

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.

“qualified” nominees to the congregation would thus obviously require wading into matters of religious doctrine because the Constitution incorporates these Biblical-based qualifications.

- Plaintiffs ask the Court to go beyond the letter of the MBC Constitution and improperly substitute the Court’s own judgment for the discretion of the Church Elders in determining the active status of Church members based on failure to attend services without reasonable excuse. (Compl ¶¶ 79-81, p. 16 Request for Relief No. 2.) Plaintiffs do so while acknowledging that “the Constitution provides no guidance as to how a determination shall be made that a member is absent for eight consecutive weeks or has no ‘reasonable excuse.’” (*Id.* ¶ 24).
- Plaintiffs ask the Court to require that the Church hold its congregational elections by secret ballot. (Compl. ¶ 70-75, p. 16, Request for Relief No. 1). Yet, secret ballots are not required under any provision of the MBC Constitution. Thus, the failure to use a secret ballot cannot constitute a breach of contract as a matter of law. This request makes clear that Plaintiffs do not seek merely to ensure MBC plays by its own rules, but also to have a secular body impose additional requirements on how the Church chooses its leaders.
- Plaintiffs ask the Court to force the Board of Elders to disclose the name of all persons placed on inactive status or removed from membership for any reason and provide the evidence to support the action. (Compl. p. 16, Request for Relief No. 5). This also has the potential to involve the Court in a “religious thicket,” as Elders are the Church’s “final authority on its application to practices, policies, and discipline.” (Article VI, § 1). Discipline includes punishing and dismissing

members who fail to adhere to the Church's doctrinal beliefs or "engage in conduct that is a reproach to Christ and a derogatory reflection upon the reputation of His Church." (Article V, § 6).

5. Plaintiffs do not allege a purported contract with any of the Individual Defendants in their individual capacity. (See Compl. ¶ 77). The Individual Defendants should be thus be dismissed from Count I.

6. Count II for "Injunctive Relief" fails because injunctive relief is a remedy, not an independent cause of action. *Blankenship v. Consolidation Coal Co.*, 850 F.3d 630, 640 (4th Cir. 2017) ("Injunctive relief is a remedy, not a cause of action."); *Bloch v. Executive Office of the President*, 164 F. Supp. 3d 841, 862 (E.D. Va. 2016) ("Injunctive relief is a remedy and not a cause of action and it is improper to frame a request for an injunction as a separate cause of action."); *Multi-Housing Tax Credit Partners XXX v. Alexander Dairy Assocs, LLC*, 2020 WL 7419218 at *6 (E.D. Va. Dec. 18, 2020) (same); *Bell v. WestRock CP*, 2018 WL 3493077 at *4 (E.D. Va. July 20, 2018) (same); *Fidelity Nat. Title Ins. Co. v. Washington Settlement Group, LLC*, 87 Va. Cir. 77, 2013 WL 9541969 at *14 n. 9 (Fairfax Cir. Ct. 2013) ("Although listed as a separate count in the complaint, the requested injunction is not a separate cause of action, but, instead, a form of relief sought.") Thus, Plaintiffs' request for injunctive relief can proceed only if their substantive cause of action proceeds. *See e.g., Blankenship*, 850 F.3d at 640 ("Because, however, the causes of action that provide the basis for any claimed relief are barred, the plaintiffs' request for injunctive relief is also barred.").

WHEREFORE, Defendants respectfully request that the Court enter an order: (1) granting this Motion to Quash Service, (2) sustaining this Demurrer to Counts I-II without leave

to amend and dismissing this action with prejudice, and (3) granting such other relief that the Court may deem just and proper.

Dated: August 5, 2021

Respectfully submitted,

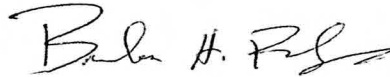
A handwritten signature in black ink, appearing to read "Brandon H. Elledge". The signature is fluid and cursive, with a horizontal line drawn underneath it.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 5th 2021, the foregoing was served on the counsel of record listed below by U.S. Mail, postage pre-paid..

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