

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001470

RECEIVED

FEB 21 2020

S.C. SUPREME COURT

John Doe,.....Respondent,

v.

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

and

Richard Roe,.....Respondent,

v.

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

APPENDIX

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Pursuant to Rule 226(e) of the South Carolina Rules of Appellate Practice,
Petitioners submit the following materials in this Appendix to their Petition for Writ of
Certiorari to the Court of Appeals:

Documents that apply to both appeals

John Doe v. Bishop of Charleston and Richard Roe v. Bishop of Charleston

Order denying Motion for Partial Summary Judgment filed July 24, 2019	001
Order Denying Motion to Alter or Amend filed August 5, 2019	007
Notice of Appeal from Order Denying Motion for Partial Summary Judgment filed September 3, 2019.....	009
Initial Brief to Court of Appeals filed September 27, 2019.....	029
Order filed October 18, 2019.....	053
Respondent's Motion to Dismiss Appeal filed November 1, 2019	055
Appellant's Return to Motion to Dismiss Appeal filed November 5, 2019	060
Respondent's Reply to Appellant's Return dated November 11, 2019	071
Order Dismissing Appeal filed December 2, 2019.....	083
Appellant's Petition for Rehearing filed December 10, 2019.....	085
Order Denying Rehearing filed February 14, 2020	103

Richard Roe v. Bishop of Charleston Only

Motion to Consolidate Appeals filed September 17, 2019	105
Order to Produce Unredacted Documents filed October 18, 2019	112
Second Notice of Appeal filed October 18, 2019	115

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-10-03929

John Doe,

Plaintiff,

v.

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

Defendants.

**ORDER DENYING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND GRANTING
PLAINTIFF'S MOTION TO COMPEL
DISCOVERY**

DATE OF HEARING:	July 17, 2019
PRESIDING JUDGE:	Bentley D. Price
PLAINTIFF'S ATTORNEY:	Lawrence E. Richter, Jr. and Jennifer S. Ivey
DEFENDANTS' ATTORNEY:	Richard E. Dukes
COURT REPORTER:	Patricia Szoke

FILED
2019 JUL 24 AM 10:02
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER came before the Court for a hearing on July 17, 2019 on Defendant, the Bishop of Charleston, a Corporation Sole's (hereinafter the "Corporation Sole")¹ Motion for Partial Summary Judgment as to the Bishop of the Diocese of Charleston, in his official capacity (hereinafter "the Bishop" and collectively "the Diocese") and Plaintiff's Motion to Compel Discovery.

Present at the hearing were Lawrence E. Richter, Jr. and Jennifer S. Ivey, Counsel for the Plaintiff, and Richard E. Dukes, Counsel for the Defendants. Also present in the courtroom were non-lawyer staff for both Plaintiff and Defendants' Counsel and Dr. Gregory B. Adams.

¹ In its pleadings, including the Motion for Partial Summary Judgment, the Corporation Sole claims that it is incorrectly identified by the Plaintiff as the "Diocese of Charleston, a Corporation Sole." Accordingly, from this point forward, the caption in this case is to be restyled as John Doe v. The Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity.

After a full review of the pleadings, the legal memoranda filed by the parties, arguments of counsel, and considering the controlling legal authorities, this Court makes the following findings of fact and conclusions of law:

THE BISHOP, IN HIS OFFICIAL CAPACITY AS A PARTY-DEFENDANT

1. The first matter heard by the Court was the Corporation Sole's Motion for Partial Summary Judgment. The Motion for Partial Summary Judgment sought dismissal of the Bishop as a defendant in this case on the basis that: (i) the Bishop is not a real party in interest, and is not a proper defendant; (ii) the Bishop does not have the capacity to sue; and (iii) the Corporation Sole is the only proper party and the only party with the capacity to be sued.

2. Plaintiff argued that the Bishop is a proper and necessary defendant. The Plaintiff presented numerous public documents from multiple lawsuits and records of real estate transactions bearing directly on this issue. Specifically, it was powerfully and persuasively shown that there is a long precedent of the Diocese being sued in the name of the Bishop, as styled in this Complaint (i.e., "the Bishop of Charleston, in his official capacity") in South Carolina and within those same cases the Bishop has answered, sought affirmative relief, entered settlement agreements, and in some instances, been afforded relief. The Plaintiff offered proof that the Bishop has conveyed property pursuant to legal instruments recorded in South Carolina and that the Bishop entered into the 2007 class action settlement in his official capacity, having been sued in that name, not objecting, and represented by counsel throughout that matter, and even showed that the very Counsel who made challenge that the Bishop as referenced in the caption is a non-entity and not capable of being sued actually represented and acted for the Bishop when sued using the exact same nomenclature. Further, it was shown that then general counsel for the Diocese brought a suit using the same name as used herein with the

Diocese/Bishop in the role of Plaintiff seeking a monetary recovery against various insurance carriers. The Plaintiff also chronicled the Bishop's actions in this case, which included numerous responses and acts before the issue of the Bishop not being a proper defendant was raised.

3. The Plaintiff further argued that not only is the Bishop a proper defendant, but that it is necessary for the Bishop to be named as a Defendant for the Plaintiff to obtain the relief he seeks. The Plaintiff presented to the Court S.C. Code § 33-56-180, which provides in pertinent part: "An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, willful, or grossly negligent manner, and the employee must be joined properly as a party defendant."

4. Based upon the long precedent of the Bishop using South Carolina courts to sue in the name of the Bishop, the Bishop's history of being sued in South Carolina, and other legal acts taken by the Bishop under this South Carolina's laws, I find that the Bishop has the capacity to be sued and is a proper party-defendant to this suit.

5. I further find that the Bishop is a necessary party for relief. Based upon the existence of statutory rules like S.C. Code § 33-56-180(A) and the facts of this case, the inclusion of the Bishop as a party-defendant may be critical to the viability of the Plaintiff's claims.

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

6. The Court also considered the Plaintiff's Motion to Compel Discovery. The Plaintiff seeks to compel responses to: (1) its first set of written discovery, issued to the Bishop on September 5, 2018; and (2) its second set of written discovery, issued to both Diocese Defendants on May 13, 2019.

7. The First Set of Written Discovery: Plaintiff seeks to compel the Bishop's responses to the Plaintiff's First Set of Interrogatories, First Requests for Production, served upon the Bishop on September 5, 2018. Plaintiff also seeks to compel the Bishop's responses to Plaintiff's First Requests for Admission, served to the Bishop on December 4, 2018. The Bishop has objected to all these discovery requests upon him based upon the Corporation Sole's Motion for Partial Summary Judgment. The Diocese has further sought an order of protection as to the Bishop based upon the pendency of the Motion for Partial Summary Judgment.

8. The Second Set of Written Discovery: The Plaintiff also seeks to compel full and complete responses to the Plaintiff's Second Set of Interrogatories and Requests for Production that were issued to the Corporation Sole and the Bishop on May 13, 2019. The Bishop did not respond to this discovery, based upon the pendency of its Motion for a Protective Order, but the Corporation Sole did. However, the Plaintiff argues that the responses made by the Corporation Sole were packed full of dilatory and delay-intentioned objections, and were not valid or sufficient responses. The Diocese maintained its objections and represented to the Court that it is going to be necessary to go line-by-line through every discovery request and have this Court rule on each.

9. The Diocese represented that it cannot produce responses, including responses to the September 5, 2018 discovery issued to the Bishop, the May 13, 2019 discovery issued to both Defendants, and the June 6, 2019 document requests by subpoena *duces tecum* to the Chief Financial Officer of the Diocese, John Barker, and its Vicar General Rev. Msgr. Anthony Droze VG, in the Roe case, until a confidentiality order is entered by the Court. The Diocese has filed a Motion for Entry of a Confidentiality Order. Plaintiff's Counsel has expressed a need for the information the Diocese seeks to shield, and as such, I find it necessary to consider the parties'

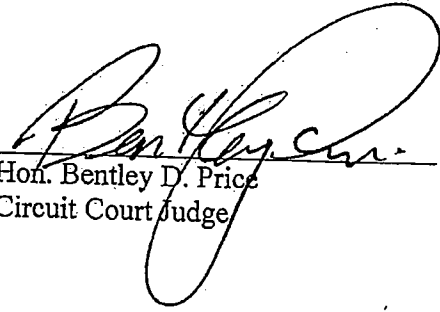
positions attendant to a line-by-line review of the Plaintiff's discovery requests and the Diocese's objections. Given the Scheduling Order in this case, I will consider both of these matters on August 19, 2019.

10. The Plaintiff's Motion to Compel is hereby granted. Based upon my foregoing conclusions with respect to the status of the Bishop as a party-defendant, the Bishop is ordered to produce responses to the Plaintiff's September 5, 2018 and December 4, 2018 first set of written discovery as soon as possible, but in any event no later than thirty (30) days from the date of the motions hearing or August 16, 2019. The Diocese is ordered to review and supplement its responses to the May 13, 2019 second set of written discovery as soon as possible, but in any event no later than thirty (30) days from the date of the motions hearing or August 16, 2019. To the extent the Diocese claims privilege or confidentiality to certain documents or information, the Diocese is ordered to have such documents ready and available in advance of the August 19, 2019 hearing. If the Court finds the documents or information are in fact not privileged, the documents and information are to be produced at the August 19, 2019 hearing or within 24 hours. As required by the SCRCF, the Defendants are to compile and send Plaintiff's Counsel a proper privilege log. Additionally, upon entry into a confidentiality order or if the Court declines to enter a confidentiality order, the documents and information are to be turned over to the Plaintiff at the conclusion or the August 19, 2019 hearing, or within 24 hours thereafter.

11. This Court will consider the Plaintiff's request to impose costs, fees, and sanctions on the Diocese under Rule 37, SCRCF at the time of the August 19, 2019 hearing.

NOW, THEREFORE, IT IS HEREBY

ORDERED AND ADJUDGED that Defendants' for Partial Summary Judgment is DENIED. Plaintiff's Motion to Compel is GRANTED and Defendants' discovery-related motions are rendered moot.


Hon. Bentley D. Price
Circuit Court Judge

29 day of July, 2019
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

John Doe,
Plaintiff

v.

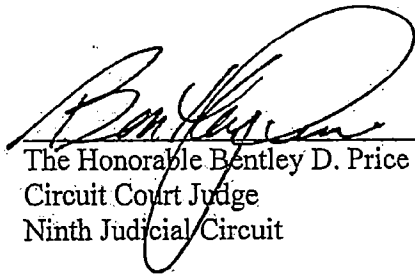
The Diocese of Charleston, a Corporation)
Sole, and the Bishop of the Diocese of)
Charleston, in his official capacity)
Defendants.)

IN THE COURT OF
COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2018-CP-10-3929

**ORDER DENYING
DEFENDANTS' MOTION
TO RECONSIDER**

FILED
2019 AUG -5 AM 9:20
JULIE J. ARMSTRONG
CLERK OF COURT

This matter initially came before the Court on July 17, 2019 on Defendant's Motion for Partial Summary Judgment and Plaintiff's Motion to Compel. At the conclusion of oral arguments, the Court granted the Plaintiff's Motion to Compel and denied the Defendants' Motion for Partial Summary Judgment. Defendant thereby timely filed a Motion to Reconsider. After thoroughly reviewing the Motion, Defendants' Motion to Reconsider is **DENIED**.
AND IT IS SO ORDERED.


The Honorable Bentley D. Price
Circuit Court Judge
Ninth Judicial Circuit

August 4th, 2019

IN THE STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Richard Roe,)

Plaintiff)

v.)

The Diocese of Charleston, a Corporation)

Sole, and the Bishop of the Diocese of)

Charleston, in his official capacity)

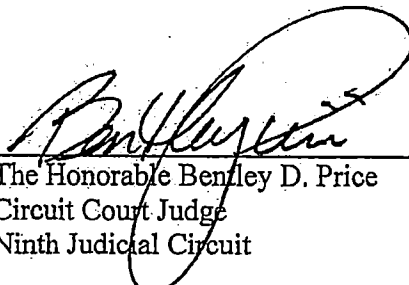
Defendants.)

IN THE COURT OF
COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2018-CP-10-4206

ORDER DENYING
DEFENDANTS' MOTION
TO RECONSIDER

FILED
2019 AUG -5 AM 9:20
JULIE J. ARISTIDE
CLERK OF COURT

This matter initially came before the Court on July 17, 2019 on Defendant's Motion for Partial Summary Judgment and Plaintiff's Motion to Compel. At the conclusion of oral arguments, the Court granted the Plaintiff's Motion to Compel and denied the Defendants' Motion for Partial Summary Judgment. Defendant thereby timely filed a Motion to Reconsider. After thoroughly reviewing the Motion, Defendants' Motion to Reconsider is **DENIED**.
AND IT IS SO ORDERED.


The Honorable Bentley D. Price
Circuit Court Judge
Ninth Judicial Circuit

August 7th, 2019

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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

Bentley D. Price, Circuit Court Judge

Case No. 2018-CP-10-03929

John Doe,.....Respondent,

v.

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

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

NOTICE OF APPEAL

The Appellant Bishop of Charleston in his individual capacity hereby appeals the Orders of the Honorable Bentley D. Price, which have the effect of striking a defense asserted in the Appellant's Answer and which directly affect the Appellant's substantial constitutional rights and the substantial constitutional rights of Bishop of Charleston, a Corporation Sole. Counsel for the Appellant received written notice of the entry of the original Order on July 24, 2019, and filed a timely motion pursuant to Rule 59(e), SCRPC. Counsel for the Appellant received written notice of the entry of the Order denying that motion on August 5, 2019. Copies of the two Orders are attached.

(Signature on next page)

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Attorneys for the Appellant

September 3, 2019

Other Counsel of Record:

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-10-03929

John Doe,

Plaintiff,

v.

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

Defendants.

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SEP 03 2019

SC Court of Appeals

**ORDER DENYING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND GRANTING
PLAINTIFF'S MOTION TO COMPEL
DISCOVERY**

DATE OF HEARING:	July 17, 2019
PRESIDING JUDGE:	Bentley D. Price
PLAINTIFF'S ATTORNEY:	Lawrence E. Richter, Jr. and Jennifer S. Ivey
DEFENDANTS' ATTORNEY:	Richard E. Dukes
COURT REPORTER:	Patricia Szoke

FILED
2019 JUL 24 AM 10:02
JULIE L. ARMSTRONG
CLERK OF COURT

THIS MATTER came before the Court for a hearing on July 17, 2019 on Defendant, the Bishop of Charleston, a Corporation Sole's (hereinafter the "Corporation Sole")¹ Motion for Partial Summary Judgment as to the Bishop of the Diocese of Charleston, in his official capacity (hereinafter "the Bishop" and collectively "the Diocese") and Plaintiff's Motion to Compel Discovery.

Present at the hearing were Lawrence E. Richter, Jr. and Jennifer S. Ivey, Counsel for the Plaintiff, and Richard E. Dukes, Counsel for the Defendants. Also present in the courtroom were non-lawyer staff for both Plaintiff and Defendants' Counsel and Dr. Gregory B. Adams.

¹ In its pleadings, including the Motion for Partial Summary Judgment, the Corporation Sole claims that it is incorrectly identified by the Plaintiff as the "Diocese of Charleston, a Corporation Sole." Accordingly, from this point forward, the caption in this case is to be restyled as John Doe v. The Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity.

After a full review of the pleadings, the legal memoranda filed by the parties, arguments of counsel, and considering the controlling legal authorities, this Court makes the following findings of fact and conclusions of law:

THE BISHOP, IN HIS OFFICIAL CAPACITY AS A PARTY-DEFENDANT

1. The first matter heard by the Court was the Corporation Sole's Motion for Partial Summary Judgment. The Motion for Partial Summary Judgment sought dismissal of the Bishop as a defendant in this case on the basis that: (i) the Bishop is not a real party in interest, and is not a proper defendant; (ii) the Bishop does not have the capacity to sue; and (iii) the Corporation Sole is the only proper party and the only party with the capacity to be sued.
2. Plaintiff argued that the Bishop is a proper and necessary defendant. The Plaintiff presented numerous public documents from multiple lawsuits and records of real estate transactions bearing directly on this issue. Specifically, it was powerfully and persuasively shown that there is a long precedent of the Diocese being sued in the name of the Bishop, as styled in this Complaint (i.e., "the Bishop of Charleston, in his official capacity") in South Carolina and within those same cases the Bishop has answered, sought affirmative relief, entered settlement agreements, and in some instances, been afforded relief. The Plaintiff offered proof that the Bishop has conveyed property pursuant to legal instruments recorded in South Carolina and that the Bishop entered into the 2007 class action settlement in his official capacity, having been sued in that name, not objecting, and represented by counsel throughout that matter, and even showed that the very Counsel who made challenge that the Bishop as referenced in the caption is a non-entity and not capable of being sued actually represented and acted for the Bishop when sued using the exact same nomenclature. Further, it was shown that then general counsel for the Diocese brought a suit using the same name as used herein with the

Diocese/Bishop in the role of Plaintiff seeking a monetary recovery against various insurance carriers. The Plaintiff also chronicled the Bishop's actions in this case, which included numerous responses and acts before the issue of the Bishop not being a proper defendant was raised.

3. The Plaintiff further argued that not only is the Bishop a proper defendant, but that it is necessary for the Bishop to be named as a Defendant for the Plaintiff to obtain the relief he seeks. The Plaintiff presented to the Court S.C. Code § 33-56-180, which provides in pertinent part: "An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, willful, or grossly negligent manner, and the employee must be joined properly as a party defendant."

4. Based upon the long precedent of the Bishop using South Carolina courts to sue in the name of the Bishop, the Bishop's history of being sued in South Carolina, and other legal acts taken by the Bishop under this South Carolina's laws, I find that the Bishop has the capacity to be sued and is a proper party-defendant to this suit.

5. I further find that the Bishop is a necessary party for relief. Based upon the existence of statutory rules like S.C. Code § 33-56-180(A) and the facts of this case, the inclusion of the Bishop as a party-defendant may be critical to the viability of the Plaintiff's claims.

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

6. The Court also considered the Plaintiff's Motion to Compel Discovery. The Plaintiff seeks to compel responses to: (1) its first set of written discovery, issued to the Bishop on September 5, 2018; and (2) its second set of written discovery, issued to both Diocese Defendants on May 13, 2019.

7. The First Set of Written Discovery: Plaintiff seeks to compel the Bishop's responses to the Plaintiff's First Set of Interrogatories, First Requests for Production, served upon the Bishop on September 5, 2018. Plaintiff also seeks to compel the Bishop's responses to Plaintiff's First Requests for Admission, served to the Bishop on December 4, 2018. The Bishop has objected to all these discovery requests upon him based upon the Corporation Sole's Motion for Partial Summary Judgment. The Diocese has further sought an order of protection as to the Bishop based upon the pendency of the Motion for Partial Summary Judgment.

8. The Second Set of Written Discovery: The Plaintiff also seeks to compel full and complete responses to the Plaintiff's Second Set of Interrogatories and Requests for Production that were issued to the Corporation Sole and the Bishop on May 13, 2019. The Bishop did not respond to this discovery, based upon the pendency of its Motion for a Protective Order, but the Corporation Sole did. However, the Plaintiff argues that the responses made by the Corporation Sole were packed full of dilatory and delay-intentioned objections, and were not valid or sufficient responses. The Diocese maintained its objections and represented to the Court that it is going to be necessary to go line-by-line through every discovery request and have this Court rule on each.

9. The Diocese represented that it cannot produce responses, including responses to the September 5, 2018 discovery issued to the Bishop, the May 13, 2019 discovery issued to both Defendants, and the June 6, 2019 document requests by subpoena *duces tecum* to the Chief Financial Officer of the Diocese, John Barker, and its Vicar General Rev. Msgr. Anthony Droze VG, in the Roe case, until a confidentiality order is entered by the Court. The Diocese has filed a Motion for Entry of a Confidentiality Order. Plaintiff's Counsel has expressed a need for the information the Diocese seeks to shield, and as such, I find it necessary to consider the parties'

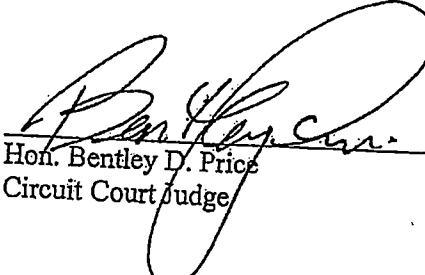
positions attendant to a line-by-line review of the Plaintiff's discovery requests and the Diocese's objections. Given the Scheduling Order in this case, I will consider both of these matters on August 19, 2019.

10. The Plaintiff's Motion to Compel is hereby granted. Based upon my foregoing conclusions with respect to the status of the Bishop as a party-defendant, the Bishop is ordered to produce responses to the Plaintiff's September 5, 2018 and December 4, 2018 first set of written discovery as soon as possible, but in any event no later than thirty (30) days from the date of the motions hearing or August 16, 2019. The Diocese is ordered to review and supplement its responses to the May 13, 2019 second set of written discovery as soon as possible, but in any event no later than thirty (30) days from the date of the motions hearing or August 16, 2019. To the extent the Diocese claims privilege or confidentiality to certain documents or information, the Diocese is ordered to have such documents ready and available in advance of the August 19, 2019 hearing. If the Court finds the documents or information are in fact not privileged, the documents and information are to be produced at the August 19, 2019 hearing or within 24 hours. As required by the SCRCP, the Defendants are to compile and send Plaintiff's Counsel a proper privilege log. Additionally, upon entry into a confidentiality order or if the Court declines to enter a confidentiality order, the documents and information are to be turned over to the Plaintiff at the conclusion of the August 19, 2019 hearing, or within 24 hours thereafter.

11. This Court will consider the Plaintiff's request to impose costs, fees, and sanctions on the Diocese under Rule 37, SCRCP at the time of the August 19, 2019 hearing.

NOW, THEREFORE, IT IS HEREBY

ORDERED AND ADJUDGED that Defendants' for Partial Summary Judgment is DENIED. Plaintiff's Motion to Compel is GRANTED and Defendants' discovery-related motions are rendered moot.


Hon. Bentley D. Price
Circuit Court Judge

29 day of July, 2019
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

John Doe,)
Plaintiff)

v.)

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

IN THE COURT OF
COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2018-CP-10-3929

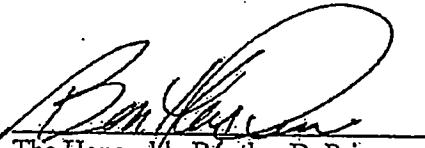
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SEP 03 2019
SC Court of Appeals

ORDER DENYING
DEFENDANTS' MOTION
TO RECONSIDER

2019 AUG -5 AM 9:20
JULIE J. ARMSTRONG
CLERK OF COURT

This matter initially came before the Court on July 17, 2019 on Defendant's Motion for Partial Summary Judgment and Plaintiff's Motion to Compel. At the conclusion of oral arguments, the Court granted the Plaintiff's Motion to Compel and denied the Defendants' Motion for Partial Summary Judgment. Defendant thereby timely filed a Motion to Reconsider. After thoroughly reviewing the Motion, Defendants' Motion to Reconsider is **DENIED**.
AND IT IS SO ORDERED.

August 1, 2019


The Honorable Bentley D. Price
Circuit Court Judge
Ninth Judicial Circuit

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2018-CP-10-03929

RECEIVED

SEP 03 2019

SC Court of Appeals

John Doe,.....Respondent,

v.

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

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

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Appellant, certifies that I have this 3rd day of September, 2019, served a copy of the Notice of Appeal on counsel for the Respondent by causing it to be deposited in the United States mail with sufficient postage attached, addressed to: Lawrence E. Richter, Jr., and Jennifer S. Ivey; The Richter Firm, LLC; 622 Johnnie Dodds Blvd., Mt. Pleasant, SC 29464.

R. Hamilton Burnett
for Richard S. Dukes, Jr.
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Attorneys for the Appellant

September 3, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2018-CP-10-04206

RECEIVED

SEP 03 2019

SC Court of Appeals

Richard Roe,.....Respondent,

v.

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

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

NOTICE OF APPEAL

The Appellant Bishop of Charleston in his individual capacity hereby appeals the Orders of the Honorable Bentley D. Price, which have the effect of striking a defense asserted in the Appellant's Answer and which directly affect the Appellant's substantial constitutional rights and the substantial constitutional rights of Bishop of Charleston, a Corporation Sole. Counsel for the Appellant received written notice of the entry of the original Order on July 24, 2019, and filed a timely motion pursuant to Rule 59(e), SCRCp. Counsel for the Appellant received written notice of the entry of the Order denying that motion on August 5, 2019. Copies of the two Orders are attached.

(Signature on next page)

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rdukes@turnerpadget.com

Attorneys for the Appellant

September 3, 2019

Other Counsel of Record:

Lawrence E. Richter, Jr.
Jennifer S. Ivey
The Richter Firm, LLC
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843) 849-6000

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-10-04206

Richard Roe,

Plaintiff,

v.

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

Defendants.

RECEIVED

SEP 03 2019

SC Court of Appeals

**ORDER DENYING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND GRANTING
PLAINTIFF'S MOTION TO COMPEL
DISCOVERY**

DATE OF HEARING:	July 17, 2019
PRESIDING JUDGE:	Bentley D. Price
PLAINTIFF'S ATTORNEY:	Lawrence E. Richter, Jr. and Jennifer S. Ivey
DEFENDANTS' ATTORNEY:	Richard E. Dukes
COURT REPORTER:	Patricia Szoke

FILED
2019 JUL 24 AM 10:03
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER came before the Court for a hearing on July 17, 2019 on Defendant, the Bishop of Charleston, a Corporation Sole's (hereinafter the "Corporation Sole")¹ Motion for Partial Summary Judgment as to the Bishop of the Diocese of Charleston, in his official capacity (hereinafter "the Bishop" and collectively "the Diocese") and Plaintiff's Motion to Compel Discovery.

Present at the hearing were Lawrence E. Richter, Jr. and Jennifer S. Ivey, Counsel for the Plaintiff, and Richard E. Dukes, Counsel for the Defendants. Also present in the courtroom were non-lawyer staff for both Plaintiff and Defendants' Counsel and Dr. Gregory B. Adams.

¹ In its pleadings, including the Motion for Partial Summary Judgment, the Corporation Sole claims that it is incorrectly identified by the Plaintiff as the "Diocese of Charleston, a Corporation Sole." Accordingly, from this point forward, the caption in this case is to be restyled as the "Bishop of Charleston, a Corporation Sole."

After a full review of the pleadings, the legal memoranda filed by the parties, arguments of counsel, and considering the controlling legal authorities, this Court makes the following findings of fact and conclusions of law:

THE BISHOP, IN HIS OFFICIAL CAPACITY AS A PARTY-DEFENDANT

1. The first matter heard by the Court was the Corporation Sole's Motion for Partial Summary Judgment. The Motion for Partial Summary Judgment sought dismissal of the Bishop as a defendant in this case on the basis that: (i) the Bishop is not a real party in interest, and is not a proper defendant; (ii) the Bishop does not have the capacity to sue; and (iii) the Corporation Sole is the only proper party and the only party with the capacity to be sued.

2. Plaintiff argued that the Bishop is a proper and necessary defendant. The Plaintiff presented numerous public documents from multiple lawsuits and records of real estate transactions bearing directly on this issue. Specifically it was powerfully and persuasively shown that there is a long precedent of the Diocese being sued in the name of the Bishop, as styled in this Complaint (i.e., "the Bishop of Charleston, in his official capacity") in South Carolina and within those same cases the Bishop has answered, sought affirmative relief, entered settlement agreements, and in some instances, been afforded relief. The Plaintiff offered proof that the Bishop has conveyed property pursuant to legal instruments recorded in South Carolina and that the Bishop entered into the 2007 class action settlement in his official capacity, having been sued in that name, not objecting, and represented by counsel throughout that matter, and even showed that the very counsel who made challenge that the Bishop as referenced in the caption is a non-entity and not capable of being sued actually represented and acted for the bishop when sued using the exact same nomenclature. Further it was shown that then general counsel for the Diocese of Charleston brought a suit using the same name as used herein with the

Diocese/Bishop in the role of Plaintiff seeking a monetary recovery against various insurance carriers. The Plaintiff also chronicled the Bishop's actions in this case, which included numerous responses and acts before the issue of the Bishop not being a proper defendant was raised.

3. The Plaintiff further argued that not only is the Bishop a proper defendant, but that it is necessary for the Bishop to be named as a Defendant for the Plaintiff to obtain the relief he seeks. The Plaintiff presented to the Court S.C. Code § 33-56-180, which provides in pertinent part: "An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, willful, or grossly negligent manner, and the employee must be joined properly as a party defendant."

4. Based upon the long precedent of the Bishop using South Carolina's courts to sue in the name of the Bishop, the Bishop's history of being sued in South Carolina, and other legal acts taken by the Bishop under this South Carolina's laws, I find that the Bishop has the capacity to be sued and is a proper party-defendant to this suit.

5. I further find that the Bishop is a necessary party for relief. Based upon the existence of statutory rules like S.C. Code § 33-56-180(A) and the facts of this case, the inclusion of the Bishop as a party-defendant may be critical to the viability of the Plaintiff's claims.

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

6. The Court also considered the Plaintiff's Motion to Compel Discovery. The Plaintiff seeks to compel responses to: (1) its first set of written discovery, issued to the Bishop on November 27, 2018; and (2) its second set of written discovery, issued to both Diocese

Defendants on May 13, 2019; and (3) his subpoenas *duces tecum* served upon John Barker and Rev. Msgr. Anthony Droze VG on June 6, 2019.

7. The First Set of Written Discovery: The Plaintiff seeks to compel the Bishop's responses to the Plaintiff's First Set of Interrogatories, First Requests for Production, and First Requests for Admissions, served upon the Bishop on November 27, 2018. The Bishop has objected to all these discovery requests to him based upon the Corporation Sole's Motion for Partial Summary Judgment. The Diocese has further sought an order of protection as to the Bishop based upon the pendency of the Motion for Partial Summary Judgment.

8. The Second Set of Written Discovery: The Plaintiff also seeks to compel full and complete responses to the Plaintiff's Second Set of Interrogatories and Requests for Production that were issued to the Corporation Sole and the Bishop on May 13, 2019. The Bishop did not respond to this discovery, based upon the pendency of its Motion for a Protective Order, but the Corporation Sole did. However, the Plaintiff argues that the responses made by the Corporation Sole were packed full of dilatory and delay intentioned objections, and were not valid or sufficient responses. The Diocese maintained its objections and represented to the Court that it is going to be necessary to go line by line through every discovery request and have this Court rule on each.

9. The Deposition Subpoenas: Plaintiff also took the issue with the attempts to obtain documents that were made by way of subpoenas *duces tecum* served upon the Chief Financial Officer of the Diocese John Barker and its Vicar General Rev. Msgr. Anthony Droze VG on June 6, 2019. The Diocese's Counsel stated to the Court that it would treat those requests as Rule 34 Requests for Production and that it had almost finished gathering the documents requested. The

Diocese's Counsel indicated, however, that the Diocese seeks confidentiality protections before it will produce any such documents.

10. The Diocese represented that it cannot produce responses, including responses to the November 27, 2018 discovery issued to the Bishop, the May 13, 2019 discovery issued to both Defendants, and the June 6, 2019 document requests by subpoena *duces tecum* to the Chief Financial Officer of the Diocese, John Barker, and its Vicar General Rev. Msgr. Anthony Drozé, until a confidentiality order is entered by the Court. The Diocese has filed a Motion for Entry of a Confidentiality Order. Plaintiff's Counsel has expressed a need for the information the Diocese seeks to shield, and as such, I find it necessary to consider the parties' positions attendant to a line-by-line review of the Plaintiff's discovery requests and the Diocese's objections. Given the Scheduling Order in this case, I will consider both of these matters on August 19, 2019.

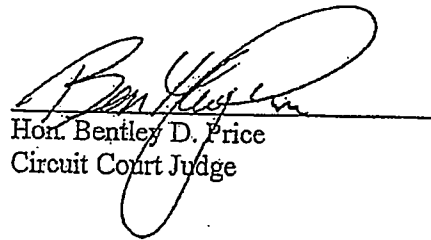
11. The Plaintiff's Motion to Compel is hereby granted. Based upon my foregoing conclusions with respect to the status of the Bishop as a party-defendant, the Bishop is ordered to produce responses to the Plaintiff's September 5, 2018 first set of written discovery as soon as possible, but in any event no later than thirty (30) days from the date of the motions hearing or August 16, 2019. The Diocese is ordered to review and supplement its responses to the May 13, 2019 second set of written discovery as soon as possible, but in any event no later than thirty (30) days from the date of the motions hearing or August 16, 2019, and the Diocese is ordered to have available on that date the documents requested from John Barker and Rev. Msgr. Anthony Droze VG on June 6, 2019. To the extent the Diocese claims privilege or confidentiality to certain documents or information, the Diocese is ordered to have such documents ready and available in advance of the August 19, 2019 hearing. As required by the SCRCP, Defendants are

to compile and send opposing counsel a proper privilege log. If the Court finds the documents or information are in fact not privileged, the documents and information are to be produced at the August 19, 2019 hearing or within 24 hours. Additionally, upon entry into a confidentiality order or if the Court declines to enter a confidentiality order, the documents and information are to be turned over to the Plaintiff at the conclusion of the August 19, 2019 hearing, or within 24 hours thereafter.

12. This Court will consider the Plaintiff's request to impose fees, costs, and sanctions on the Diocese under Rule 37, SCRPC at the time of the August 19, 2019 hearing.

NOW, THEREFORE, IT IS HEREBY

ORDERED AND ADJUDGED that Defendants' for Partial Summary Judgment is DENIED. Plaintiff's Motion to Compel is GRANTED and Defendants' discovery-related motions are rendered moot.


Hon. Bentley D. Price
Circuit Court Judge

29 day of July, 2019
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Richard Roe,)
Plaintiff)

v.)

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

IN THE COURT OF
COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2018-CP-10-4206

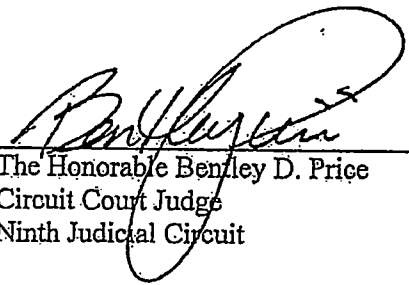
ORDER DENYING
DEFENDANTS' MOTION
TO RECONSIDER

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JULIE J. ARMSTRONG
CLERK OF COURT

This matter initially came before the Court on July 17, 2019 on Defendant's Motion for Partial Summary Judgment and Plaintiff's Motion to Compel. At the conclusion of oral arguments, the Court granted the Plaintiff's Motion to Compel and denied the Defendants' Motion for Partial Summary Judgment. Defendant thereby timely filed a Motion to Reconsider. After thoroughly reviewing the Motion, Defendants' Motion to Reconsider is **DENIED**.
AND IT IS SO ORDERED.

August 7, 2019


The Honorable Benzley D. Price
Circuit Court Judge
Ninth Judicial Circuit

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

SEP 03 2019

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2018-CP-10-04206

Richard Roe,.....Respondent,

v.

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

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

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Appellant, certifies that I have this 3rd day of September, 2019, served a copy of the Notice of Appeal on counsel for the Respondent by causing it to be deposited in the United States mail with sufficient postage attached, addressed to: Lawrence E. Richter, Jr., and Jennifer S. Ivey; The Richter Firm, LLC; 622 Johnnie Dodds Blvd., Mt. Pleasant, SC 29464.

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September 3, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001471

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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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 (<i>Codex Iuris Cononici</i>), 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 & 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 & 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. & 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
<u>STATUTES</u>	
1880 by Act 264 of the General Assembly	7
<u>OTHER AUTHORITIES</u>	
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
<u>RULES</u>	
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 Sole¹ 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).² 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

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

² 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.³

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.⁴

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.⁵ It is not sufficient that one create an inference that is not reasonable or an issue of fact that is not genuine.⁶ 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.⁷ Rather, summary judgment should be granted when "plain, palpable, and indisputable facts exist on which reasonable minds cannot

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

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

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

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

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

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

- 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.

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

⁹ 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.¹⁰ 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 Canonici*), 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

¹⁰ 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).¹¹

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.¹²*

The Corporation Sole is how the Bishop exercises his pastoral role in the civil law sphere.¹³ 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

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

¹² Bylaws of the Corporation Sole, § 1.4, *emphasis added*.

¹³ Bylaws of the Corporation Sole, § 1.3.

operation of the Diocese of Charleston and the Bishop of Charleston.”¹⁴ 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.¹⁵ 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.¹⁶ The First Amendment’s Religion Clauses prohibit secular, civil courts from exercising jurisdiction over the internal affairs of religious organizations.¹⁷ As John Locke wrote in 1689:

¹⁴ Bylaws of the Corporation Sole § 2.1(b).

¹⁵ Deposition testimony of Robert Guglielmone.

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

¹⁷ *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.¹⁸

Civil courts, quite simply, have never been vested with any authority or judicial power to countermand ecclesiastical or religious determinations of a church.¹⁹ 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.*²⁰

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).

¹⁸ John Locke, A Letter Concerning Toleration, 1689.

¹⁹ 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.

²⁰ *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.”²¹ These First Amendment protections were extended to the states in *Cantwell v. Connecticut*²² and *Everson v. Bd. Of Educ.*²³ 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.²⁴ 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.²⁵ As the Supreme Court has repeatedly held, civil courts have no power whatsoever to determine ecclesiastical questions.²⁶ 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.²⁷ The civil courts “do not have jurisdiction to adjudicate matters of church doctrine or governance, or to second-guess ecclesiastical decisions made by a

²¹ 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).

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

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

²⁴ 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).

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

²⁶ See *Presbyterian Church*, 393 U.S. at 445-46.

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

church body created to make those decisions.”²⁸ 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.²⁹ 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.”³⁰ 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

²⁸ *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).

²⁹ *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.”)

³⁰ *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.”³¹

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.”³² 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,

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

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

administration, and polity.³³ 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.³⁴

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 *Milivojevic*, *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.

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

³⁴ 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.”³⁵ 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

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

doctrine.”³⁶ 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.³⁷

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.³⁸ 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.”³⁹ The determination of church hierarchy, organization, and distribution of authority and power are just such purely ecclesiastical matters.⁴⁰

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.

³⁶ *Kedroff*, 344 U.S. at 116.

³⁷ *Presbyterian Church*, 393 U.S. at 447.

³⁸ *Serbian Eastern Orthodox Diocese*, 426 U.S. at 698, 703.

³⁹ *Presbyterian Church*, 393 U.S. at 449.

⁴⁰ *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.⁴¹

CONCLUSION

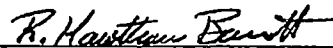
The Circuit Court erred in overturning, and in refusing to respect, the decisions of the Catholic Church in how it will interact with the secular world. The Bishop, within his authority, has determined how the Diocese maintains a presence in civil law – exclusively through the Corporation Sole. The United 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

⁴¹ *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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ATTORNEYS FOR APPELLANT

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 27th
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:

Larry E. Richter, Jr.
The Richter Firm, LLC
622 Johnnie Dodds Boulevard
Mount Pleasant, SC 29464

TURNER PADGET GRAHAM & LANEY, P.A.


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ATTORNEYS FOR APPELLANT

September 27, 2019

Turner | Padget

Richard S. Dukes, Jr.

REPLY TO:

E-Mail: RDukes@TurnerPadget.com
Writer's Direct Dial: (843) 576-2810
Writer's Direct Fax: (843) 577-1646

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.

R. Hawthorn Bantt

for Richard S. Dukes, Jr.

RHB
Enclosures

cc: Lawrence E. Richter, Jr.

TURNER PADGET GRAHAM & LANEY P.A.
Columbia | Charleston | Greenville | Florence | Myrtle Beach

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1901 Main St., 17th Floor (29201) | P.O. Box 1473, Columbia, SC 29202

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-10-03929

John Doe,

Plaintiff,

v.

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

Defendants.

ORDER

2019 OCT 18 AM 9:34
FILED
CLERK OF COURT

THIS MATTER came before the Court on Defendant's Motions for Disqualification of Plaintiff's Counsel, Motion for Entry of Confidentiality Order, and Motion to Dismiss.

These motions are **DENIED**

The Court has considered the briefing of the parties, the testimony of Defendant's expert witness, Professor Greg Adams, and the arguments made by the attorneys and, having considered the evidence, rules as follows:

Defendant's Motion to Disqualify is **DENIED**. Parties have the right to select their own counsel, and the Court finds that the Rules of Professional conduct do not prohibit Mr. Richter's undertaking this representation. The Court does not believe Mr. Richter is conflicted in representing both the Plaintiff here and the class of victims. As such, he may continue to represent this Plaintiff.

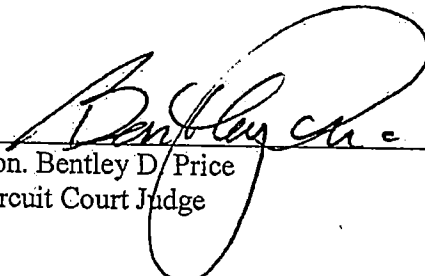
Defendant's Motion for Entry of a Confidentiality Order is likewise **DENIED**. At this point, the Court does not believe an entry of a Confidentiality Order is appropriate.

Defendant's Motion to Dismiss is likewise **DENIED**. The Court finds Plaintiff's complaint states a cause of action for which relief may be granted. As such, dismissal is inappropriate at this

stage.

IT IS SO ORDERED.

18th day of October, 2019
Charleston, South Carolina


Hon. Bentley D. Price
Circuit Court Judge

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001471

RECEIVED
NOV 01 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.

RESPONDENT'S MOTION TO DISMISS APPEAL

Respondent John Doe moves the Court to dismiss the appeal filed herein by the Bishop of Charleston, in his official capacity, of the ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND GRANTING PLAINTIFF'S MOTION TO COMPEL DISCOVERY. A copy of the appealed Order is attached to the Appellant's Notice of Appeal.

As will be seen from a review of the appealed Order, the Order does two things: (1) It denies Defendants' Motion for Partial Summary Judgment and (2) it grants Plaintiff's Motion to Compel Discovery. The Order is not immediately appealable on either ground.

- I. AN ORDER DENYING A MOTION FOR PARTIAL SUMMARY JUDGMENT IS NOT IMMEDIATELY APPEALABLE.

An order denying summary judgment is not appealable. The denial of summary judgment does not finally determine anything about the merits of the case and does not have the effect of striking any defense, since the defense may be raised again in later proceedings. *Ballenger v. Bowen*, 313 S.C. 476, 476, 443 S.E.2d 379, 380 (1994); *Brown v. Sojourner (In re Estate of Brown)*, 424 S.C. 589, 818 S.E.2d 770 (S.C. App., 2018).

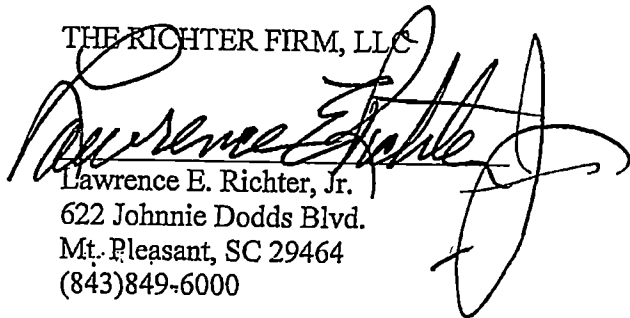
II. AN ORDER GRANTING A MOTION TO COMPEL DISCOVERY IS NOT IMMEDIATELY APPEALABLE.

An order compelling discovery is interlocutory and not immediately appealable. *Patterson v. Specter Broadcasting Corp.*, 287 S.C. 249, 335 S.E.2d 803 (1985); *Waddell v. Kahdy*, 309 S.C. 1, 419 S.E.2d 783 (1992); *Tucker v. Honda of S.C. Mfg, Inc.*, 354 S.C. 574, 582 S.E.2d 405 (2003); *Wieters v. Bon-Secours-St. Francis Xavier Hospital, Inc.*, 673 S.E.2d 417 (2009).

Accordingly, Respondent respectfully asks that this appeal be dismissed.

Respectfully submitted,

THE RICHTER FIRM, LLC


Lawrence E. Richter, Jr.
622 Johnnie Dodds Blvd.
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(843)849-6000

ATTORNEY FOR RESPONDENT

Mt. Pleasant, South Carolina

October 30, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001471

RECEIVED
NOV 01 2019
SC Court of Appeals

John Doe,.....Respondent,

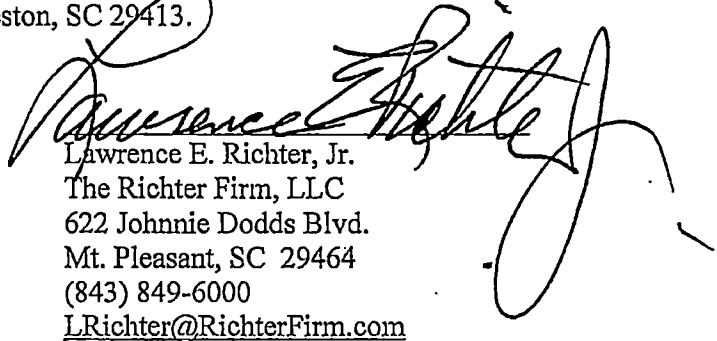
v.

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.

PROOF OF SERVICE

I certify that I have this 30th day of October, 2019 served a copy of Respondent's Motion to Dismiss Appeal on counsel for Defendants and Appellant by causing it to be deposited in the United States mail with sufficient postage attached, addressed to: Richard S. Dukes, Jr., Turner Padgett Graham & Laney, P.A., P.O. Box 22129, Charleston, SC 29413.


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Attorney for Respondent

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October 30, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
NOV 01 2019
SC Court of Appeals

In Re: John Doe v. Bishop of Charleston
Appellate Case No. 2019-001471

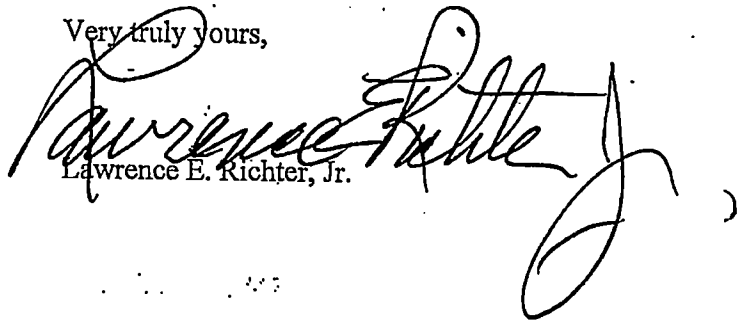
Dear Ms. Kitchings:

Enclosed please find Respondent's Motion to Dismiss Appeal, together with a Proof of Service, in regard to the above-referenced matter. Please file the original and return the file-stamped copy to our office in the enclosed, self-addressed, stamped envelope. Also enclosed please find the requisite \$50.00 filing fee. By copy of this letter to Richard S. Dukes, Jr., attorney for the Appellant, I am serving him with a copy of the same.

Of course, please feel free to contact me should you have any questions or require anything further.

With best regards, I am

Very truly yours,


Lawrence E. Richter, Jr.

LER/lwh
Enclosures

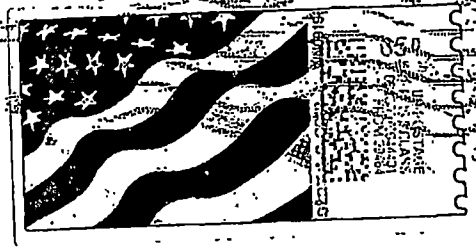
cc: Richard S. Dukes, Jr.

THE RICHTER FIRM, LLC

Attorneys & Counselors at Law

622 Johnnie Dodds Boulevard
Mount Pleasant, South Carolina 29464

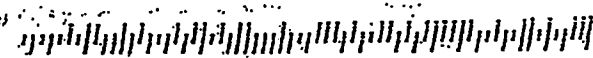
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The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Civil Action No.: 2018-CP-10-3929
Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001471

RECEIVED
NOV 05 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.

APPELLANTS' RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL

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ATTORNEYS FOR APPELLANT

The Appellants, have appealed from two orders issued by Circuit Judge Bentley Price. The first, dated July 24, 2019, ignored clear precedent of the United States Supreme Court and the South Carolina Supreme Court, and impermissibly inserted the civil courts into the ecclesiastical decisions of the organization and administration of a religious organization. Appellants have submitted the initial brief and have designated matters for inclusion in the Record on Appeal for that appeal. The second order, dated October 18, 2019, required Appellants to disclose the names of certain victims of childhood sexual abuse to Respondent. Respondent has now moved to dismiss the two appeals. Appellants oppose Respondent's motion.¹

In seeking to dismiss these appeals, Respondent places too much emphasis on what the challenged orders purport to be and ignore what they actually are. It is not the name or the type of an order that matters for purposes of appealability, but rather the order's overall impact. See *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). In *Morrow*, the Supreme Court concluded an order was immediately appealable, regardless of what it was called, because it implicated the appellant's substantial rights. As the Court stated, "Our review of the trial court order is not constrained by how the order is styled." *Id.* at 539, 773 S.E.2d at 147 (emphasis added). The Court further cited *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 479 (Ct. App. 2011), for the proposition that "an appellate court should look to the effect of an interlocutory order to determine its appealability." *Id.* at 540, 773 S.E.2d at 147 (emphasis added).

In response to Respondent's discovery requests, Appellant produced the priest personnel file of Fr. Frederick Hopwood. It is now known that Fr. Hopwood was a serial sexual abuser. When eight men came forward in 1993, Fr. Hopwood was arrested and charged with criminal

¹ In this appeal, it does not appear there was an order to produce confidential documents below, though Respondent raised both issues in the Motion to Dismiss. Appellants have moved to consolidate the two appeals. In an abundance of caution, Appellants have fully briefed the issues raised by Respondent's Motion to Dismiss.

sexual conduct. With the publicity surrounding his arrest, other victims came forward to detail their abuse at his hands. Some of these victims demanded strict confidentiality to protect their anonymity and others entered into settlement agreements containing provisions that protected their identities. Several of those victims filed suit using aliases. Many of these victims' names and the specifics of their abuse appear in Fr. Hopwood's files. In order to maintain the victims' anonymity, Appellant redacted all victim names from the documents produced to the Respondent.

Respondent filed a motion to compel production of these victim names, and Respondent's counsel stated in open court that he intended to contact every victim and ask them questions about their abuse.² In response the Trial Court ordered Appellants to provide the Hopwood personnel file and a redaction log with the victims' names for an *in camera* review. On October 18, 2019, the Trial Court entered a written order compelling production of the Hopwood personnel file without redactions of victim names. Appellants appealed that order that same day. There is no mechanism by which the confidential information regarding victims of long-past sexual abuse can be protected or effectively retracted once the names have been provided.

As noted in its Initial Brief, the Trial Court's Order regarding the motion for summary judgment filed by the ecclesiastical and canonical office of Bishop violates the First Amendment's Free Exercise and Establishment clauses by refusing to give proper deference to the Church's clear decisions on how Appellants interact with the civil law world – exclusively through the Corporation Sole. The Trial Court's order undermines perhaps the most substantial constitutional rights of the Church by refusing to respect the Roman Catholic Church's organizational structure and its choices regarding how the Church will interact with the secular, civil law world.

² Respondent's motion to compel was very broad, and he sought production of all victim names and information regarding every allegation of sexual abuse against any employee of the Diocese. Respondent also requested the complete, and unredacted, personnel files of all priests or other employees who have ever been accused of sexual abuse of a minor. The Trial Court did not rule on those discovery requests.

1. **The Trial Court's Order Compelling Production of the Names of Victims of Alleged Sexual Abuse is no Mere Discovery Order and Must Be Immediately Appealable.**

As former Chief Justice Toal wrote in her treatise, "If an order requires a party to turn over documents, which the party feels are privileged or contain proprietary or confidential matters, compliance with the order without the ability to seek immediate appeal renders the protections afforded by the privilege or confidentiality a nullity." The Trial Court's Order has the effect of revealing the very thing Appellant is claiming should remain confidential – the identities of those adults who were sexually abused as children. Once the victims' identities are revealed, the resulting pain, anguish, embarrassment, and trauma cannot be corrected. As pointed out to the Trial Court, some of the victims came forward to report their abuse more than 25 years ago, and their childhood abuse largely took place between the 1950s and 1980s. Unless the Trial Court's order is immediately appealable, the Order would be unreviewable on appeal from a final judgment, as any "relief" would be no relief at all. *See BLH v. S.C. Dep't of Social Servs.*, 814 S.E.2d 638 (Ct. App. 2018).

The victims of sexual abuse by Fr. Hopwood have come forward over the years and Appellants have respected and guarded their anonymity. Most, if not all, reached some type of confidential resolution and many have received psychological counseling to help them deal with their abuse. The fact that victims are encouraged to report past sexual abuse and the counseling and pastoral support provided by Appellants could be drastically undermined if victims know that their identities will be provided to a plaintiff's lawyer, who plans to contact them and cross examine them. The very real and imminent threat of harm to innocent third parties merits immediate appeal. Even if the Court eventually disagrees with Appellants' arguments on the

merits, those arguments need to be heard and considered now. An appeal after compliance with the challenged order would be too late to provide any meaningful remedy.

This Court's holdings in *BLH v. S.C. Dep't of Soc. Servs.*, and *Doe v. Howe*, 607 S.E.2d 354, 355 are instructive and determinative. An order is appealable if it "(1) conclusively determines the question, (2) resolves an important question independent of the merits, and (3) is effectively unreviewable on appeal from a final judgment." *Doe* at 356. As was the case in both *BLH* and in *Doe*, the "the appealability criteria were met because the order denying the client's motion to proceed anonymously 'ha[d] the effect of revealing his identity, the very thing he was seeking to keep confidential.'" *Doe* at 356; *quoted in BLH*, 814 S.E.2d at 641-42.

Likewise, the Supreme Court has held, "[a]n order allowing discovery of documents that a newspaper ultimately sought disclosed as the subject of [a] FOIA action was immediately appealable because it in effect determined the action and prevented an appealable judgment." *Knight Publishing Co. v. University of S.C.*, 295 S.C. 31, 367 S.E.2d 20 (1988), *overruled on other grounds*, *Simpson v. Sanders*, 314 S.C. 413, 445 S.E.2d 93 (1994). There, as here, if the discovery is allowed Appellants' objection, the merits of whether Respondent was entitled to receive the documents will become moot because Respondent would already have had the documents. The court-ordered production of confidential document must be immediately appealable, lest any review of the decision become meaningless.

Additionally, the idea of exposing the identities of victims who have nothing to do with this litigation – and potentially exposing them to additional psychological trauma, grief, and embarrassment clearly warrants review of the Trial Court's order on appeal. These victims have a right to their anonymity and to the confidentiality Appellants agreed to afford them. The Trial Court's order to breach that confidentiality must be reviewed now, and it should be reversed.

2. **The Trial Court's Order unconstitutional Order ignoring the Roman Catholic Church's self-determination of its organization, structure, and manner of doing business in the civil law world is immediately appealable.**

As noted above, the Trial Court's Order denying Appellant's summary judgment motion directly impacts, and violates, Appellant's substantial constitutional rights. Thus, it is immediately appealable in its own right. Yet, even if it were not, the clearly appealable order discussed in the previous section allows the Court to review this issue as well. "An order not immediately appealable will nonetheless be considered if there is an appealable issue before the appellate court, and a ruling on appeal will avoid unnecessary litigation." Toal, et al. *Appellate Practice in South Carolina*, at 88 (citing *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998)).

The Trial Court's Order ignores the very fundamental freedom of religion enjoyed by religions and enshrined into the First Amendment's Free Exercise and Establishment clauses. The Trial Court's overturning both the Church's and the state's determinations of how the Catholic Church exists in the civil, rather than the ecclesiastical, context constitutes a veritable attack on the First Amendment rights of the Catholic Church and causes the Court to engage in an impermissible inquiry into canon law and Church doctrine. The ruling stands in stark contrast to nearly 150 years' of precedent that civil courts must accept, and give full effect to, the decisions of religious organizations regarding how the church will be organized and structured. Appellants presented the Church documents establishing that Diocese of Charleston operates in civil law as the Corporation Sole and that the Corporation Sole is the only proper defendant in this action.

As with the order to produce confidential material regarding victims of sexual abuse, the Trial Court's Order denying summary judgment to the ecclesiastical office of Bishop is more

than it seems. The substance of the Order means that an ecclesiastical office, and just the office not an individual holding that office, is being forced to engage with the civil law even though the ecclesiastical office does not have a civil law presence. The diocesan bylaws spell that out distinctly – that the Bishop of Charleston is NOT a civil law title and that Bishop of Charleston, a Corporation Sole is THE civil law entity with the legal name of “Bishop of Charleston.” The Trial Court’s reordering the allocation of both ecclesiastical and civil authority constitutes governmental establishment of religion – determining how a church must function under state authority.

Thus denial of summary judgment to the ecclesiastical office of Bishop of Charleston, which exists only in canon law, erroneously trod on the First Amendment rights of the Roman Catholic Diocese. The Trial Court ignored the Church’s own determinations regarding its presence in civil law, as well as the state’s own law recognizing the Corporation Sole and the civil law presence of the Bishop of Charleston and the Catholic Diocese. In doing so, the Trial Court engaged in its own reordering of the Catholic Diocese and established a church of the Court’s making.

Because the Trial Court erroneously violated the First Amendment rights of a religious organization, violated the Establishment Clause by determining how the Trial Court believed Appellants of Charleston should be present in the secular world, and violated the Free Exercise Clause by denying the Roman Catholic Church its absolute right to control how it is organized and administered, the Trial Court’s Order must be immediately appealable and should be reversed.

CONCLUSION

For all of these reasons, the Court should deny the motion to dismiss and allow the appeal to proceed.

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ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Civil Action No.: 2018-CP-10-3929

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001471

RECEIVED

NOV 05 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.

PROOF OF SERVICE

The undersigned, an attorney in this matter, certifies that I have this 5th day of November, 2019, served a copy of the Return to Respondent's Motion to Dismiss upon all counsel of record by causing them to be deposited in the United States mail with sufficient postage attached, addressed to:

Mr. Lawrence E. Richter, Jr.
The Richter Firm, LLC
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

R. Hawthorne Barrett
for Richard S. Dukes, Jr.
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Richard S. Dukes, Jr.

REPLY TO:

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November 5, 2019

Via Hand Delivery

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

RECEIVED
NOV 05 2019
SC Court of Appeals

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

Dear Ms. Kitchings:

Enclosed are the original and seven copies of the Return to Respondent's Motion to Dismiss and the original and one copy of the Proof of Service. Please file the originals and necessary copies and return the stamped copies to our courier. Thank you for your kind assistance.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

R. Heath Benth
for Richard S. Dukes, Jr.

RHB
Enclosures

cc: Lawrence E. Richter, Jr.

THE RICHTER FIRM, LLC

Attorneys & Counselors at Law
622 Johnnie Dodds Boulevard
Mount Pleasant, South Carolina 29464

Lawrence E. Richter, Jr.

Telephone: (843) 849-6000
Telefax: (843) 881-1400

November 11, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

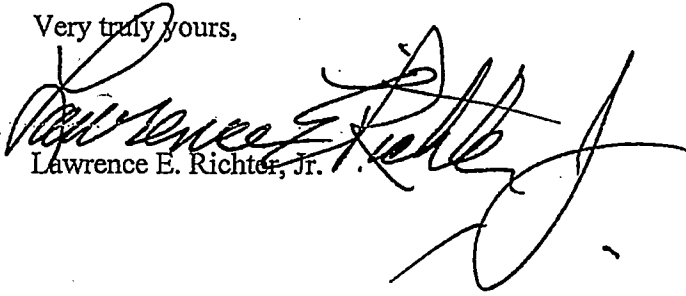
In Re: John Doe v. Bishop of Charleston
Appellate Case No. 2019-001471

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Respondent's Reply to Return to Motion to Dismiss Appeal, together with a Proof of Service, in regard to the above-referenced matter. Please file the original and necessary copies and return the file-stamped copy to our office in the enclosed, self-addressed, stamped envelope. By copy of this letter to Richard S. Dukes, Jr., attorney for the Appellant, I am serving him with a copy of the same.

With best regards, I am

Very truly yours,


Lawrence E. Richter, Jr.

LER/lwh
Enclosures

cc: Richard S. Dukes, Jr.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

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.

RESPONDENT'S REPLY TO RETURN TO MOTION TO DISMISS APPEAL

Respondent John Doe, in Reply to the Appellant's Return to Respondent's Motion to
Dismiss Appeal, would respectfully show the Court as follows:

- I. A REVIEW OF THE APPELLANT'S RETURN INDICATES THAT THE APPELLANT
IS CONFUSED AS TO THE IDENTITIES OF THE PARTIES AND THE SCOPE OF
THIS APPEAL.

The September 3, 2019 Notice of Appeal in this matter appealed the Circuit Court's
ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT
AND GRANTING PLAINTIFF'S MOTION TO COMPEL DISCOVERY, which order was

entered on July 24, 2019. As shown by July 24, 2019 Order of the Circuit (attached to the Notice of Appeal), there are two Defendants in this action, the "Bishop of Charleston, a Corporation Sole," and the "Bishop of the Diocese of Charleston, in his official capacity." Only one of these two Defendants, the "Bishop of the Diocese of Charleston, in his official capacity" (also referred to in the Notice of Appeal as both the "Bishop of Charleston, in his *official* capacity" and the "Bishop of Charleston in his *individual* capacity"), has filed a Notice of Appeal (*i.e.*, there is only one Appellant in this appeal, the "Bishop of the Diocese of Charleston, in his official capacity"). The other Defendant, the Bishop of Charleston, a Corporation Sole, has not filed a Notice of Appeal and is therefore not a party to this appeal.

Regardless of whether the Appellant prefers to be called the "Bishop of the Diocese of Charleston, in his official capacity," or the "Bishop of Charleston, in his official capacity," or even the "Bishop of Charleston in his individual capacity," the fact remains that the only thing that has been appealed in this case is the denial of a motion for partial summary judgment, which is not appealable.

II. THE APPELLANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT DEALT SOLELY WITH THE ISSUE OF WHETHER THE APPELLANT IS A PROPER PARTY TO THE ACTION.

A copy of the Appellant's Motion for Partial Summary Judgment, filed March 29, 2019, is attached hereto as Exhibit A. It will be noted in the Appellant's Motion that he claimed that the "Bishop of the Diocese of Charleston, in his official capacity," is not a proper party defendant and that the Corporation Sole is the only proper party defendant. However, the Circuit Court rejected this argument, noting in numbered paragraph 2 of the appealed Order:

2. Plaintiff argued that the Bishop is a proper and necessary defendant. The Plaintiff presented numerous public documents from multiple lawsuits and records of real estate transactions bearing directly on this issue. Specifically, it was powerfully and persuasively shown that there is a long precedent of the Diocese being sued in the name of the Bishop, as styled in this Complaint (i.e., "the Bishop of Charleston, in his official capacity") in South Carolina and within those same cases the Bishop has answered, sought affirmative relief, entered settlement agreements, and in some instances, been afforded relief. The Plaintiff offered proof that the Bishop has conveyed property pursuant to legal instruments recorded in South Carolina and that the Bishop entered into the 2007 class action settlement in his official capacity, having been sued in that name, not objecting, and represented by counsel throughout that matter, and even showed that the very Counsel who made challenge that the Bishop as referenced in the caption is a non-entity and not capable of being sued actually represented and acted for the Bishop when sued using the exact same nomenclature. Further, it was shown that then general counsel for the Diocese brought a suit using the same name as used herein with the Diocese/Bishop in the role of Plaintiff seeking a monetary recovery against various insurance carriers. The Plaintiff also chronicled the Bishop's actions in this case, which included numerous responses and acts before the issue of the Bishop not being a proper defendant was raised.

The Circuit Court correctly determined that the Appellant had been properly joined as a party defendant and further determined that he was a necessary party, and accordingly denied the Appellant's Motion for Summary Judgment. As will be seen below, the denial of the Appellant's motion for partial summary judgment is the only portion of the Circuit Court Order the Appellant has appealed.

III. IN HIS INITIAL BRIEF FILED IN THIS APPEAL, THE APPELLANT HAS RAISED ONLY TWO ISSUES, BOTH DEALING ONLY WITH THE DENIAL OF SUMMARY JUDGMENT AS TO WHETHER HE IS A PROPER PARTY DEFENDANT.

In the Statement of Issues on Appeal on page 1 in his Initial Brief, the Appellant has raised only two issues in this 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?

In his Initial Brief, the Appellant contends that “the Bishop *of the Diocese* of Charleston, in his official capacity,” is not a proper party. (Initial Brief, p. 2) The Initial Brief goes on to argue that “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.” (Initial Brief, p. 5)

- IV. THE APPELLANT CANNOT INJECT ADDITIONAL ISSUES INTO THIS APPEAL BY WAY OF HIS RETURN TO THE MOTION TO DISMISS THE APPEAL OR BY ANY OTHER MEANS.

The Appellant’s attempt to inject additional issues into this appeal by way of his Return is not permitted under the rules of appellate procedure. Ordinarily, no point will be considered on appeal which is not set forth in the statement of the issues on appeal. Rule 208(b)(1), SCACR; *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000). All issues must be presented and argued in the initial briefs; no new arguments may be made in the final briefs. Rule 211(b), SCACR. Moreover, an appellant may not use the reply brief as a vehicle to argue issues not argued in the appellant’s brief. *Bochette v. Bochette*, 300 S.C. 109, 386 S.E.2d 475 (Ct. App. 1989). Additionally, an appellant may not use oral argument as a vehicle to argue issues not argued in the appellant’s brief. *In re: Bruce O*, 311 S.C. 514, 429 S.E.2d 858 (Ct. App. 1993).

- V. THE ONLY ISSUE BEFORE THIS COURT AT THIS TIME IS WHETHER THE CIRCUIT COURT’S ORDER DENYING THE APPELLANT’S MOTION FOR SUMMARY JUDGMENT IS IMMEDIATELY APPEALABLE.

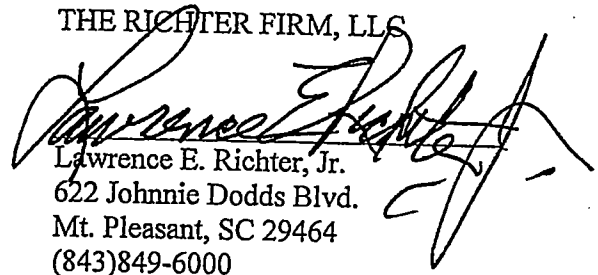
As previously stated in Respondent’s Motion to Dismiss Appeal, an order denying summary judgment is not appealable. The denial of summary judgment does not finally determine

anything about the merits of the case and does not have the effect of striking any defense. *Ballenger v. Bowen*, 313 S.C. 476, 476, 443 S.E.2d 379, 380 (1994); *Olson v. Faculty House of Carolina, Inc.*, 354 S.C.161, 168, 580 S.E.440, 444 (2003) (“[T]he denial of [a motion for] summary judgment is not appealable, even after the final judgment.”); *Brown v. Sojourner (In re Estate of Brown)*, 424 S.C. 589, 818 S.E.2d 770 (S.C. App. 2018); *Vicary v. Town of Awendaw*, 427 S.C. 48, 828 S.E.2d 229 (Ct. App. 2019).

Accordingly, Respondent respectfully asks that this appeal be dismissed.

Respectfully submitted,

THE RICHTER FIRM, LLC



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(843)849-6000

ATTORNEY FOR RESPONDENT

Mt. Pleasant, South Carolina

November 11, 2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2018-CP-10-3929

John Doe,

Plaintiff,

vs.

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

Defendants.

**MOTION FOR PARTIAL SUMMARY
JUDGMENT AS TO "THE BISHOP OF
THE DIOCESE OF CHARLESTON, IN HIS
OFFICIAL CAPACITY"**

2019 MAR 29 PM 1:06
JULIE D. GIBBS
CLERK OF COURT
BY

Defendant Bishop of Charleston, a Corporation Sole (incorrectly identified in the Complaint as "the Diocese of Charleston, a Corporation Sole" hereby moves pursuant to Rule 56 for an order dismissing "the Bishop of the Diocese of Charleston, in his official capacity." As grounds, Defendants state as follows:

1. The defendant styled "Bishop of the Diocese of Charleston, in his official capacity" is not a real party in interest, and is not a proper defendant.

Plaintiff's Complaint contends that "The Bishop of the Diocese of Charleston . . . is sued in his official capacity. The Bishop is ultimately responsible for the priests and other employed by the Diocese. Bishop is the successor in interest to his predecessors in his official position." Unlike a government agency, which by law must be sued in the name of the agency head, the law does not require the Roman Catholic Diocese of Charleston, or the Corporation Sole, to be sued in the name of its titular head. No statute or Rule mandates that the individual holding the office of Bishop of Charleston, be sued in his official capacity.

Furthermore, there is no basis under South Carolina law for Plaintiff's claim that "Bishop is the successor in interest to his predecessors in his official position." Whether, and to what extent any individual bishop may be held liable for the acts of another would require the Court to look to Canon Law and the allocation of power and authority within a hierarchical church and to



make civil determinations regarding the doctrines of the Catholic Church. Yet that very inquiry to reconcile whether a Bishop can be held responsible for acts taken by his predecessor is absolutely prohibited by the First Amendment.¹ A civil court is not permitted to reconcile competing interpretations of church law or church decisions, for doing so would constitute a civil determination of religious doctrine and would violate the Establishment Clause.² There is no neutral way for the Court to determine whether a subsequent Bishop is responsible for the decisions of his predecessor.

In short, determination of whether a Catholic bishop is the successor-in-interest to his predecessors such that he is civilly liable for the predecessor's acts cannot be ruled on without violating the Church's First Amendment rights. It is beyond question that the Catholic Church is hierarchical and that its ecclesiastical decisions may not be undermined or disturbed by a civil court. Even the inquiry into whether one bishop may be individually liable for the acts of another would tread on the Church's First Amendment rights. The parties would have to introduce expert testimony on Canon Law, and the Court would have to research and make decisions regarding questions of Church doctrine. There is no simple, religion-neutral way to decide the question.

Because the Court is prohibited from even drawing on the Catholic Church's ecclesiastical decisions, matters of Canon Law, or Catholic doctrine, it will be unable to decide questions of successor liability.

Thus, pursuant to Rule 17, "the Bishop of Charleston, in his official capacity" is *not* a real party in interest and should be dismissed as a party-defendant.

Importantly, Plaintiff has not identified *what person* he contends may be liable to him, or why. He has brought suit against an unnamed officeholder – not a person who may have done or

¹ *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

² *Id.* at 709.

not done something. Plaintiff has not sued a party at all – there is no basis for holding an official title or position responsible for any action by any individual. The office of the Bishop of Charleston is not a real party in interest and must be dismissed from the case. *See also* Rule 8(a), SCRCP (setting forth that a Plaintiff's pleading must “contain a short and plain statement of the facts showing that the pleader is entitled to relief”).

2. The amorphous “Bishop of the Diocese of Charleston, in his official capacity” does not have the capacity to be sued.

“The capacity of a party to sue or be sued shall be determined by the law of this State.” Rule 17, SCRCP. Plaintiff has not actually sued an identifiable person who may be liable to him – and he has not named as a defendant any person with the capacity sue or be sued. Rather, plaintiff has named an office or an ecclesiastical position. The office itself does not have capacity to be sued as provided under Rule 17, SCRCP. The acts described in the Complaint occurred decades ago during the administration of Bishop Ernest Unterkoefler, who died in 1991. Bishop Unterkoefler cannot be sued, in his official capacity or otherwise, at this point. There is no genuine issue of material fact that “the Bishop of the Diocese of Charleston, in his official capacity” has no capacity to be sued under Rule 17 and should be dismissed from the action.

3. The Corporation Sole is the only proper party, and the only party with the capacity to be sued.

In 1880, the South Carolina General Assembly passed Act 264 to establish “Bishop of Charleston, a Corporation Sole” as the corporate entity of the Roman Catholic Church in South Carolina. The statute authorized the Corporation Sole to transact business, hold and dispose of real and personal property, and, importantly, “to sue and be sued, plead and be impleaded, answer and be answered unto, in any Court in this State.”³ The presence of an unnamed and

³ Act 264, December 13, 1880 (17 Stat. 321).

unidentifiable "Bishop of the Diocese of Charleston, in his official capacity" is unnecessary to the resolution of Plaintiff's claims.

The Corporation sole is not like a government agency where, by statute, the head of the agency must be named as the defendant in his or her official capacity. Rather, the Corporation Sole is, by statute, a body corporate that can sue and be sued just as any corporation, LLC, or nonprofit corporation can. It is not necessary in most circumstances to sue the officers, directors or board members of a corporate entity in their "official capacity," and it is not necessary here.

TURNER, PADGET, GRAHAM & LANEY, P.A.

Richard S. Dukes, Jr., SC Bar No.: 16563

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March 29, 2019

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) Civil Action No.: 2018-CP-10-3929

John Doe,

Plaintiff,

vs.

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

Defendants.

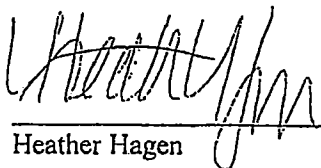
CERTIFICATE OF SERVICE

2019 MAR 29 PM 1:07
JULIE J. HARTMAN
CLERK OF COURT
BY

I hereby certify that this 29th day of March, 2019, a copy of *Motion for Partial Summary Judgment as to "the Bishop of the Diocese of Charleston, in his official capacity"* has been served upon other counsel of record by placing same in the United States Mail, postage prepaid, to:

Lawrence E. Richter, Jr.
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

Attorneys for Plaintiff


Heather Hagen

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001471

John Doe,.....Respondent,

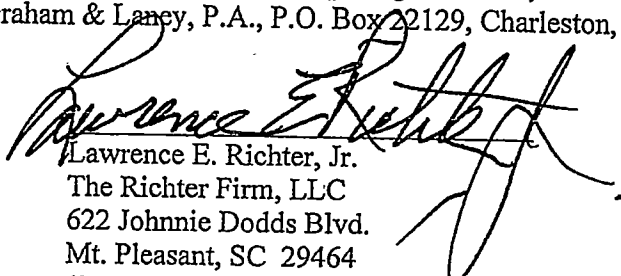
v.

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

I certify that I have this 11th day of November, 2019 served a copy of Respondent's Reply to Return to Motion to Dismiss Appeal on counsel for Defendants and Appellant by causing it to be deposited in the United States mail with sufficient postage attached, addressed to: Richard S. Dukes, Jr., Turner Padgett Graham & Laney, P.A., P.O. Box 22129, Charleston, SC 29413.



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LRichter@RichterFirm.com

Attorney for Respondent

The South Carolina 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,

and

Richard Roe, Respondent,

v.

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

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

Appellate Case No. 2019-001470

ORDER

This appeal arises out of two circuit court orders denying the appellant's motion for summary judgment and granting the respondents' motion to compel. The appeal is dismissed as interlocutory. *See Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 461, 814 S.E.2d 643, 659 (Ct. App. 2018) (holding the denial of summary judgment is not appealable); *Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986) ("An order directing a party to participate in discovery is interlocutory and not directly appealable under S.C. Code Ann. § 14-3-330 [(2017)]."). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

The appellant's motion to consolidate is granted. Any future filings should feature the caption above.

H. Bruce Waller, J.
FOR THE COURT

Columbia, South Carolina

cc:

Richard S. Dukes, Jr., Esquire
Lawrence E. Richter, Jr., Esquire
Jennifer Sue Ivey, Esquire
R. Hawthorne Barrett, Esquire

FILED

December 2, 2019

91628

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

Bentley D. Price, Circuit Court Judge

DEC 10 2019

SC Court of Appeals

Appellate Case No. 2019-001470

John Doe,.....Respondent,

v.

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

and

Richard Roe,.....Respondent,

v.

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

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

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, the Appellant respectfully submits this Petition for Rehearing as to the Court's Order dismissing these appeals as interlocutory. The Court filed that Order on December 2, 2019, and this petition is timely under Rule 221(a), SCACR. The Appellant bases this petition on the general ground that the Court overlooked or misapprehended the special and exceptional circumstances that make the challenged order of the circuit court

immediately appealable. The Appellant fully sets forth the specifics of that position in the Argument section below.

STATEMENT OF THE CASE

These consolidated appeals arise from multiple orders in civil actions brought by the Respondents “John Doe” and “Richard Roe.” The Respondents commenced those actions against The Diocese of Charleston, a Corporation Sole¹ and “the Bishop of the Diocese of Charleston, in his official capacity” based on allegations of past sexual abuse. John Doe alleged he was molested by two teachers at Sacred Heart School in 1970 and 1971. Richard Roe alleged he was molested by Fr. Frederick Hopwood in 1954 or 1955.² The Diocese timely moved to dismiss the two Complaints based upon common law charitable immunity and the *res judicata* effect of the 2007 class action settlement with (1) all individuals born on or before August 30, 1980 who claim to have been sexually abused as minors by the Diocese of Charleston personnel and (2) those individuals’ spouses and parents.

The circuit court heard the motions to dismiss on December 14, 2018, and denied those motions in orders filed on March 4, 2019. The Appellants 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. On March 29, 2019, 14 days after answering the Complaints, the Diocese moved for partial summary judgment seeking dismissal of all claims against “the Bishop of the Diocese of Charleston, in his official capacity.” Prior to the hearing on

¹ The true name of the Corporation Sole is “Bishop of Charleston; a Corporation Sole.”

² 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.

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. Guglielmone.

On July 17, 2019, the circuit court conducted a hearing on several pending motions, including the Appellants' Motions for Summary Judgment and motions by the Respondents to compel production of the materials and information that the Appellants claimed were confidential. At that hearing, the judge ordered the Appellants to respond to plaintiffs' overly broad discovery requests and ruled that the Court would hold a hearing on the objections to the discovery requests. However, the Court further noted that the Diocese should be prepared to produce all required documents within 24 hours of that review. The Court also denied summary judgment to the Bishop of the Diocese of Charleston, in his official capacity, by written order dated July 24, 2019.

After the July 2019 hearing, the Appellants produced the personnel files of Fr. Frederick Hopwood and Fr. William Croghan, the two priests the Respondent Roe alleges abused him. The Appellants redacted the names of any victims of childhood sexual abuse from the production to the Respondents. At the September hearing, the Court requested a copy of those files, together with a redaction log for an *in camera* review. The Appellants provided that information to the Court. On October 15, 2019, the Court ordered the Appellants to produce the Hopwood file without any redaction of victim names. The Court permitted redaction only for attorney-client communications and attorney work product. The Appellants commenced these appeals the next day.

The Appellants filed timely motions asking the circuit court to reconsider and reverse its decisions regarding production of confidential information and materials and the denial of

summary judgment. After the denial of those motions, the Appellants commenced separate appeals. The Respondents moved to dismiss the appeals, claiming the challenged orders were not immediately appealable. The Appellants filed returns in opposition, which set forth the reasons why the orders are, and must be, subject to immediate appellate review. The Court granted the motions to dismiss in an Order filed on December 2, 2019. In that Order, the Court also consolidated the two appeals.

ARGUMENT

I. The discovery order is immediately appealable because it compels the Appellants to produce confidential and personal information, and an appeal after a final judgment would not provide any meaningful recourse for the Appellants or innocent victims of sexual abuse impacted by the order.

In granting the motion to dismiss as to the discovery order, the Court cited only *Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986), for the proposition that “[a]n order directing a party to participate in discovery is interlocutory and not directly appealable under S.C. Code §14-3-330.” Although *Whetstone* does contain that language, the discovery order in the present appeal is significantly different than the one involved in *Whetstone*. Therefore, that case is readily distinguishable and does not support any decision to dismiss these appeals.

In *Whetstone*, the circuit court ordered a non-party witness to appear for a deposition and to produce certain documents. The Supreme Court dismissed the witness’ appeal, stating that a non-party ordered to participate in discovery could either comply with the order, thereby waiving any right to appeal, or refuse to comply, be held in contempt, and then appeal the contempt order. The Court further supported its decision by noting that the witness was a non-party, who could not suffer any “legal injury” (which would create the right to appellate review) unless and until there was a finding of contempt.

Significantly, there is no indication whatsoever that the witness in *Whetstone* claimed the testimony and documents compelled by the order were confidential or privileged. For all the opinion shows, the witness simply did not want to participate in the deposition or to produce the documents. Thus, the Supreme Court was not asked to consider, and made no ruling on, the issue of whether a discovery order is immediately appealable if it compels the production of confidential information.

In the present cases, the circuit court has ordered the Appellants to produce information and documents (with no redactions or other protections) that are highly confidential, and production of which will subject the Appellants, as well as innocent third parties, to immediate harm. Specifically, the order requires the Appellants to reveal the identities of adults who were sexually abused as children. As discussed below, the Appellants have a duty, both legal and moral, to keep those names secret, especially where those victims have chosen to guard their identities and to shun any publicity of their past trauma. The challenged order forces the Appellants to violate that duty, and once that proverbial genie has left the bottle, no appellate review would be of any consequence.

Numerous victims of sexual abuse have come forward over the years and the Appellants have respected and guarded their anonymity. Most, if not all, of those victims reached some type of confidential resolution with the Appellants, and many have received psychological counseling to help them deal with their abuse. The fact that victims are encouraged to report past sexual abuse and the counseling and pastoral support provided by Appellants could be drastically undermined if victims know that their identities will be provided to lawyers, who plan to contact them and ask about their traumatic pasts. Furthermore, complying with this order will force the Appellants to violate confidentiality provisions in the settlements reached with most, if not all, of

those past victims. This would, in turn, subject the Appellants to the threat of legal actions and damages for that breach. Thus, the order creates a real and immediate threat of harm to the Appellants.

Simply put, the challenged order must be appealed now if appellate review is to have any meaning. If the Appellants are forced to comply with that order before appealing, the confidential information will be disclosed. Even if the Court were later to agree with the Appellants on the merits of their arguments against the order, such a post-disclosure reversal of the order would be no remedy at all. At that point, the damage would be done and irreversible. In the truest sense, these cases present a “now or never” scenario for purposes of an appeal.

Furthermore, there is ample authority in South Carolina to support the immediate appealability of orders that compel a party to reveal or produce confidential information. As former Chief Justice Toal states in her treatise, “If an order requires a party to turn over documents, which the party feels are privileged or contain proprietary or confidential matters, compliance with the order without the ability to seek immediate appeal renders the protections afforded by the privilege or confidentiality a nullity.” Toal, et al. *Appellate Practice in South Carolina* (2nd Ed.) at 94. Unless such an order is immediately appealable, it would be effectively unreviewable on appeal from a final judgment, as a reversal at that late stage would be no relief at all. *See BLH*

This Court’s decisions in *BLH v. S.C. Dep’t of Social Servs.*, 423 S.C. 422, 814 S.E.2d 638 (Ct. App. 2018), and *Doe v. Howe*, 362 S.C. 212, 607 S.E.2d 354, 355 (Ct. App. 2004), are instructive. In *Doe*, a former client sued his attorney and moved to proceed anonymously because the underlying civil action involved allegations of sexual abuse. The circuit court denied that request, and the client appealed. This Court noted that an order is appealable if it

“(1) conclusively determines the question, (2) resolves an important question independent of the merits, and (3) is effectively unreviewable on appeal from a final judgment.” 362 S.C. at 216, 607 S.E.2d at 356. The Court then held that the challenged order met the appealability criteria because it “ha[d] the effect of revealing [the client’s] identity, the very thing he was seeking to keep confidential.” *Id.* at 217, 607 S.E.2d at 356.

In *BLH*, the plaintiff sought class certification for a group of adoptive parents who alleged their government subsidies were improperly reduced in the early 2000s. As part of that process, the plaintiff requested the production of the names and addresses of children who had been adopted during the relevant timeframe. The defendant objected to that information being released, as it was highly sensitive and confidential, and many of the children (or adults) affected might not even know they had been adopted. The circuit court entered a class certification order that required the information to be released, and the defendant appealed. Finding *Doe* to be instructive, this Court found that the order was immediately appealable, even though class certification orders usually are not. The Court noted that, like *Doe*, “this case involves the disclosure of personal and potentially sensitive information for which there would be ‘no appellate remedy ... likely to repair any damage done by an improper disclosure.’” 423 S.C. at 429, 814 S.E.2d at 642 (quoting *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 8, 630 S.E.2d 464, 468 (2006)).

As noted, the *BLH* Court also cited and relied upon *Ex parte Capital, supra*. In that case, a company attempted to unseal the divorce records of an employee who admittedly embezzled from it. The lower court entered an order allowing the company to examine the divorce records to inspect the employee’s financial representations, and the employee appealed. The Supreme Court concluded that the order “determined a substantial matter forming the whole or part of the

family court proceedings in which [the company] sought access to the record of the [employee's] divorce." 369 S.C. at 5, 630 S.E.2d at 466. "Moreover, [the Court] agree[d] with courts which have been included to find such an order immediately appealable because; after a court file is unsealed and the information released, no appellate remedy is likely to repair any damage done by an improper disclosure." *Id.* at 8, 630 S.E.2d at 468 (emphasis added). "Compelling a party that disputes an unsealing order to forego an appeal until the conclusion of the underlying litigation would let the cat out of the bag, without any effective way of recapturing it if the [lower] court's directive was ultimately found to be erroneous." *Id.* (quoting *Siedle v. Putnam Invs., Inc.*, 147 F.3d 7, 9 (1st Cir. 1998)) (emphasis added).³

The principles applied in *Doe*, *BLH* and *Ex parte Capital* are also controlling in the present appeals. Just as in those cases, the challenged order requires the production and release of highly confidential information. Whether or not the circuit court should have ordered that production and release is a question that an appellate court must answer now. Otherwise, the Appellants will be denied any opportunity for meaningful review of the order. A post-judgment appeal would have been too late in *Doe*, *BLH* and *Ex parte Capital*, and such an appeal would be equally moot here.

The Court's brief Order granting the motions to dismiss gives no indication that the Court considered or applied *Doe*, *BLH* and *Ex parte Capital*. The Appellants respectfully submit that in failing to take those controlling authorities into account, the Court overlooked or misapprehended the key factor that makes the challenged order much more than the granting of a

³ See also *Knight Publishing Co. v. University of S.C.*, 295 S.C. 31, 367 S.E.2d 20 (1988) ("[a]n order allowing discovery of documents that a newspaper ultimately sought disclosed as the subject of [a] FOIA action was immediately appealable because it in effect determined the action and prevented an appealable judgment."), *overruled on other grounds*, *Simpson v. Sanders*, 314 S.C. 413, 445 S.E.2d 93 (1994).

garden variety motion to compel. Therefore, the Appellants have met the requisite standard for a rehearing pursuant to Rule 221(a), SCACR.

Furthermore, by citing and relying upon *Ex part Whetstone, supra*, the Court has, at least implicitly, endorsed the requirement that a party seeking to challenge a discovery order must first refuse to comply with that order and then appeal the resulting sanction (i.e. contempt). Although there is arguably some authority to that effect, it is important to note that the Supreme Court has recently granted an extraordinary writ and has requested briefing as to whether a finding of contempt is a necessary prerequisite to appellate review of a discovery order. See Order in *Mark C. Mosley v. Christine Alston*, Appellate Case No. 2019-001056 (filed October 3, 2019).⁴ Significantly, one of the objections asserted against the discovery order in that case is the fact that it would require the defendant to release confidential medical information about third-parties. In that sense, *Mosley* and the present case involve analogous concerns.

Thus, to the extent it relied on a “contempt first” rule in granting the motions to dismiss, the Court should grant the current petition, reinstate these appeals, and then stay the appeals until the Supreme Court has issued a decision in *Mosley*. Alternatively, the Court could stay consideration of this petition (as well as all other proceedings in this Court and in the circuit court) until *Mosley* has been concluded.

II. The denial of the summary judgment motion is immediately appealable because it impacts the Appellants’ substantial rights under the First Amendment to the United States Constitution.

In light of the clear authority supporting immediate appellate review of the discovery orders in these cases, the Court need not conduct a thorough review of the reasons why the denials of the summary judgment motions are immediately appealable. Rather, the Court can

⁴ A copy of the Order is attached as an exhibit to this petition.

simply review those orders in conjunction with the discovery orders, regardless of the former's appealability. "An order not immediately appealable will nonetheless be considered if there is an appealable issue before the appellate court, and a ruling on appeal will avoid unnecessary litigation." Toal, et al. *Appellate Practice in South Carolina* (2nd Ed.) at 88 (citing *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998)).

The circuit court's orders ignore the very fundamental freedom of religion enjoyed by religions and enshrined into the First Amendment's Free Exercise and Establishment clauses. The circuit court's decision overturns both the Church's determinations of how the Catholic Church exists in the civil, rather than the ecclesiastical, context. This constitutes a veritable attack on the Church's First Amendment rights and causes the Court to engage in an impermissible inquiry into canon law and Church doctrine. The ruling stands in stark contrast to nearly 150 years' of precedent that civil courts must accept, and give full effect to, the decisions of religious organizations regarding how the church will be organized and structured. The Appellants have demonstrated beyond any conceivable doubt or dispute that the Diocese of Charleston operates in civil law as the Corporation Sole, and that Corporation Sole is the only proper defendant in this action.

As with the order to produce confidential material regarding victims of sexual abuse, the circuit court's denial of summary judgment to the ecclesiastical office of Bishop is more than it seems. The substance of the challenged ruling means that an ecclesiastical office, and just the office not an individual holding that office, is being forced to engage with the civil law even though the ecclesiastical office does not have any civil law presence. The diocesan bylaws distinctly and expressly spell out that the Bishop of Charleston is not a civil law title, and "Bishop of Charleston, a Corporation Sole" is the one and only civil law entity with the legal

name of “Bishop of Charleston.” The circuit court’s decision reorders the allocation of both ecclesiastical and civil authority and constitutes governmental establishment of religion – determining how a church must function under state authority. This is true regardless of whether or not the circuit court intended that result.

Thus denial of summary judgment to the ecclesiastical office of Bishop of Charleston, which exists only in canon law, erroneously trod on the First Amendment rights of the Roman Catholic Diocese. The circuit court ignored the Church’s own determinations regarding its presence in civil law, as well as the state’s own law recognizing the Corporation Sole and the civil law presence of the Bishop of Charleston and the Catholic Diocese. In doing so, the circuit court engaged in its own reordering of the Catholic Diocese and interfered in a realm in which the civil government has no proper role.

Although it is true that the denial of a summary judgment motion is generally not appealable, the preceding discussion demonstrates that these orders are more than just summary judgment denials. Granted, the orders are called denials of the Appellants’ summary judgment motions, but that label is not determinative. It is not the name or the type of an order that matters for purposes of appealability, but rather the order’s overall impact. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). In *Morrow*, the Supreme Court concluded that an order was immediately appealable, regardless of what it was called, because it implicated the appellant’s substantial rights.⁵ As the Court stated, “Our review of the trial court order is not constrained by how the order is styled.” *Id.* at 539, 773 S.E.2d at 147 (emphasis added). The Court further cited *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297,

⁵ Specifically, the order granted a request to bifurcate trial proceedings. The plaintiffs argued, and the Supreme Court agreed, that the order was immediately appealable because it impacted the plaintiffs’ ability to pursue their direct liability claims against a corporate defendant.

304, 705 S.E.2d 479 (Ct. App. 2011), for the proposition that “an appellate court should look to the effect of an interlocutory order to determine its appealability.” *Id.* at 540, 773 S.E.2d at 147 (emphasis added).

Here, the effect of the challenged ruling is not merely to force the Appellants to reassert a certain defense at a later stage of the proceedings.⁶ Rather, the effect is to have the civil government intrude upon the internal structure and affairs of a religious institution. This is a violation of the Appellants’ First Amendment protections – an issue, it is worth noting, that has nothing to do with the Respondents’ claims or how they are eventually decided. The Appellants have established a legitimate civil law presence for responding to cases such as this one; the Respondents and the circuit court simply ignored that decision and named an improper entity. Again, by doing so, the circuit court violated the Appellants’ constitutional rights, which are not only substantial, but also fundamental. Therefore, the circuit court’s decision is far more than a typical denial of a summary judgment motion, and it is immediately appealable.

CONCLUSION

Both issues raised in this appeal involve orders that are immediately appealable. Yet, even if the Court were to determine that the ruling on the Appellants’ summary judgment issue was not independently appealable at this time, it should nevertheless allow the entire appeal to proceed. The clearly established case law supports the appealability of the order forcing the Appellants to disclose highly confidential information, and considering the other issue on appeal would promote judicial efficiency. For these reasons, the Court should grant the Appellants’

⁶ The general rule against appellate review of a summary judgment denial stems from the fact that the moving party has later opportunities to reassert the grounds that supported the summary judgment motion.

petition, reverse the dismissal stated in the Order of December 2, 2019, and allow the entire appeal to proceed in the normal course.

Respectfully submitted,



Richard S. Dukes, Jr.
R. Hawthorne Barrett
Alan G. Jones
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ATTORNEYS FOR APPELLANTS

December 10, 2019

16-441

The Supreme Court of South Carolina

Mark C. Mosley, Respondent,

v.

Christine Alston, Personal Representative of the Estate of
Robert Alston, DaVita, Inc. d/b/a DaVita Walterboro
Dialysis #3073, DVA healthcare Renal Care, Inc., DVA
Renal Healthcare, Inc. DaVita Healthcare Partners, Inc.,
and Howard Elj,

Of which, DaVita, Inc., DVA Healthcare Renal Care,
Inc. DVA Renal Healthcare, Inc., DaVita Healthcare
Partners, Inc., and Howard Elj are, Petitioners.

Appellate Case No: 2019-001056

FILED
AM/PM

NOV - 5 2019

ORDER

MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

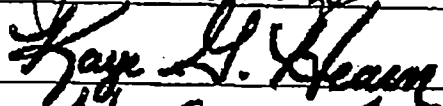
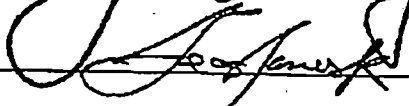
Petitioners have filed a petition for an extraordinary writ to review a discovery order of the circuit court. Respondent opposes the petition. We grant the petition and direct the parties to brief the following issues:

- (1) Does this matter involve exceptional circumstances warranting the issuance of a common law writ of certiorari to review the discovery order?
- (2) Should a contempt order for failing to comply with a discovery order be required before an appeal may be taken to review a discovery order?
- (3) If a contempt order is not required before a discovery order may be reviewed on appeal, what limitations should be placed on the ability to take an immediate appeal from a discovery order?

The parties shall, within twenty (20) days of the date of this order, agree on the content of an appendix in this matter. Within thirty (30) days after agreement on the appendix, Petitioners shall serve their brief(s) and the appendix on Respondent

and file fifteen (15) copies of the brief(s) and fifteen (15) copies of the appendix with the Clerk of this Court, with one copy of the brief(s) and appendix filed unbound. The Petitioners must also file with the Clerk proof that the brief(s) has been served, and a certificate that the brief(s) complies with Rule 211(b), SCACR. Within thirty (30) days after service of Petitioners' brief(s), Respondent shall serve his brief on Petitioners and file with the Clerk fifteen (15) copies of the brief, one copy of which shall be filed unbound. Any *amicus curiae* briefs shall be served and filed within thirty (30) days after service of Respondent's brief.

The parties will be advised if the Court wishes to schedule oral argument in this matter.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina

October 3, 2019

cc:

Martin S. Driggers, Jr., Esquire
Richard Edward McLawhorn, Jr., Esquire
John E. Parker, Esquire
William Franklin Barnes, III, Esquire
Michael T. Coulter, Esquire
H. Woodrow Gooding, Esquire
The Honorable Perry Buckner
The Honorable Mylinda D. Nettles

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001470

RECEIVED

DEC 10 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,
and

Richard Roe,.....Respondent,

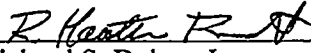
v.

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

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

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Appellants, certifies that I have this 10th day of December, 2019, served a copy of the Petition for Rehearing on counsel for the Respondent by causing it to be deposited in the United States mail with sufficient postage attached, addressed to: Lawrence E. Richter, Jr.; The Richter Firm, LLC; 622 Johnnie Dodds Blvd., Mt. Pleasant, SC 29464.


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ATTORNEYS FOR APPELLANTS

December 10, 2019

Turner Padget

Richard S. Dukes, Jr.

REPLY TO:

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Writer's Direct Fax: (843) 577-1646

December 10, 2019

Via Hand Delivery

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

RECEIVED
DEC 10 2019
SC Court of Appeals

Re: John Doe / Richard Roe v. The Diocese of Charleston, et al.
Appellate Case No. 2019-001470
Our File No. 8724.252

Dear Ms. Kitchings:

Enclosed are the following materials: (1) the original and seven copies of the Petition for Rehearing, (2) the original and one copy of the Proof of Service, and (3) a check for the filing fee. 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.



for Richard S. Dukes, Jr.

RHB
Enclosures

cc: Lawrence E. Richter, Jr.

The South Carolina Court of Appeals

Richard Roe, 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.

AND

John Doe, Respondent,

v.

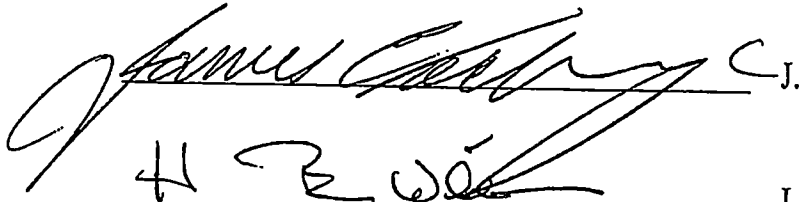
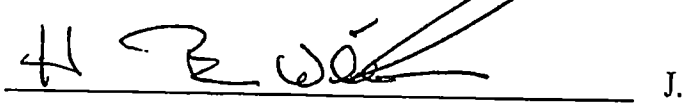
The Diocese of Charleston, a Corporation Sole, and the
Bishop of the Diocese of Charleston, in his official
capacity, Defendants,

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

Appellate Case No. 2019-001470

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


J.

J.

J.

Columbia, South Carolina

cc:

Richard S. Dukes, Jr., Esquire
Lawrence E. Richter, Jr., Esquire
Jennifer Sue Ivey, Esquire
R. Hawthorne Barrett, Esquire
Julie J. Armstrong

FILED

February 14, 2020

90885

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001470

RECEIVED

SFP 17 2019

SC Court of Appeals

Richard Roe, ... 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.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

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.

MOTION TO CONSOLIDATE

The Appellant hereby moves for an Order consolidating the two above-captioned appeals pursuant to Rule 214, SCACR. The Appellant makes this motion on the following grounds:

1. These two appeals involve challenges to orders that ruled upon the exact same legal issue. Other than slight differences relating to the identities of the respective plaintiffs, the two orders are identical. The minor differences in the orders are not germane in any way to the issues on appeal. For all practical purposes, therefore, these two appeals challenge the same legal ruling and the same order.
2. The motions that led to the orders were heard in one combined hearing by the same circuit court judge. Thus, the same hearing transcript applies to both appeals.
3. The attorneys of record in both appeals are the same.
4. The Appellant's arguments on appeal will be the same in both cases, and presumably the Respondents' arguments will also be the same. It will promote judicial economy for the Appellant to submit a single Appellant's Brief and a single Reply Brief, rather than to prepare, file and serve the same brief twice. Similarly, it will save time, effort and money for the Respondents to file one joint Respondents' Brief.¹ Even if the Respondents chose to file separate briefs for some reason, it would still make the most sense for the Court to consider those briefs as part of a consolidated appeal.

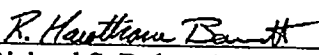
¹ This should not be difficult for the Respondents to do, as their respective submissions to the lower court as to the issues on appeal were identical in terms of the arguments and authorities they contained.

5. The record materials for the two appeals are the same and, thus, it will save time, effort and money to prepare and serve one Record on Appeal that will apply to both cases, rather than producing the same Record on Appeal twice.

6. Consolidation of these appeals will not prejudice the Respondents or impact them negatively in any conceivable way.

Therefore, the Appellant requests that the Court consolidate these appeals pursuant to Rule 214, SCACR, and allow the Appellant to submit a single Appellant's Brief, a single Reply Brief, and one Record on Appeal that will apply to both cases.

Respectfully submitted,


Richard S. Dukes, Jr.
R. Hawthorne Barrett
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40 Calhoun Street, Suite 200 (29401)
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Charleston, South Carolina 29413-2129
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ATTORNEYS FOR APPELLANT

September 17, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001470

RECEIVED

SEP 17 2019

SC Court of Appeals

Richard Roe, ... 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.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2019-001471

John Doe, ... Respondent,

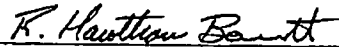
v.

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 for the Appellant, certifies that I have this 17th day of September, 2019, served a copy of the **Motion to Consolidate** on counsel for the Respondents by causing it to be deposited in the United States mail with sufficient postage attached, addressed to: Lawrence E. Richter, Jr., and Jennifer S. Ivey; The Richter Firm, LLC; 622 Johnnie Dodds Blvd., Mt. Pleasant, SC 29464.



Richard S. Dukes, Jr.
R. Hawthorne Barrett
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ATTORNEYS FOR APPELLANT

September 17, 2019

Turner | Padget

Richard S. Dukes, Jr.

REPLY TO:

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Writer's Direct Dial: (843) 576-2810
Writer's Direct Fax: (843) 577-1646

September 17, 2019

Via Hand Delivery

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

RECEIVED
SEP 17 2019
SC Court of Appeals

Re: Richard Roe v. The Diocese of Charleston, et al.
Appellate Case No. 2019-001470

John Doe v. The Diocese of Charleston, et al.
Appellate Case No. 2019-001471

Our File No. 8724.252

Dear Ms. Kitchings:

Enclosed are the following materials: (1) the original and seven copies of the Motion to Consolidate, (2) the original and one copy of the Proof of Service, and (3) a check for the filing fee. Please file the originals and necessary copies and return the stamped copies to our courier. Thank you for your kind assistance.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

R. Heather Bennett

for Richard S. Dukes, Jr.

RHB
Enclosures

Turner | Padget

The Hon. Jenny Abbott Kitchings
September 17, 2019
Page 2

cc: Lawrence E. Richter, Jr.
Jennifer S. Ivey

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-10-4206

Richard Roe,

Plaintiff

v.

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

Defendants.

ORDER

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OCT 18 2019

SC Court of Appeals

THIS MATTER came before the Court on Defendants' Motions for Disqualification of Plaintiff's Counsel, Motion to Dismiss, and Motion for Entry of Confidentiality Order. These motions are **DENIED**.

The Court has considered the briefing of the parties, the testimony of Defendant's expert witness, Professor Greg Adams, and the arguments made by the attorneys and, having considered the evidence, rules as follows:

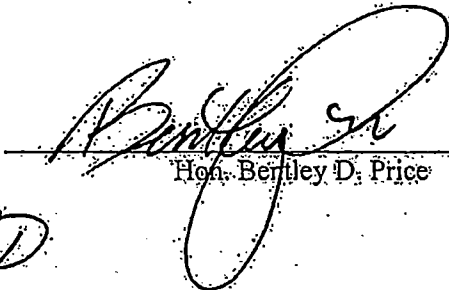
1. Defendant's Motion to Disqualify is **DENIED**. Parties have the right to select their own counsel, and the Court finds that the Rules of Professional conduct do not prohibit Mr. Richter's undertaking this representation. The Court does not believe Mr. Richter is conflicted in representing both the Plaintiff here and the class of victims. As such, he may continue to represent this Plaintiff.

TRGL9642737v1

2. Defendant's Motion for Entry of a Confidentiality Order is likewise DENIED. At this point, the Court does not believe an entry of a Confidentiality Order is appropriate.

3. Finally, Defendant provided to the Court for *in camera* review documents bates labeled CONFIDENTIAL ROE (4206) 000001 - 0000787 together with a redaction log reflecting information, such as names of victims of sexual abuse and attorney work product. The Diocese takes the position that these victims, most of whom aired their claims as much as 25 years ago, and who have confidentiality provisions in various settlement agreements, should not have their identities revealed. Additionally, the Diocese contends that South Carolina's courts are protective of victims of sexual abuse and, for that reason also, these victims' identities should remain shielded. Plaintiff's counsel has indicated his belief that other victims may be witnesses with discoverable information and has indicated his intent to contact the other victims and interview them. Having reviewed the redacted documents, the Court ORDERS Defendant to produce the documents without redaction of victim names. The only information that may be redacted is that which is attorney/client privileged or attorney work product. All information regarding victims of sexual abuse or potential victims within the document range provided to the Court should be produced to the Plaintiff.

IT IS SO ORDERED.


Hon. Bertley D. Price



TRGL9642737v1

19th day of October, 2019
Charleston, South Carolina.

Circuit Court Judge

BP

TPGL 9642737v1

91197

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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OCT 18 2019

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Bentley D. Price, Circuit Court Judge

Case No. 2018-CP-10-04206

Richard Roe,.....Respondent,

v.

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

NOTICE OF APPEAL

The Appellants hereby appeal the attached Order of the Honorable Bentley D. Price.

Counsel for the Appellant received written notice of the entry of the Order on October 18, 2019.

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rdukes@turnerpadgett.com

Attorneys for the Appellants

October 18, 2019

Other Counsel of Record:

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Jennifer S. Ivey
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Mt. Pleasant, SC 29464
(843) 849-6000

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2018-CP-10-04206

RECEIVED

OCT 18 2019

SC Court of Appeals

Richard Roe,.....Respondent,

v.

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

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Appellant, certifies that I have this 18th day of October, 2019, served a copy of the Notice of Appeal on counsel for the Respondent by causing it to be deposited in the United States mail with sufficient postage attached, addressed to: Lawrence E. Richter, Jr.; The Richter Firm, LLC; 622 Johnnie Dodds Blvd., Mt. Pleasant, SC 29464.

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for Richard S. Dukes, Jr.
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Attorneys for the Appellants

October 18, 2019

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October 18, 2019

Via Hand Delivery

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

RECEIVED
OCT 18 2019
SC Court of Appeals

Re: Richard Roe v. The Diocese of Charleston, et al.
Case No. 2018-CP-10-04206
Our File No. 8724.252

Dear Ms. Kitchings:

Enclosed are the following materials: (1) the original and one copy of the Notice of Appeal, (2) the original and one copy of the Proof of Service, and (3) a check for the filing fee. 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.

R. Hamilton Bant

for Richard S. Dukes, Jr.

RHB
Enclosures

cc: Lawrence E. Richter, Jr.