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April 11, 2019

Hand Delivered

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RE: *The Episcopal Church in South Carolina and The Episcopal Church v. Edgar W. Dickson, in his official capacity as Dorchester County Circuit Court Judge, In Re: Civil Action No. 2013-CP-18-00013, on remittitur, following the final decision of this Court in Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church, 421 S.C. 211, 806 S.E.2d 82 (Aug. 2, 2017), reh'g denied (Nov. 17, 2017), cert. denied (June 11, 2018)*
Appellate Case No. 2019-000463
Our File No. 40842/01500

Dear Mr. Shearouse:

Enclosed for filing in the above-referenced matter please find an original and seven (7) copies of the Respondent/Intervenors' Return to Petition for Writ of Mandamus in the above-reference matter. Please return a clocked-in copy to us via our courier.

With kind regards, I remain

Sincerely yours,

C. Mitchell Brown
by
Blake T. Wilkins w/ permission
C. Mitchell Brown

CMB:eh

Enclosures

cc: The Honorable Edgar W. Dickson
All Counsel of Record

THE STATE OF SOUTH CAROLINA

In the Supreme Court

The Episcopal Church in South Carolina and
The Episcopal Church.....Petitioners,

v.

Edgar W. Dickson, in his official capacity as Dorchester County Circuit Court Judge, *In re:*
Civil Action No. 2013-CP-18-00013, on remittitur, following the final decision of this Court in
Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church, 421
S.C. 211, 806 S.E.2d 82 (Aug. 2, 2017), *reh 'g denied* (Nov. 17, 2017), *cert. denied* (June 11, 2018)
.....Respondent.

And

The Protestant Episcopal Church in the Diocese of South Carolina; The Trustees of the
Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body; All Saints
Protestant Episcopal Church, Inc.; Christ St. Pauls' Episcopal Church; Church of the Cross,
Inc. and Church of the Cross Declaration of Trust; Church of the Holy Comforter; Church of
the Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; St.
Bartholomews Episcopal Church; St. James' Church, James Island; The Church of St. Luke
and St. Paul, Radcliffeboro; The Church of Our Saviour of the Diocese of South Carolina; the
Church of the Epiphany (Episcopal); The Church of the Good Shepherd, Charleston, SC; The
Church of The Holy Cross; The Church of the Resurrection, Surfside; The Protestant Episcopal
Church, of the Parish of Saint Philip, in Charleston, in the State of South Carolina; The
Protestant Episcopal Church, the Parish of Saint Michael, in Charleston, in the State of South
Carolina and St. Michael's Church Declaration of Trust; The Vestry and Church Wardens of
St. Jude's Church of Walterboro; The Vestry and Church Wardens of the Episcopal Church of
the Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church
Wardens the Episcopal Church of the Parish of St. Matthew; the Vestry and Wardens of St.
Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity
Episcopal Church, Pinopolis; St. Paul's Episcopal Church of Bennettsville, Inc. St. Davids Church;
Vestry and Church-Wardens of the Episcopal Church of the Parish of Christ Church; Vestry
and Church Wardens of the Episcopal Church of the Parish of St. John's, Charleston County;
and the Vestries and Churchwardens of the Parish of St. AndrewIntervenor
Respondents,

INTERVENORS' RETURN TO PETITION FOR WRIT OF MANDAMUS

I. INTRODUCTION

On August 2, 2017, this Court issued a decision consisting of 5 separate opinions in an appeal from the Dorchester County Circuit Court, Goodstein, J., *The Protestant Episcopal Church in the Diocese of South Carolina, et al. v. The Episcopal Church, et al.*, 421 S.C. 201, 806 S.E.2d 802 (2017) (“Collective Opinions”).

Petitioners now ask this Court to issue a writ of mandamus coercing the Circuit Court to interpret this Court’s Collective Opinions as Petitioners believe (and argue here) they should be interpreted. They do so after the issue has been briefed but before the Circuit Court has ruled and in spite of their right to appeal an adverse ruling.¹ Petitioners argue here that the Circuit Court’s duty to enforce the Collective Opinions is ministerial, requiring no exercise of discretion after telling the Circuit Court its “charge” was to “discern” what this Court decided which would require “careful reading” to determine the Court’s intent. They argue a ministerial duty here when they represented to the United States Supreme Court that the Collective Opinions are based on an “incomplete record” which “contains significant ambiguities” and are “fractured not only in rationale but even on facts.” *Brief of Respondents in Opposition to Petition for Writ of Certiorari*, 2018 WL 21229786, p. 23-26.

This Court is asked to do what mandamus does not allow: to “inquire and adjudicate” and to “compel the exercise of discretion in a particular way.” It is asked to do so when the Circuit Court has not only *not* refused to rule on the matters now placed before this Court but is considering them. It is asked to do so when Petitioners, if aggrieved by an adverse ruling, have a clear right to appeal and therefore an adequate legal remedy. Petitioners argue the Circuit Court’s duty is ministerial which this Court has defined as a “specific duty arising from fixed and definite

¹ “Mr. Tisdale: Yes Sir. There’s a right of appeal. No question about it.” Attachment 2 - Tr. p. 41.

facts...defined by law with such precision as to leave nothing to the exercise of discretion.”² They do so when the opinions of the Justices of this Court, the representations of Petitioners to the United States Supreme Court and Petitioner’s own arguments to the Circuit Court do not support their arguments.

II. STATEMENT OF FACTS

After the issuance of the Collective Opinions, certain plaintiffs, Intervenor Respondents here, petitioned for rehearing. The issues raised and arguments made in the Petition for Rehearing, by a 2-2 vote, were not passed upon by the Court.³ Justice Kittredge, joined by Acting Justice Toal, noted that the absence of a fifth justice to allow full court consideration of these “matters of great importance” “raises constitutional implications as the Court has blocked a fair and meaningful merit review of the rehearing petition.” Order, November 17, 2017, Attachment 1.⁴ Acting Justice Toal concluded that the “Courts’ collective opinions in this matter give rise to great uncertainty in

² *Redmond v. Lexington County School Dist. No. Four*, 314 S.C. 431, 437-38, 445 S.E.2d 441, 445 (1994).

³ Justice Hearn recused herself: “The Court need not address the recusal motion on a prospective basis, for Justice Hearn has elected, to her great credit, to recuse herself prospectively and not participate in the resolution of the rehearing petition.” Order, November 17, 2017, Attachment 1 (Kittredge, J., Acting Justice Toal, joining)

⁴ Petitioners infer that the denial of the Petition for Rehearing decided the issues raised in that Petition. This argument fails because of the unremarkable proposition that “nothing is settled” by an equally divided court. As stated by Chief Justice Marshall as early as 1826, in a case where the Supreme Court was evenly divided after oral argument, “the principles of law which have been argued cannot be settled, but the judgment is affirmed, the court being divided in opinion upon it.” *Etting v. Bank of United States*, 24 U.S. 59, 78 (1826); accord, *Durant v. Essex Co.*, 7 Wall. 107, 112 (1869) (“[I]f the judges are divided...no order can be made.”); *Ohio ex. Rel. Eaton v. Price*, 364 U.S. 263, 264, 80 S. Ct. 1463, 1464 (1960) (the order being reviewed is affirmed “ex necessitate, by an equally divided court” with no expression of opinion “for such an expression is unnecessary where nothing is settled.”); *Neil v. Biggers*, 409 U.S. 188, 192, 93 S.Ct. 375, 378-79 (1972) referencing the “thoughtful opinion” of the 2nd Circuit in *United States ex rel. Radich v. Criminal Ct. of City of New York*, 459 F.2d 745, 750 (2nd Cir. 1972) (“Because of the very fact of its equal division, however, the Court has been unable to reach a decision on the merits and there has therefore been no adjudication of them by it.”).

that we have given little to no coherent guidance in this case. Given our lack of agreement, I have no doubt that the court will see more litigation involving these issues...” *Id.* The Court remitted the case on November 17, 2017. On February 9, 2018, Intervenor Respondents filed a Petition for Writ of Certiorari with the United States Supreme Court, 2018 WL 862449, which was denied on June 11, 2018. 138 S. Ct. 2623 (Mem) (2018).⁵

On May 7, 2018, Petitioners argued to the United States Supreme Court that it should not grant Plaintiffs’ Petition for Certiorari because the Collective Opinions were “a poor vehicle for review.” *Brief of Respondents in Opposition to Petition for Writ of Certiorari*, 2018 WL 2129786 at 23-26. Petitioners contended this was so because the Collective Opinions are based on an “incomplete record”, which “contains significant ambiguities.” *Id.* at 2, 23. The Collective Opinions are “fractured not only in rationale but even on facts.” *Id.* at 2, 9. The absence “of a majority opinion on the standard of review” creates “ambiguities” making it “difficult to discern which of the trial court findings stand.” *Id.* at 23-24. Finally, they argued that the matters (including the federal constitutional issue) raised in the rehearing petition were not decided by this Court making review of the constitutional issue by the United States Supreme Court inappropriate. *Id.* at 20.

The day after making these statements in their filing with the United States Supreme Court, on May 8, 2018, (amended on May 16, 2018), Petitioners filed a Petition for Execution and Further Relief seeking an execution as if such would be a simple matter and as if the 5 separate opinions of the Court lent themselves to simple execution. On July 10, 2018, Petitioners filed a Petition for an Accounting. The Dorchester County Circuit Court, Dickson, J., held a status conference on July

⁵ The denial of a petition for a writ of certiorari has no precedential effect. *Teague v. Lane*, 489 U.S. 288, 296 (1989); *see also, Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 94 n. 11 (1983) (“denials of certiorari have no precedential force”).

26, 2018. The Court was presented a list of motions to be decided. The Court directed the parties to submit a list of issues the motions required the Court to consider by August 2, 2018. The Circuit Court then set a briefing schedule for all pending motions as follows:

September 24, 2018: Moving party shall submit memos/briefs to this Court;

October 5, 2018: Response memos/briefs shall be submitted;

October 12, 2019: Any reply briefs shall be submitted.

A hearing was held on November 19, 2018 and the Court took the motions up in the order of their filing based on the list provided to the Court at the status conference.

The Court: The first motion that I have today, going through the list that y'all gave me the last time y'all were here, and I think the one I am most interested in is the motion to decide what I am supposed to decide. The clarification motion, okay.

Attachment 2 - Tr. at 3. Arguments were made by both sides, with counsel for Petitioner, The Episcopal Church ("TEC"), stating "given the predicament we find ourselves in... it's my understanding that this Court's charge is to discern what the Supreme Court has set out?"

The Court: To decide what they decided.

Ms. Kostel: To discern what they decided.

The Court: Discern sounds so much smarter.

Ms. Kostel: I use that word advisedly because I don't think the task is to look for ambiguity. I think the task is...

The Court: I'm not trying to ferret out problems, but I am trying to ferret out what they mean.

...Ms. Kostel: We think it takes some careful reading to find the clarity, Your Honor."

Attachment 2 - Tr. at 41, 42.

Counsel for Petitioner, The Episcopal Church in South Carolina ("TECSC"), calling Petitioners' other motions "ancillary to the one we just argued," raised the issue of arguing at that time Petitioners' Motion to Dismiss the Complaint in the betterments lawsuit. The Court

responded: “Right now, I’d like to take care of my decision on what I am supposed to decide.”
Attachment 2 - Tr. at 48. Petitioners’ Counsel did not mention the Petition for Execution.

III. Legal Authority

A. Writ of Mandamus

The writ of mandamus is, “a ‘drastic and extraordinary’ remedy ‘reserved for really extraordinary causes’.” *Cheney v. U.S. District Court for the District of Columbia*, 542 U.S. 367, 380 (2004). It is issued only when there is a specific right to be enforced, a positive, ministerial duty to be performed and there exists no other adequate remedy at law. *City of Rock Hill v. Thompson*, 349 S.C. 197, 199-200, 563 S.E.2d 101, 102 (2002); *Edwards v. State*, 383 S.C. 82, 95, 678 S.E.2d 412, 419 (2009) (“It is a coercive writ which orders a public official to perform a ministerial duty.”). A duty is “ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. It is ministerial if it is defined by law with such precision as to leave nothing to the exercise of discretion.” *Redmond v. Lexington County School Dist. No. Four*, 314 S.C. 431, 437-38, 445 S.E.2d 441, 445 (1994). Mandamus is not available “when the legal right is doubtful, or the performance of duty rests in discretion, or when there is another adequate remedy.” *City of Rock Hill*, 349 S.C. at 200, 563 S.E. 2d at 102. The asserted right must be “clear and certain.” *Goodwin v. Carrigan*, 227 S.C. 216, 222, 87 S.E.2d 471, 473 (1955); accord, *Cheney*, 542 U.S. at 381 (“clear and indisputable”) (quoting *Bankers Life and Casualty v. Holland*, 346 U.S. 379, 384 (1953)).

Mandamus is not available when the inferior court has not refused to rule on the issue raised by the Petition. *Godwin*, 227 S.C. at 222, 87 S.E.2d at 473 (“The Writ of Mandamus is employed to compel the performance, **when refused**, of a ministerial duty.”) (emphasis added); *City of Rock Hill, supra*, 349 S.C. at 201, n. 2; 563 S.E. 2d at 103, n. 2 (“Even if the City wanted

the writ to simply order Judge to rule, we would decline to issue the writ because Judge has not declined to rule on City's Motion in limine."). Neither is the writ available to compel a lower court "to rule a particular way" if its discretion may be legally exercised in more than one way. *Id.* at 200-04, 563 S.E.2d at 103.

Finally, mandamus is not available when there exist other adequate legal remedies such as waiting for the lower court to rule on the matter before it or appealing that ruling once issued. *City of Rock Hill, supra*, 349 S.C. at 201, 563 S.E.2d at 103 ("City has two adequate legal remedies available...await Judge's ruling on its pending motion" or if City is "disadvantaged by Judge's ruling..., City can appeal."). The requirement that there be no other adequate means to obtain the desired relief is "designed to ensure that the writ will not be used as a substitute for the regular appeals process." *Cheney*, 542 U. S. at 380-81 (*quoting Ex Parte Fahey*, 332 U.S. 258, 260 (1947)); *City of Rock Hill, supra* ("City can appeal" if "disadvantaged" by the ruling); *Schlagenhauf v. Holder*, 379 U.S. 104, 112 (1964).

B. Circuit Court Jurisdiction

The jurisdiction of the Circuit Court to hear and determine matters after a case is remitted is "well established. For instance, ... the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling." *Pee Dee Health Care, P.A. v. Estate of Thompson*, 424 S.C. 520, 531, 818 S.E.2d 758, 764 (2018) (citing *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351-52 (Ct. App. 2001) and *Mullen v. Myrtle Beach Yacht and Golf Club*, 313 S.C. 412, 415, 436 S.E.2d 248, 250 (1993)).

The "enforcement of a judgment" or taking "any action consistent with an appellate court's ruling," requires the Circuit Court to determine what the appellate court ruled. Any ambiguity must be resolved by the Circuit Court which not only has the jurisdiction to do so, but also the obligation

to determine this Court's intention, even if ambiguous and even if there is no remand. *Hamm v. S. Bell Tel. & Tel. Co.*, 305 S.C. 1, 406 S.E.2d 157 (1991) ("*Hamm I*").⁶ Determining what the appellate court ruled is implicit under well-established South Carolina law. Even where a case is not "remanded," the return of the remittitur to the circuit court re-vests the circuit court with jurisdiction to hear motions seeking further consistent relief. *Moore v. N. Am. Van Lines*, 319 S.C. 446, 448, 462 S.E.2d 275, 276 (1995); *see also Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 352 (Ct. App. 2001) (reversing circuit court order that dismissed case for lack of subject matter jurisdiction because the matter was remitted rather than remanded, holding that it was a distinction is without a difference).

The judgment of a court is construed like any other written instrument to determine the intent of the court. That intent is determined from all its parts, not from an isolated part. *City of North Myrtle Beach v. East Cherry Grove Realty Co., Inc.*, 397 S.C. 497, 503, 725 S.E.2d 676, 679 (2012).

IV. Petitioners have other adequate legal remedies.

Petitioners' argument is that this remedy is the only one adequate to "protect the property". Petition at 19. Yet, it is in this Court that Petitioners have first alleged to any court that "waste" is occurring. Their filings and oral argument before the Circuit Court are silent on an issue that one

⁶ In *Hamm v. Southern Bell Telephone and Telegraph, Co.*, 302 S.C. 132, 394 S.E.2d 311 (1990), *cert. denied* 498 U.S. 1109, 111 S.Ct. 1018, 112 L. Ed.2d 1099 (1991) ("*Hamm I*"), the Supreme Court reversed a Southern Bell rate increase and remitted the case to the circuit court without instructing the circuit court that it should send the matter back to the Public Service Commission to determine refunds with interest. The circuit court held it was without jurisdiction to do so because the Supreme Court had not remanded the case with such instructions. Rather, the circuit court held that only the Supreme Court could "clarify its own opinion." *Hamm II*, 406 S.E.2d at 159. The *Hamm II* court held it was error for the circuit court not to take action that was "implicit as well as our intention." *Id.* at 160. No remand was necessary because the circuit court was to interpret the Court's decision. *Id.*

would rightly expect to be prominently argued if it were occurring. What Petitioners do fail to address is the clear holding of this Court (and the United States Supreme Court) that waiting for the lower court to rule or appealing that ruling if adverse are both adequate legal remedies. *City of Rock Hill*, 349 S.C. at 201, 563 S.E.2d at 103 (“City has two adequate legal remedies available...await Judge’s ruling on its pending motion” or if City is “disadvantaged by Judge’s ruling..., City can appeal.”). In effect, Petitioners seek, on an *ex parte* Petition, to have this Court preempt a ruling of the lower court from which an appeal could be taken if adverse to the Petitioners. Instead Petitioners falsely *infer* both an adverse result and that the Circuit Court has refused to grant the requested relief. The Petition does not meet the requirements for the issuance of a writ of mandamus as other adequate legal remedies exist.

V. The motions before the Circuit Court require the exercise of judicial discretion.⁷

⁷ The cases Petitioners cite in support of their argument that the Circuit Court’s duty here is ministerial do not support that proposition. Petition at 15-18.

First, Petitioners rely upon *Dillard v. Industrial Commission of Virginia*, 416 US. 783, 787 (1974) for the proposition that “judicial enforcement is a ministerial act.” Petition at 15. This phrase is a portion of a statement involving the enforcement of a ministerial statutory duty. The Supreme Court held that “the state courts have construed their enforcement duty [under a statute] as purely ministerial... Since *judicial enforcement is a ministerial act*, this relief appears to be available with a minimum of delay or procedural difficulty.” (emphasis added).

Second, Petitioners misuse three other South Carolina decisions: *Edwards v. State*, 383 S.C. 82, 678 S.E.2d 412 (2009); *Christy v. Christy*, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1994); and *Hampton Bldg. Supply, Inc. v. Wilson*, 285 S.C. 135, 328 S.E.2d 635 (1985). Petitioners apply *Edwards* to these facts when it involved the ministerial duty of the Governor to execute a budget properly enacted by the legislature because the Governor “had no discretion concerning the appropriation of funds.” 383 S.C. at 96, 678 S.E. 2d at 420. Similarly, this Court’s statement in *Hampton Building Supply* that the Circuit Court did not reacquire jurisdiction after an appeal involved the dismissal of an appeal which “ended the case,” not a remitted matter. 285 S.C. at 138, 328 S.E.2d at 637. Petitioners use *Christy* for the proposition that final disposition of a case occurs with the issuance of a remittitur. However, this quote has to do with this Court’s jurisdiction, not the Circuit Court’s. After the portion quoted by Petitioners, this Court states: “Until that time, the case is pending on appeal. Once the remittitur is sent down from the appellate court, the lower court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling.” 317 S.C. at 151, 452 S.E.2d at 4.

Finally, Petitioners’ quote from the Texas Court of Appeals fails to disclose what is stated

Petitioners confuse a court's "mandate" with the "mandate rule." A mandate is "an order from an appellate court directing a lower court to take specified action." *Black's Law Dictionary*, 9th Ed. at 1047 (2009). The "mandate rule" is the doctrine that, after an appellate court sends a case back to the lower court, the lower court must follow the decision that the appellate court has made in the case, unless new evidence or an intervening change in the law dictates a different result. *Id.* There is no mandate in this case.⁸

Under the mandate rule, the Circuit Court must discern what the Collective Opinions mean before it can take action consistent with their intent. As Acting Justice Toal and Justice Kittredge noted the "Courts' collective opinions in this matter give rise to great uncertainty in that we have given little to no guidance in this case..." This is consistent with Petitioners' statements to the United States Supreme Court that the Collective Opinions are "fractured not only in rationale but even on facts" because they are based on an "incomplete record" containing "significant ambiguities." This is also consistent with the Circuit Court's observation that "usually when I get something remitted to me or remanded...it tells me simply what I am supposed to do." Attachment 2 - Tr. at 40.

It is also consistent with what Petitioners told the Circuit Court: that it needed "to discern what they decided" which requires "some careful reading to find the clarity." Attachment 2 - Tr.

in the same paragraph preceding Petitioners' quoted portion. In determining what a mandate means (this case involved a remand with instructions), "'courts should look not only to the mandate itself, but also to the opinion of the Court' to ascertain what is commanded by the mandate." *Texas Health & Human Services Commission v. El Paso County Health District*, 351 S.W.3d at 476 (Ct. App. Tex. 2011).

⁸ Even if there were a specified mandate, the question remains, "what was decided"? A lower court "cannot reconsider questions which the mandate has laid at rest... but it does not tell us what issues were laid at rest." *Federal Communications Commission v. Pottsville Broadcaster Co.*, 309 U.S. 134, 140-141, 60 S. Ct. 437, 440 (1940) citing *Sprague v. Ticonia Nat. Bank*, 307 U.S. 161, 168, 59 S. Ct. 777, 781 (1939) ("[A] lower court is free as to other issues").

at 41-42. The Circuit Court recognized the obvious: “we would not be here if it was clear.” *Id.* at 24. The Circuit Court is exercising its discretion, as it must to determine what was decided, so that it can “take any action consistent with the appellate court’s ruling.” *Hamm I*, 302 S.C. 132, 394 S.E.2d 311. Petitioners ask this Court to “inquire and adjudicate” the issues before the Circuit Court and “to direct or compel the exercise of discretion in a particular way,” neither of which are appropriate for mandamus. *Williamson v. City of Greenville*, 243 S.C. 82, 86, 132 S.E.2d 169, 171; *City of Rock Hill, supra*, 349 S.C. at 201, 563 S.E. 2d at 103. The motions before the Circuit Court arising out of the 5 separate opinions of this Court do not involve “the execution of a specific duty arising from fixed and designated facts...defined by law with such precision as to leave nothing to the exercise of discretion.” *Redmond, supra*, 314 S.C. at 437-38, 445 S.E.2d at 445.

Petitioners argue there is no ambiguity in Chief Justice Beatty’s statements that “those parishes that did not expressly accede to the Dennis Canon should retain ownership of the disputed real and personal property” and he “agrees with the [Acting Justice Pleicones and Justice Hearn] as to the disposition of the remaining parishes.” Petition at 8. Discerning intent from the opinions as a whole and not just one part, *City of North Myrtle Beach, supra*, there are fundamentally different interpretations of the Collective Opinions which require the exercise of judicial discretion for their resolution.

First, under the principles of *All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 685 S.E.2d 163 (2009), which Chief Justice Beatty held, (disagreeing with Acting Justice Pleicones and Justice Hearn), applied the correct legal standard, a trust was not created unless each parish unequivocally indicated an intent

to create a trust by expressly agreeing **to the Dennis Canon** in a signed, written document.⁹ Second, there is no analysis by the Chief Justice of which parishes agreed to the Dennis Canon and which did not; rather, he expressly “assumes” such an agreement must exist before a trust is created. 421 S.C. at 250-51, 806 S.E.2d at 103. Nor could there properly be such an analysis because there was no record before this Court on those issues; there was just a summary of counsel.¹⁰ Third, it is uncontested that no parish expressly agreed to the Dennis Canon.¹¹ However,

⁹ These parishes that did not expressly accede to the Dennis Canon should retain ownership of the disputed real and personal property.

421 S.C. at 249, 806 S.E.2d at 102.

TEC argues that the parishes’ accession to the Dennis Canon created the trust. **Assuming** that each parish acceded in writing, I would agree.

Id. at 250-51, 806 S.E.2d at 103 (emphasis added).

In my view, the Dennis Canon had no effect until acceded to in writing by the individual parishes.

Id. at 250, 806 S.E.2d at 103.

...the parishes that did not accede to the Dennis Canon cannot be divested of their property.

Id.

¹⁰ The only record in support of the accession argument as to each parish were five pages from a post-trial submission to the trial court in which Petitioners’ counsel summarized documents. Statements of counsel regarding the contents of documents are not evidence and cannot be considered. *Am. Motorists Ins. Co. v. Murphy*, 253 S.C. 346, 349, 170 S.E.2d 663, 665 (1969); *Hobbs v. Beard*, 43 S.C. 370, 21 S.E. 305, 308 (1895). The documents summarized, some inaccurately, by the Petitioners’ counsel were not in the record on appeal and therefore could not have been considered by the Supreme Court. Rule 210(h), SCACR. (“[T]he appellate court will not consider any fact which does not appear in the Record on Appeal.”). The inadequacy of the record to consider the issue of accession seems obvious given the Petitioners’ representations to the United States Supreme Court, (an “incomplete record” containing “significant ambiguities”) and given what Justice Hearn, joined by Acting Justice Pleicones, noted, a “dearth of evidence on [the accession] issue in this voluminous record.” 421 S.C. at 243, 806 S.E.2d at 99.

¹¹ The summary of counsel about express trusts which was in the record, (which could not be relied

Petitioners' contend that an agreement to the Constitution and Canons of TEC which includes the Dennis Canon is sufficient. That position is not consistent with the Chief Justice's opinion both because he never says that and because there was an agreement by the *All Saints* parish "to the canons and rules of the protestant Episcopal Church" and that agreement created no trust. *All Saints, supra*, 385 S.C. 428, 439, n. 5, 685 S. E.2d 163, 169, n. 5.¹²

With respect to the property of the Diocese, Petitioners argue a single sentence in a footnote of Chief Justice Beatty's opinion, which speaks exclusively to one piece of property owned by the

upon by the Court) does not state that any parish expressly agreed in a signed writing to the Dennis Canon. It states that some parishes "expressly accepted" either the "National Church's governance" or the "Diocese's governance." Chief Justice Beatty however stated that "merely promised allegiance ...without more... cannot deprive [parishes] of their ownership rights in their property." 421 S.C. at 250, 806 S.E.2d at 103.

¹² Two examples of specific parish facts not before this Court on the accession issue demonstrate that the Circuit Court is not presented with "the execution of a specific duty arising from fixed and designated facts...defined by law with such precision as to leave nothing to the exercise of discretion." *Redmond, supra*, 314 S.C. at 437-38, 445 S.E.2d at 445.

St. Philips Church: There is nothing in either the five-page summary of Petitioners' counsel nor in the record that remotely approaches an express agreement in a signed writing to the Dennis Canon by St. Philips Church. First, in Petitioners' summary they quote from a document not in the record on appeal as "describing the purpose of the parish corporation as being 'in accord with the Articles of Religion of the Protestant Episcopal Church in the United States of America...'" The referenced "Articles of Religion" not part of the record on appeal nor were they ever introduced into evidence at trial. Petitioners have never contended that The Articles of Religion contain any mention of the Dennis Canon or any other Canon of The Episcopal Church—they represent nothing more than a summary of theological and doctrinal beliefs. There is a complete lack of evidence of an express agreement by St. Philips Church in a signed writing to the Dennis Canon.

Church of Good Shepard: According to Petitioners' counsel's summary, Good Shepherd amended its corporate articles in 2001 "describing the parish corporation as 'organized pursuant to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina'." These corporate articles were not in the record on appeal and therefore there was no evidence on this issue before the Court. Petitioners' argument in its five-page summary is that Good Shepherd is organized pursuant to the Canons of the Diocese, not TEC. However, this Court rejected the argument that organization pursuant to the Canons of the Diocese "now in force or as hereafter may be amended" was evidence of an express trust in favor of TEC when it found that St. Matthias did not "directly" accede "to the local or national version of the Dennis Canon." 421 S.C. at 265 n. 49; 806 S.E.2d at 111, n. 49.

Diocese, Camp St. Christopher, was intended to give “all” Diocesan real and personal (including intellectual) property to Petitioners. Once again, discerning intent from the whole opinion rather than a single part, it is clear that the resolution of this issue will require the exercise of the Circuit Court’s discretion.

First, the issue of Diocesan ownership of its real and personal property was not contested at trial. The only issue was whether the Diocese could successfully withdraw from TEC. The trial court found that it could, and successfully did, disassociate under *All Saints* by following neutral principles of corporate law. This Court agreed that the Diocese disassociated as all Justices repeatedly refer to the Diocese as the “disassociated Diocese.” The Diocese withdrew from TEC with all its property since it followed the same procedures as did the *All Saints* parish with the same result and since it was admitted the Dennis Canon did not apply to the property of the Diocese. An unappealed permanent injunction is currently in effect against the use of the Diocese’s names and marks against TEC and TECSC.¹³ These non-ministerial facts alone strongly suggest that to interpret the Chief Justice’s footnote more broadly than Camp St. Christopher would inconsistent with the resolution of the issues appealed to this Court as well as those not

¹³ Judge Goodstein issued a permanent injunction against TEC and the ECSC and any of its officers, employees, members and other associated persons from “using, issuing or adopting in any way, directly or indirectly, the names, styles, emblems or marks of the Plaintiffs...” This injunction covered those names, and other indicia, which are owned by the Plaintiff Diocese and three Plaintiff Parishes, St. Philips, St. Michael’s, and the Parish Church of St. Helena. Fin. Or. at 44-46. There were two statutory grounds for this injunction: service mark infringement, §§39-15-1105 *et. seq.* and §§16-17-310 and 320 (Improper use of names, styles and emblems). *Id.* at 37-43. Judge Goodstein found willful violations and found “under both statutes, the Plaintiffs have established their entitlement to permanent injunctive relief.” *Id.* at 43. The Defendants appealed the “service mark infringement” ground but not the “improper use” ground. On the appealed service mark registration ground, the Collective Opinions are evenly split 2-2 with Chief Justice Beatty expressing no opinion and therefore, Judge Goodstein’s order is affirmed. The unappealed ground with its permanent injunction is now the law of the case. *Dreher v. S. Carolina Dep’t. of Health & Env’tl. Control*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015).

appealed.

Second, the only property discussed in this footnote is Camp St. Christopher and its deed. 412 S.C. at 251, n. 29, 806 S.E.2d at 103, n. 29. Third, Acting Justice Toal's summary of what the Court's intent was on Diocesan real and personal property says the only property at issue was Camp St. Christopher and there is no indication that Chief Justice Beatty disagreed with her analysis.¹⁴

VI. Constitutional Implications of the Petition

Petitioners ask this Court to interrupt and direct the outcome of matters supplemental to this Court's Collective Opinions that are presently pending before the Circuit Court. Some of the issues before the Circuit Court were also issues raised in Intervenor Respondents' Petition for Rehearing which this Court by a 2-2 vote did not consider. Yet many of them are based on facts that were not in the record before this Court (accession issues) or were *sua sponte* decisions because they were not presented to or ruled upon by the trial court (revocability, minimal burden). As noted by Justice Kittredge and Acting Justice Toal, Intervenor Respondents have never been heard on the merits on these issues. Petitioners ask this court to block their consideration and resolution by the Circuit Court. The United States Supreme Court has held that such action is a denial of procedural due process.

Justice Brandeis, writing for a unanimous Supreme Court, considered the issue of the procedural due process due a litigant when an appellate court deprives it of its property. *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 50 S. Ct. 451 (1930). There the

¹⁴ “[W]ith regard to Camp St. Christopher, Chief Justice Beatty, Justice Hearn and Acting Justice Pleicones would hold that title is in the trustee corporation for the benefit of the associated diocese, whereas Justice Kittredge and I would hold that the trustee corporation holds title for the benefit of the disassociated diocese.” 421 S.C. at 291, n. 72, 806 S. E. 2d at 125, n. 72. (emphasis added)

Supreme Court of Missouri overruled a previous decision construing a state statute on which the plaintiff had relied and in so doing, deprived the plaintiff of the remedy the previous construction had afforded. The plaintiff petitioned for a rehearing which was denied without opinion. Justice Brandeis stated the Court's concern was not the plaintiffs' rights on the merits, but "whether the plaintiff has been accorded due process in the primary sense – whether it has had an opportunity to present its case and be heard in its support." *Id.* at 680, 50 S.Ct. at 454. Reversing the Missouri Supreme Court, the Court held that "whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." *Id.* at 682, 50 S.Ct. at 454-455; *accord, Bouie v. City of Columbia*, 378 U.S. 347, 354, 84 S. Ct. 1697, 1703 (1964) (Due process includes a "standard of state decisional consistency").

The Circuit Court is in the process of resolving the constitutional concern.¹⁵ Interrupting that process and directing an outcome that prevents consideration of the new issues raised by the Collective Opinions as Petitioners would have the Court do, would be a denial of procedural due process.

VII. Conclusion

Petitioners seek to use the extraordinary writ of mandamus for an improper purpose. They ask this Court to issue this "coercive writ" directing the outcome of motions before the Circuit Court the resolution of which requires the exercise of discretion. They do so when the Circuit Court has yet to rule and when Petitioners, if aggrieved, could clearly appeal to correct any abuse of discretion. They do so intending to circumvent unconstitutionally the ability of Intervenor

¹⁵ Justice Brandeis noted that if a remedy were still available after the petition for rehearing was denied, there would be no denial of due process. *Id.* n. 9

Respondents to be heard on matters not previously considered.

It is respectfully submitted in these “matters of great importance” (Kittredge, J.), involving the interpretation of an unprecedented 5 separate opinions which Justices of this Court as well as Petitioners before the United States Supreme Court and before the Circuit Court have said “give rise to great uncertainty” (Toal, A.J.), are “fractured not only in rationale but even on facts” and are based on an “incomplete record” which “contains significant ambiguities” all requiring discernment, that the Court should deny the Petition for a Writ of Mandamus allowing the Circuit Court to resolve the motions before it, on the record before it.

April 11, 2019

Respectfully submitted,

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Attachment 1

The Supreme Court of South Carolina

The Protestant Episcopal Church in the Diocese of South Carolina; The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body; All Saints Protestant Episcopal Church, Inc.; Christ St. Paul's Episcopal Church; Christ the King, Waccamaw; Church of The Cross, Inc. And Church of the Cross Declaration of Trust; Church of The Holy Comforter; Church of the Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; St. Matthews Church; St. Andrews Church-Mt. Pleasant Land Trust; St. Bartholomews Episcopal Church; St. David's Church; St. James' Church, James Island, S.C.; St. John's Episcopal Church of Florence, S.C.; St. Matthias Episcopal Church, Inc.; St. Paul's Episcopal Church of Bennettsville, Inc.; St. Paul's Episcopal Church of Conway; The Church of St. Luke and St. Paul, Radcliffeboro; The Church of Our Saviour of the Diocese of South Carolina; The Church of the Epiphany (Episcopal); The Church of the Good Shepherd, Charleston, SC; The Church of The Holy Cross; The Church of The Resurrection, Surfside; The Protestant Episcopal Church of The Parish of Saint Philip, in Charleston, in the State of South Carolina; The Protestant Episcopal Church, The Parish of Saint Michael, in Charleston, in the State of South Carolina and St. Michael's Church Declaration of Trust; The Vestry and Church Wardens of St. Jude's Church of Walterboro; The Vestry and Church Wardens of The Episcopal Church of The Parish of Prince George Winyah; The Vestry and Church Wardens of The Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens of The Parish of St. Matthew; The Vestry and Wardens of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church Wardens of the Episcopal Church of The Parish of Christ Church; Vestry and Church

Wardens of The Episcopal Church of the Parish of St.
John's, Charleston County, The Vestries and
Churchwardens of The Parish of St. Andrews,
Respondents.

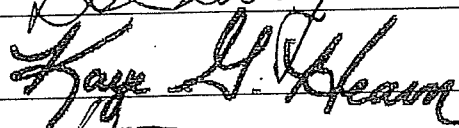
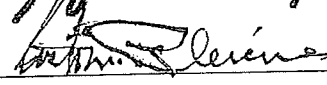
V. _____

The Episcopal Church (a/k/a The Protestant Episcopal
Church in the United States of America) and The
Episcopal Church in South Carolina, Appellants.

Appellate Case No. 2015-000622

ORDER

Respondents have filed a motion to recuse Justice Hearn from participating in the decision on the petitions for rehearing in this case and to vacate Justice Hearn's opinion or, in the alternative, to vacate all opinions in this case. Respondents request consideration of this motion by the full Court. With the exception of the request for the full Court to consider the motion, the motion is denied. *See Davis v. Parkview Apts.*, 409 S.C. 266, 762 S.E.2d 535 (2014) (citing *Duplan Corp. v. Milliken, Inc.*, 400 F.Supp. 497, 510 (D.S.C. 1975) ("Timeliness is essential to any recusal motion. To be timely, a recusal motion must be made at counsel's first opportunity after discovery of the disqualifying facts."))).

	_____	C.J.
	_____	J.
	_____	A.J.

Kittredge, J., concurring in separate order in
which Toal, A.J., joins in part

Toal, A.J., concurring in separate order

I write separately to state my position on the rehearing matters before the Court. Because I remain firmly convinced that this Court's majority decision as to the so-called twenty-eight "acceding churches" reaches the wrong result and is fundamentally flawed, I vote to grant rehearing. I have signed the Court's order reflecting my vote.

In connection with the requested recusal of Justice Hearn, because the motions are untimely as they relate to the Court's opinion(s), I join the Court in denying the vacatur and recusal motions. The Court need not address the recusal motion on a prospective basis, for Justice Hearn has elected, to her great credit, to recuse herself prospectively and not to participate in the resolution of the rehearing petitions.

For the purpose of resolving the rehearing petitions, I requested that a fifth justice be appointed to fill the absence created by Justice Hearn's recusal so that a *full* Court could decide this matter of great importance. My request was rejected, which I find shocking. Under these circumstances, to disallow a full Court from considering the rehearing petitions is deeply troubling and, in my judgment, raises constitutional implications as the Court has blocked a fair and meaningful merits review of the rehearing petitions.

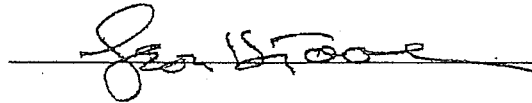

_____ J.

I have voted to grant rehearing. I join Justice Kittredge's separate writing and submit this additional separate writing concerning this matter.

With regard to the motion for recusal and the associated motion for vacatur, I agree wholeheartedly with the other members of the Court that these motions are untimely. The respondents did not challenge Justice Hearn's participation in the five months between this Court's certification of the case from the court of appeals and the oral arguments before us. While the respondents may have surmised she would recuse herself during that five-month span, any possible reason for their not filing a formal motion for her recusal vanished after she participated in the oral arguments. Nonetheless, in the two years between the arguments and the issuance of the Court's opinion, the respondents again took no action. Only after receiving an adverse decision on the merits from a majority of the Court did the respondents challenge Justice Hearn's participation in the matter. However, an adverse decision

is no reason to excuse a nearly two-and-a-half year delay in making a request for recusal. Moreover, Justice Hearn is not participating in this matter on a prospective basis, remedying any possible future question about her participation in the matter. While I make no criticism of the respondents' lawyers for filing the motions to recuse and for vacatur, I am disappointed in the tone of these filings. They are unreasonably harsh criticisms of a highly accomplished judge and a person of great decency and integrity. The respondents' legal points could have been made without such unnecessary language. I concur in the Court's decision to deny the motions for recusal and vacatur.

With regard to the request to appoint a fifth justice to fill the vacancy left by Justice Hearn's prospective non participation, I believe that this could have been accomplished without significant delay or undue burden on the Court or an appointed acting justice. In any event, the Court's collective opinions in this matter give rise to great uncertainty, in that we have given little to no coherent guidance in this case or in church property disputes like this going forward. Given our lack of agreement, I have no doubt the Court will see more litigation involving these issues and similarly situated parties. I am comforted in the knowledge that there will be ample opportunity for the Court to resolve these issues in a more definitive manner in the future.

 A.J.

Columbia, South Carolina
November 17, 2017

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The Honorable Diane Schafer Goodstein

Attachment 2

STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2017-CP-18-01909

2013-CP-18-00013

The Protestant Episcopal Church in)
the Diocese of SC et al,)

Plaintiff,)

v.)

Transcript of Record)

The Episcopal Church, et al,)

Defendant.)

November 19, 2018
Orangeburg, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

A P P E A R A N C E S:

Attorney for the Plaintiff

Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

1 THE COURT: The first motion that I have today,
2 going through the list that y'all gave me the last time
3 y'all were here, and I think the one I'm most interested in
4 is the motion to decide what I'm supposed to decide. The
5 clarification motion, okay.

6 Now, that's your motion, correct?

7 MR. RUNYON: Yes, Your Honor.

8 THE COURT: All right. Let me hear from you.

9 MR. RUNYON: Thank Your Honor.

10 First of all I apologize on behalf of Henrietta Golding
11 who would have been here but she is afflicted with some kind
12 of illness that not only makes her feel bad, but makes her
13 unable to talk. She told me that she missed a golf
14 tournament, so I know it was serious.

15 THE COURT: All right.

16 MR. RUNYON: She would like to be here but she
17 isn't.

18 Your Honor, I've got on the screen the essence of what
19 I would like to say to the Court today. And I'll start with
20 where I think this case, Your Honor's jurisdictional issues
21 should start and that is with the last thing said by two
22 members, one-half the court that considered the issues, the
23 South Carolina Supreme Court. We been little to no
24 coherence in this case, speaking of the underlying opinion.
25 The Court's collective opinion gives rise to great

1 a little more concise statement?

2 MR. TISDALE: Your Honor, it would have been
3 wonderful if it was five to nothing in our favor.

4 THE COURT: I would be the first person to be happy
5 with that.

6 MR. TISDALE: Your Honor, we'd join you in that.

7 THE COURT: So we didn't get that?

8 MR. TISDALE: No, we didn't.

9 THE COURT: You know, usually when I get something
10 remitted to me or remanded to me to do something and usually
11 -- usually I have something that's remanded to me to decide
12 and it tells me pretty simply what I'm supposed to do.

13 MR. TISDALE: I can understand that. And I know
14 that's true.

15 THE COURT: And this just says, The above
16 referenced matter is hereby remitted to the lower court and
17 tribunal.

18 MR. TISDALE: And it also says it's final.

19 THE COURT: Well, remittitur just says a copy of
20 the judgment of this Court is enclosed.

21 MR. TISDALE: Yes, sir.

22 THE COURT: You know, I know your argument is that
23 it's final and I think that -- well, I don't know if it will
24 be their final ruling on it or not. Somehow I don't believe
25 that if anybody has agreed to my decision that they're going

1 to let it stand here.

2 MR. TISDALE: In other words, there are two sides.

3 THE COURT: No, I mean, I'm just thinking which
4 ever side loses when I decide here they're going to appeal
5 it.

6 MR. TISDALE: Yes, sir. There's a right of appeal.
7 No question about that.

8 THE COURT: I think that gets around the issue that
9 that is a two-two split on whether there was going to be a
10 remand. That's why I think they punted it here.

11 MR. TISDALE: Yes, sir.

12 THE COURT: So I can be wrong. Y'all can all be
13 pleased with my decision.

14 MR. TISDALE: Well, we appreciate what you're doing
15 to try to finalize it.

16 THE COURT: Oh, yeah. Anything else you want to
17 tell me?

18 MR. TISDALE: I don't think right now.

19 THE COURT: Ms. Kostel?

20 MS. KOSTEL: I would make one comment about the --
21 predicament we find ourselves in. First of all, it's my
22 understanding that this Court's charge is to discern what
23 the Supreme Court has set out?

24 THE COURT: To decide what they decided.

25 MS. KOSTEL: To discern what they decided.

1 THE COURT: Discern sounds so much smarter.

2 MS. KOSTEL: I use that word advisedly because I
3 don't think the task is to look for ambiguity. I think the
4 task is --

5 THE COURT: I'm not trying to ferret out problems,
6 but I am trying to ferret out what they mean.

7 MS. KOSTEL: I also understand that what this
8 Court's job is to find out what they meant on the result.
9 Later cases five years from now are going to have to figure
10 out what they meant on the law. This court has to figure
11 out what they meant on the result, because if the result is
12 clear and if in our view it's clear Pleicones and Hearn
13 would have given 36 Parishes back and all the Diocesan
14 property and Justice Beatty said 29 and he explains why -- I
15 really believe that paragraph. He's talking about
16 allegiance. It's what Pleicones and Hearn are talking about
17 and I'm not getting on the allegiance train. There has to
18 be an agreement, an exception that happens post Dennis Canon
19 that's consistent with what he did in All Saints. So that's
20 a disposition. So we think -- we do think that it's clear.

21 Thank you.

22 THE COURT: Through a glass darkly.

23 MS. KOSTEL: We think it takes some careful reading
24 to find the clarity, Your Honor.

25 THE COURT: Okay. Thank you, ma'am.

1 will control all of us.

2 THE COURT: Yeah. Ms. Kostel.

3 MS. KOSTEL: I don't think -- I do not believe that
4 it controls the betterment issue.

5 MR. TISDALE: It certainly doesn't.

6 THE COURT: Well, I can just tell y'all that I know
7 -- I'm not going to address the betterment issue now, okay.
8 What I want to find out is how we're going to go forward on
9 this. That is enough clutter my mind. I am amused that
10 there is a motion to establish complex designation. I'm
11 willing to grant that right now.

12 MR. TISDALE: The last time we had a status meeting
13 with you, Your Honor, you asked us about that and we
14 suggested and Your Honor agree that we should have a hearing
15 on our motions to dismiss that action.

16 THE COURT: Before we go to that?

17 MR. TISDALE: Before we have a complex designation.

18 THE COURT: Okay.

19 MR. TISDALE: You seemed to agree and said that,
20 but we are ready. We would like to have a hearing on our
21 motion to dismiss the betterment lawsuit.

22 THE COURT: And I'm not saying that you're not
23 going to hear that at some point. Right now, I'd like to
24 take care of my decision on what I'm supposed to decide.

25 MR. TISDALE: Yes, sir.

C

-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE COMMON PLEAS COURT OF ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 19 DAY OF NOVEMBER, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

January 11, 2019

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appellate Case No. 2019-000463

The Episcopal Church in South Carolina and The
Episcopal Church,

Petitioners,

v.

Edgar W. Dickson, in his official capacity as
Dorchester County Circuit Court Judge, *In re: Civil*
Action No. 2013-CP-18-00013, on remittitur, following
the final decision of this Court in *Protestant Episcopal*
Church in the Diocese of South Carolina v. The
Episcopal Church, 421 S.C. 211, 806 S.E.2d 82 (Aug.
2, 2017), *reh'g denied* (Nov. 17, 2017), *cert. denied*
(June 11, 2018),

Respondent,

The Protestant Episcopal Church in the Diocese of
South Carolina; The Trustees of the Protestant
Episcopal Church in South Carolina, a South Carolina
Corporate Body; All Saints Protestant Episcopal
Church, Inc.; Christ St. Pauls' Episcopal Church;
Church of the Cross, Inc. and Church of the Cross
Declaration of Trust; Church of the Holy Comforter;
Church of the Redeemer; Holy Trinity Episcopal
Church; Saint Luke's Church, Hilton Head; St.
Matthews Church; St. Bartholomews Episcopal Church;
St. James' Church, James Island; The Church of St.
Luke and St. Paul, Radcliffeboro; The Church of Our
Saviour of the Diocese of South Carolina; the Church of
the Epiphany (Episcopal); The Church of the Good
Shepherd, Charleston, SC; The Church of The Holy
Cross; The Church of the Resurrection, Surfside; The
Protestant Episcopal Church, of the Parish of Saint
Philip, in Charleston, in the State of South Carolina;
The Protestant Episcopal Church, the Parish of Saint
Michael, in Charleston, in the State of South Carolina
and St. Michael's Church Declaration of Trust; The
Vestry and Church Wardens of St. Jude's Church of
Walterboro; The Vestry and Church Wardens of the
Episcopal Church of the Parish of St. Helena and The

Parish Church of St. Helena Trust; The Vestry and Church Wardens the Episcopal Church of the Parish of St. Matthew; the Vestry and Wardens of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church-Wardens of the Episcopal Church of the Parish of Christ Church; Vestry and Church Wardens of the Episcopal Church of the Parish of St. John's, Charleston County; and the Vestries and Churchwardens of the Parish of St. Andrew Intervenor.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent/Intervenors, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by E-mail and by U.S. mail to the following address(es):

Pleadings: **Return to Petition for Writ of Mandamus**

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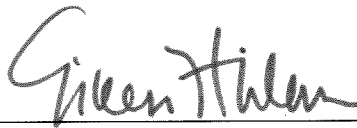
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4/11, 2019