

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

STEVE GASKINS, *et. al.*,

Plaintiffs,

vs.

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

Defendants.

Case No. CL-2021-0010198

**DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS
AND DEMURRER TO PLAINTIFFS' COMPLAINT**

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Defendants McLean Bible Church, Inc. (“MBC” or the “Church”), David Platt, Lawrence Cooper, Patrick Lee, and Wayne Fujito (collectively, the “Individual Defendants” and together collectively with the Church, “Defendants”), by counsel, submit this motion to quash service of process and demurrer to Plaintiffs’ Complaint. The grounds supporting this motion and demurrer are as set forth below under each heading.

MOTION TO QUASH SERVICE

1. Plaintiffs failed to serve sufficient process on Defendants by not serving a summons with the Complaint. Defendants thus request that the Court quash the defective service under Va. Code 8.01-277.¹

2. Defendants were not served with a summons to appear in this Court and defend the lawsuit. The only papers Defendants received were the Complaint, a motion for a temporary injunction, and a memorandum in support of said motion.

3. Rule 3:5 proscribes the form of summons to be issued by the Court in civil actions and requires the clerk of court to securely attach a summons to the front of each copy of the complaint to be served. Rule 3:6 further requires that the “the summons with copy of the complaint attached constitutes and must be served as one paper.” Service of a complaint without a summons is insufficient as a matter of law and the Court thus has yet to acquire personal jurisdiction over the Defendants. *See Lifestar Response of Maryland, Inc. v. Vegosen*, 267 Va. 720, 724-25 (2004) (holding, under a predecessor to Rule 3:5, that a motion for judgment served without the notice required by rule (analogous to a summons) did not constitute valid process and cannot be cured under Va. Code § 8.01-288);² *McCarthy v. Leiser*, 2020 WL 2565903, at *2

¹ Va. Code § 8.01-277 allows a Defendant to file a motion to quash to raise “any defect in the issuance, service, or return” of process. Such motion may be filed simultaneously with the filing of any pleading to the merits. *Id.*

² In *Lifestar*, the Court held that the curing provisions of the constructive service statute at Va. Code § 8.01-288 did not apply because the statute “is designed to cure defects in the *manner* in which ‘process’ is served. It cannot cure

(Sup. Ct. Va. May 21, 2020) (unpublished order) (“Under our Rules, the ‘process’ is [t]he summons with a copy of the complaint attached and these documents shall constitute and be served as one paper. Without service of the ‘process,’ the court acquires no jurisdiction.”) (quoting Rule 3:6 and *Lifestar*) (internal citations and quotations omitted).

4. The Court should thus quash service of process on all Defendants for the defects noted above, strike any proof of service filed by Plaintiffs, and order Plaintiffs to serve valid process of the summons and complaint.

DEMURRER

1. Defendants demur to Plaintiffs’ Complaint on both counts. Accepting all factual, non-conclusory allegations as true, as the Court must on demurrer, the Complaint fails to state a claim pursuant to Va. Code § 8.01-273.

2. First, the Court lacks subject matter jurisdiction to hear this matter under the First Amendment to the United States Constitution and Article I, § 16 of the Constitution of Virginia. Contrary to Plaintiffs’ assertions, this case is not simply an action to ensure MBC governance complies with the Church’s Constitution. Many issues Plaintiffs raise would indeed require the Court to impermissibly wade into the “religious thicket” in violation of MBC’s right to free exercise of religion.

3. While only certain church disputes over property and other matters may be decided by civil courts by applying neutral principles of law without reference to faith and religious doctrine, this is not one of those limited instances. Indeed, courts must proceed with caution to ensure suits are limited in these kinds of internal church matters because of the

defects in the ‘process’ itself.” 267 Va. at 725 (emphasis in original). Here, just as in *Lifestar*, the defect is the failure to include the process issued by the Court notifying Defendants of the filing of the lawsuit and their duty to respond within the required time period.

“danger that the power of the state may be called upon to aid a faction espousing a particular doctrinal belief or to ‘become entangled in essentially religious controversies.’” *See Reid v. Gholson*, 229 Va. 179, 187 (1985) (quoting *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976)). Complaints that require the Court to go beyond neutral principles of law and enter a “religious thicket” are impermissible. *Id.* The secular courts have no place in resolving the latter disputes, especially as they related to church leadership and governance. *See Cha v. Korean Presbyterian Church of Washington*, 262 Va. 604, 612 (2001).

4. Plaintiffs’ Complaint here seeks the extraordinary remedy of setting aside MBC’s election of its Elders. The inquiry required of the allegations goes well beyond whether MBC followed its own constitution. Many allegations cross the line into religious issues and seek to establish procedures not required by the Church Constitution, which would infringe on the Church’s ability to select its own leaders. For example:

- Plaintiffs allege that the Board of Elders purposely withheld qualified candidates for the open Elder positions from the nomination slate in “defiance of the requirement of Article VI, § 3 to ‘submit to the congregation a list of men qualified to serve as elders.’” (Compl. ¶¶ 40-42). Under the MBC Constitution, however, the Elders determine whether a member meets the qualifications to serve as an Elder. The qualifications are that an Elder must be an active member of the Church and must “possess the qualifications described in Timothy 3:1-7, Titus 1:6-9, 1 Peter 5:1-7 and Acts 20:28.” (MBC Constitution, Article VI, § 2).³ For the Court to determine whether the Board of Elders submitted a full list of

³ Plaintiffs’ reference and attach only partial excerpts of an outdated version of the MBC Constitution to their Complaint. Defendants, therefore, properly file a Motion Craving Oyer with this responsive pleading seeking to append the full, current Constitution to the pleadings for the Court’s consideration on Demurrer.

