

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

STEVE GASKINS, et. al.

Plaintiffs,

v.

MCLEAN BIBLE CHURCH, INC., et. al.,

Defendants.

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) *Case No. CL-2021-0010198*
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PLAINTIFFS’ OPPOSITION TO MOTION FOR PLEA IN BAR

COME NOW your Plaintiffs, Steve Gaskins, Michael Manfredi, Roland Smith, Kevin Elwell and Adam Jeantet, by counsel and file their Opposition to Defendant’s Motion to File Plea in Bar. In support thereof, Plaintiffs state as follows:

On June 10, Defendant filed in this Court a frivolous and dilatory motion seeking leave to file a Plea in Bar. Defendant’s primary argument is that actions by Defendant have somehow rendered Plaintiffs’ case moot. Defendant’s argument is manifestly frivolous.

Plaintiffs initially filed their Complaint in this action in July, 2021, after Defendant’s multiple actions in violation of the constitution of Defendant McLean Bible Church (“MBC”) to illegally place MBC members into “inactive” nonvoting status, illegally purging church membership rolls of valid members in order to fraudulently taint the outcome of elections for MBC’s governing Board of Elders (“the Board”). In addition, after failing to obtain the required 75 percent support to elect Elders in June 2021, Defendant held another “election” the following month for the same three Elder candidates – this time, for the first time in the 60-year history of

MBC – denying the secret ballot and forcing members’ names to be placed on their ballots if they wished to vote.

Plaintiffs asked this Court to hold the matter *in statu quo*, requiring the Church to allow voting rights to all members constitutionally eligible to vote in the Elder election as of June 2021, and any subsequent “vote of confidence” in the Board of Elders that the MBC constitution required if a slate of candidates for Elder does not achieve a 75 percent vote.

MBC’s constitution creates an Elder-run assembly. The Board of Elders selects the individuals for the congregation to consider as its own replacements. According to Article VI Section 4 of the MBC Constitution, attached to the Complaint in this action as Exhibit 1, candidates for Elder must receive 75 percent of the vote in a congregational meeting to be elected. The only “veto power” the congregation has is under Article VI Section 11. In the event that the annual congregational meeting fails to see six Elders receive 75 percent of the vote, the entire Board of Elders is subjected to a “vote of confidence.” If the Board does not receive 75 percent of the vote, the congregation directly selects a nominating committee which submits new Elder candidates to the congregation for a vote. Otherwise, all power remains in the hands of the Elders.

In the intervening months, Defendant has taken numerous actions in an attempt to forestall this Court from being able to grant the relief requested by Plaintiffs, and ensuring that no “vote of confidence” ever happens.

First, Defendants announced election of hundreds of new members in December, selected by the Board in an effort to ensure that even if Plaintiffs were successful in court, the new members chosen by the Board would ensure the Board would have 75 percent support at any new election this Court might order.

Plaintiffs sought a hearing on an injunction against the election of new members, again attempting to hold the matter *in statu quo* until a decision on the merits, but the Court had no available times to hear the matter before the vote.

Second, last month, the Board concocted its latest strategy to deny this Court opportunity to grant effective relief. The Board announced a euphemistically-titled “Plan for Lawsuit Resolution.” The Plan proposed to allow a new vote on the Elders – but one that would not only include the hundreds of new members selected by the Board in December, six months after this action sought to preserve the status quo, but would also conveniently elect hundreds of new members selected by the Board in May, just before the sham Elder vote in June. Further, any persons who were members in June of 2021 would be required to declare that they were still members in good standing if they wished to vote. Any member who had changed churches due to the tainted election of June/July 2021 would be required either to lie or not be allowed to cast a vote – despite the fact that they would have been entitled to do so at the tainted 2021 election.

Not surprisingly, after twice adding hundreds of carefully selected new members after Plaintiffs sought to maintain the status quo, Defendant was able to obtain a greater than 75 percent majority for its new proposed slate of Elders.

In the meantime, Defendants steadfastly resisted Plaintiffs’ discovery requests. Plaintiffs sought discovery to identify members illegally purged or placed in inactive status. Nothing has been forthcoming up to the date Defendant filed its Motion for Plea in Bar – nearly a full year since this action commenced.

Third, MBC has now changed its constitution, such that the congregation no longer has the ability to have a “vote of confidence” in the Board should its candidates fail to receive 75 percent of the vote. Effectively, while stonewalling discovery, Defendant has taken every

possible measure to deny this Court any opportunity to grant effective relief. Defendant has taken dramatic steps, including electing unprecedented numbers of carefully selected new members, and changing the church constitution, such that should this Court try to grant relief, Defendant will protest that the Court is infringing on its right to conduct business and forcing a change in its constitution. Incredibly, Defendant, having blatantly violated its own constitution, denying its members' voting rights thereunder, has now changed that constitution in an attempt to "stand on the MBC constitution" to block this Court from granting relief.

In sum, when Plaintiffs challenged actions that were in blatant violation of the MBC constitution, to illegally and fraudulently determine the outcome of leadership elections, the Board simply in effect stacked the ballot boxes again. When illegally purging members in June and July 2021 was not sufficient, the Board stacked the deck again with a massive infusion of new voting members in December, and again in May 2022, just weeks before its sham June vote to re-elect the disputed Elders.

The claim that this "Plan" somehow gives "virtually all the relief requested by Plaintiffs" is patently incredible; it is frivolous. It is a final desperate gamble by Defendant, as Plaintiffs have scheduled their first deposition for June 28, to avoid having to commence discovery. It is one final desperate, and deceitful, effort to avoid having the light of day shined on Defendant's secretive effort to rig the 2021 MBC leadership elections.

The relief requested in Plaintiff's Complaint could not be more clear – or more reasonable. They ask this Court to require that the tainted and fraudulent 2021 leadership elections be held over again – this time, with all members properly entitled to vote as of June 2021 – and only those members – having opportunity to cast a fair secret ballot to freely choose their Elders. Then should the proposed Elders not receive 75 percent support, the same

membership universe – as it stood in June 2021 – would be given the opportunity to hold a vote of confidence in the entire Board, as the constitution required at the time, before Defendant’s effort to change it to deny this Court opportunity to grant effective relief.

Plaintiffs prevailed on both Defendant’s motion to dismiss and demurrer. Defendant’s actions have compounded inequity upon inequity, and now they ask this Court to effectively decide the case on the merits in their favor, before discovery, despite losing at both the motion to dismiss and demurrer stages. Defendant has changed the rules three times, since Plaintiffs asked this Court to intervene – with two additions of hundreds of members and an emergency change to the constitution to forestall Court relief. Their proposed “Plan” could not be further from offering the relief Plaintiffs seek if it were designed to be. This motion is utterly frivolous. This Court should not tolerate this abuse of the legal process.

Code of Virginia § 8.01-271.1 states, in Section B:

The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

In Section D, the Code provides:

If a pleading, motion, or other paper is signed or made in violation of this section, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, **a represented party**, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including reasonable attorney fees (emphasis added).

WHEREFORE, Plaintiffs respectfully pray this Court for the following relief:

1. Deny Defendant’s motion to file a Plea in Bar, or in the alternative, deny the frivolous Plea in Bar;

2. Grant judgment against Defendant, a represented party, for Plaintiffs' attorney's fees expended in defending against this frivolous motion, pursuant to Code of Virginia § 8.01-271.1.
3. Grant such other and further relief as shall seem to this honorable Court to be just and reasonable.

Respectfully Submitted,

Steve Gaskins
Michael Manfredi
Roland Smith
Kevin Elwell
Adam Jeantet

By Counsel

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CERTIFICATION

I, Rick Boyer, counsel for Plaintiffs, hereby certify that on this 15th day of June, 2022, I caused a true and accurate copy of this Motion to Amend Complaint to be served by U.S. postal mail and electronic mail upon the following counsel for Defendants in this matter:

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