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-1800013
	)	
	)	**DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLARIFICATION AND FURTHER RELIEF**
v.	)	
	)	
The Episcopal Church, *et al.*	)	
	)	
_____	)	

Defendants The Episcopal Church (the "Church") and its diocese The Episcopal Church in South Carolina ("TECSC" or "Associated Diocese") hereby submit this Brief in Opposition to Plaintiffs' Motion for Clarification and for Further Relief ("Plaintiffs' Motion"), as follows:

INTRODUCTION

Plaintiffs' Motion is an inappropriate and improper challenge to the mandate of our Supreme Court in this case. After making a petition for a rehearing to the South Carolina Supreme Court followed by a petition for writ of certiorari to the United States Supreme Court, both of which were denied, Plaintiffs now contend in their instant Motion that our Supreme Court did not actually make a decision against them regarding the property in dispute, and that if it did, this Circuit Court should determine that our Supreme Court's decision is too flawed to be enforced.

The South Carolina Supreme Court considered its decision for two years after the case was argued in 2015. It understood this to be an important case involving a large amount of diocesan and parish property. By majority vote, the Supreme Court decided that Defendants have trust interests entitling them to the diocesan and parish property in dispute, except as to the property of seven specifically identified parishes. The Supreme Court did not remand the case

for further proceedings on the merits, and the reason why it did not is manifest: because it made a final decision that is dispositive of this property dispute. Upon remittitur, this Circuit Court has jurisdiction to enforce the mandate of our Supreme Court, not to unravel it, as Plaintiffs now urge this Court to do.

PROCEDURAL BACKGROUND

On August 2, 2017, the South Carolina Supreme Court issued a decision in this case. *Protestant Episcopal Church in the Diocese of South Carolina v. The Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (2017).

On September 1, 2017, the non-prevailing Plaintiffs petitioned for a rehearing and made a motion to recuse Justice Hearn. (Petition for Rehearing, dated September 1, 2017; Motion to Recuse, dated September 1, 2017).

On November 17, 2017, the South Carolina Supreme Court denied their petition for rehearing and their motion to recuse Justice Hearn and remitted the case. The South Carolina Supreme Court's order specifically provided as follows: ***"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."*** (South Carolina Supreme Court Order, dated November 17, 2017) (emphasis added). This order was signed by four of the five Justices: J. Beatty, J. Pleicones, J. Kittredge, and J. Toal (with J. Hearn not participating). *Id.*

On February 9, 2018, the non-prevailing Plaintiffs filed a petition for writ of certiorari to the United States Supreme Court. (Plaintiffs' Pet. Writ. Cert., dated February 9, 2018).

On June 11, 2018, the United States Supreme Court denied that petition for writ of certiorari. (U.S. Supreme Court Order, dated June 11, 2018).

Accordingly, the August 2, 2017 decision of the South Carolina Supreme Court is not subject to any further appeals in any court in this State or this Country.

ARGUMENT

The Supreme Court of South Carolina issued a decision in this case, and remitted the case, without remand, to this Court. It is well-settled that a Circuit Court's authority on remittitur without remand extends only to enforcing the order of the appellate court. Plaintiffs now argue that this bedrock principle should be overcome in this instance because (1) the Supreme Court's decision is ambiguous, requiring interpretation by this Court, and (2) the Supreme Court's decision deprived them of fair and due process, which deprivation this Court should remedy by undertaking further proceedings on the merits. As we show below, both arguments are wrong and deeply misguided. This Court should adhere to foundational jurisprudential norms and enforce the decision of the Supreme Court, as required by law.

I. THIS COURT'S JURISDICTION ON REMITTITUR IS LIMITED TO ENFORCING THE MANDATE OF THE SOUTH CAROLINA SUPREME COURT.

When an appeal from a circuit court decision is filed, jurisdiction leaves the circuit court and vests in the appellate court. Rule 205, SCACR. Here, when the South Carolina Supreme Court took a direct appeal of the Circuit Court's decision in this case, jurisdiction left this Court and vested in the Supreme Court. *Id.*

Once the Supreme Court issues its mandate in a case, that mandate "is jurisdictional." *Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011); *see also Hampton Building Supply, Inc. v. Wilson*, 285 S.C. 135, 138, 328 S.E.2d 635, 637 (1985) (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."). The scope of this Court's jurisdiction over the present case at this point in its development, therefore, is dictated by the Supreme Court's mandate.

Here, the Supreme Court's mandate was a remittitur to this Court stating that "the opinions" that Court filed on August 2, 2017, constitute "the final decision" of that Court. (Supreme Court Order, dated November 17, 2017). The Supreme Court did *not* remand this case, despite Plaintiffs' specific request for a remand in their Petition for Rehearing before that Court. (Petition for Rehearing, dated September 1, 2017). Accordingly, this Court has jurisdiction here only to "enforce the judgment and take any action consistent with the Supreme Court ruling." *Mueller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 415, 438 S.E.2d 248, 250 (1993). The cases cited by Plaintiffs are in complete agreement. And it hardly bears stating that, in doing so, "[t]he trial court has a duty to follow the appellate court's directions." *Prince*, 392 S.C. at 605, 709 S.E.2d at 125 (citing *Ackerman v. McMillan*, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct.App.1996)).

The Supreme Court's "final decision" holds that the real and personal property of 29 parishes is held in trust for the Church and TECSC, the Associated Diocese, and that the real and personal property held by the corporation called "The Trustees of the Protestant Episcopal Church in South Carolina" (the "Trustees Corporation") is held for the benefit of TECSC, the Associated Diocese. Enforcing that Court's mandate thus entails transitioning the subject property to Defendants' possession and control.

Plaintiffs ask this Court to exceed its jurisdiction, however, to go beyond merely enforcing the Supreme Court's mandate and instead to reopen issues that are not properly before this Court. The basis for their invitation is two-fold: They argue that the Supreme Court's decision is "ambiguous," requiring this Court to interpret it; and if it is not ambiguous, it is so

flawed that it denies them fair and due process, requiring this Court to go behind the Supreme Court's decision to cure the alleged deficiencies. As we show below, both arguments fail, and Plaintiffs' Motion for Clarification should be denied.

II. THE MANDATE OF THE SUPREME COURT IS CLEAR AND UNAMBIGUOUS.

Plaintiffs first argue that the Supreme Court's decision is "ambiguous," requiring this Court to delve into the merits of the two issues in this case: (1) whether the parish property at issue is held in trust for the Defendants, and (2) whether property held by the Trustees Corporation is held for the benefit of the Plaintiff Diocese (the "Disassociated Diocese") or TECSC, the Associated Diocese. Even though the Supreme Court's decision included five separate opinions, the outcome is clear and unambiguous on both questions at issue here.

A. The Supreme Court Decided That The Property Of The Parishes That Acceded Is Held In Trust For Defendants.

On the issue of parish property, the majority of the Supreme Court – comprising Chief Justice Beatty, Justice Pleicones, and Justice Hearn – held that the parishes that acceded in writing to the Dennis Canon (in the Church's and TECSC's Constitution and Canons) hold their property in trust for the Church and TECSC. *See Protestant Episcopal Church*, 421 S.C. at n.72, 806 S.E.2d at n.72 (Toal, J.) ("with regard to the twenty-eight church organizations which acceded to the Dennis Canon, a majority consisting of Chief Justice Beatty, Justice Hearn, and Acting Justice Pleicones would hold that a trust in favor of the national church is imposed on the property and therefore, title is in the national church").

Chief Justice Beatty concluded that the parishes' written accessions were "sufficient to create an irrevocable trust" under South Carolina law. *Id.* at 251, 806 S.E.2d at 103 (Beatty, C.J.).

Justice Pleicones and Justice Hearn, joining each other's decisions, *id.* at 231, 806 S.E.2d at 93 (Pleicones, J.), *id.* at 232, 806 S.E.2d at 93 (Hearn, J.), would have imposed a trust on the property of all 36 of the plaintiff parishes, regardless of whether they acceded in writing to the Dennis Canon. *Id.* at 229, 230, 806 S.E.2d at 92 (Pleicones, J.), *id.* at 237-40, 244, 248, 806 S.E.2d at 95-97, 99 (Hearn, J.).

Taken together, the decisions of these three justices produced the result that the parishes that *did* accede to the Dennis Canon *are* subject to trusts.

In her summary of the decision, Justice Toal refers to a count of twenty-eight parishes, but the majority actually counted twenty-nine. The twenty-ninth parish is Old St. Andrews, which was not identified among the list of seven parishes that retained their property in the Supreme Court's order, which included: Christ the King Waccamaw; St. Matthews Church, Darlington; St. Paul's Episcopal Church, Conway; The Episcopal Church of Parish of Prince George Winyah, Georgetown; St. John's, Florence; and St. Matthias Episcopal Church, Summerton. The seventh is St. Andrew's, Mount Pleasant, which operates using two corporate entities that were both named as parties to the action and both identified in the Supreme Court's order, namely St. Andrews Church-Mt. Pleasant Land Trust and the Parish of St. Andrew, Mt. Pleasant. Protestant Episcopal Church in the Diocese of South Carolina, 421 S.C. at 248 n. 27, 806 S.E.2 at 102 n. 27 (Hearn, J.) ("To clarify the dissent's summary of this case's resolution, I join Acting Justice Pleicones and Chief Justice Beatty in reversing the trial court as to the ***twenty-nine*** parishes that documented their reaffirmation to the National Church, but Chief Justice Beatty joins Acting Justice Toal and Justice Kittredge with respect to the remaining ***seven*** parishes.") (emphasis added); 421 S.C. at 251, 806 S.E.2 at 103 (Beatty, J.) ("***I agree with the majority*** as to the disposition of the remaining parishes…") (emphasis added). Plaintiffs

expressly raised this issue regarding Old St. Andrews in their petition for rehearing, which was denied. Evidence of Old St. Andrews' accession was introduced at trial and its accession has been finally determined by the South Carolina Supreme Court.

B. The Supreme Court Decided That The Trustees Corporation Holds All Property For The Benefit Of TECSC, The Associated Diocese.

On the issue of diocesan property, the majority composed of Chief Justice Beatty, Justice Pleicones, and Justice Hearn held that TECSC, the Associated Diocese, is the proper beneficiary of all property held by the Trustees Corporation. *Id.* at 229, 806 S.E.2d at 92 (Pleicones, J.) ("I would reverse the circuit court's decision … to the extent the Disassociated Diocese [or] the Trustees .. controlled or owned the disputed … property); *id.* at 248, 806 S.E.2d at 101 (Hearn, J.) (the Associated Diocese is "entitled to all property, including Camp Saint Christopher"); *id.* at n.29, 806 S.E.2d n.29 (Beatty, C.J.) ("the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina").

Plaintiffs concede that the majority concluded that at least one of the assets held by the Trustees Corporation – Camp St. Christopher, the most valuable single asset held by the Trustee Corporation – is held in trust for TECSC, the Associated Diocese. *See* Plaintiffs' Mem. at 13. Their only argument is that as to the *other* property, Chief Justice Beatty's vote does not hold up. *See id.* ("If Chief Justice Beatty's opinion is not limited to Camp St. Christopher, then he fails to state a legal reason which is both a violation of Rule 220(b), SCACR and the requirements of due process."). Their argument should be rejected, for two reasons.

First, their argument makes no sense. Here is what Chief Justice Beatty said about the diocesan property:

> I would find "The Trustees of the Protestant Episcopal Church" in the Diocese of South Carolina should retain title to Camp St. Christopher as my decision in no way alters the clear language of

> the 1951 deed conveying ownership of this property. 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 can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina***.

Protestant Episcopal Church, 421 S.C. at n.29, 806 S.E.2d at n.29 (emphasis added).

As Chief Justice Beatty said, the 1951 deed he describes conveyed the real property that is now known as Camp St. Christopher to "The Trustees of the Protestant Episcopal Church" for "the welfare of the Protestant Episcopal Diocese of South Carolina." *Id.*; *see also* Deed of Seabrook Island to Trustees Corporation (July 301, 1951) (excerpt from Record on Appeal at 1119-1122). The question raised by the 1951 deed, thus, was:

1) Who is "the Protestant Episcopal Diocese of South Carolina" for whom the Trustees Corporation holds the Camp St. Christopher property?

Chief Justice Beatty unequivocally answered that question: "[T]he disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina." *Protestant Episcopal Church,* 421 S.C. at n.29, 806 S.E.2d at n.29). In other words: TECSC, the Associated Diocese, is "the Protestant Episcopal Diocese of South Carolina."

The question raised by the 1951 deed is essentially the same question that was presented regarding the other property held by the Trustees Corporation. The legislative Acts that formed that Corporation state that it shall hold property for "the Protestant Episcopal Church for the Diocese of South Carolina." 1880 Act No. 222 § 1 ("*Be it enacted* . . . That the bishop and members of the Standing Committee for the time being of the Protestant Episcopal Church for the Diocese of South Carolina, and their successors in office or a majority of them, are hereby appointed trustees for the purpose of holding in trust any property heretofore given or acquired,

or hereafter to be given or acquired, for objects connected with *said Church, in said Diocese* . . . ." (emphasis added)); 1902 Act No. 621 § 3 (transferring obligations of 1880 Act No. 222 to a board of trustees). Thus, the question regarding the other property was:

> 2) Who is "the Protestant Episcopal Church for the Diocese of South Carolina" for whom the Trustees Corporation holds all of its property?

The second question is nearly identical in words, and certainly identical in meaning, to the first – no one has argued, or can argue, that "the Protestant Episcopal Diocese of South Carolina" (the subject of the first question) is a different entity than "the Protestant Episcopal Church for the Diocese of South Carolina" (the subject of the second question). Accordingly, the same answer applies: TECSC, the Associated Diocese.

Plaintiffs suggest that a different answer must apply to the second question, but make no argument about why the questions should be regarded differently. Indeed, there is no rational reason why the two questions should provide different results, and on that basis Plaintiffs' arguments should be rejected.

Plaintiffs ask this Court to exceed its jurisdiction and question the soundness of the Chief Justice's decision. They argue that Chief Justice Beatty's conclusion (to all property except the Camp) violates Supreme Court Rule 220(b) and the "requirements of due process" by failing to state its underlying reasoning. But it is well-established that the judgment of a court is the mandate, and the reasoning upon which the judgment is based does "not constitute[] any part of the judgment itself." *Ex Parte Dial*, 14 S.C. 584, 586 (1881). Since this Court's authority extends only so far as enforcing the Supreme Court's mandate, *see supra* at --, it has no authority to look behind the conclusion of the Court, or question its reasoning.

In sum, the Supreme Court having determined the Plaintiff Disassociated Diocese is <u>not</u> the successor to the Protestant Episcopal Church in the Diocese of South Carolina – meaning that

TECSC, the Associated Diocese, is – this Court may only act consistently with that conclusion by enforcing the trust imposed over all diocesan assets, and requiring the Trustees Corporation to hold those assets for the benefit of the Associated Diocese. This is a ministerial act necessary to effectuate the August 2, 2017 decision.

C. Plaintiffs Have Repeatedly Conceded That The Supreme Court's Decision Finally Resolved The Property Rights At Issue.

Plaintiffs argue to this Court that the Supreme Court's decision did not decide the question of property rights at issue. They espoused the opposite view, however, in prior written submissions to both the Supreme Court of South Carolina and the Supreme Court of the United States.

Plaintiffs' Petition for Rehearing to the South Carolina Supreme Court repeatedly acknowledged that that Court's decision had a final effect on their property rights:

- "Pursuant to the provision of Rule 221(a), Respondents, ***with the exception of those parishes who prevailed with respect to their property rights*** (hereinafter 'Petitioners'), through their undersigned counsel, respectfully petition this Court for a rehearing based on facts, points, and arguments overlooked or misapprehended as set forth herein." (Petition for Rehearing, p.2) (emphasis added).

- "The decision to strip Petitioners of their property rights . . . ." (Petition for Rehearing, p.2).

- "The disruptive effect of this decision on religious organization transactions with the business world will be significant." (Petition for Rehearing, p.3).

- "Nevertheless, the effect of the majority of the opinions is to deprive them of their property retroactively." (Petition for Rehearing, p.4, n.1).

- "[T]he Court's action constitutes a deprivation and a taking of the private property of respondents . . . ." (Petition for Rehearing, p.16).

- "The record demonstrates that the Petitioners followed to the letter the requirements of *All Saints* to structure their relationships under South Carolina civil law involving corporate control and real property. Yet to no avail, according to the majority." (Petition for Rehearing, p. 17).

- "***As a result, the majority would transfer the real and personal property*** of South Carolina religious organizations, many of which preexisted The Episcopal Church and the United States, to a New York religious organization." (Petition for Rehearing, p.36) (emphasis added).

Plaintiffs made similar statements to the Supreme Court of the United States. In their Petition for Writ of Certiorari, they wrote, "The decision below is that of a state court of last resort, and the state court's resolution of the First Amendment question ***was dispositive***." (Petition for Writ of Certiorari, p.38) (emphasis added). In response to Defendants' discussion regarding the finality of the decision, Plaintiffs' reply brief on certiorari rebuked Defendants for "attempt[ing] to inject uncertainty by obliquely suggesting we do not believe it is final." (Reply in Support of Certiorari, p.11). They identified only "two minor state law issues that remain to be decided" that unequivocally "do not render the judgment below non-final." (*Id.* at p.11). The first was the "discrepancy about whether 28 or 29 parishes acceded in writing to the Dennis Canon" that "appears to arise from a typographical error." (*Id.*) The second was a determination of whether the diocesan trust extends beyond Camp St. Christopher. (*See id.* at pp.11-12). In their words, these "ancillary state law questions" are ones that "have little substance, their outcome is certain, or they are wholly unrelated to the federal question." (*Id.* at p.12) (citations and quotations omitted).

Plaintiffs therefore repeatedly conceded the August 2, 2017 order was dispositive and final. In stark contrast, Plaintiffs now contend there are a multitude of state and federal law issues that remain undecided before any property transfer or recognition of a trust can be

effectuated. This Court should not countenance Plaintiffs' revisionist history that is contrary to the express mandate of our Supreme Court and the Plaintiffs' own position before our Supreme Court and the Supreme Court of the United States.

III. PLAINTIFFS HAVE RECEIEVED FAIR AND DUE PROCESS IN THIS CASE, BECAUSE THEY HAVE HAD AN OPPORTUNITY TO RAISE EVERY DEFICIENCY THEY COMPLAIN OF HERE AND ARGUED THE DEFICIENCY AND HAD THEIR ARGUMENT REJECTED.

Longstanding precedent establishes that an issue raised by a party in a petition for rehearing before the Supreme Court, and rejected by that Court, may not be raised again on remittitur to the Circuit Court. *See Ackerman*, 324 S.C. at 443, 477 S.E.2d at 268 ("After the remittitur is sent down from an appellate court, the trial court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling. Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form.") (citing *Mueller*, 313 S.C. 412, 438 S.E.2d 248 and 5 C.J.S. Appeal and Error § 975(a) (1993)). Ignoring this rule, Plaintiffs make multiple arguments to this Court that have already been rejected by the Supreme Court.

Plaintiffs' suggestion that the Court's decision on their Petition for Rehearing did not dispose of the issues they raised therein, *see* Plaintiffs' Mem. at 3, is meritless. They point to the fact that the vote to reject their Petition was 2-2, with the two dissenting Justices voting to grant a rehearing. (They ignore, of course, that Justice Beatty – who cast the deciding vote in the case – voted *against* rehearing.) But a close vote makes the Court's decision no less final and dispositive. Indeed, four Justices, including the two dissenting Justices, signed the order denying the petition for rehearing, which expressly and unequivocally denied Plaintiffs' Petition for Rehearing and confirmed the finality of the Supreme Court's decision, as follows:

> "Respondents, with the exception of those parishes who prevailed with respect to their property rights, have filed petitions for rehearing. We would deny their petitions. [Signed by C.J. Beatty and A.J. Pleicones] We would grant the petitions for rehearing. [Signed by J. Kittredge and A.J. Toal] ***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.***" [Signed by C.J. Beatty, A.J. Pleicones, J. Kittredge, and A.J. Toal (J. Hearn, not participating)]." (emphasis added).

(South Carolina Supreme Court Order, dated November 17, 2017).

Nor did Defendants concede in their brief to the U.S Supreme Court that the South Carolina Supreme Court's rejection of Plaintiffs' Petition for Rehearing failed to dispose of the merits, as Plaintiffs argue. *See* Plaintiffs' Mem. at 4. In that brief, Defendants were demonstrating to the U.S. Supreme Court why it should not take this case; one reason Defendants gave was that the Plaintiffs had only raised their federal law issues for the first time in their Petition for Rehearing, and the Supreme Court of South Carolina did not "pass upon" those newly-raised issues, making the case inappropriate for a grant of certiorari. Opp. to Cert. at 20 (quoting *Forbes v. State Council of Virginia*, 216 U.S. 396, 398 (1910)). The preference of the U.S. Supreme Court to take cases where lower court have done more than "simpl[y] den[y]" a motion, however, *see McCoquodale v. Texas*, 211 U.S. 432, 437 (1908), says nothing about the finality or dispositive effect of such a denial.[1]

[1] Plaintiffs similarly assert that Defendants previously argued there was an "incomplete record" that "contains significant ambiguities." Plaintiffs' Mem. at 3. The quoted language appears in the context of Defendants' response to a new question raised by Plaintiffs for the first time in their Petition for Rehearing; hence, the record was incomplete and contains ambiguities *as to that new question. See* Opp. to Cert. at 2. Moreover, Plaintiffs ignore that after discussing ambiguities, Defendants also asserted, "Undoubtedly, the record is clear on certain factual issues. At least a majority of the justices—and in some cases all of them—agreed that the Church adopted the Dennis Canon," "that the Associated Diocese adopted a similar counterpart," and

Accordingly, it is clear that the South Carolina Supreme Court rejected the arguments Plaintiffs made in their Petition for Rehearing. We show below where Plaintiffs raised each of the arguments made here in their Petition for Rehearing.

1. Evidence of parish accessions was insufficient

Plaintiffs exhaustively argued in their Petition for Rehearing that the evidence of parish accessions was insufficient:

- "There is not a single document acceding specifically to the Dennis Canon by any parish." (Petition for Rehearing, p.19).
- "As set forth below, the alleged documents to create an 'accession' are in many cases unsigned." (Petition for Rehearing, p.20).
- "As a result, this Court should at absolute minimum remand to the trial court so that she can take evidence and consider [the issue of parish accession to the Dennis Canon] properly." (Petition for Rehearing, p.22).
- "As for various parishes, there are many disparities and differences with respect to asserted accession documents, as set forth below . . ." (Petition for Rehearing, p.24).
- "[T]he ROA contains no accession documents for any of the parishes." (Petition for Rehearing, p.26).[2]

"that at least some of the parishes acceded to those rules in writing." Opp. to Cert. at 24 (citations omitted).

[2] Soon after the notice of appeal was filed in this case, the Supreme Court issued an order instructing the parties to curtail the record on appeal, stating: "[W]e remind the parties that it is the duty of appellate attorneys to pare the lower court record in a manner that will aid and assist the appellate court in rendering an educated decision on the issues before it. It is imperative that the record be culled in such a way to allow this Court to make a decision in an efficient and timely manner without having to wade through volumes of unnecessary materials. We therefore direct counsel for the parties, as officers of this Court, to scour the record they propose to present to this Court with a practical eye and consider which materials therein are crucial to a decision by this Court in its capacity as an appellate court. Only those materials shall be submitted to this Court in the record on appeal." (Supreme Court Order dated April 15, 2015). Defendants accordingly curtailed their designations for the record on appeal, including a summary of the (voluminous) trial evidence showing accession by each parish. In response, Plaintiffs designated nothing to challenge that summary. Indeed, Defendants' summary was true and correct, so any attempt to challenge it would have failed. In any event, Plaintiffs cannot now complain to this

- "There is no evidence of an express accession to the Dennis Canon by any of the parishes." (Petition for Rehearing, p.27).

- "At a minimum, these issues require Rehearing and a remand to the trial court for fact finding with regard to intent to accede to the Dennis Canon." (Petition for Rehearing, p.27).

- "For these churches, there are no signed documents in the record acceding to any canons . . . ." (Petition for Rehearing, p. 28).

- "Because there are no signed accession documents as to these parishes, rehearing should be granted." (Petition for Rehearing, p.29).

- "For the above six parishes, even if one were to review documents from the trial record not in the ROA, there is no language of accession to TEC's canons." (Petition for Rehearing, p.29).

- "[T]he parishes did not use the word 'accession' in many instances." (Petition for Rehearing, p.29).

- "Many Parishes have no Documents showing 'accession.'" (Petition for Rehearing, p.29).

- "[T]here are inconsistencies between Appellant's counsel's stated conclusions regarding accession in the Motion to Reconsider filed with the trial court and the underlying documents of the parishes." (Petition for Rehearing, p.31).

- "None of the parish documents acknowledge the Dennis Canon specifically nor show any understanding by the parish of the intent to create a trust." (Petition for Rehearing, p.33).

2. Trusts were revocable

Plaintiffs argued in their Petition for Rehearing that the trusts were revocable:

- "Moreover, all of the parish churches retained an interest in the property, as the express terms of the Dennis Canon make clear. The presumption is that the trust is ***revocable***, not irrevocable . . . ." (Petition for Rehearing, p.20) (emphasis added).

3. "Minimal burden" for creating trusts was not satisfied

Court that they were deprived of an opportunity to make such challenge on appeal – a challenge that, as we show above, they raised with the Supreme Court in their Petition for Rehearing, which was denied.

Plaintiffs argued in their Petition for Rehearing that the "minimal burden" for creating trusts was not satisfied:

- "The opinions of the Court depended on the conclusion that *Jones v. Wolf* mandated a ***minimal burdensomeness requirement*** for trusts created by religious organizations. 433 U.S. 595 (1979). However, as noted previously, that argument was not made until Appellant's Brief." (Petition for Rehearing, p.5) (emphasis added).

- "This Court's decision relies upon a misapplication of the First Amendment and the Supreme Court's decision in *Jones v. Wolf*, 443 U.S. 596 (1979)." (Petition for Rehearing, p.2).

- "*Jones* imposes no constitutional requirement modifying South Carolina's express trust law requirements for a religious organization . . . ." (Petition for Rehearing, p.5).

- "*Jones* did not create a new constitutional requirement for treating religious charitable organizations differently from secular charitable organizations." (Petition for Rehearing, p.7).

4. Defenses Were Not Properly Considered

Plaintiffs argued in their Petition for Rehearing that their defenses were not properly considered:

- "The trial court did not rule upon this defense in that it was not necessary based on its findings that the parishes had properly disassociated and amended their governing documents." (Petition for Rehearing, p. 36).

5. Due Process Was Denied

Plaintiffs argued in their Petition for Rehearing that they were denied due process:

- "[T]his Court's decision has sanctioned . . . a deprivation of their property without due process of law, all in violation of Article 1, Sections 2 and 3 of the South Carolina Constitution and the 1st, 5th, and 14th Amendments to the United States Constitution." (Petition for Rehearing, p.5).

- "[T]he Court's action constitutes a deprivation and a taking of the private property of respondents without due process of law in violation of the 5th and

14th Amendments to the United States Constitution." (Petition for Rehearing, p.16).

- "[R]esult would be a deprivation of property without due process of law for no other basis was raised to or considered by the trial court nor presented to this Court." (Petition for Rehearing, p.35).

6. Issues not preserved by Defendants

Plaintiffs argued in their Petition for Rehearing that Defendants failed to properly preserve certain issues for review:

- "[T]he consideration of issues that were not preserved for review by the Appellants . . . ." (Petition for Rehearing, p.3).

- "The opinions of the Court depended on the conclusion that *Jones v. Wolf* mandated a minimal burdensomeness requirement for trusts created by religious organizations. 433 U.S. 595 (1979). However, as noted previously, that argument was not made until Appellant's Brief." (Petition for Rehearing, p.5).

- "The following points, relied upon to reverse the trial court, were not ruled on by the trial court." (Petition for Rehearing, p.22).

- "The following issues were not argued in the Appellant's Initial Brief . . ." (Petition for Rehearing, p.24).

Because Plaintiffs' Petition for Rehearing containing each of the above-cited issues was denied by the South Carolina Supreme Court, this Court should decline to entertain those arguments now.

CONCLUSION

This property dispute was finally decided by the South Carolina Supreme Court on August 2, 2017. Plaintiffs' petitions for rehearing and writ of certiorari were denied, and the arguments they made therein, which Plaintiffs repeat in the instant Motion, were fully and finally rejected. This Court has jurisdiction to enforce the mandate of the South Carolina Supreme Court. Plaintiffs' Motion defies that mandate and urges the Court to go beyond its jurisdiction

and improperly infringe on the final decision of the South Carolina Supreme Court. Wherefore, Plaintiffs' Motion should be denied.

(Signature page to follow)

Dated: October 5, 2018

Respectfully submitted

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