



# Litigation Facts

LEGAL UPDATE FROM THE DIOCESE OF SOUTH CAROLINA; JUNE 2018

## What does the denial by the US Supreme Court mean?

While it's disappointing our appeal to the US Supreme Court was denied, we knew the likelihood of any case being taken is very low. Also, the same day our petition was denied, a Minnesota case involving a Presbyterian Church was also denied. In Eden Prairie, the same facts applied, but with an outcome opposite to ours. That congregation was ruled to have left its denomination with both its name and property. Denial of our petitions is not a judgement on the merits of either case or their outcomes. The Court simply chose not to review this issue at this time. And as is always the case with the denial of a petition, there is no explanation given.

## Is the litigation over?

No. As the Episcopal Church stated in their own brief to the U.S. Supreme Court, the five South Carolina State Supreme Court opinions are "fractured," to the degree of being virtually unenforceable as written. Executing them, as TEC has now asked the Dorchester Court to do, will require interpreting what they mean both individually and collectively. It will also require the answer to a number of very complicated questions created by those conflicting opinions and the legal rationale (or lack thereof) for each opinion.

As just one example, the deciding vote (Justice Beatty) said only parishes that "acceded in writing to the Dennis Canon" created a trust. No parish acceded in writing to the Dennis Canon.

On that basis, what the ruling actually says is that no congregation should lose their property. We do not believe these, or many other matters, are close to being settled.

It also should be understood that there are two other legal matters pending.

- The Diocese has filed a claim under the state Betterments Statute for the 29 parishes claimed to be subject to the adverse ruling of the State Supreme Court. The statute says that if a property owner, in good faith, believing they own their property, makes improvements, only to later have a court determine it

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## WHY CONTINUE LITIGATION?

### ONE REASON IS THAT THE CURRENT RULING IS UNJUST.

It's unjust both in terms of how it was achieved and what it suggests. Left standing, it creates a precedent in South Carolina that not only violates the rights of our parishes but may do so for countless others in the future. That property can be taken, solely on the force of a denominational claim, with no agreement by the local congregation is wrong. To correct this injustice, we should never be quick to surrender. And our greatest hope of success comes if we resist this injustice together. There are sound reasons to believe the rule of law will yet prevail in our case. That is worth the effort.

### GOSPEL PROCLAMATION IS CENTRAL.

Secondly, the parishes of the Diocese of South Carolina have been faithfully proclaiming the Gospel for over 300 years. Many places of worship in which we gather and serve have been beacons of good news since before the founding of this nation. That witness will, by God's grace, continue, with or without these properties. It is a certainty that we will not return to the denomination that rejected our adherence to the faith once received even if we are forced from our spiritual homes and required to rebuild. And Gospel proclamation is the central issue. The Episcopal Church has demonstrated repeatedly, by words and actions of its leaders,

to be a church "over scripture." Its operating philosophy, as one bishop wrote, is that, "The church wrote the bible. It can rewrite the bible." A Diocese such as ours, that understands itself to be "under" the authority of scripture will be increasingly and irreconcilably in conflict with such a denomination. The value for ministry and the long heritage of our places of worship is immeasurable. Good stewardship recognizes the richness of this heritage and seeks to pass it on to future generations and that is still worth defending.

### MAINTAINING BIBLICAL ANGLICANISM IS A GLOBAL ISSUE.

Finally, as Bishop Lawrence has reminded us repeatedly, the

issue of maintaining faithfulness to Biblical Anglicanism is not just a South Carolina issue, or even a United States issue, but a global issue. As the third largest church body in Christendom, Anglicanism as a faithful expression of the Gospel is vitally important. A positive outcome in our case is a precedent that will bless Anglicans across North America and through them, the larger Communion.

As faith-filled Anglicans in North America, we are excited for its future and our place within it. The Diocese of South Carolina can be an engine for Gospel ministry that holds the promise of even greater things for the Kingdom of God and worldwide Anglicanism. This is

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# HOW DID WE GET HERE?

Conflict between The Episcopal Church (TEC) and the Diocese goes back long before our disassociation in 2012. By actions of its Diocesan Convention (the people of the parishes gathered together) we voted collectively, and repeatedly, over the years to differentiate ourselves from actions taken by TEC. The proof that our theological differences (and resulting practice) would no longer be tolerated in TEC, came when the attempt was made in 2012 to remove our Bishop. Only then did the Diocese, by action of its elected Standing Committee, affirmed by the chosen delegates at Diocesan Convention, act to end our voluntary association with TEC.

Every congregation of the Diocese was then free to choose whether it would remain with the Diocese or return to TEC. About 80% of the parishes and missions, by votes of their vestry or congregation, chose to depart with the Diocese (a process NEVER used by the congregations which remained in TEC.).

The near immediate response to our corporate decision was the use of the Diocesan name, seal and other identifying marks by a 'rump' group, long prepared, presuming to act in the name of this Diocese. The legal tactics employed, not surprisingly, were the same ones previously used by TEC against other faithful congregations and dioceses

across the country seeking to leave the denomination.

Our response in January 2013 was to ask the South Carolina courts for a "declaratory judgement." The law at that time, and up until the 2017 South Carolina Supreme Court ruling, was clear. As incorporated religious non-profits we had followed all appropriate steps to change our governing documents to disassociate from TEC, and our names and properties continued to belong to us. We asked nothing from those returning to TEC except the freedom to go in peace. The original trial court ruling in 2015 affirmed that understanding of existing state law. It also granted a permanent injunction protecting our right to our names and trademarks.

In August 2017, the State Supreme Court reversed that ruling in part, contradicting its own standing precedent for settling church property issues, that of using the same principals employed to settle any other ownership question. A plurality of the justices, in a fractured ruling with five separate opinions and two conflicting legal standards, suggested that TEC had a trust interest in the property solely because the denomination claimed to have it. Because we believe this contradicted the 1979 Jones v. Wolf decision by the U.S. Supreme Court we petitioned for their review.

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## Why Continue? *(from page one)*

a struggle not just for the future of a single diocese, but for the future of a vital branch of the larger Body of Christ. It is our capacity to continue effectively in that ministry that is also at stake in this litigation, and why we continue.

All ministry comes at a cost. All witness of eternal significance involves sacrifice. We need look no further than the Cross. The congregations of this Diocese have sacrificed greatly of their time, talent and treasure, not only for their local ministries, but for the values at stake in this litigation. That fight is not over.

## Litigation Not Over

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belongs to another, they must be reimbursed for the value of those improvements. While this statute only takes effect in the case of a final judgement (which we don't believe has been reached), the settlement of such a claim will not be speedy.

- Finally, TEC has been pursuing a false advertising claim in the Federal Courts since 2013, asserting first that the Bishop, and more recently the congregations have held themselves out as being "Episcopal" when they are not. While laughable on the face of it, the assertion of trademark violations continues and the judge will move that case forward in the coming months.

None of these matters are close to immediate resolution. How long it will take to do so is impossible to determine at this time.

## What can I do?

To learn more about the issues involved in this litigation visit <https://www.dioceseofsc.org/news-events/legal-news/>

### PARTICIPATE IN MINISTRY.

**1** In this time of testing for us as a Diocese, the key issue is whether we will focus on Gospel ministry or fret about the fate of our properties. The former is our Great Commission obligation, and within our control. The latter is beyond our control and challenges us to trust in God's provision. May we all be found faithful putting the first things first.

### CONTINUE TO FAITHFULLY SUPPORT THE WORK OF YOUR PARISH.

**2** No one's giving today is in danger of going to TEC tomorrow. But our failure to be faithful stewards of our God given resources can cripple our ability to do Gospel ministry today.

### STAY AWARE OF WHAT'S HAPPENING.

**3** Your parish and the Diocese will communicate regularly about legal events. Invest the time to understand them well enough to participate fruitfully in the life of the parish. And when you encounter issues you don't understand, speak directly with your parish clergy. If you have concerns, or misunderstandings develop, they can only be resolved if you bring them forward.

### PRAY FOR ALL PARTIES TO THIS ONGOING CONFLICT.

**4** Your parish and Diocesan leadership particularly need your prayers. This is every bit, if not more, a spiritual battle as well as a legal one. Our attorneys also need your prayers. May God grant us all wisdom and discernment as we take the next steps and seek to follow God faithfully.