

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM Dorchester County  
Court of Common Pleas

SEP 19 2017

Diane S. Goodstein, Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No. 2015-00622

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The Protestant Episcopal Church in the Diocese of  
South Carolina, et al. .... Respondents,

v.

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

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**Motion to for Leave to Accept Amici Curiae Brief of  
The Honorable William T. Howell and the Honorable H. Samuel Stilwell  
in Opposition to Respondents' Motion to Recuse**

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**ATTORNEYS FOR AMICI CURIAE**

Pursuant to the South Carolina Appellate Court Rule 213, the Honorable William T. Howell and the Honorable H. Samuel Stilwell, both retired, move for leave of the Court to file an amicus brief in opposition to Respondents' motion to disqualify. The above matter addresses issues of substantial concern to Retired Chief Judge Howell and Retired Judge Stilwell, collectively serving more than thirty years on the bench. As such, they have a direct interest in ensuring the integrity of the legal system, fair and impartial administration of justice, and the rule of law in this State. Further, retired Chief Judge Howell and retired Judge Stilwell submit this brief to offer the Court a more in-depth review of the ethical and legal issues arising from Movants' motion with the intent to provide the Court with a well-developed discussion from all perspectives.<sup>1</sup>

As more fully stated in the brief to be filed with the Court, Retired Chief Judge Howell and Retired Judge Stilwell are concerned with the integrity of the judicial process and our profession. Movants' filing of this motion is an overzealous reaction to an unsuccessful appeal, which is unsupported by the facts and law now. South Carolina law requires a recusal motion to be timely, which this Court has interpreted as counsel's first opportunity after discovery of the disqualifying facts, but certainly it cannot be filed at the very last opportunity before this Court. The evidence now relied on by Movants was known and discovered by Movants and their counsel no later than 2014. Thus, it is a reflection of counsel's legal error or deliberate delay to use the motion only after an adverse decision and as a collateral attack to undermine this Court's ruling.<sup>2</sup> Such action

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<sup>1</sup> Retired Chief Judge Howell and Judge Stilwell have no position or interest in the outcome of the underlying litigation.

<sup>2</sup> Not all counsel for Respondents signed this motion, despite Movants' claim that "[u]nless otherwise specified, all Respondents are 'Movants.'" Mot. at 2. At least twelve lawyers of record for Respondents did not join in this effort.

unnecessarily burdens and threatens the confidence in and integrity of this Court and our profession.

Moreover, as to the merits of Movants' arguments, it would not matter when the motion was filed because the outcome is the same: no due process violation has occurred, and Justice Hearn has not violated any aspect of the judicial canons. While Movants aggressively condemn Justice Hearn, their allegations do not show a constitutional violation as required for disqualification at this point. In addition, Movants have not demonstrated that her impartiality might reasonably be questioned. Without actual evidence supporting their legal arguments, Movants go to great lengths to weave a tale of bias and direct interest in this case as harrowing justification for filing this motion, while proclaiming for themselves good faith and restoration of integrity to the process. However, Movants' filing casts an unwarranted shadow on a respected and unimpeachable justice with more than thirty years of public service on the bench. For the foregoing reasons, Retired Chief Judge Howell and Retired Judge Stilwell respectfully request this Court grant leave to present an amicus curiae brief. A copy of the proposed amicus brief is attached hereto, and is being filed with this motion in accordance with Rule 213, SCACR.

*Signature Page to Follow*

Most Respectfully,



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**PROOF OF SERVICE**

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The undersigned hereby certifies that on September 19, 2017 she served counsel of record with a copy of the **Motion to for Leave to Accept Amici Curiae Brief of The Honorable William T. Howell and the Honorable H. Samuel Stilwell in Opposition to Respondents' Motion to Recuse** and the conditionally filed **Amici Curiae Brief of The Honorable (retired) William T. Howell and The Honorable (retired) H. Samuel Stilwell in Opposition to Respondents' Motion to Recuse** by sending copies of the same by electronic mail to the following addresses:

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September 19, 2017  
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