THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE JOHN M. MILLING, CIRCUIT COURT JUDGE

CIVIL ACTION NO. 2007-CP-10-896

IRA BANKS, JAMES BELL, AND VERNON HOLMES,.....RESPONDENTS,

V.

ST. MATTHEW BAPTIST CHURCH, AN UNINCORPORATED ASSOCIATION,
AND CLINTON BRANTLEY,
OF WHOM
CLINTON BRANTLEY IS THE .....PETITIONER.

PETITION FOR REHEARING

Pursuant to Rules 221(a) and 240, SCACR, Petitioner Clinton Brantley petitions this Court to rehear its Opinion in Banks v. St. Matthew Baptist Church, Opinion No. 27317 (S.C.Sup.Ct. filed Sept. 25, 2013) (Shearouse Adv.Sh. No. 41 at 34-45). The Majority apparently overlooked and/or misconstrued several key legal principles and facts that place Reverend Brantley's statements squarely within the ambit of *First Amendment* protection. The defamation claims at issue here cannot be completely resolved by applying the neutral principles of civil law doctrine and, therefore, civil courts lack jurisdiction to hear Respondents' claims.

In light of the Majority's Opinion, no longer will "[t]he maintenance of governmental neutrality in the court resolution of church disputes ... [be] the consistent

and dominant theme of the South Carolina cases in this area." Knotts v. Williams, 319 S.C. 473, 477, 462 S.E.2d 288, 290 (1995). Instead, the Majority Opinion is a significant and disconcerting shift away from South Carolina's "long history of concern for the protection of religious freedom." Id. Furthermore, the Majority Opinion places South Carolina jurisprudence in a minority of one: no other court – federal or state – has ruled that it can adjudicate defamation claims based on statements made to the highest decision-making body of a religious institution, for the purpose of petitioning that body concerning issues of internal administration, governance or leadership. The "'neutral principles' doctrine has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." Hutchison v. Thomas, 789 F.2d 392, 396 (6th Cir. 1986).

ARGUMENT

1. The Majority overlooks key facts and relies on faulty logic.

The central and fundamental flaw in the Majority Opinion is its failure to properly take into account the context and purpose of the allegedly defamatory statements. In order to reach the conclusion that civil courts can hear Respondents' defamation claims, the Majority focuses narrowly on the "setting" (inside the church building) in which the comments were made, and totally overlooks or dismisses the fact that the statements at issue constituted Reverend Brantley's argument in support an important church governance issue (composition of the St. Matthew Baptist Church's ("Church") Board of Trustees), made to the highest decision-making body of the Church (the congregation) at a formal business meeting where the central issue was whether Respondents should remain as Trustees. The Majority carefully characterizes Reverend Brantley's comments

as merely "made in a church meeting—a religious setting—in which church governance was discussed," and focuses narrowly and solely on the "setting" or the "situs" where the comments were made, Opinion, Shearouse Adv.Sh. No. 41 at 38, completely ignoring the fact that the allegedly defamatory statements constituted Reverend Brantley's petition and explanation to the highest decision-making body of the Church that Respondents should be removed as Trustees.

The Dissent correctly points out that the Majority "ignore[s] the pertinent facts that the alleged defamation took place during a congregational meeting and that the allegedly defamatory statements directly concerned [Respondents'] continued leadership, both financial and spiritual." Opinion, Shearouse Adv.Sh. No. 41 at 44-45 (Toal, J, dissenting). The Dissent properly recognizes that, "[b]ecause the alleged defamatory remarks center on the relationship between Brantley and his Board and the Trustees and their role in Church affairs and spiritual life before a self-governing congregation," the Majority's ruling will place "civil courts in the position of having to referee this type of ecclesiastical decision-making." Id. at 45.

The Majority Opinion fails to take into account the fact that, in a congregational Baptist church, the congregation is the Church's

> governing body, and acts in entire independence of any other ecclesiastical authority. The congregation may for its own convenience adopt such rules as it deems expedient, but a civil tribunal cannot in anywise hold it bound to follow these rules, except where the civil rights of other persons have become involved by such persons being led to deal with the church as a corporation, in the faith of its rules. Whenever the congregation meets as a church, it may expel members, depose its pastor, and dispose of its property in any way that it sees fit; and when a congregation has acted, the civil courts will not inquire whether in doing so it violated any of its own rules. The congregation being the sole legislative and judicial body of the Baptist Church, those who connect themselves with it, voluntarily assume the risk of the propriety and justice of congregational action ...

Morris St. Baptist Church v. Dart, 67 S.C. 338, 342-43, 45 S.E. 753, 754 (1903). Statements made to the highest decision-making body as part of an internal governance proceeding cannot be evaluated by civil courts without trammeling on the *First Amendment*. As the Dissent properly recognized, the governance of the Church, "is vested in the body of believers who compose it," and as "a sovereign and democratic Baptist church under the Lordship of Jesus Christ," the membership retained "unto itself the exclusive right of self-government in all phases of the spiritual and temporal life of the church." Opinion, Shearouse Adv.Sh. No. 41 at 40 (Toal, J, dissenting) (Appx. 114-115).

Not only does the Majority overlook the context and purpose of Reverend Brantley's comments, it engages in faulty logic in order to support its conclusion. To begin with, the Majority's comparisons to a physical assault or embezzlement of church funds entirely miss the mark. If Reverend Brantley had struck Respondents in the meeting, that act would have nothing to do with whether they should be removed as Trustees. It would be a simple assault and battery which would fall within traditional civil and/or criminal law. There simply is no precedent for extending *First Amendment* protection to physical assaults committed inside religious buildings, and this case does not present that question. Similarly, the act of embezzlement is a crime, regardless of whether the funds belong to a church or to a bank and, by definition, is not related to church governance.[1]

[1] However, if statements that a trustee had embezzled money were made to the highest decision-making body of a church as part of an argument that they should be removed from the board of trustees, those statements could not be challenged in civil court as defamatory any more than the statements at issue here can be adjudicated by a civil court.

Notably, courts routinely reject the argument that extending *First Amendment* protection to matters of internal church administration and governance would cloak and protect all sorts of egregious behavior. Minker v. Baltimore Ann. Conf. of United Methodist Church, 894 F.2d 1354, 1357 (D.C. Cir. 1990). The United States Supreme Court has "consistently recognized that the religion clauses [of the *first amendment*] are subject to a balancing of interests test." Minker, 894 F.2d at 1357. On one side, civil courts can regulate even religious conduct or actions taken inside a church building where that conduct or those actions "invariably posed some substantial threat to public safety, peace or order." Sherbert v. Verner, 374 U.S. 398, 403, 83 S. Ct. 1790, 1793 (1963). However, courts have uniformly held that defamation claims rarely, if ever, rise to this level of concern. *See, e.g.*, Heard v. Johnson, 810 A.2d 871, 883 (D.C. Ct. App. 2002) (observing that "[u]nder most circumstances, defamation is one of those common law claims that is not compelling enough to overcome *First Amendment* protection . . ."); Yaggie v. Indiana-Kentucky Synod, 860 F. Supp. 1194, 1198 (W.D. Ky. 1994) (explaining that "[o]nly on rare occasions where there exists a compelling governmental interest in the regulation of [public] health, safety, and general welfare have the courts interfered in ecclesiastical matters," regardless of whether the ecclesiastical dispute fails "to touch on church or religious doctrine"); Patton v. Jones, 212 S.W.3d 541, 553-54 (Tex. App. 2006) ("Under most circumstances, defamation is one of those common law claims that is not compelling enough to overcome *First Amendment* protection ... because resolution of the claim would require impermissible inquiry into the church's bases for its action.... Questions of truth, falsity, malice, and the various privileges that exist often take on a different hue when examined in the light of religious precepts and

procedures that generally permeate controversies over who is fit to represent and speak for the church"). Indeed, "[o]nly in rare instances where a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate' is shown can a court uphold state action which imposes even an 'incidental burden' on the free exercise of religion." McClure v. The Salvation Army, 460 F.2d 553, 558 (5th Cir. 1972). There is no such compelling state interest present here.

Courts routinely refuse to hear defamation claims arising out of the debate and adjudication of internal church affairs. *See, e.g.*, Bryce v. Episcopal Church in the Diocese of Colorado, 289 F.3d 648, 658 (10th Cir. 2002) (refusing to hear defamation claim based on statements made in the context of discussions of church administration or governance, regardless of whether the statements are "offensive" or even incorrect, because the "church autonomy doctrine is rooted in protection of the *First Amendment* rights of the church to discuss church doctrine and policy freely"); Bourne v. Center on Children, Inc., 838 A.2d 371, 380 (Md. Ct. Spec. App. 2003) (holding that statements made during intra-church discussions regarding "religious leadership positions" (which include persons involved in church governance as well as positions that are "important to the spiritual and pastoral mission" of the church) are protected by the *First Amendment* even if they are "invalid and unfair"); Anderson v. Watchtower Bible & Tract Soc. of N.Y., Inc., No. M2004-01066-COA-R9-CV, 2007 Tenn. App. LEXIS 29, *83 (Tenn. Ct. App. Jan. 19, 2007) (defamation claims arising out of internal church proceedings are not subject to civil court review); Celnik v. Congregation B'Nai Israel, 131 P.3d 102, 107 (N.M. Ct. App. 2006) (allegations that the defendants "intentionally disseminated one-sided and negative information" about the plaintiff with an intent to sway a

congregational leadership decision was "precisely the type of religious debate that the church autonomy doctrine is intended to protect from judicial review"); Jae-Woo Cha v. Korean Presbyterian Church of Washington, 553 S.E.2d 511 (Va. 2001) (refusing to hear defamation claim based on statements made during internal church proceedings).

Similarly, the comparison to a soap box on the street corner completely misstates the case before this Court. Reverend Brantley has not disputed that, had he published his comments to bystanders on the street who were not members of the Church and had no part in the decision-making process of determining whether Respondents should remain as Trustees, their defamation claims would be justiciable by a civil court. That scenario would constitute an unprivileged publication to a third party. Here, in contrast, the publication was strictly and solely to the highest decision-making body of the Church, made as part of Reverend Brantley's petition and for the purpose of making his case on issues of internal church governance. As such, the allegedly defamatory statements made by Reverend Brantley in the May 22, 2006 congregational meeting – a formal meeting of the highest decision-making body of the Church – are protected by the *First Amendment*. *See, e.g.*, Stepek v. Doe, 392 Ill. App.3d 739, 751-53, 910 N.E.2d 655, 666 (Ill. Ct. App. 2009) (extending *First Amendment* protection to allegedly defamatory statements that were made for the purpose of and confined to the internal church proceedings). As Maryland's highest court explained, "[e]ven where the dispute actually presented to the court is one that, if presented by any other set of litigants, would clearly be justiciable, if the resolution of that dispute between the litigants at hand would require the court to adjudicate matters of church doctrine **or governance**, or to second-guess ecclesiastical decisions made by a church body created to make those decisions, the matter falls outside

the court's authority." Downs v. Roman Catholic Archbishop of Baltimore, 683 A.2d 808, 811 (Md. Ct. Spec. App. 1996) (emphasis added).

Next, the Majority mistakenly concludes that the defamation claims are barred only if the allegedly defamatory statements contain such directly religious assertions as that Respondents "were sinners, were not true followers of God, or had violated church law ..." Opinion, Shearouse Adv.Sh. No. 41 at 38. The Majority cites no support for its distinction and, in fact, courts uniformly hold that the *First Amendment* bars civil courts from hearing defamation claims arising out of the resolution of an internal church dispute or governance issue, regardless of whether the statements themselves express any direct religious principles or beliefs. *E.g.*, Yaggie, 860 F. Supp. at 1198 (refusing to hear defamation claim involving statements which, although they "did not express any religious principles or beliefs," were made in the context of a church controversy concerning the ministerial style of the pastor); Farley v. Wisconsin Evangelical Lutheran Synod, 821 F. Supp. 1287 (D. Minn. 1993) (courts lack jurisdiction to hear defamation claim arising out of a determination that the plaintiff did not possess the skills to develop his congregation into a financially self-sustaining church); Patton, 212 S.W.3d at 522 (allegedly defamatory statements made in connection with an internal church decision-making process "are protected from secular review, even if the statements do not expressly involve religious doctrine"); Heard, 810 A.2d at 884 (noting that in most of the defamation claims barred by the *First Amendment*, "the alleged defamatory statements did not overtly express any religious principles or beliefs, but all the actions resulted from conflicts 'confined within' the churches involved"); Downs, 683 A.2d at 810 (allegedly defamatory statements concerned the plaintiff's "honesty, reliability, integrity and

morality, specifically, asserting sexually motivated conduct toward certain staff members" at a church); Stepek, 392 Ill. App.3d at 751-53, 910 N.E.2d at 666-69 (even if the allegedly defamatory statements did not require any interpretation of church doctrine and "irrespective of the fact that a court or jury could apply 'neutral principles of law' to the [defendants'] alleged statements to determine whether they were defamatory," "the absolute *first amendment* protection for statements made by Church members in an internal church disciplinary proceeding precludes the circuit court from exercising jurisdiction in this matter"); Jae-Woo Cha, 553 S.E.2d at 514 (refusing to exert civil court jurisdiction over a claim that allegations of "misuse of church funds," which impugned the plaintiff's honesty and integrity, were defamatory); Schoenhals v. Mains, 504 N.W.2d 233, 234 (Minn. Ct. App. 1993) (holding civil courts lack jurisdiction to hear defamation claims related to church finance, and allegations by the pastor that the plaintiffs had failed in their financial stewardship, created "division, animosity and strife in the fellowship," and fabricated lies); Patton, 212 S.W.3d at 546 (refusing to hear claim involving defamatory remarks charging that the plaintiff, hired as a youth minister, had "upset congregation members by dating certain women and by putting his arm around girls at church"); Bourne, 838 A.2d at 375 (allegedly defamatory comments concerned the plaintiff's "ministerial style" as well as his hostility and disobedience toward church supervisors, but which did not raise any specific religious beliefs, were not justiciable); Celnik, 131 P.3d at 104 (court lacked jurisdiction to hear tort claim alleging dissemination of negative information to the congregation and the public accusing plaintiff of "having a poor work ethic, having no concern for congregation members, and performing poorly as a rabbi by failing to return telephone calls, failing to work adequate

hours, failing to make hospital visits, and the like"); *see also* Minker, 894 F.2d at 1357 (refusing to hear plaintiff's ADA claim, which was "unrelated to religious belief or policy" because "there is no exception to the bar against interfering with matters of church administration").

The Majority fails entirely to acknowledge that Reverend Brantley's statements constituted his petition and reasons for removing Respondents as Trustees, or that Respondents themselves acknowledged that their positions – and the decision as to whether they should remain as Trustees – were issues of church governance to be decided by the congregation. Nor does the Majority recognize the fact that Respondents readily admitted that their positions as Trustees involved supporting the spiritual mission of the Church. (Appx. p. 133, lines 16-20) (Appx. 135, line 7 – 136, line 21) (Appx. 137, lines 4-8) (Appx. 146, line 24 – 147, line 4) (Appx. 152, line 7 – 153, line 13).

Reverend Brantley neither strayed from the issue under consideration (Respondents' fitness to continue to serve as Trustees) nor published his remarks to anyone other than the highest decision-making body of the Church. Where, as is the case here, the allegedly defamatory statements are made within the context of a church's highest administrative authority, deciding issues of church governance, they fall "squarely within the protective ambit of the *First Amendment*." Downs, 683 A.2d at 813. Decisions regarding who is or is not a member of a religious body as well as the selection or dismissal of spiritual and institutional leaders are fundamentally religious decisions and enjoy "the same protection from court review or intervention." Consequently, defamation claims arising out of such proceedings are not subject to civil court review. Anderson, 2007 Tenn. App. LEXIS 29 at *83-86. To hold otherwise would exert a

"potentially chilling effect" on the conduct of internal church affairs and "could very well inhibit the free communication of important ideas and candid opinions" by clergy and parishioners alike. Jae-Woo Cha, at 516-17, *quoting from* McManus v. Taylor, 521 So. 2d 449 (La. Ct. App. 1988).

The Majority fails to explain how congregational churches such as St. Matthew Baptist are to conduct their business, including the selection and dismissal of church leaders, if statements made during church governance meetings, directed to the specific issues under consideration, can be examined by civil courts as defamatory. In light of the Majority Opinion, neither Reverend Brantley, the Trustees, Deacons nor the parishioners themselves would be free to speak their minds in church governance meetings for fear of being served with a lawsuit. Even if successfully defended, the threat of being subjected to civil proceedings will exert a chilling effect on the free-flow of communication regarding church administration and governance. In both substance and effect, the Majority Opinion strips the Church – and all churches – of the autonomy to determine matters of internal church governance by subjecting statements made in formal proceedings considering such issues to civil court review.

2. Consideration of the defamation claims in this case will inextricably entangle civil courts in religious custom, practice, governance and administration.

The Majority Opinion sets forth the elements of a defamation claim and then erroneously concludes that, applying neutral principles of law, a civil court can evaluate Respondents' defamation claims without implicating the *First Amendment*. However, consideration of Respondents' defamation claims unavoidably will involve a civil court in issues of church governance and administration.

The Majority first asserts the allegedly defamatory statements "are all simple declarative statements about the actions of the Trustees," the truth of which be easily ascertained by a civil court. Opinion, Shearouse Adv.Sh. No. 41 at 37.[2] Respondents' Complaint sets forth the following statements alleged to be defamatory:

- Respondents "had placed a $300,000 mortgage upon the church property to purchase some apartment buildings nearby," without Reverend Brantley's knowledge,
- Respondents "had failed to insure the apartment buildings,"
- Respondents "had mismanaged money,"
- Money was missing from the Church,
- Respondents had constantly deceived Reverend Brantley, and
- Respondents should be removed as Trustees of the Church.

(Appx. 3-4).

What the Majority fails to account for is the fact that each of these statements "about the actions of the Trustees," concerns actions taken by Respondents in their official capacity as Trustees of the Church. Thus, what they did or did not do, should or should not have done, can only be analyzed within the context of their roles as financial and spiritual leaders of the Church. For example, in order to determine whether the statement relating to mismanagement of money is true, a court would have to examine and decide what is and is not proper/acceptable management of the Church's money by the Trustees. Given that Respondents acknowledged repeatedly that the apartments were part of the spiritual mission and kingdom-building of the Church, (Appx. p. 133, lines 16-20) (Appx. 135, line 7 – 136, line 21) (Appx. 137, lines 4-8) (Appx. 146, line 24 – 147,

[2] "The truth of the matter is a complete defense to an action based on defamation ...." Haulbrooks v. Overton, 295 S.C. 380, 383, 368 S.E.2d 676, 678 (Ct. App. 1988), *citing* Ross v. Columbia Newspapers, Inc., 266 S.C. 75, 80, 221 S.E.2d 770, 772 (1976).

line 4) (Appx. 152, line 7 – 153, line 13), any inquiry into whether money related to the apartments was or was not mismanaged necessarily will involve religious considerations.

The Majority indicates Reverend Brantley said Respondents lied to him. A court would have to examine the statements made by Respondents to Reverend Brantley and determine whether each of them was true or false. In addition, being deceived does not always involve overt lies – it can also arise from a failure to keep someone apprised of events and actions they should know about. Thus, consideration of whether the statement that Reverend Brantley had been constantly deceived by Respondents is true or false delves unavoidably into what the Trustees are obligated to inform the pastor about and/or what decisions they should involve him in. Finally, the statement that Respondents should be removed as Trustees goes to the very heart of church governance and administration – the Majority fails to explain how this statement possibly can be adjudicated without excessive entanglement.

As to an unprivileged publication to a third party, the Majority completely overlooks the fact that the congregation is the highest decision-making body of the Church, *see* Dart, 67 S.C. at 342-43, 45 S.E. at 754, and simply assumes the statements were unprivileged statements to a third party. However, in order to determine whether an unprivileged publication was made to a third party, a court would have to determine whether Reverent Brantley had a right to make his case to the congregation (the highest decision-making body), and whether the congregation (the highest decision-making body) had a right to hear arguments regarding whether and why Respondents should be removed as Trustees. As various courts have held, "questions of truth, falsity, malice, and the various privileges that exist often take on a different hue when examined in the

light of religious precepts and procedures that general permeate controversies over who is fit to represent and speak for the church." Heard, 810 A.2d at 884; Downs, 683 A.2d at 812; *see also* Patton, 212 S.W.3d at 553-54.[3] As noted above, the Majority fails to explain how the Church is to manage its internal affairs if statements made during congregational meetings concerning issues of church governance and administration can be challenged in civil courts as defamatory. Civil courts simply cannot hear the defamation claims in this case without becoming impermissibly ensnared in issues of internal church governance.

Finally, with respect to any alleged harm to Respondents' reputations, to the extent their dismissal from the Board of Trustees caused any harm to their reputations, that action was taken by way of a vote of the Church congregation, and is not attributable to Reverend Brantley. To the extent Respondents allege the specific comments made by Reverend Brantley during the May 22 meeting damaged their reputations, there are neither allegations nor any proof in this case that Reverend Brantley published those comments beyond the confines of the May 22 meeting of the congregation. If congregants repeated and/or embellished Reverend Brantley's statements outside of the Church, Reverend Brantley cannot be held liable for any such publication.

At the end of the day, "when a person voluntarily joins a religious organization and submits to its governance, that person consents to the final decision by that organization's tribunals without recourse to civil courts." Anderson, 2007 Tenn. App. LEXIS 29, *88. The Majority has lost sight of the fact that Respondents voluntarily associated themselves with a congregational, as opposed to a hierarchical, church. They

[3] Note that Reverend Brantley raised the issue of qualified privilege before the Circuit Court. (Appx. 67, line 17 – 68, line 5).

thus voluntarily agreed to participate in and be bound by the congregational structure, which designates the congregation as the highest decision-making body. The Church's constitution provides that, "[a]ll internal groups created and empowered by the church shall report to the church, and be accountable only to the church, unless otherwise specified by church action." (Appx. 114). Thus, Reverend Brantley, as well as Respondents, report to and are accountable only to the Church with respect to internal governance issues.

"The *First Amendment*'s protection of internal religious disciplinary proceedings would be meaningless if a parishioner's accusation that was used to initiate those proceedings could be tested in civil courts. [citation omitted] Indeed, 'a person must be free to say anything and everything to his Church, at least so long as it is said in a recognized and required proceeding of the religion and to a recognized official of the religion.'" Stepek, 910 N.E. 2d at 666. Where, as is the case here, a defamation claim flows entirely from an internal church dispute, "consideration of the claim in isolation is impossible." Heard, 810 A.2d at 885.

3. Recent defamation cases involving religious institutions support Petitioner's Petition.

Since the parties briefed this case, several published decisions have been issued considering defamation claims involving religious institutions. Not one case with remotely similar facts has found that civil courts possess jurisdiction to hear defamation claims arising out of internal church proceedings. For instance, Purdum v. Purdum, 301 P.3d 718 (Kan. 2013), involved a statement in an application for an annulment of a marriage that the plaintiff was bipolar,[4] which he claimed was false and defamatory. The

[4] Petitioner notes that there is nothing overtly religious or spiritual about this statement.

allegedly defamatory statement was made solely to the Archdiocesan Tribunal in the wife's annulment petition which "inextricably became part of the Archdiocesan Tribunal, within its ecclesiastical procedure." 301 P.3d at 725-26. The Kansas Supreme Court explained that:

> There is no doubt that the *First Amendment* offers no protection to religious worshipers who make slanderous or libelous statements outside ecclesiastical tribunals, but that is not the case here. [Defendant] asked for an annulment in a church forum as part of a church-approved, church-defined, and church-controlled process where the church would determine the validity of the church's marriage sacrament. There is no evidence that she took any action against Purdum outside the Archdiocesan Tribunal. ...The *First Amendment to the United States Constitution* gives to churches freedom in managing their affairs in accordance with their own infernal law and procedure, free from civil courts and governmental intervention

301 P.3d at 727; *see also* Drake v. Moulton Mem'l Baptist Church of Newburgh, 93 A.D.3d 685 (N.Y. App. Div. 2012 (holding courts could not hear defamation claims brought by plaintiffs who had been removed from their positions as trustees because "resolution of the issues raised would necessarily involve an impermissible inquiry into religious doctrine or practice"); Indiana Area Found. of the United Methodist Church, Inc. v. Snyder, 953 N.E.2d 1174 (Ct. App. Ind. 2011) (concluding that civil courts cannot adjudicate defamation claim based on statements concerning the plaintiff's mental health status, made to parishioners or to church officials, because they were part of the church's internal governance decision-making process); *cf.*, Bilbrey v. Myers, 91 So.3d 887 (Ct. App. Fla. 2012) (holding that a civil court could hear defamation claim where statements that plaintiff was homosexual were published to members of plaintiff's church and to his fiancée's father, as well as to various out-of-state church officials and the plaintiff's new pastor after plaintiff moved).

The instant case is in line with Purdum, Drake and Snyder. Reverend Brantley's comments were made solely within the context of a congregational meeting of the Church, for the purpose of supporting his petition that Respondents should be removed from positions of financial and spiritual leadership of the Church. To allow these defamation claims to be adjudicated by a civil court would inextricably entangle the court in church governance and administration.

Finally, after the parties brief this case, the South Carolina Court of Appeals decided McCain v. Brightharp, 399 S.C. 240, 730 S.E.2d 916 (Ct. App. 2012). Although not appealed to this Court, McCain shows precisely the type of entanglement the Majority Opinion invites. In McCain, the Court of Appeals upheld the circuit court's order which went far beyond "restoring the *status quo*" by ordering the church to hold quarterly joint board meetings on specific dates and requiring the pastor to allow certain trustees and deacons to "fully participate" in the joint board meetings or face a $1,000 fine for each meeting. Although Petitioner does not argue with the ability of a civil court to "restore the *status quo*" in appropriate cases, Bowen v. Green, 275 S.C. 431, 272 S.E.2d 433 (1980), the Court of Appeal's holding in McCain went far beyond restoring the *status quo* by establishing meeting dates and specifying who could participate and how. Thus, McCain is directly in conflict with a long line of this Court's decisions, which hold that "[i]t is not the function of the courts to dictate procedures for a church to follow." Williams v. Wilson, 349 S.C. 336, 340, 563 S.E.2d 320, 322 (2002); Knotts, 319 S.C. at 478, 462 S.E.2d at 291; Bowen, 275 S.C. at 435, 272 S.E.2d at 435.

This Court's Majority Opinion is yet another step in the direction of entangling civil courts in internal church governance and administration. However, the *First*

Amendment prohibits the judiciary, as well as the legislature, from interfering with the free exercise of religion. Kreshik v. Saint Nicholas Cathedral, 363 U.S. 190, 191, 80 S. Ct. 1038 (1960). The Majority Opinion flies in the face of long-standing precedent which holds that "[t]he right to organize voluntary religious associations ... and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it." Watson v. Jones, 80 U.S. 679, 728-29 (1871). If this Court maintains its current position with respect to Respondents' defamation claims, Petitioner will have no recourse but to appeal the Majority Opinion to the United States Supreme Court.

Pursuant to Rule 240(h), Petitioner requests this Court to allow oral argument on his Petition.

CONCLUSION

Petitioner Brantley respectfully requests this Court to rehear its Opinion in this case and hold that civil courts lack subject matter jurisdiction to hear Respondents' defamation claims under the *First Amendment* of the United States Constitution and Article I, Section 2 of the South Carolina constitution.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

October 10, 2013

Weston Adams, III
Gunnar Nistad
Helen F. Hiser
Meridian 10th Floor
1320 Main Street
PO Box 12519
Columbia, South Carolina 29211-2519
(803) 779-2300

Attorneys for Petitioner Clinton Brantley

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PROOF OF SERVICE

I certify that I have served the Petitioner Brantley's **Petition for Rehearing** on Respondents, by depositing a copy of it in the United States Mail, postage prepaid, on the 10th day of October 2013, addressed to all attorneys of record:

Thomas O. Sanders, IV, Esquire
Sanders Law Firm, LLC
1738 Three Oaks Avenue
Charleston, South Carolina 29407
Attorney for Respondents

Richard C. Thomas, Esquire
Barnes, Alford, Stork & Johnson
Post Office Box 8448
Columbia, SC 29202
Attorney for St. Matthew Baptist Church

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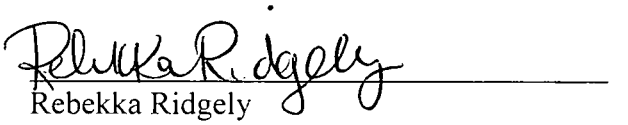

Rebekka Ridgely
Paralegal to Weston Adams, III
McANGUS GOUDELOCK & COURIE LLC
Meridian 10th Floor
1320 Main Street
PO Box 12519
Columbia, South Carolina 29211-2519
(803) 779-2300

Attorneys for Petitioner Clinton Brantley