

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

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

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Appellate Case No. 2019-001471

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**RECEIVED**  
SEP 27 2019  
SC Court of Appeals

John Doe, ..... Respondent,

v.

The Diocese of Charleston, a Corporation Sole, and  
the Bishop of the Diocese of Charleston, in his official capacity, ..... Defendants,

Of whom the Bishop of the Diocese of Charleston,  
in his official capacity is the ..... Appellant.

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**INITIAL BRIEF OF APPELLANT**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF THE CASE.....2

ARGUMENT .....4

STANDARD OF REVIEW .....4

    I.    How the ecclesiastical position of “Bishop of Charleston” interacts with the civil law world is a matter of church administration and organization and the Circuit Court violated the First Amendment’s Free Exercise Clause and Establishment Clause in failing to defer to the determinations of the judicatory person with responsibility to make those decisions.....5

        a.    The Diocese of Charleston and the office of Bishop are ecclesiastical bodies, created under and existing pursuant to Catholic Church’s canon law (*Codex Iuris Cononici*), and have no civil law existence beyond that which the Church determines .....6

        b.    The Circuit Court erred in failing to respect the organizational and administrative decisions of the Bishop of Charleston and, in so doing, violated the Catholic Church’s First Amendment rights.....8

    II.    Over a 150 years’ of constitutional jurisprudence establish that the civil courts may not overturn or alter the ecclesiastical organization and polity of the Diocese of Charleston.....14

CONCLUSION.....16

## TABLE OF AUTHORITIES

### Cases

<i>Byrd v. DeVeaux</i> , 2019 WL 1017602 at *7 .....	11
<i>Cantwell v. Connecticut</i> , 310 U.S. 296 (1940) .....	10
<i>Commack Self-Service Kosher Meats, Inc. v. Weiss</i> , 294 F.3d 415, 427–28 (2d Cir. 2002) .....	9
<i>Conlon v. InterVarsity Christian Fellowship</i> , 777 F.3d 829 (6th Cir. 2015).....	10
<i>Dixon v. Edwards</i> , 290 F.3d 699, 714–15 (4th Cir. 2002).....	9
<i>Everson v. Bd. of Educ.</i> , 330 U.S. 1 (1947) .....	10
<i>George v. Fabri</i> , 345 S.C. 440, 548 S.E.2d 868 (2001) .....	4
<i>Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC</i> , 565 U.S. 171, 186 (2012).....	8, 10
<i>Houck v. State Farm Fire &amp; Cas. Ins. Co.</i> , 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005).....	5
<i>Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church</i> , 344 U.S. 94, 117 (1952).....	10, 12, 13, 14, 15
<i>Lee v. Sixth Mount Zion Baptist Church</i> , 903 F.3d 113 (3rd Cir. 2018).....	10
<i>Logan v. Cherokee Landscaping &amp; Grading Co.</i> , 389 S.C. 611, 617, 673 S.E. 2d 801, 803.....	5
<i>Main v. Corley</i> , 281 S.C. 525, 316 S.E.2d 406 (1984).....	4
<i>McClure v. The Salvation Army</i> , 460 F.2d 553, 559 (5th Cir. 1972).....	10
<i>Md. &amp; Va. Churches v. Sharpsburg Church</i> , 396 U.S. 367, 369, (1970) .....	12
<i>Medical University of South Carolina v. Arnaud</i> , 360 S.C. 615, 602 S.E.2d 747 (2004).....	5
<i>NationsBank v. Scott Farm</i> , 320 S.C. 299, 302–03, 465 S.E.2d 98, 100 (Ct. App. 1995) .....	4
<i>Ponce v. Roman Catholic Apostolic Church</i> , 210 U.S. 296 (1908).....	10, 14
<i>Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church</i> , 393 U.S. 440, 449-50 (1969) .....	8, 9, 10, 11, 13, 15, 16

<i>Priest v. Brown</i> , 302 S.C. 405, 408–09, 396 S.E.2d 638, 639–40 (Ct. App. 1990) .....	4
<i>Protestant Episcopal Church v. Episcopal Church</i> , 806 S.E.2d 211, 229 (S.C. 2017).....	12, 13
<i>Serbian Eastern Orthodox Diocese v. Milivojevich</i> , 426 U.S. 696, 709–10 (1976).....	8, 11, 12, 13, 15
<i>Stewart v. State Farm Mut. Auto Ins. Co.</i> , 341 S.C. 143, 533 S.E.2d 597, 600 (Ct. App. 2000) .....	4
<i>Tomic v. Catholic Diocese</i> , 442 F.3d at 1038.....	11
<i>Watson v. Jones</i> , 80 U.S. 679 (1871).....	8, 9, 12
<i>Young v. Northern Illinois Conference of United Methodist Church</i> , 173 F.3d 184, 187 (7th Cir. 1994).....	11
 <b><u>STATUTES</u></b>	
1880 by Act 264 of the General Assembly .....	7
 <b><u>OTHER AUTHORITIES</u></b>	
3 Blackstone, <i>Commentaries on the Laws of England</i> ch. 5 (1768).....	10
Bylaws of Bishop of Charleston, a Corporation Sole, § 1.1 .....	7
Bylaws of the Corporation Sole § 2.1(b) .....	8
Bylaws of the Corporation Sole, § 1.3 .....	8
Bylaws of the Corporation Sole, § 1.4.....	8
Canon 368 .....	7
Canon 375 § 1 .....	7
Canon 391 § 1.....	7
 <b><u>RULES</u></b>	
Rule 56(c).....	4
Rule 59(e).....	3

**STATEMENT OF ISSUES ON APPEAL**

1. **Did the Circuit Court err in denying summary judgment to the ecclesiastical office of Bishop of Charleston where that decision violates the Religion Clauses of the First Amendment, as incorporated to the States under the Fourteenth Amendment?**
  
2. **Did the Circuit Court err in refusing to dismiss claims against the ecclesiastical office of Bishop of Charleston, which has no presence in civil law, where that decision violated the well-established precedent of the United States Supreme Court?**

## STATEMENT OF THE CASE

### A. Procedural History

Respondents commenced these actions asserting claims of Outrage, Negligence/Gross Negligence, Breach of Fiduciary Duty, Intentional Infliction of Emotional Distress, Civil Conspiracy, Fraudulent Concealment, Negligent Retention or Supervision, Breach of Contract, and Breach of Contract Accompanied by a Fraudulent Act against The Diocese of Charleston, a Corporation Sole<sup>1</sup> and “the Bishop of the Diocese of Charleston, in his official capacity.” Respondent John Doe alleges he was molested by two teachers at Sacred Heart School in 1970 and 1971. (Complaint). Respondent Richard Roe alleges he was molested by Fr. Frederick Hopwood in 1954 or 1955. (Complaint).<sup>2</sup> The Diocese timely moved to dismiss the complaints based upon common law charitable immunity and the *res judicata* effect of the 2007 class action settlement with:

- All individuals born on or before August 30, 1980 who claim to have been sexually abused as minors by the Diocese of Charleston personnel (“primary class”) and
- Those individuals’ spouses and parents (“consortium class”).

(Defendants’ Motion to Dismiss).

That motion was heard on December 14, 2018. The Court denied Defendants’ motion to dismiss on March 4, 2019. (Order denying Motion to Dismiss). The Defendants then answered the Complaints, raising First Amendment defenses and pleading that “the Bishop of the Diocese of Charleston, in his official capacity” was not a proper party. (Answer to Complaint). On

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<sup>1</sup> The true name of the Corporation Sole is “Bishop of Charleston, a Corporation Sole.”

<sup>2</sup> The Doe claims occurred during the time Bishop Ernest Unterkoefler served as Bishop of Charleston. Bishop Unterkoefler retired as Bishop in 1990 and died in 1993. The Roe claims occurred during the service of Bishop John Russell who was appointed Bishop of Richmond in 1958. Bishop Russell retired in 1973 and died in 1993. The current Bishop, Bishop Robert Guglielmone, was appointed Bishop of Charleston in 2009.

March 29, 2019, 14 days after answering the complaint, the Diocese moved for partial summary judgment seeking dismissal of all claims against “the Bishop of the Diocese of Charleston, in his official capacity.” (Motion for Partial Summary Judgment). Prior to the Circuit Court’s hearing the motions, the Diocese submitted additional authority in support including the Bylaws of Bishop of Charleston, a Corporation Sole and the deposition testimony of Bishop Robert E. Guglielmono. (Supplemental Authority in Support of Motion for Partial Summary Judgment).

On July 17, 2019, the Circuit Court heard oral argument on the Diocese’s Motion for Partial Summary Judgment; the Diocese’s Motion to Disqualify Plaintiff’s Counsel, and Plaintiff’s Motion to Compel responses to his discovery requests served on “the Bishop of the Diocese of Charleston, in his official capacity.” The Court further heard oral argument of the Diocese’s Motion to Disqualify Plaintiff’s Counsel. (Motion to Disqualify). At that hearing, the judge ordered the Bishop to respond to plaintiffs’ overly broad discovery requests and ruled that the Court would hold a hearing on Defendants’ objections to the discovery requests, but that the Diocese should be prepared to provide full responses to any ruling within 24 hours. (Transcript of Hearing). The Court denied summary judgment to the Bishop of the Diocese of Charleston, in his official capacity, by written order dated July 24, 2019. (Order denying Defendants’ Motion for Partial Summary Judgment). Defendants moved the Court to reconsider its ruling on August 1, 2019. (Motion for Reconsideration). The Circuit Court denied the Rule 59(e) motion on August 5, 2019. These appeals followed.

## ARGUMENT

### STANDARD OF REVIEW

An appellate court reviews a ruling on summary judgment under the same standard as the trial court.<sup>3</sup>

Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial. Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings.<sup>4</sup>

The Court cannot simply ignore facts that are unfavorable to the non-moving party, and must determine whether a verdict in favor of the party opposing summary judgment would be reasonably possible.<sup>5</sup> It is not sufficient that one create an inference that is not reasonable or an issue of fact that is not genuine.<sup>6</sup> The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.<sup>7</sup> Rather, summary judgment should be granted when “plain, palpable, and indisputable facts exist on which reasonable minds cannot

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<sup>3</sup> *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001).

<sup>4</sup> *NationsBank v. Scott Farm*, 320 S.C. 299, 302–03, 465 S.E.2d 98, 100 (Ct. App. 1995) (internal citations omitted).

<sup>5</sup> *Stewart v. State Farm Mut. Auto Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597, 600 (Ct. App. 2000).

<sup>6</sup> *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984).

<sup>7</sup> *Priest v. Brown*, 302 S.C. 405, 408–09, 396 S.E.2d 638, 639–40 (Ct. App. 1990).

differ.”<sup>8</sup> The fact that a case might present a novel issue does not render summary judgment inappropriate.<sup>9</sup>

**I. How the ecclesiastical position of “Bishop of Charleston” interacts with the civil law world is a matter of church administration and organization and the Circuit Court violated the First Amendment’s Free Exercise Clause and Establishment Clause in failing to defer to the determinations of the judicatory person with responsibility to make those decisions.**

The questions presented by Respondents’ claims against “The Bishop of the Diocese of Charleston, in his official capacity” implicate the legal presence of the Bishop of Charleston in the temporal world. These questions hit at the very heart of the Religion Clauses’ separation of Church and State, as well as the First Amendment’s proscription against civil courts’ becoming entangled in controversies over the organization and allocation of authority within a hierarchical church. At its essence, Respondents’ claims call in to question the Roman Catholic Church’s interaction with the secular world, and the Church’s determinations on how its ecclesiastical officials may conduct business in the world governed by the civil law. The Circuit Court quite simply overturned the ecclesiastical decisions of the Church, and engaged in a wholesale restructuring of the hierarchy and the allocation of power within the Roman Catholic Church in South Carolina, and the Church’s internal ecclesiastical determination of how the Church interacts in the civil law world. Additionally, the Court inserted itself into the ecclesiastical determinations of a religious body and evaluated and overturned the Church’s determinations of how the Church interacts with the secular world. These actions stand in direct contravention of the Establishment Clause and the Free Exercise Clause and must be reversed.

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<sup>8</sup> See *Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 617, 673 S.E. 2d 801, 803.

<sup>9</sup> See, *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005); *Medical University of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004).

The only proper defendant in these cases is the statutory entity, Bishop of Charleston, a Corporation Sole. The Bishop, as the highest juridic body responsible for determining how the Diocese will be present in civil law, has decided that the ecclesiastical office will interact with the secular world as the Corporation Sole. The legislature, too, incorporated the Corporation Sole to be the Bishop's civil law presence. The Circuit Court erred in failing to give legal effect to those determinations, and in so doing, violated the Establishment Clause by reordering the Diocese of Charleston's government and administration. The Circuit Court should have dismissed the ecclesiastical office and allowed the case to proceed against the Corporation Sole only.

The Court's error, essentially, was disregarding the determinations of the Bishop regarding the Church's organization and administration. In effect, the Court's denial of the purely ecclesiastical office's summary judgment motions amounts to a determination that the ecclesiastical office of the Bishop of Charleston, which exists only in canon law, can be liable for the alleged delicts of every man who has held the office of Bishop since it was established in 1820. That determination is a patent violation of the First Amendment's Establishment Clause and Free Exercise Clause.<sup>10</sup> On that basis, the Circuit Court's unconstitutional ruling cannot stand.

- a. **The Diocese of Charleston and the office of Bishop are ecclesiastical bodies, created under and existing pursuant to Catholic Church's canon law (*Codex Iuris Cononici*), and have no civil law existence beyond that which the Church determines.**

As the Diocese made clear to the Circuit Court, the ecclesiastical office of the Bishop of Charleston has no presence in the civil law world. Dioceses and their bishops are creatures of

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<sup>10</sup> Furthermore, without any legal justification, the Circuit Court departed from the recent decision of Judge Norton of the U.S. District Court dismissing almost exactly the same claims against the ecclesiastical office of the Bishop of Charleston. (Minute Order).

the Catholic Church canon law. A diocese is a particular church “in which form and from which the one and only Catholic Church exists. (Canon 368). Bishops are placed as the heads of dioceses and are “constituted pastors in the Church, so that they are teachers of doctrine, priests of sacred worship, and ministers of governance.” (Canon 375 § 1). The diocesan bishop governs “the particular church [i.e. diocese] entrusted to him with legislative, executive and judicial power according to the norm of law. (Canon 391 § 1).<sup>11</sup>

Section 1.4 of the Bylaws of the Corporation Sole states:

(a) The “**Bishop of Charleston**” is a diocesan bishop entrusted with the pastoral care of the Diocese of Charleston, South Carolina, by the Supreme Pontiff of the Roman Catholic Church and authorized as a successor of the apostles to teach, govern and sanctify through the power of the Holy Spirit in accord with Sacred Scripture, Church doctrine, and canon law as described in the preamble to this section. *The “Bishop of Charleston” is not a civil law title*, and notwithstanding the fact that the Corporation Sole is also the Bishop of Charleston, when used in these Bylaws, such term refers only to the person serving as the diocesan bishop, except where the context clearly requires otherwise.

(c) “**Corporation Sole**” is a nonprofit corporation or other *civil law entity with the legal name of “Bishop of Charleston.” The Corporation Sole is distinct from the ecclesiastical Bishop of Charleston. The duly appointed Bishop of Charleston or his successor (as specified in Section 6.1(c) of these Bylaws) is constituted in civil law as “Bishop of Charleston, a Corporation Sole.<sup>12</sup>*

The Corporation Sole is how the Bishop exercises his pastoral role in the civil law sphere.<sup>13</sup> The corporate entity was enshrined in law in 1880 by Act 264 of the General Assembly. That law was amended in 1900, but the Corporation Sole has ever since been recognized by the State as the civil law presence of the canonical entity of the Diocese and the ecclesiastical office of Bishop. One of the purposes of the Corporation Sole is to “support the ecclesial and civil

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<sup>11</sup> See, Bylaws of Bishop of Charleston, a Corporation Sole, § 1.1 **The Diocese in Canon Law.**

<sup>12</sup> Bylaws of the Corporation Sole, § 1.4, *emphasis added.*

<sup>13</sup> Bylaws of the Corporation Sole, § 1.3.

operation of the Diocese of Charleston and the Bishop of Charleston.”<sup>14</sup> Both the Church and the State have recognized that the civil law presence of the Roman Catholic Church in South Carolina is through the Corporation Sole. No statute or Rule of Civil Procedure mandates that the individual holding the office of Bishop of Charleston be sued in his official capacity.

As the Bylaws of the Corporation Sole establish, the Bishop of Charleston has determined that the Corporation Sole is the manner in which the Diocese will be organized and administered to interact in civil law, and it is through the Corporation Sole alone that the Diocese conducts “business” in the secular world. As Bishop Guglielmone has testified – when the Bishop acts in the civil law world, he does so as the Corporation Sole.<sup>15</sup> In short, the only admissible evidence before the Circuit Court was that the Church recognizes the Corporation Sole as its civil law presence, and the Bishop of Charleston, in his official capacity, is not a proper party to this action.

**b. The Circuit Court erred in failing to respect the organizational and administrative decisions of the Bishop of Charleston and, in so doing, violated the Catholic Church’s First Amendment rights.**

Civil courts lack subject matter jurisdiction to second-guess a church hierarchy’s decisions and actions regarding how the church is organized and administered. The State is required to defer to, and respect, a church’s determination of how it will organize itself, and how the church will have a civil law presence.<sup>16</sup> The First Amendment’s Religion Clauses prohibit secular, civil courts from exercising jurisdiction over the internal affairs of religious organizations.<sup>17</sup> As John Locke wrote in 1689:

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<sup>14</sup> Bylaws of the Corporation Sole § 2.1(b).

<sup>15</sup> Deposition testimony of Robert Guglielmone.

<sup>16</sup> See e.g. *Watson v. Jones*, 80 U.S. 679, 733-34.

<sup>17</sup> *Hosanna-Tabor supra*; *Jones v. Wolf*, 443 U.S. 595, 602 (1979); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709–10 (1976); *Presbyterian Church in the United States*

God has not granted power over religion to the ruler, and the right to seek their own means of salvation is not something that the citizens would give up to join in the social contract; . . . the king of coercive force available to a secular ruler is inadequate to compel belief; . . . taking on such a task would entail that souls be saved only in countries where the state enforces the correct religion.<sup>18</sup>

Civil courts, quite simply, have never been vested with any authority or judicial power to countermand ecclesiastical or religious determinations of a church.<sup>19</sup> The State has no authority of ignore the distinct personhood, both under canon law and in civil law, of the Diocese and its Bishop. In *Watson v. Jones*, the Supreme Court of the United States recognized that jurisdiction did not, and could not, reach religious or ecclesiastical matters:

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. ***The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, 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. ***But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.***<sup>20</sup>

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v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449–50 (1969); *Commack Self-Service Kosher Meats, Inc. v. Weiss*, 294 F.3d 415, 427–28 (2d Cir. 2002); *Dixon v. Edwards*, 290 F.3d 699, 714–15 (4th Cir. 2002).

<sup>18</sup> John Locke, A Letter Concerning Toleration, 1689.

<sup>19</sup> When the Constitution was ratified, England had ecclesiastical courts, such as the Court of Arches and the Court of Peculiars. See 3 Blackstone, *Commentaries on the Laws of England* ch. 5 (1768). Because the Framers did not establish a national church, nor did they intend to, civil courts were expressly denied the authority to adjudicate ecclesiastical disputes.

<sup>20</sup> *Watson v. Jones*, 80 U.S. 679, 728-29 (1871) (emphasis added).

The Religion Clauses “radiate[]...a spirit of freedom for religious organizations, an independence from secular control or manipulation” that places “matters of church government and administration beyond the purview of civil authorities.”<sup>21</sup> These First Amendment protections were extended to the states in *Cantwell v. Connecticut*<sup>22</sup> and *Everson v. Bd. Of Educ.*<sup>23</sup> The Religion Clauses act as a structural barrier to both federal and state law claims that would entangle the government in religious affairs and determinations of matters of church governance and ecclesiastical authority.<sup>24</sup> As has long been the law, church governance and structure is an attribute of the religion, and it is not up to civil courts, as a State body, to define, much less intervene in, the church’s internal structure, nor in its functioning or organization.<sup>25</sup> As the Supreme Court has repeatedly held, civil courts have no power whatsoever to determine ecclesiastical questions.<sup>26</sup> Likewise, the State can neither disregard nor overturn a church’s ecclesiastical determination of its own civil law existence.

The Free Exercise Clause solidifies the independence and freedom of religious organizations to decide not just doctrine, but all matters of church governance, organization and structure, and control of its ministers.<sup>27</sup> The civil courts “do not have jurisdiction to adjudicate matters of church doctrine or governance, or to second-guess ecclesiastical decisions made by a

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<sup>21</sup> See *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 186 (2012); also *McClure v. The Salvation Army*, 460 F.2d 553, 559 (5th Cir. 1972).

<sup>22</sup> *Cantwell v. Connecticut*, 310 U.S. 296 (1940) (incorporating the Free Exercise Clause).

<sup>23</sup> *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947) (incorporating the Establishment Clause).

<sup>24</sup> See e.g. *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829 (6th Cir. 2015) and *Lee v. Sixth Mount Zion Baptist Church*, 903 F.3d 113 (3rd Cir. 2018).

<sup>25</sup> See *Ponce v. Roman Catholic Apostolic Church*, 210 U.S. 296 (1908).

<sup>26</sup> See *Presbyterian Church*, 393 U.S. at 445-46.

<sup>27</sup> *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 117 (1952).

church body created to make those decisions.”<sup>28</sup> Church governance, organization, and administration are attributes of the religion and it is not up to the courts, as a State body, to define, much less intervene in, the internal structure or the functioning of the church.<sup>29</sup> It is axiomatic, then, that civil courts have no authority to reallocate ecclesiastical authority among church bodies, or to overturn the decisions of ecclesiastical authorities regarding the distribution of responsibility within the church.

*Serbian Eastern Orthodox Diocese* is determinative. In that case, the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church had defrocked a sitting bishop and appointed a replacement. The Holy Synod also determined to make a number of organizational and hierarchical changes: to divide the church into additional dioceses, and to appoint additional Bishops. Bishop Dionisije and others challenged the Church’s determinations in Illinois state court. The Illinois Supreme Court ruled in Dionisije’s favor, and held that the Church proceedings were procedurally and substantively deficient under the Church’s internal regulations. On *certiorari* review, the United States Supreme Court reversed, and held that “the inquiries made by the Illinois Supreme Court into matters of ecclesiastical cognizance and polity and the court’s actions in ruling on the case contravened the First and Fourteenth Amendments.”<sup>30</sup> Importantly, Justice Brennan wrote for the majority:

Consistently with the First and Fourteenth Amendments, ‘civil courts do not inquire whether the relevant hierarchical church governing body has power under

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<sup>28</sup> *Byrd v. DeVeaux*, 2019 WL 1017602 at \*7; see also *Tomic v. Catholic Diocese*, 442 F.3d at 1038. See also *Young v. Northern Illinois Conference of United Methodist Church*, 173 F.3d 184, 187 (7th Cir. 1994); *E.E.O.C. v. Catholic University of America*, 83 F.3d 455, 462-63 (D.C. Cir. 1996).

<sup>29</sup> *Presbyterian Church*, 393 U.S. at 449 (to conclude that the State can, in any way, define what the Church is, and what it is not, “would be to render judgment on the internal ecclesiastical hierarchy of the Catholic Church, in clear violation of the total separation between Church and State.”)

<sup>30</sup> *Serbian Eastern Orthodox Diocese*, 426 U.S. at 698.

religious law (to decide such disputes) . . . . Such a determination frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a hierarchical) church so as to decide . . . religious law (governing church polity) . . . would violate the First Amendment in much the same manner as civil determination of religious doctrine.”<sup>31</sup>

The *Serbian Eastern Orthodox Diocese* Court repeatedly cautioned against the courts serving as a forum for challenges to ecclesiastical decisions, whether it be the disposition of property, appointment of clergy, or administration and organization of the hierarchical church. Those decisions are to be left solely in the hands of the ecclesiastical authorities and the “civil courts exercise no jurisdiction in any matter that concerns theological controversy, church discipline, *ecclesiastical government*, or the conformity of the members of the church to the standard of morals required of them.”<sup>32</sup> Likewise, in *Kedroff*, the Supreme Court held that the First Amendment protects religious organizations from State interference in their organization and government, and the Constitution prohibits the State from manipulating the organizational decisions of the Church.

By the same token, the South Carolina Supreme Court gave full force and effect to the Episcopal Church’s organizational and administrative documents in *Protestant Episcopal Church v. Episcopal Church*. While the Episcopal Church case involved seceding parishes and a dispute over the property owned and controlled by the individual churches, the Supreme Court looked to the Church’s own canons, its Constitution, and other governing documents and gave those documents their full effect. Even then, the Court was clear that civil courts cannot inject themselves into church governance and cannot reevaluate decisions on matters of governance using state law principles. Civil courts simply cannot intrude into matters of church governance,

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<sup>31</sup> *Id.* at 708-09 quoting *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 369, (1970) (Brennan, J., concurring) (ellipsis in original).

<sup>32</sup> *Id.* at 713-714 quoting *Watson v. Jones*, 80 U.S. at 733-34 (emphasis added).

administration, and polity.<sup>33</sup> The Bishop of Charleston has made an ecclesiastical determination regarding the manner of his presence within the secular, civil law, arena – that is exclusively through the Corporation Sole. No civil court can interfere with or manipulate that decision without violating the First Amendment.<sup>34</sup>

In short, neither the federal nor the state courts have any constitutional authority, or any subject matter jurisdiction, to intercede in the distribution of authority and allocation of ecclesiastical power within a church. The determination of those issues by the Church itself is binding on the civil courts, and the courts must accept those determinations as Gospel. Any other inquiry, and more importantly, any reallocation of authority at the hands of a civil court would run roughshod over the First Amendment.

The Trial Court’s error was to engage in exactly the inquiry forbidden by *Milivojevich*, *Kedroff*, *Presbyterian Church* and *Protestant Episcopal Church* – looking behind, and overturning the dictates of the Roman Catholic Bishop regarding the organization and administration of the Diocese. Further, the Court’s denial of summary judgment to “the Bishop of the Diocese of Charleston, in his official capacity” represents an unconstitutional establishment of religion because the Court altered the proclamation of the Bishop and declared, notwithstanding Catholic doctrine, canon law, and the Bylaws of the Corporation Sole, that the ecclesiastical office of Bishop *is* a civil law office that can be sued in its own capacity as an official position. This Court should reverse that unconstitutional violation of religious freedom and remand with instructions to grant the partial summary judgment motions.

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<sup>33</sup> *Protestant Episcopal Church v. Episcopal Church*, 806 S.E.2d 211, 229 (S.C. 2017).

<sup>34</sup> As Acting Justice Toal wrote in dissent, when the first state constitution disestablished the Church of England, the individual parishes could petition the legislature to incorporate the parish by legislation. *Protestant Episcopal Church*, 806 S.E.2d at 110 (Toal, A.J. dissenting). It was not until 1973 that the Episcopal Diocese actually incorporated as an entity. *Id.*

**II. Over a 150 years' of constitutional jurisprudence establish that the civil courts may not overturn or alter the ecclesiastical organization and polity of the Diocese of Charleston.**

The Catholic Church has a hierarchical structure that is established under the church's canon law – the ecclesiastical law governing how the Church operates. Church governance and structure “was and is an attribute of [the] religion, in accordance with the First Amendment, as regulated by canon law.”<sup>35</sup> This structure is not an end unto itself, but is a core component of how the church furthers its religious mission in the United States. While the Pontiff in Rome has overarching authority over the dioceses around the world, each diocese stands as its own legal and juridical entity. As a State body, the civil courts may not intervene in, much less overturn, the Church's decisions on its organization and structure. More importantly, the Religion Clauses forbid courts from engaging in the exact inquiry as the Circuit Court undertook – no civil court can redefine the manner and method by which a church engages with secular culture. Rather, any action of the State, aimed at intervening in or seeking to alter the way in which the Catholic Church operates or is organized violates the separation of church and state. A civil court simply has no power to reconfigure the church's organization to fit its own purposes, or those of civil litigants.

To conclude otherwise would be to render judgment on the internal organization and hierarchy of the Roman Catholic Church in clear contravention of the separation of church and state, and in obvious violation of both the Free Exercise Clause and the Establishment Clause. As the Supreme Court held in *Kedroff*, the First Amendment grants to “religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and

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<sup>35</sup> *Ponce v. Roman Catholic Apostolic Church*, 210 U.S. 296 (1908).

doctrine.”<sup>36</sup> As has been the case for 150 years, civil courts have no role in determining ecclesiastical matters – including how a church decides to organize and administer its operations.<sup>37</sup>

The Supreme Court’s unbroken line of First Amendment cases establishes a bright line, more a barrier – civil courts cannot even inquire into matters of church polity, and are forbidden from substituting their own interpretations of church governance for the ecclesiastical determinations of the church.<sup>38</sup> Deference to religious authorities is essential to preserve the religious liberties of a church, but also to prevent courts from becoming inextricably entangled in religious questions. “If civil courts undertake to resolve such controversies . . . , the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern.”<sup>39</sup> The determination of church hierarchy, organization, and distribution of authority and power are just such purely ecclesiastical matters.<sup>40</sup>

In this case, the Church has decided under its canon law, its hierarchical organization, and under the authority of the Bishop, how the Catholic Diocese should carry out its evangelical mission within the secular, civil law world, and how the Diocese is to be structured and organized. The First Amendment requires the State to defer to the ecclesiastical decisions of the Church and it prohibits civil courts from reallocating authority in a church. Becoming entangled in such internal organizational matters is precisely what the First Amendment prohibits.

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<sup>36</sup> *Kedroff*, 344 U.S. at 116.

<sup>37</sup> *Presbyterian Church*, 393 U.S. at 447.

<sup>38</sup> *Serbian Eastern Orthodox Diocese*, 426 U.S. at 698, 703.

<sup>39</sup> *Presbyterian Church*, 393 U.S. at 449.

<sup>40</sup> *Kedroff*, 344 U.S. at 119 and *Serbian Eastern Orthodox Diocese*, 426 U.S. at 721 (organization of the church involves matters of internal church government, which sits at the core of ecclesiastical affairs).

As a matter of constitutional law, the definition of what the Church is, and what it is not, is exclusively the responsibility of the religious organization. The civil courts have no authority or jurisdiction to reexamine the ecclesiastical decisions of the Church. Those decisions must be accepted and respected by the State, lest the State violate the First Amendment. For the State to conclude otherwise would be to render judgment on the internal ecclesiastical organization of the Catholic Church in clear contravention of the total separation between Church and State.<sup>41</sup>

### CONCLUSION

The Circuit Court erred in overturning, and in refusing to respect, the decisions of the Catholic Church in how it will interact with the secular world. The Bishop, within his authority, has determined how the Diocese maintains a presence in civil law – exclusively through the Corporation Sole. The United States Supreme Court has long held that civil courts have no role in interpreting or overturning the ecclesiastical decisions of a hierarchical church, and that the courts lack subject matter jurisdiction to do so. This includes the organizational structure of the Catholic Church and the ecclesiastical determination regarding the civil law presence of the Diocese and its Bishop.

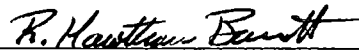
In short, the First Amendment prohibits civil courts from adjudicating claims against “the Bishop of the Diocese of Charleston, in his official capacity” in contravention of canon law and the Church’s established organizational and hierarchical structure. The courts cannot constitutionally override the Church’s ecclesiastical decisions or the structure of the Catholic Church. The Circuit Court erred in unconstitutionally ignoring the Diocese’s own determinations of its organization and structure, and in overturning those ecclesiastical determinations. In denying the Motion for Partial Summary Judgment, the Court determined and

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<sup>41</sup> *Presbyterian Church*, 393 U.S. at *id.*

established the Catholic Church's existence in the secular realm on its own terms and conditions without regard, or respect for, the religious organization's own decisions. For more than two centuries, the Constitution has forbidden precisely that establishment. Therefore this Court should reverse the decision below and remand with instructions to grant "the Bishop of the Diocese of Charleston, in his official capacity" judgment as a matter of law.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

**RECEIVED**  
SEP 27 2019  
SC Court of Appeals

Appellate Case No. 2019-001471

John Doe, ..... Respondent,

v.

The Diocese of Charleston, a Corporation Sole, and  
the Bishop of the Diocese of Charleston, in his official capacity, ..... Defendants,

Of whom the Bishop of the Diocese of Charleston,  
in his official capacity is the ..... Appellant.


**PROOF OF SERVICE**

The undersigned, an attorney in this matter of the Appellant certifies that I have this 27<sup>th</sup> day of September, 2019, served copies of the **Initial Brief of Appellant** and Appellant's **Designation of Matter to be Included in the Record on Appeal** upon all counsel for the

Respondents (listed below) by causing them to be deposited in the United States mail with sufficient postage attached, addressed to:

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September 27, 2019

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September 27, 2019

**Via Hand Delivery**

The Hon. Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate St.  
Columbia, 29201

Re: John Doe v. The Diocese of Charleston, et al.  
Case No. 2019-001471  
Our File No. 8724.252

**RECEIVED**  
SEP 27 2019  
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed are the originals and one copy each of the following materials: (1) Initial Brief of Appellant, (2) Designation of Matter to be Included in the Record on Appeal, and (3) Proof of Service. Please file the originals and return the stamped copies to our courier. Thank you for your kind assistance.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

*B. Hawthorn Bantt*

*for* Richard S. Dukes, Jr.

RHB  
Enclosures

cc: Lawrence E. Richter, Jr.