

The Supreme Court of South Carolina

The Protestant Episcopal Church in the Diocese of South Carolina; The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body; All Saints Protestant Episcopal Church, Inc.; Christ St. Paul's Episcopal Church; Christ the King, Waccamaw; Church of The Cross, Inc. And Church of the Cross Declaration of Trust; Church of The Holy Comforter; Church of the Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; St. Matthews Church; St. Andrews Church-Mt. Pleasant Land Trust; St. Bartholomews Episcopal Church; St. David's Church; St. James' Church, James Island, S.C.; St. John's Episcopal Church of Florence, S.C.; St. Matthias Episcopal Church, Inc.; St. Paul's Episcopal Church of Bennettsville, Inc.; St. Paul's Episcopal Church of Conway; The Church of St. Luke and St. Paul, Radcliffeboro; The Church of Our Saviour of the Diocese of South Carolina; The Church of the Epiphany (Episcopal); The Church of the Good Shepherd, Charleston, SC; The Church of The Holy Cross; The Church of The Resurrection, Surfside; The Protestant Episcopal Church of The Parish of Saint Philip, in Charleston, in the State of South Carolina; The Protestant Episcopal Church, The Parish of Saint Michael, in Charleston, in the State of South Carolina and St. Michael's Church Declaration of Trust; The Vestry and Church Wardens of St. Jude's Church of Walterboro; The Vestry and Church Wardens of The Episcopal Church of The Parish of Prince George Winyah; The Vestry and Church Wardens of The Church of The Parish of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens of The Parish of St. Matthew; The Vestry and Wardens of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church Wardens of the Episcopal Church of The Parish of Christ Church; Vestry and Church

Wardens of The Episcopal Church of the Parish of St.
John's, Charleston County, The Vestries and
Churchwardens of The Parish of St. Andrews,
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.

Appellate Case No. 2015-000622

ORDER

Respondents have filed a motion to recuse Justice Hearn from participating in the decision on the petitions for rehearing in this case and to vacate Justice Hearn's opinion or, in the alternative, to vacate all opinions in this case. Respondents request consideration of this motion by the full Court. With the exception of the request for the full Court to consider the motion, the motion is denied. *See Davis v. Parkview Apts.*, 409 S.C. 266, 762 S.E.2d 535 (2014) (citing *Duplan Corp. v. Milliken, Inc.*, 400 F.Supp. 497, 510 (D.S.C. 1975) ("Timeliness is essential to any recusal motion. To be timely, a recusal motion must be made at counsel's first opportunity after discovery of the disqualifying facts.")).

	C.J.
	J.
	A.J.

Kittredge, J., concurring in separate order in
which Toal, A.J., joins in part

Toal, A.J., concurring in separate order

I write separately to state my position on the rehearing matters before the Court. Because I remain firmly convinced that this Court's majority decision as to the so-called twenty-eight "acceding churches" reaches the wrong result and is fundamentally flawed, I vote to grant rehearing. I have signed the Court's order reflecting my vote.

In connection with the requested recusal of Justice Hearn, because the motions are untimely as they relate to the Court's opinion(s), I join the Court in denying the vacatur and recusal motions. The Court need not address the recusal motion on a prospective basis, for Justice Hearn has elected, to her great credit, to recuse herself prospectively and not to participate in the resolution of the rehearing petitions.

For the purpose of resolving the rehearing petitions, I requested that a fifth justice be appointed to fill the absence created by Justice Hearn's recusal so that a *full* Court could decide this matter of great importance. My request was rejected, which I find shocking. Under these circumstances, to disallow a full Court from considering the rehearing petitions is deeply troubling and, in my judgment, raises constitutional implications as the Court has blocked a fair and meaningful merits review of the rehearing petitions.

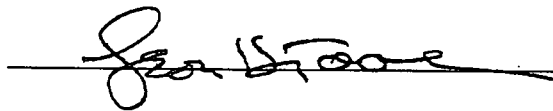

_____ J.

I have voted to grant rehearing. I join Justice Kittredge's separate writing and submit this additional separate writing concerning this matter.

With regard to the motion for recusal and the associated motion for vacatur, I agree wholeheartedly with the other members of the Court that these motions are untimely. The respondents did not challenge Justice Hearn's participation in the five months between this Court's certification of the case from the court of appeals and the oral arguments before us. While the respondents may have surmised she would recuse herself during that five-month span, any possible reason for their not filing a formal motion for her recusal vanished after she participated in the oral arguments. Nonetheless, in the two years between the arguments and the issuance of the Court's opinion, the respondents again took no action. Only after receiving an adverse decision on the merits from a majority of the Court did the respondents challenge Justice Hearn's participation in the matter. However, an adverse decision

is no reason to excuse a nearly two-and-a-half year delay in making a request for recusal. Moreover, Justice Hearn is not participating in this matter on a prospective basis, remedying any possible future question about her participation in the matter. While I make no criticism of the respondents' lawyers for filing the motions to recuse and for vacatur, I am disappointed in the tone of these filings. They are unreasonably harsh criticisms of a highly accomplished judge and a person of great decency and integrity. The respondents' legal points could have been made without such unnecessary language. I concur in the Court's decision to deny the motions for recusal and vacatur.

With regard to the request to appoint a fifth justice to fill the vacancy left by Justice Hearn's prospective non participation, I believe that this could have been accomplished without significant delay or undue burden on the Court or an appointed acting justice. In any event, the Court's collective opinions in this matter give rise to great uncertainty, in that we have given little to no coherent guidance in this case or in church property disputes like this going forward. Given our lack of agreement, I have no doubt the Court will see more litigation involving these issues and similarly situated parties. I am comforted in the knowledge that there will be ample opportunity for the Court to resolve these issues in a more definitive manner in the future.

 A.J.

Columbia, South Carolina
November 17, 2017

cc:

Blake A. Hewitt, Esquire
John S. Nichols, Esquire
Thomas S. Tisdale, Jr., Esquire
Jason S. Smith, Esquire
Allan R. Holmes, Sr., Esquire
David Booth Beers, Esquire
Mary E. Kostel, Esquire
Andrew Spencer Platte, Esquire
Henrietta U. Golding, Esquire
Charles H. Williams, Esquire
C. Pierce Campbell, Esquire

Ivon Keith McCarty, Esquire
Harry Arthur Oxner, Esquire
Thornwell F. Sowell, III, Esquire
Robert R. Horger, Esquire
Lawrence B. Orr, Esquire
Harry Roberson Easterling, Jr., Esquire
Mark V. Evans, Esquire
Saunders M. Bridges, Jr., Esquire
Steven Smith McKenzie, Esquire
Robert S. Shelton, Esquire
John Furman Wall, III, Esquire
William A. Bryan, Esquire
Francis Marion Mack, Esquire
Peter Brandt Shelbourne, Esquire
Susan Pardue MacDonald, Esquire
James Kent Lehman, Esquire
Allan Poe Sloan, III, Esquire
Joseph C. Wilson, IV, Esquire
David B. Marvel, Esquire
David L. DeVane, Esquire
David Spence Cox, Esquire
Henry E. Grimball, Esquire
Thomas Christian Davis, Esquire
G. Mark Phillips, Esquire
W. Foster Gaillard, Esquire
William A. Scott, Esquire
John B. Williams, Esquire
Stephen A. Spitz, Esquire
George J. Kefalos, Esquire
Oana Dobrescu Johnson, Esquire
C. Alan Runyan, Esquire
Robert Walker Humphrey, II, Esquire
Bess Jones DuRant, Esquire
Timothy O'Neill Lewis, Esquire
Amanda A. Bailey, Esquire
C. Mitchell Brown, Esquire
Henry Pickett Wall, Esquire
William C. Marra, Esquire
Charles J. Cooper, Esquire
Matthew Terry Richardson, Esquire

Wallace K. Lightsey, Esquire
D. Reece Williams, III, Esquire
John Carroll Moylan, III, Esquire
Christopher Ernest Mills, Esquire
Steffen N. Johnson, Esquire
The Honorable Diane Schafer Goodstein