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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS
The Honorable Mikell Scarborough
Master-In-Equity

Appellate Case No. 2025-000209

Michele Graham

Cooper River Love and Charity Society (2023).....Appellants,

v.

The Attorney General’s Office of South Carolina.....Respondent

**APPELLANTS’ PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN
BANC PURSUANT TO RULE 219, SCACR**

Appellants petition this Court for a rehearing of its May 15, 2025 Order dismissing this appeal as interlocutory. The Court improperly elevated form over substance by treating both the Appellants’ filings and the master-in-equity’s orders according to their labels, rather than addressing their actual legal effect. In doing so, the Court failed to recognize that the Appellants’ filings were not routine procedural motions in substance and overlooked the irreversible harm caused by the master-in-equity’s rulings. Furthermore, the Court overlooked the Attorney

General's reliance on finality to vacate the Appellants' judgment yet ignored the Appellants' reliance on that same finality to obtain appellate review. The Court also ignored S.C. Code § 33-31-126(c), a specialized appealability statute that directly authorizes immediate review of a central issue in this case. This was clearly cited and analyzed in Appellants' return.

The issues raised in this appeal present serious constitutional and procedural concerns, and the Court's dismissal order sets a dangerous precedent for future cases. If allowed to stand, the Order would permit trial courts and state actors to unilaterally redefine the identity of private associations, alter their governance and property rights without evidence or due process, insulate such actions from appellate review, and then force litigants to bear the burden of prolonged litigation merely to reclaim rights that were improperly taken. Accordingly, Appellants suggest a rehearing en banc pursuant to Rule 219, SCACR, due to the presence of several questions of exceptional importance and to maintain uniformity in the Court's treatment of appealability and the substance-over-form doctrine. These questions, which are fully discussed in Section IV of this petition, are:

1. Does an appellate court have a duty to assess the substance of a filing and the actual legal effect of a trial court's order, rather than rely solely on procedural labels, when determining whether appellate review is warranted?
2. Does the procedural vehicle affect the independent appealability of a statutorily appealable issue?
3. Does permitting the Attorney General to intervene in a private dispute and vacate a default judgment pertaining to real property—without any judicial finding that the property at issue is charitable or that jurisdiction exists—violate due process and improperly expand executive power by allowing the State to seize control of private property without proof, process, or standing?
4. When a court inserts legally determinative language—such as “public charity” or “charitable interest,” which carry significant consequences for property rights—into its orders without adjudication, and then later denies a Rule 60(b) motion challenging that language, does that denial remain interlocutory, or has it functionally altered substantive rights in a manner that governs the case?

GROUNDNS FOR REHEARING

I. The Court Prioritized Form Over Substance, Overlooked a Specialized Statutory Appeal Right and Failed to Account for the Case’s Unique Procedural and Factual Context

Given the labels of the filings, a cursory glance at the Notice of Appeal could create the mistaken impression that the challenged orders are not immediately appealable. However, the Appellants' return provided the Court with critical procedural background and substantive context demonstrating why this appeal is both urgent and legally appropriate at this time. The Court's failure to engage with the substance of Appellants' filings reflects a form-over-substance approach that ignores the reality of the relief sought and the true procedural posture of the case. The filings in question, while labeled according to conventional procedural titles, functionally sought restoration of the case to its proper procedural posture.

Although labeled as a motion for summary judgment, this was not a routine Rule 56 filing. The substance of the filing functioned as a motion that specifically requested judicial affirmation of the Appellants' right to amend the articles of incorporation, reinstatement and finalization of the default judgment in full, termination of the illegitimate litigation that followed its improper vacatur, and the correction of the legal status of the 1920 Society—a status that the master-in-equity had altered in its June and July orders without evidence or hearing.

Similarly, the Rule 60(b) motion was a substantive request to affirm that the 1920 Society was a mutual benefit corporation at the time of its dissolution in 1975 and vacate the June and July orders containing the legally consequential phrases “public charity” and “charitable interests” that were inserted into the record without hearing or evidence. The Rule 60(b) motion was the Appellants' only opportunity to vacate an erroneous foundation that altered the litigation posture irreversibly.

In addition, the Supplemental Memo and Request for Judicial Notice¹ was not merely an evidentiary filing. While it includes a request for judicial notice, this document was the procedural vehicle used to further challenge the Attorney General’s standing, contest the insertion of legally determinative language without adjudication, and reiterate the request for substantive relief—including vacatur of the June 24 and July 25, 2024 Orders and affirmation of Appellants’ statutory right to amend the 2023 Society’s articles of incorporation.

Since both the Summary Judgment Motion and the Supplemental Memorandum and Request for Judicial Notice expressly sought judicial affirmation of the Appellants’ statutory right to amend the articles of incorporation under S.C. Code Ann. § 33-31-1001(b), the Court’s denial of those filings operates as a denial of that discrete statutory request. That portion of the ruling is therefore independently appealable, as provided by S.C. Code Ann. § 33-31-126(c). By characterizing the filings as merely routine submissions and declining to substantively engage with the statutory rights invoked, the Court improperly elevated procedural form over legal substance. This obscured the nature of the relief sought and failed to address the dispositive legal question at issue—namely, whether the Appellants are entitled to amend the entity’s corporate form as a matter of law. Because the denial resolved a specific and substantial legal right independent of the broader litigation, it is immediately reviewable on appeal.

A. The Court Ignored Appellants’ Statutory Right to Appeal Under § 33-31-126(c)

Appellants expressly requested, to the extent deemed necessary, leave to amend their Notice of Appeal to clarify that the appeal encompassed the trial court’s denial of their statutory right to convert the 2023 Society under S.C. Code Ann. § 33-31-126(c). This request is tied to a

¹ The Supplemental Memo and Request for Judicial Notice is included as Exhibit N in the Attorney General’s list of exhibits

discrete, statutorily granted right, the denial of which constituted a final determination as to that issue and left no further relief available in the trial court. Despite this, the appellate court neither ruled on the request to amend the notice nor addressed the underlying legal issue of whether the trial court's order was immediately appealable under § 33-31-126(c). The appellate court's failure to engage with this statutory issue deprived the Appellants of appellate review on a matter expressly made appealable by statute.

B. The Court Over-Relied on General Interlocutory Case Law Without Applying It to the Distinct Facts of This Case

The dismissal Order rests entirely on generalized appellate case law concerning interlocutory orders, but it fails to engage with how those principles apply or do not apply to the specific procedural posture and substantive consequences of this case. Nowhere in the Court's Order is there any reference to Appellants' central arguments, statutory authorities, or evidentiary exhibits. The Court merely stated, "Appellants filed a return opposing the motion," while overlooking the detailed analysis explaining why appellate review is both appropriate and necessary at this stage. For example, Appellants thoroughly explained why the denial of the Rule 60(b) motion is immediately appealable under S.C. Code Ann. § 14-3-330(1) and (2). The Court did not address these points, nor did it consider the case-specific procedural history that distinguishes this matter from routine interlocutory issues. Instead, the Court issued a boilerplate dismissal citing standard precedents such as *McLendon*, *Watson*, and *Breland*, which concern the general non-appealability of interlocutory rulings. Those cases were quoted without application, explanation, or analysis of the arguments raised in Appellants' return. The Court's failure to apply the cited precedent to the facts and procedural posture of this case reflects a misapprehension of controlling law and a failure to consider the core substance of the appeal.

II. The Court Overlooked the Substance and Finality of the Rule 60(b) Denial and Its Appealability

Before this Court can conclude that the denial of Rule 60(b) relief is interlocutory, it must confront a foundational question: On what basis did the Attorney General intervene in this case? The answer is: **The master-in-equity’s insertion of “public charity” and the 33-31-1202(f) statute pertaining to public charities into the June 24, 2024 Order.**

The insertion of “public charity” and the related “finding” of a “charitable interest” was introduced into the record without motion, hearing, or adversarial testing. This language carries property rights implications under South Carolina law; and it was treated as sufficiently final to confer standing on the Attorney General, vacate a final judgment, and assert control over private property. This Court misunderstood what is being appealed. The Appellants are not appealing the act of intervention itself, but rather the legal foundation that enabled that intervention—specifically, the unadjudicated classification of the 1920 Society as a “public charity.” This Court incorrectly dismissed this appeal, because the denial of the 60(b) constitutes a final, rights-altering determination.

If statutory authority exists for the Attorney General’s intervention in this case, then the trial court must issue a proper order supported by adjudicated facts and grounded in a specific legal finding. Otherwise, the current language in the June and July orders—untested but legally determinative—functionally resolves a core merits issue and alters the rights of the parties without process. When the master-in-equity denied Appellants’ Rule 60(b) motion, it finalized the erroneous finding that enabled the Attorney General’s intervention in the first place. At that point, the language in the June and July Orders became the law of the case. The Appellants made it clear in their return that this outcome functioned as a final determination of a dispositive legal issue. The appellate court’s Order does not address this argument, nor does it assess the practical

effect of denying 60(b) relief under the appealability framework of S.C. Code Ann. § 14-3-330. The harm caused by the denial—specifically, the inability to correct the record on the Society’s classification—cannot be remedied through continued litigation. The appealability of that denial under § 14-3-330(1) and (2) must be addressed on the merits.

III. The Court Cannot Accept the Attorney General’s Use of Finality to Vacate a Judgment While Also Denying Appellants the Same Finality to Obtain Appellate Review

In a memorandum filed November 14, 2024, the Attorney General argued that the master-in-equity’s July 25, 2024 order is now “the law of the case” because Appellants did not appeal or otherwise challenge it. This assertion necessarily presumes that the July 25 order was final and appealable. The AG stated:

The court issued an Order granting the Motion to Intervene on July 25, 2024, finding that this action involves a charitable interest, and that the Attorney General’s intervention was supported by his *parens patriae*, statutory, common law and case law authority. Plaintiff did not appeal or otherwise challenge the Order, **and it is now the law of the case.** (Emphasis added).

Yet, in opposing appellate jurisdiction, the AG has argued that the same order is interlocutory and not subject to review. This contradiction cannot stand. The AG cannot rely on finality to defeat Appellants’ property rights in the trial court, while simultaneously denying finality to block appellate review.² This Court cannot condone such opportunistic use of procedural doctrine without undermining due process and the integrity of both trial and appellate processes.

In its motion to dismiss, the Attorney General claimed that the trial court’s Orders did not make a final determination as to the nature of the 1920 Society. Yet the AG relied on the court’s insertion of legally determinative phrases—such as “public charity” and “charitable interest”—as final enough to successfully vacate a default judgment that had designated the 2023 Society as

² See the Attorney General’s Motion to Vacate as Exhibit 16 of Appellants’ Return

the lawful successor to the 1920 Society. Because those Orders were treated as final enough to undo a judgment, strip property rights and assert control over private property, the 60(b) motion denial is immediately appealable. However, if the Court maintains that the June and July orders were not final determinations, then it must also acknowledge that the vacatur was premature and the default judgment should be reinstated in full until classification is actually adjudicated and finalized. Either the orders were final and appealable—triggering the Appellants’ right to appellate review—or they were not final, and the Attorney General had no legal authority to rely on them to assert standing or vacate a judgment.

Classification is the threshold issue in this case. Unless and until the 1920 Society is proven to be a public charity, the Attorney General has no standing, no jurisdiction, and no lawful authority to intervene, vacate judgments, or assert control over its property.

IV. This Case Raises Constitutional and Procedural Questions of Exceptional Importance That Justify En Banc Review

A. Appellate Courts Must Look Beyond Procedural Labels to Assess Substantive Legal Effect

Question: Does the appellate court have a duty to assess the substance of a filing and the actual legal effect of a trial court’s order, rather than rely solely on procedural labels, when determining whether appellate review is warranted?

The principle of substance over form is essential to the integrity of appellate review, and this Court has recognized that substance controls over form when determining the nature of filings and the consequences of lower court rulings. This is illustrated in Richland Cnty. v. Kaiser, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002)(stating, "because the relief sought was more in the nature of a request for an injunction than a mandamus, we will treat this action as an appeal from the denial of injunctive relief"). In the present case, the appellate court dismissed the appeal without assessing the relief sought or the legal effect of the master-in-equity’s orders, which

altered the classification of a private entity and transferred control of private property based on unadjudicated assumptions. The court’s reliance on procedural titles and generalized precedent, rather than evaluating the functional outcome of the orders, raises a critical question about whether form is being improperly elevated over substance in appellate jurisdictional analysis.

B. The Use of a Procedural Vehicle Does Not Strip a Statutorily Appealable Issue of Its Independent Appealability

Question: Does the procedural vehicle affect the independent appealability of a statutorily appealable issue?

This question presents an important clarification for South Carolina appellate law, particularly where a specialized statute, such as S.C. Code Ann. § 33-31-126(c), confers an immediate right of appeal. In this case, the Appellants raised a statutory claim involving the right to convert a nonprofit corporation (the 2023 Society) from public benefit to mutual benefit status, and that issue was embedded within filings labeled as a motion for summary judgment and a request for judicial notice. The master-in-equity denied those filings, which effectively denied the conversion and triggered the statutory appeal right under § 33-31-126(c). The appellate court failed to address this altogether.

The question for the full Court is whether the procedural form in which a statutorily appealable issue is raised can insulate it from appellate review. If procedural labels can neutralize substantive statutory rights, then litigants are at the mercy of how the trial court characterizes their filings, rather than the legal effect of what was actually denied.

C. The State Cannot Seize Control Over Private Property Without a Judicial Finding of Standing, Jurisdiction, or Legal Basis

Question: Does permitting the Attorney General to intervene in a private dispute and vacate a default judgment pertaining to real property—without any judicial finding that the property at issue is charitable or that jurisdiction exists—violate due process and improperly expand executive power by allowing the State to seize control of private property without proof, process, or standing?

This question implicates foundational due process protections. The Attorney General entered this case without an actual judicial finding that the 1920 Society was a public charity or that the property in question was subject to charitable trust. Relying solely on untested language inserted into a court order, the AG was permitted to vacate a final judgment and assert control over real property. The full Court must address whether the State can bypass proof and process to exercise control over private entities and assets. This unchecked expansion of *parens patriae* authority, absent a jurisdictional finding, threatens the property rights of private associations and individuals statewide. It raises serious constitutional concerns and calls for en banc review to determine whether the conduct of the master-in-equity and the AG is consistent with South Carolina law and due process guarantees.

D. When Legally Determinative Language Is Inserted Into an Order Without Adjudication, the Denial of Rule 60(b) Relief Alters Substantive Rights and Is Immediately Appealable

Question: When a court inserts legally determinative language—such as “public charity” or “charitable interest,” which carry significant consequences for property rights—into its orders without adjudication, and then later denies a Rule 60(b) motion challenging that language, does that denial remain interlocutory, or has it functionally altered substantive rights in a manner that governs the case?

This is not a hypothetical concern; it is the exact situation presented here. The master-in-equity inserted legally consequential phrases into the June 24, 2024 order without any evidentiary basis or factual finding. That language was then used to vacate a default judgment, shift control of property, and incorrectly frame the basis for continued litigation—all without proof or hearing. When Appellants filed a Rule 60(b) motion to correct the record and challenge the unsupported classification, the trial court denied relief. That denial cemented a classification that had never been adjudicated, creating an irreversible legal posture that governs the rest of the case.

The appellate court's treatment of this denial as interlocutory ignores the substantive effect of the ruling. This Court should grant en banc review to determine whether such rights-altering orders are truly interlocutory or whether they must be treated as final and appealable when they resolve dispositive legal questions without further process.

V. Conclusion

The issues and rulings presented in this case are far more than routine interlocutory matters; they are final in effect and determinative of substantive rights. The master-in-equity's orders erroneously inserted legally consequential findings without adjudication, and the Attorney General exploited those errors in an attempt to seize control over a valuable private asset. Allowing such orders to evade review based solely on procedural labeling invites state actors to restructure private entities and reallocate property rights without proof, process, or accountability.

For these reasons, Appellants respectfully request that the Court grant rehearing to correct its prior ruling, or, in the alternative, grant rehearing en banc pursuant to Rule 219, SCACR, to address the exceptionally important questions of law raised herein and to maintain uniformity in the Court's treatment of appealable orders and the doctrine of substance over form.

Should the Court decline to reinstate the appeal, Appellants respectfully request that the Court recommend full restoration of the default judgment pending a final adjudication of the 1920 Society's legal classification, in order to prevent further deprivation of private rights without due process.


SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

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APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Circuit Court Case No. 2023-CP-10-02883

Michele Graham

Cooper River Love and Charity Society (2023) Appellants

v.

The Attorney General of the State of South Carolina Respondent

PROOF OF SERVICE

The Appellants certify that the APPELLANTS' PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC PURSUANT TO RULE 219, SCACR was served on the Respondent by emailing a .pdf copy of the same to his counsel of record on May 30, 2025.

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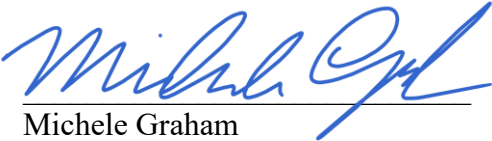
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