STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF SOUTH CAROLINA, ET AL.,	)	Case No.: 2013-CP-18-00013
Plaintiffs, v.	)	DEFENDANTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND
THE EPISCOPAL CHURCH, ET AL.,	)	
Defendants.	)	

INTRODUCTION

Pursuant to Rule 59(e), SCRCP, Defendants respectfully request that the Court reconsider its Order dated June 19, 2020 (the "Order") and alter or amend the Order as further set forth below.

RULE 59(e) MOTIONS GENERALLY

A Rule 59(e) motion serves several purposes. Such a motion is proper when a party "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Moreover, a Rule 59(e) motion is necessary "when an issue or argument has been raised, but not ruled on." *Id.*

BACKGROUND

Plaintiffs filed this action in Circuit Court and undertook the burden of proof. They participated fully in a trial before Judge Goodstein, at which time they had every opportunity to introduce evidence in support of their claims and in opposition to the defenses.

Following that trial, Judge Goodstein ruled in favor of Plaintiffs, finding twenty-nine parishes retained their property free of any claim by Defendants, seven other parishes retained

their property free of any claim by Defendants,[1] and the Plaintiff diocese was the beneficiary of a trust holding legal title to various diocesan property including Camp St. Christopher (collectively, "Diocesan Property").[2]

On appeal, the South Carolina Supreme Court issued a decision, the official slip opinion of which contained the following in its caption:

Appellate Case No. 2015-000622

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 27731
Heard September 23, 2015 – Filed August 2, 2017

REVERSED IN PART AND AFFIRMED IN PART

Justice Pleicones authored the Court's lead opinion, stating he "would reverse the entire order." *Protestant Episcopal Church*, 421 S.C. at 214, 806 S.E.2d at 84. Immediately following his opinion, the Court's official slip opinion stated:

> **HEARN, J., concurring in a separate opinion. BEATTY, C.J., concurring in part and dissenting in part in a separate opinion. KITTREDGE, J., concurring in part and dissenting in part in a separate opinion. Acting Justice Jean H. Toal dissenting in a separate opinion.**

Justices Pleicones and Hearn voted to reverse the Circuit Court's rulings on the property issues *in toto.* Chief Justice Beatty concurred with them with respect to the twenty-nine parishes and the Diocesan Property but dissented with respect to their conclusion on the other seven

[1] Although Judge Goodstein did not make these numerical distinctions, the Supreme Court did on appeal. *Protestant Episcopal Church in the Diocese of S.C. v. The Episcopal Church*, 421 S.C. 211, 248 n. 27, 806 S.E.2d 82, 102 n. 27 (2017) (Hearn, concurring). Therefore, in this motion, Defendants distinguish between the two groups of parishes for the sake of continuity and clarity.

[2] Judge Goodstein also ruled on service mark issues which are no longer at issue in this action.

parishes. This is why the result, as described and published by the Supreme Court, was "Reversed in Part and Affirmed in Part."

The Supreme Court denied Plaintiffs' Petition for Rehearing in an order stating:

> In light of the above, the petitions for rehearing have failed to receive a majority vote. Therefore, the petitions for rehearing have been denied, and the opinions previously filed in this case reflect the final decision of this Court. The Clerk of this Court shall send the remittitur.

"Reversed in Part and Affirmed in Part" was the "final decision" to which the Supreme Court referred in denying rehearing. Because the affirmance related to the seven parishes that are no longer involved in this case, the holding can be reduced to "Reversed" for present purposes.

This Court's June 19, 2020 Order has the effect of reinstating Judge Goodstein's decision on parish and Diocesan Property. Simply put, the Order ignores the fact the Supreme Court "Reversed" because it refuses to admit any impact of the Supreme Court's holding on the result.

SUMMARY OF GROUNDS FOR THIS MOTION

The Court should reconsider the Order and should alter or amend it to carry into effect the result mandated by the Supreme Court's decision (to wit, its holding that the property of twenty-nine parishes is held in trust for Defendants and the Defendant diocese is the beneficiary of the Diocesan Property trust) for the following reasons:

1. This Court lacked the authority to issue the Order.
2. Even if this Court had the authority to construe the Supreme Court's decision, the Order misinterprets and contradicts that decision.
3. Even if this Court somehow had the authority to relitigate the issues upon which the Supreme Court previously ruled, the Order incorrectly analyzes the facts and improperly applies the law.
4. The Order incorrectly finds Plaintiffs were denied due process.
5. Because of its rulings, the Court erred in denying Defendants' requested relief.
6. The Order fails to rule on all issues raised by Defendants.

ARGUMENT

1. This Court lacked the authority to issue the Order.

The Order represents the only instance Defendants can locate where a Circuit Court has issued a ruling on remittitur *that reinstates a result the Supreme Court expressly reversed* – basically, an order by the Circuit Court overruling a determination by the Supreme Court. This action is particularly stark here, where the Circuit Court is purporting to do what the Supreme Court refused to do itself by denying Plaintiffs' request for a rehearing.[3]

Defendants have submitted extensive briefing regarding this Court's jurisdiction and authority on remittitur from a decision by the Supreme Court. Rather than repeating the contents of those briefs, Defendants incorporate by reference their previous submissions on the topic[4] and ask the Court to reconsider the propriety of its ruling given the Supreme Court's decision. In addition, Defendants ask the Court to reconsider the Order based on the following specific points.

"Once the remittitur is sent down from this Court, [the] Circuit Court acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling." *Muller v. Myrtle Beach Golf and Yacht Club*, 313 S.C. 412, 414-15, 438 S.E.2d 248, 250 (1993). But general adjudicative jurisdiction does not "re-vest in the Circuit Court except by order of the Supreme Court, such as, for example, by granting a new trial." *Hampton Building Supply, Inc. v. Wilson*, 285 S.C. 135, 138, 328 S.E.2d 635, 637 (1985).

"[M]atters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form." JEAN HOEFER TOAL, AMELIA WARING

[3] *See* Defendant's Brief in Opposition to Plaintiffs' Motion for Clarification and Further Relief, pp. 14-17 (summarizing arguments in support of Plaintiffs' Petition for Rehearing, all of which the Supreme Court rejected).

[4] These are listed in Appendix B hereto.

WALKER & MARGARET E. BAKER, APPELLATE PRACTICE IN SOUTH CAROLINA 386 (3d ed. 2016). Moreover, under the "law of the case" doctrine, both "issues explicitly decided" as well as "issues which were necessarily decided" are binding on the parties. *Id.* at 215, *citing Ross v. Medical Univ. of S.C.*, 328 S.C. 51, 492 S.E.2d 62 (1997). An appellate court's decision in an appeal is the law of the case. TOAL, *supra*, at 215, *citing Huggins v. Winn-Dixie Greenville*, 252 S.C. 353, 166 S.E.2d 297 (1969) and *Robert E. Lee & Co. v. Commission of Pub. Works*, 250 S.C. 394, 158 S.E.2d 185 (1967).

The reversal of a judgment on appeal has the effect of vacating that judgment – that is, the judgment becomes of no effect and is no longer in existence – such that the case is left "standing as if no judgment had been rendered." *Moore v. North Am. Van Lines*, 319 S.C. 446, 448, 462 S.E.2d 275, 276 (1995). Where a judgment is reversed in part, the part that is reversed is set aside and the appellate court's judgment is substituted in its stead.

Contrary to the Order's reasoning, it is not within the Circuit Court's purview to determine whether an issue addressed by the Supreme Court was preserved for appellate review. Rather, because an appellate court will not address a question in the abstract or issue an advisory opinion, *see, e.g.*, *Sangamo Weston, Inc. v. National Sur. Corp.*, 307 S.C. 143, 414 S.E.2d 127 (1992), when it decides an issue it implicitly finds the issue was preserved for appellate review.[5] *See* Rule 220(b), SCACR ("In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the

[5] *White's Mill Colony v. Williams*, 363 S.C. 117, 609 S.E.2d 811 (Ct. App. 2005), cited on page 7 of the Order, does not support a contrary result. There, the *appellate* court concluded it was not bound by a statement that was not necessary to the *lower* court's decision; it did not hold that a lower court, after remittitur, was free to ignore an appellate court's findings in support of its decision. Additionally, *White's Mill* did not hold "appellate court statements about an unpreserved issue are dicta" as stated on page 7 of the Order.

court … must, with the reason for the court's decision, be preserved in the record of the case."). On remittitur, the Circuit Court lacks the authority to contradict this finding. Here, this Court erred in concluding that the Supreme Court's reversal of Judge Goodstein's judgment is not binding because it was based on unpreserved issues.[6]

Moreover, the Order proceeds on the erroneous premise that this matter is before the Circuit Court on remand. (Order, p. 12). The Supreme Court did not *remand* this case; rather, as to the remaining matters at issue (property claimed by the twenty-nine parishes and the Diocesan Property), it reversed the Circuit Court and *remitted* the case. By treating this case as having been remanded for further analysis of the facts and law on issues on which the Supreme Court already ruled, this Court exceeded its authority on remittitur.

This Court's reversal of the result mandated by the Supreme Court has broad implications. In this case, does this mean Defendants are free to relitigate issues with respect to property of the seven parishes as to which the Supreme Court affirmed Judge Goodstein? And, if this matter is again appealed, can the non-prevailing party on that appeal return to this Court and ask for contrary relief? More importantly to the authority of the judicial system as a whole – as well as the public's confidence in and respect for our court system – does every disappointed appellate litigant have the right to challenge an appellate court's result by questioning its reasoning on remittitur?

Litigation must end at some point and lower courts must adhere to the express rulings of appellate courts. The Order has the effect of undermining the authority, respect, and confidence necessary for the integrity of our judiciary.

[6] Regardless, Defendants properly preserved all issues for appellate review. *See* Defendants' Response to Court's Request, pp. 7-67 (Feb. 20, 2020).

2. Even if this Court had the authority to construe the Supreme Court's decision, the Order misinterprets and contradicts that decision.[7]

The Order acknowledges that this Court is bound to follow the decision of an appellate court as the law of the case. (Order, p. 7). However, the Court's analysis strays from this directive when it begins to focus on the reasoning of the Supreme Court justices – particularly the dissenting opinions – while ignoring the *result* mandated by the Supreme Court (reversal).

This approach appears to be the product of the Court's reaction to the fact that each Supreme Court justice authored a separate opinion, something this Court mentioned more than once in hearings and again in the Order. However, neither the number of separate opinions nor any disagreement among the concurring and dissenting justices changes the Supreme Court's holding, the result of the appeal, or the law of the case.

The South Carolina Supreme Court has held that the result of an appeal – that is, its ruling – establishes the law of the case, not whether a concurring justice had a different rationale for his opinion. In *Moseley v. American Nat. Ins. Co.*, 167 S.C. 112, 166 S.E. 94 (1932), the court rejected the notion that a fractured decision[8] does not constitute the law of the case, holding:

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[7] Defendants address the specific rulings of the Order under headings 2, 3, and 4 without prejudice to their argument that the Court exceeded its authority, as discussed in heading 1.

[8] The Texas Court of Criminal Appeals recently reviewed the various terms to be used when describing an appellate decision that is not unanimous:

> An "opinion of the Court" or "majority opinion" is one that is joined by a majority of the judges participating in the case. A "fractured decision" is a judgment by an appellate court that has no majority opinion. A "plurality opinion" is that opinion in a fractured decision that was joined by the highest number of judges or justices. Plurality opinions do not constitute binding authority. But a fractured decision may constitute binding authority if, and to the extent that, a majority holding can be ascertained from the various opinions in the case. Even if the rationales seem disparate, if a majority of the judges agree on a particular narrow ground for or rule of decision, then that ground or rule may be viewed as the holding of the court.

Unkart v. State, 400 S.W.3d 94, 100 (Tex. App. 2013) (footnotes omitted). Thus, even if this Court were unwilling to consider the decision of three justices to reverse as a "majority opinion,"

> If … we did not care to follow the *Stanton* Case, it could be said that the *Stanton* Case was decided by a divided court, two justices were for affirmance, two for reversal, and the fifth justice concurred only in the result of the main opinion. Under these conditions it has been held that such cases shall not be considered as precedents, *but establish the law only as to the particular case*.

Id., 166 S.E. at 96 (emphasis added).

Furthermore, decisions with multiple opinions, including fractured decisions, are not as uncommon as the Court apparently believes. South Carolina appellate courts have issued a number of such decisions, many of which have been cited in subsequent cases as authoritative. *See, e.g., Fabian v. Lindsay*, 410 S.C. 475, 765 S.E.2d 132 (2014) (Beatty voted to reverse in the lead opinion; Hearn concurred; Kittredge concurred in result; Pleicones concurred in part and dissented in part in a separate opinion, with which Toal concurred); *Gibbs v. State*, 403 S.C. 484, 744 S.E.2d 170 (2013) (Kittredge and Hearn voted to affirm in lead opinion; Pleicones concurred in result only; Toal and Beatty dissented); *Jennings v. Jennings*, 401 S.C. 1, 736 S.E.2d 242 (2012) (Kittredge and Hearn voted to reverse in lead opinion; Pleicones concurred in result only; Toal and Beatty also concurred in result but for different reasons); *Arrow Bonding Co. v. Warren*, 399 S.C. 603, 732 S.E.2d 622 (2012) (Pleicones and Toal voted to affirm in lead opinion; Kittredge concurred in result only; Beatty and Hearn dissented); *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010) (Beatty voted to affirm in part and reverse in part in lead opinion; Waller concurred; Pleicones concurred in part and dissented in part in separate opinion; Kittredge concurred in part and dissented in part in separate opinion, with which Toal concurred); *Wilson v. Preston*, 378 S.C. 348, 662 S.E.2d 580 (2008) (Moore voted to affirm in lead opinion; Waller concurred; Toal and Pleicones concurred with result only; Beatty concurred in part and dissented

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it would be proper to describe the Supreme Court's decision in this case as "fractured." As such, the Order assigns undue significance to Defendants' use of the term. (Order, p. 19 n. 15). More importantly, as the Supreme Court itself made clear in its official slip opinion, a majority holding (reversal) can be ascertained from its ruling/decision and is therefore the law of this case.

in part); *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 506 S.E.2d 497 (1998) (Finney and Goolsby voted to reverse in lead opinion; Toal concurred in result only; Chandler and Moore dissented); *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (Finney voted to affirm in part and reverse in part in lead opinion; Chandler concurred in result in separate opinion, with which Gregory and Harwell concurred; Toal concurred in result in separate opinion, from which Finney dissented).

Most importantly, this Court did not need to deconstruct the reasoning of the five justices' opinions to determine their effect on the result in this case. The Supreme Court already did that.

As noted above, with respect to the remaining issues in this case,[9] the Supreme Court characterized its holding as "reversed." Also, the justices individually acknowledged the effect of their opinions. Four of them regarded Justice Pleicones' opinion as the "lead opinion." *Protestant Episcopal Church*, 421 S.C. at 214, 806 S.E.2d at 84 (Pleicones), 421 S.C. at 232, 806 S.E.2d at 93 (Hearn), 421 S.C. at 252 n. 32, 806 S.E.2d at 103 n. 32 (Kittredge), 421 S.C. at 261 n. 42, 806 S.E.2d at 109 n. 42 (Toal). Justices Kittredge and Toal regarded themselves as *dissenting* from the holding, *id.* at 260, 806 S.E.2d at 108 (Kittredge), 421 S.C. at 125, 806 S.E.2d at 291 (Toal), while referring to the opinions of the remaining justices as "the majority." *Id.* at 252 n. 32, 806 S.E.2d at 103 n. 32 (Kittredge), 421 S.C. at 261 n. 40, 806 S.E.2d at 108 n. 40 (Toal). Likewise, Chief Justice Beatty – whose opinion the Order acknowledges determines the majority (Order, p. 12) – described his concurrence with Justices Pleicones and Hearn as "agree[ing] with the majority." *Id.* at 251, 806 S.E.2d at 103.

[9] Because issues related to the property of the seven parishes are no longer part of this case and the Order did not disturb the Supreme Court's ruling on the service mark issues, the "remaining issues" are with respect to the twenty-nine parishes and the Diocesan Property. Defendants use this term as shorthand but do not concede that there are open issues with respect to the Supreme Court's ruling on these topics, except with respect to Defendants' enforcement motions.

After issuance of the Supreme Court's decision, the Plaintiffs moved to recuse Justice Hearn, which the Supreme Court unanimously denied. Justice Toal authored an order concurring in that denial, in which she described the court's reversal of Judge Goodstein's judgment vis-à-vis Plaintiffs as "an adverse decision on the merits from a majority of the Court." Justice Kittredge also wrote a separate concurring order in response to that motion, wherein he reiterated his disagreement with "this Court's majority decision as to the so-called twenty-eight [sic] 'acceding churches.'" In short, even the justices who disagreed with the court's holding acknowledged it was contrary to their individual opinions, was contrary to Plaintiffs' positions, and represented the majority ruling.

Significantly, the Supreme Court lacks the authority to reverse a lower court's judgment unless three justices concur in doing so. S.C. CONST., ART. V, § 2; S.C. CODE ANN. § 14-3-360 (1976, as amended). It therefore follows that, by holding it was reversing Judge Goodstein's rulings as to the remaining issues, the Supreme Court implicitly stated that three or more justices agreed with that result.

In short, while there was a divergence in rationale on the legal issues, *the Supreme Court and its individual justices agreed on one thing: Judge Goodstein's rulings on the remaining issues in this case were reversed by a 3-2 vote.*[10] Indeed, even Plaintiffs have agreed with this conclusion.[11]

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[10] Appendix A to this motion contains a breakdown of the justices' rulings and specific statements regarding the remaining issues in this case. *See also* Defendants' Submission in Response to the Court's Request (Jan. 22, 2019).

[11] Plaintiffs' Petition for Rehearing stated: "The decision to strip Petitioners of their property rights…" (Petition for Rehearing at 2); "Nevertheless, the effect of the majority of the opinions is to deprive them of their property retroactively." (*id*. at 4 n.1); "[T]he Court's action constitutes a deprivation and a taking of the private property of respondents [in the appeal]…" (*id*. at 16); "As a result, the majority would transfer the real and personal property of South Carolina religious organizations … to a New York religious organization" (*id*. at 36). Plaintiffs' Petition for a Writ

Nevertheless, based on a misinterpretation of the Supreme Court's ruling, the Order undertakes to review the evidence under neutral principles of law (Order, pp. 12-13) to determine whether the Plaintiff parishes acceded to the Dennis Canon. (Order, pp. 23-39). This is not only at odds with the Supreme Court's holding, it also contradicts specific findings by the justices.

Specifically, all five justices previously analyzed this issue applying neutral principles of law; consequently, there was no need for this Court to undertake such an analysis.

- Justice Pleicones: "Properly applied, the 'neutral principles' approach … is the approach I expressly adopt." 421 S.C. at 220, 806 S.E.2d at 87. "I … also join in Justice Hearn's opinion." *Id.* at 231, 806 S.E.2d at 93.

- Justice Hearn: "Even were we to wade into this dispute and resolve it solely on neutral principles as the dissent insists, I would still find the trial court erred…." *Id.* at 236, 806 S.E.2d at 95.

- Chief Justice Beatty: "In resolving this issue, I am guided by the neutral principles of law approach … ." *Id.* at 249, 806 S.E.2d at 102.

- Justice Kittredge: Embracing "proper application of 'neutral principles of law.'" *Id.* at 251, 806 S.E.2d at 103.

- Justice Toal: I "apply[] *Jones'*s neutral principles approach." *Id.* at 277, 806 S.E.2d at 117.

Additionally, in applying neutral principles of law, four justices concluded the combination of the Dennis Canon and the Plaintiff parishes' accessions imposed a trust on the Plaintiff parishes' property.

- Justice Pleicones: "I would now overrule *All Saints* to the extent it held the Dennis Canon and the 1987 amendment to the Lower Diocese's Constitution were ineffective in creating trusts over property held by or for the benefit of any parish, mission, or congregation in the Lower Diocese." *Id.* at 223, 806 S.E.2d at 88. "I … also join in Justice Hearn's opinion." *Id.* at 231, 806 S.E.2d at 93.

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of Certiorari to the United States Supreme Court also acknowledged: "This case involves a dispute over property…," "Petitioners lost below…," and "the state court's resolution of the First Amendment question was dispositive…" (Petition for Writ of Certiorari at 8, 18, & 38).

- Justice Hearn: "Adherence to neutral principles does not require us to ignore the clear language of the United States Supreme Court in *Jones* as to how hierarchical churches like the National Church may protect their property, nor the actions of the Plaintiffs before us. … The Dennis Canon, the Diocesan Canon, and the mandate found in the National Church's canons declaring that affiliated parishes are bound by its governing laws satisfy the legally cognizable form and the intent to create a trust …." *Id.* at 238-40, 806 S.E.2d at 96-97.

- Chief Justice Beatty: "I agree 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." *Id.* at 251, 806 S.E.2d at 103.

- Justice Kittredge: "I conclude that a trust was created in favor of the national church over the property of the twenty-eight local churches that acceded in writing to the 1979 Dennis Canon." *Id.* at 255, 806 S.E.2d at 105. "[A]ll thirty-six parishes acceded to the Dennis Canon such that a legally cognizable trust was created in favor of the National Church." *Id.* at 102 n. 27, 806 S.E.2d at 248 n. 27.

The Supreme Court referred to evidence in the record regarding the Dennis Canon and discussed its consideration of the Dennis Canon in *All Saints* before making its ruling. Implicit in its holding was that there was adequate evidence; otherwise, it would have remanded for additional proceedings to take and to consider additional evidence. It was therefore a mistake for this Court to commence its own review of the evidence and to issue a ruling at odds with the Supreme Court's holding and the findings of four justices.

Similarly, the Order misinterprets the Supreme Court's holding with respect to Diocesan Property, improperly undertakes its own analysis of that topic, and issues its own ruling that contradicts the Supreme Court's reversal of Judge Goodstein's ruling regarding that property.

Justice Hearn's opinion – in which Justice Pleicones expressly joined – stated "the Appellants [Defendants herein] represent the true Lower Diocese of the Protestant Episcopal Church in South Carolina and are therefore entitled to all property, including Camp Saint Christopher." *Id.* at 248, 806 S.E.2d at 101. Justice Beatty concluded:

> The conveyance of Camp St. Christopher was for the explicit purpose of furthering "the welfare of the Protestant Episcopal Diocese of South Carolina." In my view, the disassociated

> diocese [Plaintiffs herein] can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.

Id. at 251 n. 29, 806 S.E.2d at 103 n. 29.

In short, again by a 3-2 vote, the Supreme Court held that the Defendant diocese is the beneficiary of the trust that owns the Diocesan Property, including Camp St. Christopher. Because the Supreme Court made this ruling, reversed Judge Goodstein's finding on this topic, and did not remand for further proceedings, the Court erred in re-opening this issue so as to, in effect, relitigate the question based on the identical record that led to the Supreme Court's ruling and to rule in a fashion that directly contradicts the Supreme Court's holding.

3. Even if this Court somehow had the authority to relitigate the issues upon which the Supreme Court previously ruled, the Order incorrectly analyzes the facts and improperly applies the law.

Respectfully, the Court's finding that Defendants have no rights with respect to the parish property or the Diocesan Property is incorrect, in addition to being beyond the Court's authority.

Defendants refer the Court to their appellate briefs for a correct analysis of the facts and the law, under both the First Amendment and neutral principles, including this State's decision in *All Saints* and the controlling jurisprudence from the United States Supreme Court. Without limitation, the parish issues, including the adoption of the Dennis Canon and the parishes' accession thereto, are discussed in Defendants' Brief at pages 33-39 and Reply Brief at pages 21-23.[12] The diocesan issues, including the questions of identity and leadership, the beneficiary of

[12] The Court appears to discount all of the evidence of accession in the record simply because parishes did not use the word "Dennis" in expressing their written accession to the Constitution and Canons of the Church, which manifestly and indisputably included the Dennis Canon since 1979. This analysis contravenes the constitutional safeguards set forth in *Jones v. Wolf* and its progeny, as discussed in Defendants' appellate briefs, including the requirement that trust provisions contained in the governing documents of hierarchical churches be enforced by civil courts. Incidentally, the name "Dennis" is commonly used for ease of reference but does not appear in the canon itself, which is formally "Title I.7.4" (as presently numbered).

the statutory trust (which includes Camp St. Christopher and other diocesan property), and the role of the diocesan corporation and the illegitimacy of *ultra vires* actions taken in its name, are discussed in Defendants' Brief at pages 22-33, 43-50 and Reply Brief at pages 6-10, 17-20.[13]

Defendants also refer the Court to its submissions during these proceedings on remittitur, including without limitation, its letters, motions, briefs, proposed orders, oral arguments, and answers to the Court's questions. (*See* Appendix B).

Errors in the Court's analysis are further revealed in a glaring inconsistency contained within its Order. The Court's deference to the federal court – which determined that the Defendant diocese owns the intellectual property of the diocese because it "is the lawful successor to the Historic Diocese" and the Plaintiff (disassociated) diocese "is an organization formed in 2012" (*vonRosenberg v. Lawrence*, Case No. 2:13-cv-00587-RMG (Order dated September 19, 2019) – is irreconcilable with the Order's conclusion that the Plaintiff diocese was and remains the beneficiary of the statutory trust formed in the nineteenth century that holds title to Camp St. Christopher (and other Diocesan Property).

Lastly, in the Order, the Court recognized its fundamentally misguided approach by noting that this dispute over "ownership of church property" arises "due to disagreements on the theological direction of the Episcopal Church." (Order, p. 3). This is the type of "masquerade" discussed in *All Saints* and United States Supreme Court jurisprudence that requires deference to the hierarchical organization of the national church. Similarly, although the Order acknowledged "determining the 'true diocese' is an ecclesiastical question" (Order, p. 39), the Court erred in failing to defer to the church's hierarchical determination, as the First Amendment requires.

[13] Defendants refer the Court to particularly helpful pages here, but more generally and expressly preserve all arguments presented in their appellate briefs.

4. The Order incorrectly finds Plaintiffs were denied due process.[14]

Plaintiffs received due process to the fullest extent imaginable – from the Circuit Court to the United States Supreme Court. Plaintiffs had a full and fair opportunity to litigate and to be heard on all issues finally decided by the South Carolina Supreme Court.

A party is entitled to procedural due process and substantive due process. A party has received procedural due process when he is provided with notice, an opportunity to be heard, and judicial review. *Harbit v. City of Charleston,* 382 S.C. 383, 393, 675 S.E.2d 776, 781 (Ct. App. 2009). A denial of substantive due process occurs when a party is "arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." *Id.* at 394, 675 S.E.2d at 782.

The Order appears to find that Plaintiffs were denied due process in two ways: (1) the lack of "a finding, pursuant to a proper opportunity for argument and based on a proper record that they indeed acceded to the Dennis Canon" (Order, p. 21); and (2) the Supreme Court's denial of their petition for rehearing by a 2-2 vote. (Order, p. 41). Although the Order is not specific, it appears its rationale is based upon procedural due process principles.

Plaintiffs had notice, an opportunity to be heard, and judicial review of the accession issues. They filed this action and were therefore on notice of the issues before the Court. They participated in a comprehensive and lengthy trial and fully took part in the appeal before the South Carolina Supreme Court. The parish issues (including adoption of the Dennis Canon and the parishes' accession thereto) and the diocesan issues (including the questions of identity, leadership, and trust beneficiary status for Diocesan Property) were all reviewed on appeal. (*See* Defendants' Brief at

[14] As discussed above, this Court's jurisdiction on remittitur is limited; therefore, the Court does not have the authority to address whether Plaintiffs received due process in proceedings prior to the remittitur. Because the Order is based on such a finding, this argument addresses the error in that conclusion but is not a concession regarding this Court's jurisdiction to rule on that issue.

pp. 22-33, 43-50 and Reply Brief at pp. 6-10, 17-20). Plaintiffs had the opportunity to respond to all issues but never challenged the record on the accession evidence in that court. As noted in Justice Toal's dissent, basic appellate principles recognize that successive bites at the apple are disfavored, especially where – as here – evidence has been painstakingly reviewed and informed decisions. 421 S.C at 281 n. 66, 806 S.E.2d at 119, n. 66. In short, Plaintiffs were afforded due process regarding their accession to the Dennis Canon.

Likewise, the Supreme Court's denial of Plaintiffs' petition for rehearing was not a denial of procedural due process.

As an initial matter, no party has the right to a rehearing. Any further hearing beyond the ordinary appellate process is purely discretionary and a failure to receive another layer of attention from the appellate court is not a denial of due process. *See State v. McKennedy*, 348 S.C. 270, 559 SE2d 850 (2002) (". . . petitions for rehearing and certiorari following an adverse Court of Appeals' decision are not required in order to exhaust all available state remedies. . . . it effectively places discretionary review by this Court *outside* of South Carolina's "ordinary appellate procedure"); *State v. Lyles*, 381 S.C. 442, 673 S.E.2d 811 (2009) (emphasizing the Court's discretionary authority in reviewing appellate court decisions and holding: "Litigants are not required to petition for rehearing and certiorari following an adverse decision of the Court of Appeals in order to be deemed to have exhausted all available state remedies."); *see also In re Exhaustion of State Remedies in Criminal & Post-Conviction Relief Cases*, 321 S.C. 563, 564, 471 S.E.2d 454 (1990) (holding that "when the claim has been presented to the Court of Appeals or the Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies").

Secondly, Plaintiffs in fact filed a petition for rehearing under South Carolina Appellate Court Rule 221, which provides that a petitioner "state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221, SCACR. In this case, Plaintiffs did so. As such, Plaintiffs took advantage of their opportunity to be heard on those points. And, because a petition for rehearing is limited to the existing record and points previously presented by the party to the court, JEAN HOEFER TOAL, AMELIA WARING WALKER & MARGARET E. BAKER, APPELLATE PRACTICE IN SOUTH CAROLINA 391 (3d ed. 2016), Plaintiffs were unable to obtain by rehearing any greater right to appellate review than they had in the appeal itself. In other words, Plaintiffs received due process via the appeal, regardless of the disposition of their petition for rehearing.

Finally, the Supreme Court addressed the petition for rehearing in accordance with established procedures. The Supreme Court must proceed with business if it has three or more justices – a quorum. S.C. CONST., ART. V, § 2; S.C. CODE ANN. §§ 14-3-90 & -100 (1976, as amended). Only one justice is necessary to rule on motions, including petitions for rehearing. Rule 240(j), SCACR. However, when more than one justice rules on a petition, the petitioner, as the moving party, has the burden of persuasion. This burden is satisfied, of course, ony when a majority of the justices ruling on the petition vote to grant it. In sum, the petition for rehearing was handled in accordance with established procedures; Plaintiffs' failure to secure a majority of voting justices – not a lack of due process – resulted in the denial of their petition for rehearing.[15]

[15] Notably, there were only four justices because, following Plaintiffs' Motion to Recuse, Justice Hearn voluntarily recused herself from prospective participation in this matter. In other words, Plaintiffs created the scenario where there were only four justices ruling on the petition for rehearing. They should not now be heard to complain that they were denied due process – and seek another "bite at the apple" – under those circumstances.

Additionally, Plaintiffs have not and cannot show a denial of substantive due process in this case. By contrast, the Order deprives Defendants of due process because it purports to take away their vested property rights recognized by the Supreme Court's final decision. After eight years of the adversarial process, for the Circuit Court to take away legally recognized rights at this time – based on the identical record that led to the Supreme Court's reversal of Judge Goodstein – is nothing short of arbitrary and capricious.

5. Because of its rulings, this Court erred in denying Defendants' requested relief.

Defendants ask this Court to reconsider the Order for all the reasons above. Instead of granting Plaintiffs the relief that the Supreme Court reversed on appeal, the Court should have taken the enforcement action requested by Defendants. Defendants not only request reconsideration, alteration, and amendment of the Order as discussed above but again ask the Court to discharge its job of enforcing the final judgment of the South Carolina Supreme Court.

6. The Order fails to rule on all issues raised by Defendants.

Defendants respectfully request a ruling on all Diocesan Property because the Order as written omits and ignores the disposition of Diocesan Property other than Camp Saint Christopher. (*See* Order at p. 42).

CONCLUSION

For the foregoing reasons, Defendants respectfully submit that the Court should reconsider the Order and alter or amend it to conform to the Supreme Court's holding that the property of the twenty-nine churches is held in trust for Defendants and that the Defendant diocese is the beneficiary of the trust that owns legal title to the Diocesan Property.

Dated: June 29, 2020

Respectfully submitted,

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APPENDIX A

	Property of 29 parishes	Diocesan Property
Pleicones	*Reverses* the Circuit Court. 421 S.C. at 214, 806 S.E.2d at 84 ("I would reverse the entire order.").	*Reverses* the Circuit Court. 421 S.C. at 214, 806 S.E.2d at 84 ("I would reverse the entire order.").
Hearn	*Reverses* the Circuit Court. 421 S.C. at 248 n. 27, 806 S.E.2d at 102 n. 27 ("I join Acting Justice Pleicones and Chief Justice Beatty in reversing the trial court as to the twenty-nine parishes").	*Reverses* the Circuit Court. 421 S.C. at 248, 806 S.E.2d at 101 ("the Appellants represent the true Lower Diocese of the Protestant Episcopal Church in South Carolina and are therefore entitled to all property, including Camp Saint Christopher").
Beatty	*Reverses* the Circuit Court. 421 S.C. at 251, 806 S.E.2d at 103 ("I agree 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.").	*Reverses* the Circuit Court. 421 S.C. at 251 n. 29, 806 S.E.2d at 103 n. 29 ("The conveyance of Camp St. Christopher was for the explicit purpose of furthering 'the welfare of the Protestant Episcopal Diocese of South Carolina.' In my view, the disassociated [Plaintiff] diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.").
Kittredge	Would have affirmed the Circuit Court. 421 S.C. at 251, 806 S.E.2d at 103 ("Because I believe the proper application of 'neutral principles of law,' … demands that all thirty-six local parishes retain ownership and control of their property, I would affirm the trial court in result.").	Would have affirmed the Circuit Court. 421 S.C. at 251 n. 31, 806 S.E.2d at 103 n. 31 ("I join Justice Toal's opinion, save for Part II.C.1's conclusion that no trusts were created as to the twenty-eight churches that acceded to the 1979 Dennis Canon.").
Toal	Would have affirmed the Circuit Court. 421 S.C. at 285, 806 S.E.2d at 121 ("By applying neutral principles of South Carolina's longstanding property law, I would find that the national church has no 'legally cognizable' interest in the plaintiff parishes' properties.").	Would have affirmed the Circuit Court. 421 S.C. at 287, 806 S.E.2d at 123 ("I would declare title to Camp St. Christopher in the trustee corporation, held for the benefit of the disassociated diocese, just as the original deed conveyed the property.").

APPENDIX B

May 8, 2018	Petition for Enforcement (amended on May 16, 2018)
July 7, 2018	Petition for an Accounting
August 2, 2018	Submission, at Circuit Court's request, listing issues before the Circuit Court and stating how the Circuit Court should proceed
September 24, 2018	Opening briefs for Petition for Enforcement, Petition for an Accounting, and Motion to Dismiss Betterment Action
October 5, 2018	Response brief to Motion for Clarification
October 12, 2018	Reply briefs for Petition for Enforcement, Petition for an Accounting, and Motion for Clarification
November 19, 2018	Transcript of Hearing
November 27, 2018	Letter to Circuit Court responding to Power Point Presentation by Non-Prevailing Parties
December 18, 2018	Letter to Circuit Court providing Proposed Order
January 22, 2019	Submission in response to Circuit Court's E-mail dated January 8, 2019
January 25, 2019	Submission in response to Circuit Court's E-mail dated January 14, 2019
February 1, 2019	Reply to Non-Prevailing Parties' Response dated January 30, 2019
April 17, 2019	Petition for Writ of Mandamus
July 23, 2019	Transcript of Hearing
July 23, 2019	Proposed Order
July 23, 2019	Poster Boards
July 29, 2019	Letter
July 31, 2019	Letter

August 1, 2019	Proposed Order
August 2, 2019	Letter
September 19, 2019	(Betterment Action) Motion to Reconsider
October 4, 2019	Letter
October 21, 2019	Letter
October 29, 2019	Letter
November 19, 2019	E-mail providing Defendant's Appellate Briefs (Opening Brief, Reply Brief, Return to Petition for Rehearing)
November 25, 2019	Letter
November 26, 2019	Transcript of Hearing
December 23, 2019	Proposed Order
February 21, 2020	Submission in response to Circuit Court's E-mail dated February 6, 2020
February 21, 2020	Petition for Writ of Prohibition
February 27, 2020	Transcript of Hearing

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