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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court
In its Original Jurisdiction

Appellate Case No. 2020-000324

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

v.

Edgar W. Dickson, in his official capacity as Judge of the First Judicial Circuit, *In re:* Civil Action No. 2013-CP-18-00013, *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. Bartholomew's Episcopal Church; St. David's Church; St. James' Church, James Island; St. Paul's Episcopal Church of Bennettsville, Inc.; 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, S.C.; 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 Church of the Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens the 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. Andrews, ...Respondents.

RETURN TO PETITION FOR A WRIT OF PROHIBITION

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Pursuant to Rule 240(e), SCACR, the Respondents submit this Return to the Petition for a Writ of Prohibition.

INTRODUCTION

Petitioners seek, for the second time, to have this Court exercise its extraordinary writ powers to direct the circuit court with respect to pending motions before it. The Episcopal Church ("TEC") and The Episcopal Church in South Carolina ("TECSC") raise many of the same arguments in this new petition that they raised previously to this Court in their petition for a writ of mandamus. *See* Intervenors' Ret. to Mandamus Pet. ("Intervenors' Ret. to Mandamus Pet."), *Ex parte Episcopal Church*, No. 2019-000463 (S.C. Apr. 19, 2019) (included as an appendix to this return). This Court denied the petition for a writ of mandamus, and it should likewise deny this petition for a writ of prohibition.

The circuit court has before it several motions. Among them is the Diocese of South Carolina's ("DSC") and the parishes' motion for clarification regarding this Court's five separate opinions in *Protestant Episcopal Church in the Diocese of South Carolina* v. *The Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (2017) ("Collective Opinions"). Also among them are TEC's and TECSC's motions to enforce the judgment, for an accounting, and for the appointment of a master.

In an email to the parties' counsel, the circuit court noted it was finalizing an order and asked TEC and TECSC for "exact citations in the trial record where each parish expressly acceded to the 1979 Dennis Canon." Counsel for TEC and TECSC informed the circuit court in response via email on February 10, 2020 that they had

"begun the research necessary to respond to the request" and "expect[ed] to be able to send information to [the circuit court] by no later than the end of next week." On the same day that TEC and TECSC provided what they claim shows this express accession to the circuit court, they filed this petition for writ of prohibition with this Court, asserting that the circuit court lacks the authority to decide the motion for clarification.

The circuit court has now heard all pending motions in this matter. It is therefore positioned to make a ruling. TEC and TECSC have argued to the circuit court that it should deny the motion for clarification and instead grant their motions. The DSC and the parishes have argued the opposite. This Court previously declined to interfere in this process, denying the petition for mandamus, and it has already expressed its understanding that the circuit court will rule on the pending matters before it.

At its core, this petition—like the previous one—amounts to a request for this Court to tell the circuit court to grant TEC and TECSC's pending motions and deny the pending motion of the DSC and the parishes. But this petition—like the previous one—is not a proper vehicle for that.

STATEMENT OF THE CASE

When the DSC disassociated from TEC in 2012, litigation followed seeking declarations of corporate control and ownership. This case—with which this Court is well familiar—focuses on corporate control as well as real and personal property, and state marks that were owned by the DSC and its parishes when they disassociated.

The circuit court, following a three-week trial in July 2014, ruled for the DSC and the parishes. TEC and TECSC appealed, and this Court issued the Collective Opinions in August 2017. This Court denied a petition for rehearing by a 2-2 vote,[1] and the United States Supreme Court declined to review the matter, denying a petition for a writ of certiorari.

After the case was remitted, the DSC and the parishes moved for clarification regarding the intent of the Collective Opinions. TEC and TECSC, meanwhile, moved to enforce the Collective Opinion based on their interpretation of them. Since then, the circuit court has held two hearings (one in November 2018 and the other in November 2019) on the motion for clarification along with briefing, supplemental submissions, and proposed orders.

On February 14, 2020, the circuit court set a hearing on TEC and TECSC's pending motions for February 27, 2020. On February 21, 2020, TEC and TECSC filed this petition for writ of prohibition with this Court. Nevertheless, TEC and TECSC proceeded to the hearing on February 27, at which they argued that the circuit court should rule in their favor on their motions and that the circuit court should reject the arguments in the motion filed by the DSC and the parishes.

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[1] The issues raised and arguments made in the petition for rehearing, by a 2-2 vote, were not passed upon by the Court. 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 3, *Protestant Episcopal Church in the Diocese of S.C.* v. *The Episcopal Church*, No. 2015-000622 (S.C. Nov. 17, 2017) (opinion of Kittredge, J.). The issues raised by the petition for rehearing remain undecided because "nothing is settled" by an equally divided court. *See* Intervenors' Ret. to Mandamus Pet. 3 n.4.

LEGAL STANDARD

This Court has the authority to issue a writ of prohibition. *See* S.C. Const. art. V, § 5. Such a writ, however, is "intended only for the most *extraordinary* and exceptional situations." *State v. Isaac*, 405 S.C. 177, 185 n.6, 747 S.E.2d 677, 681 n.6 (2013) (emphasis in original). Thus, it "should be used with forbearance and caution, and only in cases of necessity." *Berry v. Lindsay*, 256 S.C. 282, 287, 182 S.E.2d 78, 81 (1971). The writ is not necessary when "an adequate and applicable remedy by appeal, writ of error, certiorari, or other prescribed methods of review are available." *Ex parte Jones*, 160 S.C. 63, 158 S.E. 134, 137 (1931).

REASONS FOR DENYING THE PETITION

TEC and TECSC build their petition for a writ of prohibition on two equally (for them) essential arguments. The first is that the Collective Opinions are clear that TEC and TECSC prevailed and are entitled to ownership of the property of twenty-nine parishes that they claim acceded to the Dennis Canon as well as entitlement to be the beneficiary of any Trustees' property held for the benefit of a diocese. The second is that on remittitur, the circuit court was limited to enforcing this conclusion, without authority to do anything else. Both arguments are incorrect.

However, before reaching those issues, TEC and TECSC face the threshold problem that a writ of prohibition is not available here. If they believe the circuit court errs in its interpretation of the Collective Opinions, TEC and TECSC may simply appeal that decision. South Carolina law is clear that when a party has the right to appeal, it has no right to a writ of prohibition.

I. A writ of prohibition cannot issue here when TEC and TECSC have the right to appeal any unfavorable decision.

When TEC and TECSC set out the standard for obtaining a writ of prohibition, they note that the writ has a long history in Anglo-American jurisprudence, and they observe that it will prevent a lower court from improperly assuming jurisdiction. *See* Prohibition Pet. 13–14. However, they omit a critical—and dispositive—holding from this Court about the writ: The writ is unavailable when "the usual remedies provided by law are adequate and complete." *Woodworth v. Gallman*, 195 S.C. 157, 10 S.E.2d 316, 319 (1940).

The most common usual remedy is an appeal from a final order. *See Ex parte Jones*, 160 S.C. 63, 158 S.E. at 137. Thus, for two centuries, our courts have refused to allow a writ of prohibition to issue when a party could appeal the lower court's decision. *See, e.g.*, *State v. Nathan*, 38 S.C.L. 513, 516 (S.C. App. L. 1851) ("There can be no doubt that the inferior Court had jurisdiction both of the prisoner and the crime in this case, and as the appeal will correct any error in the decision, and is the appropriate remedy now provided, we are of the opinion the writ of prohibition ought not to have been granted."); *Kinloch v. Harvey*, 16 S.C.L. 508, 511–12 (S.C. App. L. & Eq. 1830) ("The great object of this writ is to restrain all inferior jurisdictions from proceeding without due authority, and to keep them within their appropriate limits. It does not go to correct errors in the proceedings, or to set aside the sentences or decrees pronounced by them, which are supposed to be irregular—there are Courts of Appeal, allowed competent to determine all those cases, and to correct errors in

cases of erroneous proceedings. It is not the province of the writ of prohibition to correct such abuses.").

Here, TEC and TECSC can appeal the circuit court's decision, not yet issued, on the motion for clarification. Indeed, they have admitted as much. At the November 19, 2018 hearing on the motion for clarification, Judge Dickson commented that whichever side lost was going to appeal. Counsel for TECSC immediately responded, "Yes, sir. There's a right of appeal. *No question about that.*" Nov. 19, 2018 Hr'g Tr. 41:6–7, *Protestant Episcopal Church in the Diocese of S.C.* v. *The Episcopal Church*, No. 2013-CP-18-13 (emphasis added). That admission is fatal to the petition for a writ of prohibition.

None of the cases TEC and TECSC cite compel a different result. They rely largely on inapposite cases from other jurisdictions.[2] *See* Prohibition Pet. 16–17. The

[2] The cases from other jurisdictions are distinguishable. Some cases involve separate lawsuits on the same issues or when res judicata bars a claim. For example, when a separate proceeding from a decade earlier resolved a child's paternity, a writ of prohibition was appropriate to prevent the child from having to submit to genetic testing. *See Missouri ex rel. Family Support Div. v. Stovall-Reid*, 163 S.W.3d 519, 521 (Mo. Ct. App. 2005); *see also Reed v. Caton*, 375 S.W.2d 567, 568 (Tex. Civ. App. 1964) (the writ was proper when interests in real property were finally decided in an earlier lawsuit); *Dixie Gas & Fuel Co. v. Jacobs*, 66 S.W.2d 446, 448 (Tex. Civ. App. 1933) (the writ was proper when another case involving the same parties and same subject matter had already been tried and the original case was still in the appellate court). Other cases involve trial courts reopening issues on remand that were never appealed. *See Florida v. Bynes*, 121 So. 3d 619 (Fla. Dist. Ct. App. 2013) (the trial court tried to resentence a defendant on counts for which the sentence was not reversed); *Butler v. Super. Ct.*, 128 Cal. Rptr. 2d 403 (Cal. Dist. Ct. App. 2002) (the trial court reconsidered an order striking a defendant's answer when the remand from the appellate court instructed the trial court take up the amount of the default judgment again); *Burgermeister Brewing Corp. v. Super. Ct. In & For Butte Cty.*, 15 Cal. Rptr. 751 (Cal. Dist. Ct. App. 1961) (the trial court retried issues from first trial

only South Carolina case they cite in arguing that a writ is appropriate "at this juncture," Prohibition Pet. 16, is one in which the circuit court lacked subject-matter jurisdiction (which is not the case here) over an insurance case, *see New S. Life Ins. Co. v. Lindsay*, 258 S.C. 198, 187 S.E.2d 794 (1972). Moreover, and tellingly, they omit from their prominently featured *New South* quotation, Prohibition Pet. 13, the remainder of the paragraph which directly contradicts the relief they seek:

> but, if the inferior court or tribunal has jurisdiction of the person and subject-matter of the controversy, the writ will not lie to correct errors and irregularities in procedure, or to prevent an erroneous decision or an enforcement of an erroneous judgment, or even in cases of encroachment, usurpation, and abuse of judicial power or *the improper assumption of jurisdiction, where an adequate and applicable remedy by appeal, writ of error, Certiorari, or other prescribed methods of review are available.*

New S. Life Ins. Co., 258 S.C. at 200, 187 S.E. 2d at 796 (emphasis added). *New South* is itself dispositive because TEC and TECSC have "no question about" their right to appeal.

II. The Collective Opinions are not as clear as TEC and TECSC suggest.

Putting aside the fact that the writ is not available here, neither of the two arguments at the core of the petition are correct. The first critical argument in the petition (which also was prominent in the petition for a writ of mandamus) is the assertion that the Collective Opinions are, contrary to what the circuit court said, "clear," and that TEC and TECSC "generally prevailed" in the Collective Opinions.

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that were not appealed). And another case involves the power to grant a new trial in a murder case. *See Appo v. New York*, 20 N.Y. 531, 540 (N.Y. 1860).

Prohibition Pet. 4, 8; *see also* Pet. for Writ of Mandamus 7, *Ex parte Episcopal Church*, No. 2019-000463 (S.C. Mar. 20, 2019) ("Mandamus Pet."). TEC and TECSC are incorrect on their projection regarding the clarity of the Collective Opinions. That lack of clarity is apparent from their counsel's own words to the United States Supreme Court and to the circuit court, as well as Acting Justice Toal's and Justice Kittredge's expressions of concern when this Court refused to hear the merits of the petition for rehearing by a 2-2 vote.

TEC and TECSC advanced the *lack* of clarity of the Collective Opinions as an argument in the United States Supreme Court against the issuance of a writ of certiorari. Their opposition to the petition for a writ of certiorari called the Collective Opinions a "poor vehicle" for resolving any questions because of the "incomplete record" which "contains significant ambiguities" as well as the "fractured" decision from this Court "not only in rationale but even on facts that could be relevant to the disposition of the case on the merits."[3] Opp'n to Pet. for Writ. of Cert. 2, 23, *Protestant Episcopal Church in the Diocese of S.C. v. The Episcopal Church* (U.S. May 7, 2018).

[3] TEC and TECSC quote the petition for a writ of certiorari from the U.S. Supreme Court, arguing that the DSC and the parishes admitted the Collective Opinions were clear. *See* Prohibition Pet. 7 n.3. Implicit here is an estoppel argument. Yet if any estoppel argument exists here, it works against TEC and TECSC, as they prevailed on the petition for a writ of certiorari. *See Cothran v. Brown*, 357 S.C. 210, 215–16, 592 S.E.2d 629, 632 (2004) (noting that prevailing in the earlier litigation on a particular position is an element of judicial estoppel). Further, and in any event, the DSC and the parishes argued for review by the U.S. Supreme Court because various opinions among the Collective Opinions were improperly applying "deference" rather than neutral principles and because the trial court's judgment had not been affirmed in all respects, for the reasons she gave.

Additionally, the way TEC and TECSC proceeded after the remittitur issued also supports the conclusion that the Collective Opinions are not as clear as they now insist they are. If the Collective Opinions were so clear and easy to enforce, TEC and TECSC would have presumably gone back to the circuit court and sought to enforce what this Court held. Instead, TEC and TECSC admittedly went first to federal district court and sought to have that court (rather than the state trial court) enforce this Court's holding. *See* Prohibition Pet. 8 n.5. The federal court declined to interfere in the state court property issues. Such conduct suggests TEC and TECSC recognize that the Collective Opinions are not so clear.

Moreover, the lack of clarity of the Collective Opinions is evident in what the circuit court has been doing. It has sought briefing and proposed orders and held multiple hearings on what the Collective Opinions mean. If the Collective Opinions were clear, none of that would have been necessary. This is confirmed by TEC and TECSC's counsel's responses at these hearings. Characterizing the issues before the circuit court on the motion for clarification as a "predicament," TEC's counsel argued that the circuit court's "charge" was "to discern what they decided" which would take "some careful reading." Intervenors' Ret. to Mandamus Pet. 5.

Finally, two members of this Court in their concurring opinions to the order denying the motion to recuse Justice Hearn focused on this lack of clarity. Acting Justice Toal stated the Collective Opinions "give rise to great uncertainty" because they give "little to no coherent guidance in this case." Order 4, *Protestant Episcopal Church in the Diocese of S.C.* v. *The Episcopal Church*, No. 2015-000622 (S.C. Nov.

17, 2017) (opinion of Toal, Acting J.). She predicted where the parties are today: "I have no doubt the Court will see more litigation involving these issues." *Id.* Justice Kittredge, joined by Acting Justice Toal, noted the Court did not resolve the issues raised in the petition for rehearing. Justice Kittredge expressed his shock that a fifth Justice was not appointed to fill Justice Hearn's recusal: "Under these circumstances, to disallow a full Court from considering the rehearing petition is deeply troubling and, in my judgment, raises constitutional implications as the Court has blocked a fair and meaningful merits review of the rehearing petition." *Id.* at 3 (opinion of Kittredge, J.).

These sources point to the same conclusion: The Collective Opinions are not clear in what the Court's judgment means, making analysis of them necessary to determine this Court's intent.

III. TEC and TECSC take too narrow a view of what the circuit court may do on remittitur.

The second argument on which the petition rests is that on remittitur, the circuit court is limited to enforcing this Court's mandate. *See* Prohibition Pet. 7.[4] This argument suffers from two flaws.

First, even accepting that a circuit court's authority is so narrow, the circuit court still has to "discern" what was decided. Thus, a review of the appellate decision is always necessary. Some decisions (such as a unanimous decision in a single-issue, two-party appeal) may be easy to interpret. Other decisions (such as the one in this

[4] TEC and TECSC confuse a court's "mandate" with the "mandate rule." *See* Intervenors' Ret. to Mandamus Pet. 10, 11.

case) may be more difficult. Either way, a circuit court has to read the appellate decision and discern what the appellate decision means. *Cf. Fed. Commc'ns Comm'n v. Pottsville Broad. Co.*, 309 U.S. 134, 140–41 (1940) ("The Court of Appeals invoked against the Commission the familiar doctrine that a lower court is bound to respect the mandate of an appellate tribunal and cannot reconsider questions which the mandate has laid at rest. That proposition is indisputable, but it does not tell us what issues were laid at rest." (internal citation omitted)).

Second, this Court has made clear that a circuit court's authority on remittitur is greater than TEC and TECSC suggest.[5] Recently, the Court explained that "once the remittitur is issued from an appellate court, 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) (emphasis added). In interpreting this Court's decision and trying to apply it faithfully, that is what the circuit court is doing.

In trying to limit the circuit court's authority, TEC and TECSC put more weight on the word "remittitur" than it can bear, trying to contrast that word with "remand" (making another argument—word for word at times—from their petition

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[5] TEC and TECSC once again—word for word—rely on *Hampton Building Supply, Inc v. Wilson*, 285 S.C. 135, 138, 328 S.E. 2d 635, 637 (1985), and *Christy v. Christy*, 285 S.C. 145, 151, 452 S.E. 2d 1, 4 (Ct. App. 1995), for the same question-begging proposition that a circuit court cannot relitigate what has already been decided. *See* Prohibition Pet. 14. As previously noted last year, *see* Intervenors' Ret. To Mandamus Pet. 9, n.7, *Hampton Building Supply* involved the dismissal of an appeal which "ended the case," not a remitted matter. *Christy*'s "final disposition" quote relates to the jurisdiction of *this* Court when the remittitur is sent, not that of the circuit court when it is received.

for a writ of mandamus). *See* Prohibition Pet. 6–7. This is a distinction that this Court has refused to draw. *See, e.g., Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 352 (Ct. App. 2001) (citing *Moore v. North American Van Lines*, 319 S.C. 446, 462 S.E.2d 275 (1995), and explaining that "the South Carolina Supreme Court held that despite the issuance of the remittitur and the fact that the case was not expressly 'remanded' to the circuit court, the circuit court was still vested with jurisdiction to hear the appellant's motion for restitution"); *Hamm v. S. Bell Tel. & Tel. Co.*, 305 S.C. 1, 5, 406 S.E.2d 157, 160 (1991) ("Although we did not explicitly remand the case, and used only the word 'reversed,' in view of our prior case law and opinion in this case, it was implicit as well as our intention that a refund was owed to Southern Bell's ratepayers.").

That the circuit court's authority is broader than TEC and TECSC claim is also evident from the order denying their petition for a writ of mandamus. That petition (like this one and which quotes many of the same things from the circuit court record) discussed at length the motion for clarification that the DSC and the parishes filed in the circuit court after the remittitur and the circuit court's handling of that motion. *See* Mandamus Pet. 10–12. With the knowledge that the motion for clarification was pending along with TEC and TECSC's petition to enforce the judgment, this Court denied the petition for a writ of mandamus, giving the circuit court the opportunity to resolve the petition to enforce the judgment, "as well as any related matters that are pending." Order 3, *Ex parte Episcopal Church*, No. 2019-000463 (S.C. June 28, 2019). That necessarily includes the motion for clarification.

Resolving the pending motions is all the circuit court is doing right now. What TEC and TECSC appear to fear is not that the circuit court will rule on the motion for clarification but that the circuit court will rule against them on that motion. Their evidence that the circuit court "intends to rule in a manner that would exceed [its] duties, authority, and jurisdiction on remittitur" is that the circuit court requested TEC and TECSC point to the specific evidence in the trial record that the twenty-nine parishes expressly acceded to the Dennis Canon. Prohibition Pet. 12. Presumably, TEC and TECSC believe that by asking for this evidence, the circuit court is analyzing the Collective Opinions through the DSC and the parishes' framework, and they are worried they do not have express evidence of such accession. If TEC and TECSC thought they were likely to prevail on the motion for clarification, it is unlikely they would have ever sought a writ of prohibition.

That TEC and TECSC's petition is motivated by a fear of losing the motion for clarification is confirmed by the fact that they did not seek a writ of prohibition immediately after the motion for clarification was filed and instead waited until they believed they might lose the motion. The circuit court has been exercising jurisdiction over the motion for some time now, holding multiple hearings and receiving multiple written submissions from the parties, without TEC and TECSC having come to this Court to have the circuit court prohibited from doing so. The logical conclusion is that TEC and TECSC are now trying to stop the circuit court from entering what may be an unfavorable order—far from the extraordinary circumstances necessary for a writ of prohibition to issue.

IV. Important points show TEC and TECSC's interpretation of the Collective Opinions is incorrect.

As previously stated, this petition is not the proper vehicle for this Court to answer the underlying question of which side has interpreted the Collective Opinions correctly. The circuit court should decide the issues in the pending motions. Still, a couple of points here illustrate just a few of the flaws in TEC and TECSC's interpretation of the Collective Opinions.

First, on the property of the parishes, according to TEC and TECSC, Acting Justice Pleicones, Justice Hearn, and Chief Justice Beatty each held that the property of the twenty-nine parishes belongs to TEC and TECSC. *See* Prohibition Pet. 4–5. They base their argument on Chief Justice Beatty's statement that he "agree[d] with the majority as to the disposition of the remaining parishes because their express accession to the Dennis Canon was sufficient to create an irrevocable trust." *Protestant Episcopal Church in the Diocese of S.C.*, 421 S.C. at 251, 806 S.E.2d at 103 (opinion of Beatty, C.J.).

In doing so, they ignore that Chief Justice Beatty did not list particular parishes in his opinion that expressly acceded to the Dennis Canon. He instead established a legal rule: If a parish expressly acceded to the Dennis Canon, a trust was created for the benefit of TEC. If a parish did not, no trust exists. *See id.* Since there was no record before this Court on the issue of parish accession to the Dennis Canon but rather only a disputed and untimely summary of counsel for TEC, it could not be otherwise. *See* Intervenors' Ret. to Mandamus Pet. 12 n.10. It therefore belongs to the circuit court now to apply this rule to determine which parishes, if any,

expressly acceded to the Dennis Canon. That is what the circuit court was trying to do when it requested TEC and TECSC point out the specific evidence in the record of express accession, which appears to have prompted TEC and TECSC to file this petition.

This parish-by-parish analysis necessarily has to be done by the circuit court now. In the appeal that resulted in the Collective Opinions, the Record on Appeal did not include all of the transcripts and evidence from the trial.[6] Thus, this Court did not have the evidence before it to do that analysis. *See* Rule 210(h), SCACR.

Second, on the state marks, TEC and TECSC say "this Court reversed the trial court." Prohibition Pet. 6. Not so. This Court actually divided 2-2, with Chief Justice Beatty "express[ing] no opinion." *Protestant Episcopal Church in the Diocese of S.C.*, 421 S.C. at 249 n.28, 806 S.E.2d at 102 n.28 (opinion of Beatty, C.J.). Expressing no opinion is not the same thing as voting to vacate the injunction. Thus, the Court was split 2-2. And an evenly divided court means the lower court is *affirmed. See, e.g.*, *Peoples Life Ins. Co. of S.C. v. Cmty. Bank*, 278 S.C. 70, 292 S.E.2d 188 (1982). Additionally, TEC and TECSC did not appeal the circuit court's additional ground for the injunction, which is now the law of the case. *See* Intervenors' Ret. to Mandamus Pet. 14 n.13. The injunction on the state marks therefore was not reversed.

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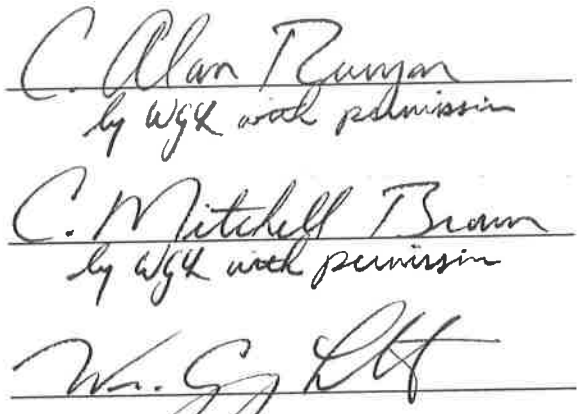
[6] TEC and TECSC were the appellants in that appeal, so they "had the burden of providing a sufficient record" on appeal for this Court to do this analysis (assuming this Court would have done it in the first instance). *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339, 611 S.E.2d 485, 488 (2005).

Conclusion

The petition should be denied.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Supreme Court
In its Original Jurisdiction

Appellate Case No. 2020-000324

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

v.

Edgar W. Dickson, in his official capacity as Judge of the First Judicial Circuit, *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. Bartholomew's Episcopal Church; St. David's Church; St. James' Church, James Island; St. Paul's Episcopal Church of Bennettsville, Inc.; 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, S.C.; 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 Church of the Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens the 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. Andrews, ... Respondents.

CERTIFICATE OF SERVICE

I certify that this RETURN TO PETITION FOR WRIT OF PROHIBITION was served on counsel for the Petitioners via electronic mail and U.S. Mail on March 2, 2020:

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APPENDIX

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. Andrew .....Intervenor Respondents,

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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

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[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 II*").[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]

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[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.

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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; C*ity 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,

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[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

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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 & Envtl. 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

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[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.

John K. Kittredge 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

cc:
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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.

The Episcopal Church, et al,

Defendant.

Transcript of Record

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

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'm most interested in is the motion to decide what I'm supposed to decide. The clarification motion, okay.

Now, that's your motion, correct?

MR. RUNYON: Yes, Your Honor.

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

MR. RUNYON: Thank Your Honor.

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

THE COURT: All right.

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

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

a little more concise statement?

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

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

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

THE COURT: So we didn't get that?

MR. TISDALE: No, we didn't.

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

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

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

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

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

MR. TISDALE: Yes, sir.

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

to let it stand here.

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

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

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

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

MR. TISDALE: Yes, sir.

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

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

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

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

THE COURT: Ms. Kostel?

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

Thank you.

THE COURT: Through a glass darkly.

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

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

will control all of us.

THE COURT: Yeah. Ms. Kostel.

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

MR. TISDALE: It certainly doesn't.

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

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

THE COURT: Before we go to that?

MR. TISDALE: Before we have a complex designation.

THE COURT: Okay.

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

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

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..... Intervenors.

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):

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4/11, 2019