diocese then reelected him in 2007, and he subsequently obtained consent. *Id.* It was only after the requisite consent had been obtained, from Church officials outside of the Diocese, that Bishop Lawrence was able to be ordained as Bishop of the Diocese.

Authority over the removal of bishops and restrictions on their ministry likewise rests with the national Church, rather than individual dioceses, a fact recognized by one of Bishop Lawrence's own declarants. *See* Decl. of Dr. Colin John Podmore, Doc. No. 21-3, at 11 & n.25. Canon IV.16(A).1 provides that if a bishop abandons the Church, the Presiding Bishop must restrict that bishop from "perform[ing] any Episcopal, ministerial or canonical acts." In addition, if a bishop renounces the Church, the Presiding Bishop may accept the renunciation and pronounce that "the Bishop is released from the obligations of all Ministerial offices, and is deprived of the right to exercise the gifts and spiritual authority as a Minister of God's Word and Sacraments conferred in Ordinations." Canon III.12.7. The Presiding Bishop took both actions here.[4] *See* Doc. 6-1, at 7-8; Aff. of the Right Reverend John C. Buchanan, Doc. 6-16, ¶¶ 10-13, 15-18. There is simply no way to understand these Canons except as conferring authority in the Church

[4] The Disciplinary Board for Bishops' Certificate of Abandonment is attached hereto as Exhibit B.

and its Presiding Bishop to supervise and, if needed, discipline diocesan bishops. That canonical reality cannot be reconciled with Bishop Lawrence's view that there is no higher authority in the Church than the diocesan bishop.

Indeed, Bishop Lawrence's view contradicts not just canon law, but common sense. There is no principle of rational governance under which a question concerning the relationship of dozens of dioceses to the Church could be governed severally by the bishop of each diocese. If, as Bishop Lawrence suggests, any bishop of any diocese is empowered to determine for the whole of the Church whether a diocese may secede from the Church, there could be no uniform view as to the nature of the relationship of dioceses to the Church, and therefore, no "traditional understanding of Episcopal Church polity" to speak of at all. Def.'s Resp., Doc. No. 20, at 30.

Bishop Lawrence suggests a radical reordering of the hierarchical polity of The Episcopal Church that is contrary to judicial precedent, canon law, and rational governance. This Court should reject his contention and recognize, as have numerous courts, that within The Episcopal Church's hierarchical polity, the highest ecclesiastical authority on questions of church governance is the Church's General Convention and its Executive Council and Presiding Bishop.

C. Bishop Lawrence's Arguments That Dioceses Validly May Secede From The Church Are Misdirected And Lack Merit In Any Event.

Bishop Lawrence argues that the Church's Constitution and Canons do not "prevent the Diocese from leaving TEC," Def.'s Resp., Doc. No. 20, at 25, and his various declarants present an interpretation of the Church's Constitution and Canons that they claim supports that view. On any view, however, this is a question of Episcopal Church law. And, as established above, it is a question of church law relating to the operation of the Church's hierarchical polity that clearly is committed to the General Convention and its Executive Council and Presiding Bishop.

Accordingly, if Bishop Lawrence wanted to withdraw his Diocese from the Church, he should have presented his argument of "diocesan autonomy" to the General Convention and attempted to persuade his fellow bishops to adopt his view that the Church's law allows dioceses to secede from the Church. That typically is how questions of church law are resolved—by church tribunals. *See Serbian E. Orthodox*, 426 U.S. at 711 ("'It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves . . . .'" (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) at 728-29)).

But in making his case in the General Convention, Bishop Lawrence would not have been writing on clean slate. Prior to Bishop Lawrence's attempt to withdraw the Diocese from the Church, the Church's Executive Council had passed a resolution that reaffirmed the requirement of Article V, section 1, of the Constitution that all diocesan constitutions contain an "unqualified accession to the Constitution and Canons of [the] Church" and nullified amendments made to certain diocesan constitutions that "purport[] in any way to limit or lessen the unqualified accession." *See* Ex. C. Further, the Presiding Bishop, acting with consent of the Church's House of Bishops, deposed—that is, removed entirely from the clergy of the Church—two diocesan bishops for attempting to withdraw their dioceses from the Church. *See* Ex. D (materials regarding deposition of the Right Reverend John-David Schofield); Ex. E (materials regarding deposition of the Right Reverend Robert Duncan). These actions make clear that the highest authorities within The Episcopal Church have rejected the view that dioceses can secede from the Church. And it is for that reason that the Presiding Bishop recognized Bishop Lawrence's actions as a renunciation of the Church by him, but not a secession of the Diocese he led. The Church authorities have repeatedly rejected the notion that dioceses may secede or otherwise impair their unqualified accession to the Constitution and Canons of The Episcopal Church.

Perhaps for that reason, Bishop Lawrence attempted to arrogate to himself the authority to withdraw the Diocese from the Church and has asked ***judicial authorities***—first in state court, and now here—to vindicate his construction of Church law and reject the ruling of the Church's ***religious authorities***. To do so, however, would be to commit precisely the same error that the Illinois Supreme Court made in *Serbian Eastern Orthodox*: the Supreme Court there instructed that the First Amendment "forbid[s]" any civil court from "substitut[ing] its interpretation of the Diocesan and Mother Church constitutions for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation." 426 U.S. at 721.

* * *

Other than disagreeing about the interpretation of Church law reached by hierarchical Church authorities, Bishop Lawrence does not dispute that Bishop vonRosenberg is likely to succeed on the merits of his Lanham Act claims. For the foregoing reasons and those provided in the opening memorandum, this Court should conclude that Bishop vonRosenberg is Bishop of the Diocese, and therefore find that his claims are likely to succeed.

III. Bishop vonRosenberg Has Established The Remaining Elements Necessary For A Preliminary Injunction.

Bishop Lawrence's arguments that Bishop vonRosenberg has failed to establish the remaining elements of the preliminary injunction standard are conclusory in the extreme.

His argument that Bishop vonRosenberg's claimed injuries stem from the state-court temporary injunction is not supported by fact or law. The fact that the state-court order does not prohibit Bishop Lawrence's conduct does not mean that the order compels Bishop Lawrence to violate the Lanham Act. And it is Bishop Lawrence's violations of the Lanham Act that are causing harm to Bishop vonRosenberg. Moreover, the state-court order does not touch on Bishop Lawrence's continued false representations that he is the Bishop of the Diocese even in light

of the contrary decision by authorities within the Church. The harm that results from those misrepresentations is not connected to the state-court order in any way whatsoever.[5]

Bishop Lawrence's remaining arguments—that the Diocese left The Episcopal Church prior to Bishop vonRosenberg's election and installation as Bishop and that Bishop vonRosenberg is Bishop of a new religious body known as The Episcopal Church in South Carolina—are simply recycled versions of his merits arguments. And contrary to Bishop Lawrence's representation, Def.'s Resp., Doc. No. 20, at 31, Bishop vonRosenberg vigorously disputes those arguments because, as explained, both arguments are inconsistent with the decisions of Church authorities. Bishop Lawrence offers no other reasons for this Court to deny Bishop vonRosenberg's requested relief.

CONCLUSION

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

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[5] Bishop vonRosenberg did not discuss the state-court temporary injunction in detail, *see* Def.'s Resp., Doc. No. 20, at 4, because he was not a party to the injunction at the time it was entered and therefore cannot be bound by it. *See Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 112 (1969) (holding that it was error to enter an injunction against a non-party). The order does, however, bind The Episcopal Church. And that is the ***only*** reason the Church is temporarily referring to Bishop vonRosenberg's Diocese as The Episcopal Church in South Carolina. To be perfectly clear, the Diocese that Bishop Lawrence attempted to remove from the Church is the same Diocese for which Bishop vonRosenberg now serves as Bishop.

Dated: April 22, 2013

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all ECF users registered with the Court for this case.

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