

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Dr. Richard Taylor, Dr. Parker Young, J. David Chesnut, and the Erskine Alumni Association,

Plaintiffs,

vs.

General Synod of the Associate Reformed Presbyterian Church, Inc.

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

C.A. No.: 2010-CP-01-080

**ORDER GRANTING
PRELIMINARY INJUNCTION**

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2010 APR 9 PM 4 38
EMILY Y MCMAHAN
CLERK OF COURT

This matter is before me on the motion of Plaintiffs Dr. Richard Taylor, Dr. Parker Young, J. David Chesnut, and the Erskine Alumni Association for a preliminary injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure. The Court has carefully considered the written submissions of the parties, as well as the court filings, arguments, testimony, and documents presented at the hearing on this matter. For the reasons that follow, the Plaintiffs' motion is hereby granted and an injunction of the scope set forth hereinafter is granted pending final resolution of this matter.

At the core of this case is action taken by Defendant General Synod of the Associate Reformed Presbyterian Church (the "General Synod") purporting to remove the sitting Board of Trustees of Erskine College and to establish a new "interim Board" for Erskine. The Plaintiffs' contention on the merits in this action is that the General Synod lacks the power to remove any or all of Erskine's Trustees, and accordingly that this attempted restructuring of Erskine's Board of Trustees was null and void. Consistent with that contention, Plaintiffs seek a preliminary injunction that would preserve the status quo by enjoining the purported removal of sitting

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Erskine Trustees and the convening of the new interim Board.

I. Facts

Erskine College ("Erskine") is a liberal arts college located in Due West, South Carolina. In addition to its undergraduate program, Erskine also operates the Erskine Theological Seminary, which is not separately incorporated. Erskine was chartered as a separate corporation by an act of the South Carolina legislature in 1850. Erskine's corporate charter was amended and fully restated in 1977, and is on file with the South Carolina Secretary of State. A 1980 amendment to the charter provides that "[a]ll members of the Board of Trustees of Erskine College shall be appointed by the General Synod," and that the "maximum number of members which shall comprise the Board and the terms of office shall be as set forth in the By-Laws of this Corporation."

Article II of Erskine's Bylaws contains provisions related to the Board of Trustees of Erskine. Section 1 provides that Erskine is "governed by the Board." Section 3 controls the selection of Trustees; it provides that the total number of Trustees may not exceed 34; that the General Synod may annually appoint five Trustees to the Board, each to serve a six-year term; and that four additional persons are members of the Board "ex officio."

Section 5 governs removal of Trustees. This extensive provision is central to this matter, and so is reproduced here in full:

5. **Removal.** The Board, by two-thirds vote of the members present, may remove a Trustee from office for cause, but only after the Trustee has had or waived the due process hearings as provided herein. Any Trustee having removal charges brought against him shall be entitled to a hearing before the Executive Committee. If the Executive Committee recommends removal, the affected Trustee shall have the right to a hearing before the Board if the Trustee requests such a hearing in writing within ten days after receiving written notice of the recommendation of the Executive Committee.

An accurate record of each hearing shall be kept by recording device or other method approved by the Executive Committee.

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Unless he waives same, the affected Trustee shall be given at least ten days written notice of each hearing.

The person bringing the charges and the affected Trustee may each be accompanied and assisted in presenting their cases at the hearings by a member of the Board but not by anyone who is not a member of the Board.

The hearings need not be conducted strictly according to the rules of evidence or law but may be conducted in an informal and fair matter. Any relevant material upon which responsible persons customarily rely in the conduct of serious affairs shall be admissible for consideration.

The person bringing the charges and the affected Trustee shall each have the right: to call and examine witnesses, to introduce evidence, to cross examine any witness on any matter relevant to the issue of the hearing and to make opening and closing statements.

The Plaintiffs in this matter are three individual Trustees of Erskine College (all of whom are Erskine alumni) and one unincorporated association that is granted the right of representation on Erskine's Board by Erskine's Bylaws. Dr. Richard Taylor and Dr. Parker Young were each appointed to Erskine's Board by the General Synod. Each is serving in his second term as an Erskine Trustee. Mr. David Chesnut is a member of Erskine's Board by virtue of his position as President of Plaintiff Erskine Alumni Association. There is no dispute that the three individual Plaintiffs were members of Erskine's Board prior to the General Synod's action at issue here. None of the three individual Trustees has resigned from the Board or been removed pursuant to the Bylaws provision quoted above.

Defendant General Synod is the governing body of the Associate Reformed Presbyterian Church (the "ARP"). On March 3, 2010, at a special called meeting, the General Synod took action that purported to remove the existing Erskine Board of Trustees, to reconstitute the Erskine Board with an interim Board consisting of a combination of sitting Trustees and new appointees, and to instruct that interim Board to amend Erskine's Bylaws in several respects. Plaintiffs Taylor and Young were among the Trustees who were removed and not re-appointed to

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the interim Board. At the hearing on this motion, the General Synod's witness acknowledged that this removal was not "for cause." Plaintiff Chesnut, because his position was provided for in the current Erskine Bylaws, was to be a member of the interim Board, at least until the new Bylaws were adopted.

This action by the General Synod had its roots in the June 2009 General Synod meeting, where the Moderator of the General Synod was directed to form a Commission "to investigate whether the oversight exercised by the Board of Trustees and the Administration of Erskine College and Seminary is in faithful accordance with the standards of the ARP Church."

This Commission issued a Preliminary Report dated February 19, 2010. That Preliminary Report stated among other things that "Erskine College and Seminary is an agency of the Associate Reformed Presbyterian Church"; that "[t]he ARP Church owns and operates Erskine College and Seminary"; and that "Our trustees for Erskine function in a fiduciary role for the General Synod." The Preliminary Report expressly declined to discuss the specific recommendations that the Commission would make, indicating those recommendations would be revealed only at the called meeting of the General Synod.

The Commission's Report to the General Synod, released at the called meeting, included the following recommendations: removal of the "current trustees" of Erskine; creation by the General Synod of a new "interim Board" for Erskine; convening of the interim Board by the Moderator of the General Synod; and delegation to five individuals of the process of revising Erskine's Bylaws along the lines recommended by the Commission, with the product of this revision to be presented to the interim Board for approval. With some minor amendments – including an express statement that the Trustees that the General Synod intended to remove were to be "commended for their work to date, and assured that dismissal is not based on personal

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failure, but systemic problems” – these recommendations were adopted by the General Synod. Plaintiffs Taylor and Young were among the sitting Trustees who were thereafter informed they were no longer members of the Erskine Board. Neither received any advance notice that he might be removed as a Trustee, nor any opportunity to be heard regarding that removal. A notice was sent to members of the interim Board calling a meeting of that body for March 17, 2010.

II. Procedural History

The first judicial challenge to the General Synod’s action came in a lawsuit filed in this Court against the General Synod by Erskine College. That lawsuit was accompanied by an application for a temporary restraining order, which was granted on March 9, 2010 with a hearing on Erskine’s motion for preliminary injunction set for March 19, 2010.

Erskine dismissed its lawsuit without prejudice on Friday, March 12, 2010.

The instant action, also accompanied by a motion for a temporary restraining order against the General Synod’s actions, was filed on Monday, March 15, 2010. This Court granted that motion for TRO on the same date, and indicated that the Defendant would have the option of proceeding with the scheduled March 19, 2010 hearing, or having a hearing for preliminary injunction on March 25, 2010. Defendant opted for the latter date, and a hearing on this matter was held then at the Newberry County Courthouse. At the conclusion of that hearing the Court extended the Temporary Restraining Order for an additional ten days.

Each side has submitted two memoranda of law to the Court, and had the opportunity to present oral argument and live testimony, and to introduce exhibits. The Court has carefully considered all these materials in reaching its decision.

III. The Legal Standard

The purpose of a preliminary injunction is to preserve the status quo and to prevent

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possible irreparable injury to a party. An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508-09 (Ct. App. 2009). For a preliminary injunction to be granted, a party must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it has a likelihood of success in the litigation; and (3) there is no adequate remedy at law. *Id.* “When seeking a preliminary injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present a fair question to raise as to the existence of such a right.” *Peek v. Spartanburg Regional Healthcare Sys.*, 367 S.C. 450, 456, 626 S.E.2d 34, 37 (Ct. App. 2005).

IV. Analysis

The Plaintiffs have met the burden required of them for entry of a preliminary injunction. They have demonstrated an imminent prospect of irreparable harm if an injunction is not granted, a likelihood of success on the merits, and the inadequacy of any legal remedy. The Plaintiffs are entitled to maintenance of the status quo pending resolution of this matter.

A. Irreparable Harm

Each of the individual Plaintiffs is a Trustee of Erskine. The General Synod’s resolutions purport to remove two of those three individuals from the Board. This action, if allowed to go forward, would inflict substantial harm on the Plaintiffs individually, and in the particular role that they occupy as fiduciaries for Erskine. Each of these harms is by itself sufficient to support the injunction sought by Plaintiffs. In the aggregate, these threatened harms present an overwhelming case for injunctive relief.

The Board of Trustees is the highest governing authority of a nonprofit corporation like Erskine. This principle is clear both from the South Carolina Code and from Erskine’s own governing documents. *See* S.C. Code Ann. § 33-31-801(b) (all affairs of nonprofit corporation are to be managed “by or under the authority of” the corporation’s board); Erskine Bylaws Art.

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II, § 1 (Erskine “shall be governed by the Board”).¹ The action of the General Synod in purporting to remove the sitting Board of Erskine and to install a new “interim Board” casts doubt on the proper composition of Erskine’s Board. Simply put, in the absence of injunctive relief there would be two distinct, but overlapping, groups of individuals with a claim to be “the Board” of Erskine College. It is difficult to imagine a circumstance in the area of corporate governance in which the threat of irreparable harm could be clearer.

Drs. Taylor and Young face a particularly stark threat of imminent harm in that the General Synod’s action purports to remove them from the Erskine Board. Board membership is both a privilege and a substantial legal responsibility. The General Synod’s action would deprive each of these Plaintiffs of both the privilege of serving and of the opportunity to discharge the obligations placed on them as Trustees. This concern alone is more than sufficient to support a finding that irreparable harm would occur in the absence of an injunction. There are, however, a number of additional irreparable harms that would also follow in the absence of an injunction.

Although the General Synod’s action would not immediately deprive Plaintiff Chesnut of his Board seat, it would deprive him of certainty as to which of the two groups was Erskine’s true Board. As a Board member, Mr. Chesnut has an interest in certainty regarding the composition of the Board, as does the Plaintiff Alumni Association whose President sits on the Board. In addition, it is reasonable to infer that the amendment of Erskine’s Bylaws planned by the new interim Board could well operate to eliminate the Alumni Association Board seat occupied by Mr. Chesnut. These direct interests in the composition of the Board are also directly threatened by the General Synod’s action.

¹ Notwithstanding Defendant’s reliance on S.C. Code Ann §33-31-305 and the pre-1900 legislative charters.

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Another set of threatened irreparable harms flows from the actions the interim Board was created to take. Obviously, the General Synod did not expect its interim Board to play a purely ceremonial role. The General Synod expected the interim Board to take certain actions, and indeed gave the interim Board express instructions. Chief among these was the direction to amend Erskine's Bylaws, in accordance with the recommendations of a five-member panel designated by the General Synod. If this occurred, Erskine College and its Trustees would face not only two bodies with claims to be Erskine's Trustees, but two documents that might be Erskine's duly adopted Bylaws. An injunction is necessary to avoid that potential confusion.

This concern that an improperly constituted Board might take actions that bind Erskine extends beyond the amendment of the Bylaws into all areas of College operation. As noted above, the Board is the highest governing authority of Erskine College. It has general authority over Erskine's assets, S.C. Code Ann. § 33-31-1202, as well as over management of every other aspect of the College's operations. This control is of particular importance at the present moment, as the current President of Erskine College has announced his retirement effective in June 2010, and a search for Erskine's next President is underway. Erskine's Bylaws provide for appointment of the President (and other officers) by the Board. *See* Bylaws Art. IV § 1. Doubt about the composition of Erskine's Board would undoubtedly hinder that important process, and the hiring of a President by an improperly constituted Board would be subject to challenge. Further, as noted above, the Commission's Preliminary Report states a strong interest in control of the search process. The likelihood that the General Synod's interim Board would take actions with respect to Erskine's governance – and in particular with respect to the selection of a new President – that could turn out to be illegal provides more clear evidence of irreparable harm.

Finally, there is clear and credible evidence that the actions of the General Synod, if not

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restrained, could threaten Erskine's accreditation. The Principles of Accreditation for the Southern Association of Colleges and Schools ("SACS") – the accrediting body for Erskine College – require, in Sections 3.2.4 and 3.2.5:

The governing board is free from undue influence from political, religious, or other external bodies and protects the institution from such influence.

The governing board has a policy whereby members can be dismissed only for appropriate reasons and by a fair process.

In addition, Erskine has also received a letter from the Association of Theological Schools ("ATS"), the accrediting agency for Erskine Theological Seminary. That letter (which indicated on its face that a copy was being sent to SACS) requires Erskine to show cause why its ATS accreditation should not be revoked as a result of the threatened removal of Erskine's sitting Trustees.

Accreditation is of critical importance to an institution like Erskine. There is substantial evidence that removal of Erskine's Trustees without cause by the General Synod would place Erskine's accreditation by SACS and ATS in jeopardy.

The General Synod argues that these individual Plaintiffs lack standing to raise harms that might befall Erskine as a result of the General Synod's actions. This argument fails for several reasons. First, as noted above, these Plaintiffs have direct personal interests in participating in, and knowing the composition of, the Board, and the direct irreparable harm that would occur to those interests in the absence of an injunction is alone sufficient here.

Furthermore, the General Synod's argument ignores both the role and responsibility of a Trustee, and the somewhat unique nature of the challenged action at issue. Trustees are charged with overall responsibility for the entity they serve. The position of Trustee is not merely an honor; it carries duties as well. These Plaintiffs' rights and duties include making decisions in Erskine's interest. Accordingly, improper removal from the Board affects them in their roles as

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Trustees, not merely as individuals. Moreover, because the threatened harms all would flow directly from the General Synod's action in removing Trustees, including Drs. Taylor and Young, they are the parties best situated to raise those harms. The connection between the challenged action and the harms is quite direct, as is these Plaintiffs' interest in both the action and the harms. These Plaintiffs' interest as Trustees in participating in Erskine's governance – indeed, their duty to do so – and hence their direct interest in the harms that their improper removal could cause to Erskine, could not be clearer.

Indeed, the General Synod's suggestion that only Erskine itself should be allowed to assert some of these harms shows directly the unique nature of this case and these Plaintiffs' interest. Which "Board" of Erskine would decide what Erskine's position should be? It is appropriate for Trustees to rely on and assert the interests of the entity that they are called to serve, where those interests are directly threatened by the removal of those Trustees. *See Gilbert v. McLeod Infirmary*, 219 S.C. 174, 64 S.E.2d 524 (1951) (allowing individual trustees of eleemosynary corporation to sue to vindicate corporation's rights); *American Center for Ed. v. Cavnar*, 26 Cal. App. 3d 26, 36-37, 102 Cal. Rptr. 575, 583 (1972) (where lawsuit presents question of who controls corporation, the individuals claiming that right are proper parties to present that question). For similar reasons, the General Synod's argument – that the Plaintiffs cannot proceed because Erskine College has acquiesced in the General Synod's action – is unsound. First, the record reflects that Erskine's sitting Executive Committee took the position that the General Synod does not have the power to remove Trustees. Moreover, even if it sought to, Erskine could not unilaterally take away the standing of these Plaintiffs as individuals or as Trustees – not, at least, without following the procedures for Trustee removal set forth in Erskine's Bylaws.

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All of the foregoing harms would be irreparable. The removal of Trustees, the reconstitution of the Board, the amendment of Bylaws, the hiring of a new President for Erskine, and the potential loss of accreditation all constitute dramatic harms that could not be undone.

By purporting to remove sitting Trustees and to create a new Board for Erskine with marching orders to make substantial changes at Erskine, the General Synod's action threatens immediate and irreparable harm.

B. Likelihood of Success on the Merits

Although the public disagreements about the future of Erskine and its relationship with the General Synod appear to have excited considerable interest and emotion among the broader Erskine and ARP communities, the core question presented by this lawsuit is a relatively narrow matter of governance of nonprofit corporations: Does the General Synod have the power to remove sitting Trustees of Erskine?

This question is governed by Section 33-31-809 of the Nonprofit Corporation Act. That section provides: "***Except as otherwise provided in the articles or bylaws***, an appointed director may be removed without cause by the person appointing the director." (Emphasis added.)² The emphasized language is dispositive here. It is undisputed that the General Synod has appointed all of Erskine's Trustees other than the four (including Plaintiff Chesnut) designated as "ex officio" members in Article II, Section 3 of Erskine's Bylaws. Thus, the default rule in the absence of provision otherwise would be that the General Synod could remove the Trustees it

² There are suggestions in arguments made by the General Synod of some other source for its claimed removal power beyond its status as "the person appointing the director." There is no such source that is apparent on the current state of the record. The General Synod is not a "member" of Erskine. See S.C. Code Ann. § 33-31-140(23)(b) (a person "is not a member by virtue of . . . any rights the person has to designate or appoint a director or directors"). Nor does the historical relationship between Erskine and the ARP church make the General Synod a virtual "owner" or "shareholder" in Erskine. Erskine is duly chartered as a nonprofit corporation under South Carolina law, and such concepts do not have any place or meaning under that law.

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appointed. However, the Court concludes after review of Erskine's governing documents, and for purposes of the assessment of Plaintiffs' likelihood of success on the merits that is required in deciding this motion, that Erskine's Bylaws do "otherwise provide," that this means the General Synod does not have the power to remove Trustees that it purported to exercise, and accordingly that Plaintiffs have shown a strong likelihood of success on the merits.

Erskine was originally chartered by a special action of the General Assembly. The earliest such special legislative charter introduced at the hearing was from 1850, and the legislative charter was renewed in 1872. These early legislative charters, however, are no longer the governing documents of Erskine.³ The Secretary of State's records reveal that Erskine's Charter was completely amended and restated in 1977, with a subsequent amendment in 1980. The relevant portion of the 1980 amendment provides: "All members of the Board of Trustees of Erskine College shall be appointed by the General Synod of the Associate Reformed Presbyterian Church. The maximum number of members which shall comprise the Board and the terms of office shall be as set forth in the By-Laws of this Corporation."

Erskine's Bylaws, quoted in full above, describe in considerable detail the process that must be followed to remove a Trustee. Article II, Section 5 of the Bylaws is entitled "Removal." It provides that before a Trustee may be removed, the Trustee is entitled to (i) two separate hearings; (ii) ten days written notice of each hearing; (iii) stenographic recording of the hearings; (iv) a right to assistance from another member of the Board at each hearing; and (v) a right to call witnesses, cross examine, and make opening and closing statements. The Bylaws also

³ The General Synod's suggestion that the 1872 legislative charter may still have legal force is not well taken. Aside from the absence of any evidence that any party affiliated with Erskine or the General Synod actually treats that document as Erskine's charter, the filing with the Secretary of State of the 1977 restatement is "prima facie evidence" that the charter was fully amended and restated. S.C. Code Ann. § 33-31-127; *see also* S.C. CONST. Article III, Section 34, Subsection III (abolishing special legislative charters).

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require that removal be approved by a two-thirds supermajority of the Board itself.

Review of this provision indicates that it was intended to deal comprehensively with the topic of removal of Trustees. It provides a careful and detailed description of the procedure and safeguards required for removal. Moreover, the provision is not written as only one part of a larger scheme; on its face it is designed to provide a complete description of the method for removing Trustees.

This comprehensive procedure is in sharp contrast to the General Synod's contention that it has the power to remove any or all Trustees for any reason or no reason at all, and with or without any particular "process." Because of this contrast, it appears to the Court at this time that the drafting intent in the Bylaws was to "occupy the field" regarding removal of Trustees. It makes little sense to suggest that the drafters would include so many safeguards, while at the same time being content to allow Trustees, either singly or as a group, to be removed at will by the General Synod.

The General Synod argues that Section 33-31-809 should be read to require an express statement in the Bylaws taking the power of removal away from the General Synod. The statute, however, does not require so much. Corporate bylaws are to be interpreted using the same rules as those governing construction of statutes and contracts. Among these is the maxim *expressio unius est exclusio alterius* – that is, the expression of one thing implies exclusion of another. That principle's application is plain here, because the Bylaws are so clear and comprehensive in dealing with Trustee removal. The Bylaws' discussion of removal operates to "otherwise provide" within the meaning of Section 33-31-809, with the result that the default rule allowing removal by the General Synod does not operate here.

The conclusion that Erskine's Bylaws are meant to deal comprehensively with Trustee

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removal is bolstered by other facts in the record. The General Synod acknowledged that there are no known instances of exercise by the General Synod of its claimed removal power. Furthermore, as noted above, the possibility of removal without cause is inconsistent with the requirements for accreditation that Erskine must meet. Erskine's governing documents should not be lightly read as intending to include a provision that would threaten Erskine's accreditation.

Because of the structure of Section 33-31-809, the decision in *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000), relied on by the General Synod, does not govern here. *Hodges* did not involve Section 33-31-809, but two statutes that provided two different means of removal of directors of Santee Cooper. Neither of those statutes contained language that would give one statute precedence over the other, and the Supreme Court found that the statutes could be harmonized by allowing for two different methods of removal. Here, by contrast, Section 33-31-809 does expressly provide that the removal power of an appointing entity will go away if there is a provision otherwise in the Bylaws. This difference means *Hodges* is not controlling.

In sum, under Section 33-31-809, the General Synod would have the power it claimed to remove some or all of Erskine's Trustees only if Erskine's Bylaws do not "otherwise provide." The detailed and comprehensive fashion in which Erskine's Bylaws deal with removal support the conclusion, for purposes of assessing Plaintiffs' likelihood of success on the merits that, that the Bylaws do "otherwise provide" and that the General Synod therefore does not have the right to remove Trustees. On the basis of this analysis, Plaintiffs have shown the required likelihood of success on the merits.

C. Inadequate Remedy at Law

Given the foregoing analysis, the absence of an adequate remedy at law is plain. No damages remedy could compensate for deprivation of the right of a Trustee to participate in

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Board activities, or for the harms that could flow from actions taken on behalf of Erskine by an improperly constituted Board – including but not limited to the rewriting of Erskine’s Bylaws and the selection of a new President. An injunction is necessary to prevent actions that could not be compensated later. *See Housing Authority of El Paso v. El Paso*, 141 S.W.3d 663, 668 (Tex. App. 2004) (“the probable, imminent, and irreparable harm resulting from an illegally constituted board of commissioners cannot be adequately compensated for in damages”).

In light of the foregoing, the equities balance in favor of granting the injunction requested by Plaintiffs. The risk of any harm that might flow from granting the injunction is far outweighed by the risk of harms that would result from a denial.

V. The Preliminary Injunction

For the foregoing reasons, it is appropriate to enter a preliminary injunction to maintain the status quo as it existed prior to the General Synod’s March 3, 2010 actions. Accordingly, pursuant to SCRCP 65, the Court hereby orders that the General Synod and its officers, agents, servants, employees, and attorneys, as well as those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise are hereby enjoined from

- (i) removing, or attempting or purporting to remove the Board of Trustees of Erskine as it existed prior to March 3, 2010 (the “Existing Board”) or any member thereof, with the result that the Existing Board (taking account of any change in its composition pursuant to Erskine’s Bylaws) will be recognized as the Board of Trustees of Erskine;
- (ii) appointing any new Trustees of Erskine, except for annual appointment of five Trustees to fill expiring terms in accordance with Article II, Section 3 of Erskine’s Bylaws, and except for the filling of vacancies in accordance with Article II, Section 7;
- (iii) convening or encouraging the convening of any group other than the Existing Board that claims to be the Board of Erskine;
- (iv) declaring any group other than the Existing Board to be the Board of Erskine; and/or

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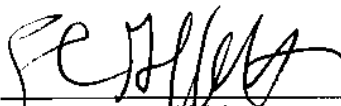
- (v) engaging in any transaction or activity in which the restrained party purports to control or act for or on behalf of Erskine, or purports to control or dispose of the property, funds, or other assets of Erskine other than pursuant to authorities or arrangements existing prior to March 3rd, 2010 and only to such extent the actions are undertaken in the restrained party's capacity as an existing trustee of Erskine or employee of Erskine, and are normal for and appropriate to that capacity.

This injunction shall remain in effect until modified by the Court.

It may be worthwhile to emphasize briefly some things that this injunction does not do. It does not "freeze" the composition of the Existing Board; those Trustee terms otherwise set to expire while this injunction is in effect will expire, and appointments of successor Trustees may be made in accordance with the Bylaws. The injunction does not prevent any individual enjoined person who may be a member of the Existing Board (including anyone newly appointed to fill an expired term) from engaging in all activities normal and appropriate for a Trustee. Nor does it preclude (or require) provision of financial support to Erskine by the General Synod, as has occurred in the past.

In accordance with Rule 65(c), Plaintiffs are directed to provide security in the amount of Fifty Thousand Dollars (\$50,000.00). Said security may be posted as Surety approved by the Abbeville Clerk of Court or ten percent of the security being Five Thousand Dollars (\$5,000.00) cash to be placed in an interest bearing account or certificate of deposit by the Abbeville Clerk of Court. The Court finds that this amount is appropriate because this injunction, should it later be found to be improper, is unlikely to cause material financial hardship to the General Synod.

IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Resident Judge, Eighth Judicial Circuit

April 9th, 2010
Laurens, South Carolina

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