

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Jun 20 2022

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2020-000986

The Protestant Episcopal Church in the Diocese of South Carolina; The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body; All Saints Protestant Episcopal Church, Inc.; Christ St. Paul's Episcopal Church; Church Of The Cross, Inc. and Church Of The Cross Declaration Of Trust; Church Of The Holy Comforter; Church of the Redeemer; Holy Trinity Episcopal Church; Saint Luke's Church, Hilton Head; St. Bartholomew's Episcopal Church; St. David's Church; St. James' Church, James Island, S.C.; St. Paul's Episcopal Church of Bennettsville, Inc.; The Church Of St. Luke and St Paul, Radcliffeboro; The Church Of Our Saviour Of The Diocese of South Carolina; The Church Of The Epiphany (Episcopal); The Church Of The Good Shepherd, Charleston, SC; The Church Of The Holy Cross; The Church Of The Resurrection, Surfside; The Protestant Episcopal Church, Of The Parish Of Saint Philip, In Charleston, In The State Of South Carolina; The Protestant Episcopal Church, The Parish Of Saint Michael, In Charleston, In The State Of South Carolina and St. Michael's Church Declaration Of Trust; The Vestry And Church Wardens Of The Episcopal Church Of The Parish Of St. Helena and The Parish Church of St. Helena Trust; The Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. Matthew; The Vestry and Wardens Of St. Paul's Church, Summerville; Trinity Church of Myrtle Beach; Trinity Episcopal Church; Trinity Episcopal Church, Pinopolis; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of Christ Church; Vestry and Church Wardens Of The Episcopal Church Of The Parish Of St. John's, Charleston County, The Vestries And Churchwardens Of The Parish Of St. Andrew,

Respondents,

v.

The Episcopal Church (a/k/a, The Protestant Episcopal Church in the United States of America); The Episcopal Church in South Carolina,

Appellants.

RETURN TO PETITIONS FOR REHEARING

INTRODUCTION

As directed by the Court’s Order dated June 7, 2022, Appellants The Episcopal Church (“TEC”) and The Episcopal Church in South Carolina (“TECSC”) submit this Return in response to specified arguments contained within the Petitions for Rehearing by Respondents The Church of the Good Shepherd, Charleston, SC (“Good Shepherd”); Church of the Holy Comforter (“Holy Comforter”); The Church of the Holy Cross (“Holy Cross”); The Vestries and Churchwardens of the Parish of St. Andrew (“Old St. Andrew’s”); The Vestry and Church Wardens of St. Jude’s Church of Walterboro (“St. Jude’s”); St. Luke’s Church, Hilton Head (“St. Luke’s”); and Trinity Church of Myrtle Beach (“Trinity”) (hereinafter, collectively, “Petitioners”).

Each Petitioner submitted a separate Petition for Rehearing; however, after eliminating the arguments as to which the Court has denied rehearing, their remaining arguments fall into two categories. The Court summarized these arguments as: “(1) revocation based on subsection 62-7-602(a) of the South Carolina Code (2022), and (2) no trust was created because the language purporting to constitute accession existed in the bylaws or constitutions before 1979.”¹

Given this consolidated view of the Petitioners’ arguments, Appellants submit a single Return rather than seven separate Returns. Below, Appellants address each argument generally and then, as appropriate, discuss evidence specific to each Petitioner.

ARGUMENT

1. Response to argument of revocation based on S.C. CODE ANN. § 62-7-602(a) (2022).

Good Shepherd, Holy Cross, and Old St. Andrew’s argue that the Court in its 2022 Opinion relied on bylaws that were adopted after January 1, 2006, to find trusts with respect to their

¹ Only Good Shepherd raised both arguments in its Petition. Holy Cross and Old St. Andrew’s raised the revocability argument in their Petitions but not the argument based on pre-1979 language. On the other hand, Holy Comforter, St. Jude’s, St. Luke’s, and Trinity only made the argument based on pre-1979 language but not the revocability argument.

property, that the trusts were therefore presumptively revocable, and the trusts were revoked. This argument fails for several reasons.

A. Law of the Case.

This Court acknowledged that a majority of the 2017 Court “would have held the trusts in this case, based on express accession to the Dennis Canon, are irrevocable.” *Protestant Episcopal Church v. Episcopal Church*, Op. No. 28095, 2022 S.C. LEXIS 59, at *36-37 (Sup. Ct. Apr. 20, 2022) [“*Protestant Episcopal Church II*”] (citing *Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church*, 421 S.C. 211, 251, 806 S.E.2d 82, 103 (2017) [“*Protestant Episcopal Church I*”] (Beatty, C.J., concurring in part and dissenting in part) (stating “express accession to the Dennis Canon” creates “an irrevocable trust”); *id.* at 242, 806 S.E.2d at 98 (Hearn, J., concurring) (stating “the trust is irrevocable”); *id.* at 231, 806 S.E.2d at 93 (Pleicones, J., lead opinion) (joining Justice Hearn’s opinion)). Complying with the law of the case, this Court stated: “We adhere today to the votes those Justices cast in 2017.” *Protestant Episcopal Church II*, at *37.

Petitioners recognized this holding in 2017, when they petitioned for rehearing of *Protestant Episcopal Church I*. (R. p. 1311). In fact, they asked the Court for rehearing with respect to this specific holding, arguing “[t]he presumption is that the trust is revocable, not irrevocable.” (R. pp. 1330-31). The Court denied their Petition for Rehearing. (R. p. 143).

The irrevocability of the trusts is the law of the case. “The doctrine of the law of the case prohibits issues which have been decided in a prior appeal from being relitigated in the trial court in the same case.” *Ross v. Medical Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997). “The law of the case applies both to those issues explicitly decided and to those issues which were

necessarily decided in the former case.” *Id.* at 62, 492 S.E.2d at 68. Because irrevocability is the law of the case, Good Shepherd, Holy Cross, and Old St. Andrew’s cannot challenge it now.

Appellants should be able to rely upon the Court’s previous ruling. There must be an end to the efforts to relitigate every ruling in this case. The Court should adhere to its holding of irrevocability in *Protestant Episcopal Church I*, which it restated in *Protestant Episcopal Church II*.

B. Pre-2006 evidence of accession to the Dennis Canon and Diocesan Canon.

The premise of the revocability argument is that there is no evidence the subject Petitioners acceded to the Dennis Canon before 2006. However, the Record demonstrates otherwise.

Good Shepherd

The Court cited the following language from the preamble to Good Shepherd’s 2006 constitution (R. p. 7091) as evidence of its accession to the Dennis Canon: “[Good Shepherd] adopts the bylaws and canons of the Protestant Episcopal Church of the United States of America and of the Diocese of South Carolina.” *Protestant Episcopal Church II*, at *49. While that amended version of Good Shepherd’s constitution was adopted after January 1, 2006, the amendments were limited in nature and did not alter the previous version of the constitution’s preamble except to reflect the change in the name of the parish. (R. pp. 7088-89). In other words, the accession language predated the amended constitution.

The Record does not clearly show the date of the previous version of the constitution but it is reasonably inferable that version predated 2006. Good Shepherd was to distribute copies of its constitution at a parish meeting shortly after May 2004 (R. p. 7119) and, as of that time, a committee was to consider proposed changes to the constitution or bylaws. (R. p. 7122). So, some version of the constitution existed before 2006.

Other evidence shows Good Shepherd acceded to TEC's and TECSC's canons before 2006 and that its pre-2006 constitution would have included the accession language relied upon by the Court. Good Shepherd's 2001 amended corporate articles² were adopted for the stated purpose of bringing the parish "in conformity with the Canons of the Protestant Episcopal Church in the Diocese of South Carolina" and to "subject" it to those canons. (R. p. 7077-78).³ These same amendments indicate a clear intent, prior to 2006, for Good Shepherd's property to become TECSC's property in the event Good Shepherd is no longer "operating a Parish or Mission, organized pursuant and subject to [TECSC's] Canons." (R. p. 7078). This is independent evidence of accession prior to 2006. It is also circumstantial evidence that Good Shepherd did not remove accession language from its constitution between May 2004 and January 2006 but then amend its constitution between January 2006 and September 2006 to reinstate the language.

Holy Cross

The Court cited portions of Holy Cross' 2011 bylaws (R. pp. 6446, 6448) in support of its finding of accession. *Protestant Episcopal Church II*, at *53. The bylaws were amended in 2011 (although final approval may not have occurred until 2013). (R. pp. 6446, 6457). However, the changes were unrelated to the portions cited by the Court (R. p. 6457), demonstrating that the accession language predated 2011. In fact, the identical language was contained within Holy Cross' bylaws as early as 1980. (R. p. 8912). Therefore, Holy Cross did accede to TEC's and TECSC's canons before 2006.

² The amended articles are for St. Peter's, a previous name for Good Shepherd. (R. pp. 7059-60).

³ Good Shepherd reiterated this evidence of accession in 2004 via the Articles of Merger between St. Peter's and St. John's. (R. p. 7081-82). Therein, it also described the merger as "governed by, the Constitution and Canons of the Protestant Episcopal Church in the United States of America [and] the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina." (R. p. 7084).

Old St. Andrew's

The Court found accession by Old St. Andrew's, citing its 2007 and 2010 constitution and canons. *Protestant Episcopal Church II*, at *52-53. The Record shows that Old St. Andrew's had adopted the cited provisions no later than January 10, 1970, wherein it adopted a constitution and canons that not only "accede[d] to and adopt[ed]" the constitution and canons of TEC and TECSC (in Article I) but also stated, in Article II:

ANY FUTURE CHANGES IN THE CONSTITUTION AND CANONS OF THE EPISCOPAL CHURCH IN THE UNITED STATES AND THE DIOCESE OF SOUTH CAROLINA, WHICH MAY CONFLICT WITH ANY ARTICLE OF THIS PARISH CONSTITUTION OR CANONS, SAID PARISH ARTICLES SHALL AUTOMATICALLY BE CHANGED TO CONFORM. THE SECTION WHICH SHALL BE IN CONFLICT SHALL AUTOMATICALLY BE CHANGED TO CONFORM NATIONAL [sic] AND/OR DIOCESAN CONSTITUTION AND CANONS.

(R. p. 6246).

The same Article I accession language was repeated in the version of the constitution and canons published in Old St. Andrew's' 2007 Vestry Book; but Article II was reworded to state:

[S]hould any future changes be made in the Constitution and Canons of the Episcopal Church in the United States or those of the Diocese of South Carolina which may then conflict with any article herein contained, this Constitution and these Canons shall be deemed automatically changed to conform with the national and diocesan constitution and canons.

(R. p. 6252). The changes in the language of Article II had to have occurred before 2006.⁴ The fact that Old St. Andrew's reviewed Article II and consciously made changes in its syntax while retaining its effect demonstrates it intended, prior to 2006, to accede to the Dennis Canon and for any contrary parish provision to conform to TEC's and TECSC's canons.

⁴ The language of the 2007 printing of Old St. Andrew's' constitution and canons is different in several respects from the 1970 version, demonstrating it was amended after 1970. The exact date of the amendment is unclear, in part because pages 5 and 6 of the version published in 2007 are missing. (R. p. 6255). However, it is evident it was amended before January 1, 1997, because a section was added to Article VII that disqualified certain individuals from vestry service after that date. (R. p. 6254). Thus, one can conclude the amendment occurred between 1970 and 1996.

Moreover, Good Shepherd, Holy Cross, and Old St. Andrew's had representatives attend and "apparently participated in the 1987 Diocesan Convention at which [TECSC] adopted the Diocesan Canon." *Protestant Episcopal Church II*, at *18. This canon, suggested by but not required by the Dennis Canon, *id.* at *18, 20, is further evidence of these Petitioners' acceptance of and accession to the Dennis Canon well before 2006.

C. A post-2006 trust does not require a written expression of irrevocability.

Even if the Court were to address the merits of the argument on revocability, it should reject it as based on a misunderstanding of the law. The Trust Code does not require a precise statement of irrevocability as the only method for ensuring that a trust is irrevocable; rather, the Code takes other evidence of a settlor's intent into account. In this case, irrevocability is apparent from evidence of the subject Petitioners' knowledge of the purpose of the trust. The Court did not, as those three Petitioners contend, overlook the Trust Code. Rather, its decision directly adheres to the Trust Code.

Code Section 62-7-602 states: "Unless the *terms of a trust* expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust." S.C. CODE ANN. § 62-7-602(a) (emphasis added). "Terms of a trust" is defined as "the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument *or as may be established by other evidence* that would be admissible in a judicial proceeding." S.C. CODE ANN. § 62-7-103(17) (emphasis added). The settlor's intention of irrevocability may be in writing or established by other evidence. "Oral statements, the situation of the beneficiaries, the purposes of the trust, the circumstances under which the trust is to be administered, and, to the extent the settlor was otherwise silent, rules of construction, all may have bearing on determining a trust's meaning." S.C. CODE ANN. § 62-7-103, Reporter's Comments.

The Court took this into account when it explained it must “consider the background in which the Dennis Canon was written and adopted, which provides context for the actions by the individual Parishes.” *Protestant Episcopal Church II*, at *13. The relevant background is that Good Shepherd, Holy Cross, and Old St. Andrew’s all knew about the Dennis Canon and the Diocesan Canon, knew the canons’ meaning when they amended their respective governing documents, and understood the consequence of restating language that adopted or acceded to TEC’s and TECSC’s canons.

TEC’s “1979 adoption of the Dennis Canon – and its potential effect on parish property disputes – was widely known in the Episcopal community.” *Id.* at *18. The “terms of the trust” include the express language of the Dennis Canon that allows a parish to exercise authority over property only “so long as [it] remains part of, and subject to [TEC] and its Constitution and Canons,” *id.*, at *16-17, a clear indication of the irrevocability of the trust. Further, representatives of Good Shepherd, Holy Cross, and Old St. Andrew’s attended and “apparently participated in the 1987 Diocesan Convention at which [TECSC] adopted the Diocesan Canon.”⁵ *Id.*, at *18. The Petitioners in question do not contest these holdings, so they are the law of this case.

Accordingly, the trusts were irrevocable under the Trust Code despite the “presumption of revocability” argued by Good Shepherd, Holy Cross, and Old St. Andrew’s.

⁵ Under the Trust Code, “[a]n organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee’s attention if the organization had exercised reasonable diligence.” S.C. CODE ANN. § 62-7-104(b). These Petitioners, through their convention representatives, had actual knowledge of the Diocesan Canon (and, thus, the equivalent Dennis Canon), as well as its purpose.

D. The Petitioners at issue did not take adequate action to revoke the trusts.

Even if the Court were to conclude that the trusts created by Good Shepherd, Holy Cross, and Old St. Andrew's were revocable, the record does not support the argument that they revoked those trusts consistent with the Trust Code. As amended effective in 2006, the Trust Code required the following to revoke a revocable trust:

(c) The settlor may revoke or amend a revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) a later will or codicil that expressly refers to the trust, manifesting clear and convincing evidence of the settlor's intent; or

(B) by oral statement to the trustee if the trust was created orally; or

(C) any other written method, other than a later will or codicil, delivered to the trustee and manifesting clear and convincing evidence of the settlor's intent.

S.C. CODE ANN. § 62-7-602(c).

There was no "method provided in the terms of the trust" for it to be revoked, which is of course consistent with the fact that the trusts created via the Dennis Canon were intended to be irrevocable. (*See* discussion under heading E. below). Therefore, subsection (c)(1) of the statute does not apply. Additionally, subsections (c)(2)(A) and (B) are not applicable because there were no later wills or codicils and the trusts at issue were not oral.

Accordingly, assuming for the sake of argument the trusts were revocable, the only way Good Shepherd, Holy Cross, and Old St. Andrew's could have validly revoked their trusts was by complying with subsection (c)(2)(C).

Subsection (c)(2)(C) requires a writing that manifests clear and convincing evidence of the settlor's intent to revoke. The simple removal of accession language is not clear and convincing

evidence. The Dennis and Diocesan Canons to which Petitioners acceded state that each parish retained power over the property “so long as the particular Parish, Mission, or Congregation remains a part of, and subject to” TEC and TECSC. *Protestant Episcopal Church II*, at *17-18. Before disassociating from TEC, no Petitioner made a clear and express statement that it was revoking TEC’s and TECSC’s trust interests (or even “un-acceding” to TEC’s and TECSC’s canons); instead, this occurred after the acts of disassociation whereby each Petitioner had relinquished its interest in the parish property at issue – and, of course, the act of disassociation itself could not be a revocation because it is the very thing that effectuates TEC’s and TECSC’s trust interests under the Dennis and Diocesan Canons. Therefore, there is no “clear and convincing evidence” that they revoked the trust.

E. Deference to ecclesiastical determination of irrevocability.

The Court relied on *Jones v. Wolf*, 443 U.S. 595 (1979), in its analysis of the legal effect and purpose of the Dennis Canon. *Protestant Episcopal Church II*, at *13-16. It found that TEC adopted the Dennis Canon in “response to the Supreme Court’s suggestion in *Jones* that a trust could be created under which [TEC] would have beneficial ownership of Parish property.” *Id.*, at *15-16. Consistent with the holding of *Jones*, TEC concluded that the Dennis Canon and TECSC concluded that the Diocesan Canon created irrevocable trusts.

The reasoning of *Jones* illustrates why the trusts it contemplated – and which were effectuated in this case by TEC’s adoption of the Dennis Canon and the parishes’ accession to it – are intended to be, and make sense only if they are, irrevocable.

At any time before the dispute erupts, the parties can *ensure*, if they so desire, that the faction loyal to the hierarchical church *will* retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.

Jones, 443 U.S. at 606 (emphasis added).

Jones addressed a disagreement among religious factions and prescribed a way for the parties to resolve a property dispute before it occurred. If that resolution would be undone when the dispute arose, then it is not a resolution at all. As Justice Hearn recognized in her 2017 opinion (joined by Justice Pleicones and Justice Beatty), finding that the trust is revocable defeats its entire purpose of ensuring who will retain the church property in the event of a disagreement. *Protestant Episcopal Church I*, 421 S.C. at 241, 806 S.E.2d at 97-98 (Hearn, J., concurring). In short, there is no point to the trust if it is revocable.

F. Effect of ruling on revocability argument.

If the Court were to grant rehearing on this argument, its relief would be limited to the three Petitioners that sought rehearing on this basis. However, if it were to reject this argument – which it should, for one or more of the reasons set forth above – the Court must deny the Petitions for Rehearing by Holy Cross and Old St. Andrew’s.

2. Response to argument that no trust was created because the language purporting to constitute accession existed in the bylaws or constitutions before 1979.

Good Shepherd, Holy Comforter, St. Jude’s, St. Luke’s, and Trinity argue that – even though the Court relied on accession language in versions of their constitutions or bylaws that were adopted after 1979 – because that accession language was already in their constitutions or bylaws, the post-1979 constitutions or bylaws were not evidence of present intent to create a trust.⁶ In other words, they seem to suggest that the progression of (1) accession language in constitutions or bylaws, (2) followed by adoption of the Dennis Canon (and Diocesan Canon), and (3) then restatement of the accession language in constitutions or bylaws was insufficient to constitute

⁶ In addressing this argument, Appellants do not abandon their position that these Petitioners’ statements of accession before 1979, coupled with the adoption of the Dennis Canon, is sufficient to establish trusts over their property without the need for accession evidence after 1979.

accession to the Dennis Canon. Impliedly, they argue the constitutions or bylaws had to use different wording after 1979 to have the same effect that the accession language relied upon by the Court would have had after 1979 in the absence of the pre-1979 accession language – in other words, saying it twice means less than saying it once. This pedantic argument does not hold up to scrutiny.

It is important to begin with what these five Petitioners do not contest. They do not take issue with the Court's holding that language in a constitution or bylaws stating "we 'adopt' or 'accede to' the Canons of the National Church and the Lower Diocese" creates a trust in favor of TEC and TECSC. *Protestant Episcopal Church II*, at *29-30. Moreover, they do not dispute that they voluntarily placed such language in their constitutions and bylaws, that they were aware of the adoption of the Dennis Canon and the Diocesan Canon, and that they amended their constitutions and/or bylaws after adoption of the Dennis Canon without changing their agreement to adopt or to accede to TEC's and TECSC's canons.

Instead, these Petitioners argue that, because their constitutions or bylaws included adoption or accession language before adoption of the Dennis Canon, its continued inclusion in their constitutions or bylaws thereafter is not a present intent to create a trust.

That conclusion is incorrect. The restatement of these Petitioners' adoption of or accession to the Constitutions and Canons of TEC and TECSC is a "present action coupled with the present intent to create a trust for the beneficiary." *Id.* at *20. This is particularly true "in light of the knowledge these Parishes had of the Dennis and Diocesan Canons." *Id.* at *30. Certainly, the post-1979 documents containing the adoption or accession language is not evidence that they *lacked* the intent to accede.

If these Petitioners did not agree to the Dennis and Diocesan Canons, they could have stated that in their governing documents after those canons were adopted. Their failure to do so, with express knowledge of the adoption of those canons, is direct evidence of a present action and intent to create a trust for TEC and TECSC.

That the five Petitioners at issue included adoption or accession language in their governing documents before the Dennis Canon does not nullify the effect of consenting to the same language afterward. The crucial fact is that “the governing body of [Good Shepherd, Holy Comforter, St. Jude’s, St. Luke’s, and Trinity each] states in an official document of the Parish,” specifically its constitution or bylaws, “that the Parish ‘adopts’ or ‘accedes’ to the Canons of the National Church, coupled with the Parish’s knowledge of the Dennis Canon and participation in adopting the Diocesan Canon indicat[es] the present intent to create a trust.” *Id.*, at *35-36.

Just because they had the intent to accede earlier does not mean they lacked that intent when they amended other parts of the document; in fact, it is evidence that they did have the requisite present intent. When these Petitioners amended their governing documents, they had actual knowledge of the Dennis Canon. They could have chosen to exempt that canon specifically from their adoption of or accession to TEC’s and TECSC’s canons but chose not to do so.⁷ *Cf. Ahrens v. State*, 392 S.C. 340, 355, 709 S.E.2d 54, 62 (2011) “[C]itizens are presumed to know the law and are charged with exercising reasonable care to protect their interests.” (internal quotation marks omitted)); *Wigfall v. Tideland Utils.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003) (recognizing that when the Legislature fails to alter a statute, “its inaction is evidence the

⁷ That this was an option available and known to each of these Petitioners is demonstrated by the fact that they made similar changes in an effort to avoid a trust created by the Dennis Canon after they began to disassociate from TEC. (R. pp. 7104, 7106, 7109 [Good Shepherd]; 6582, 6601, 6645, 6648 [Holy Comforter]; 5703, 5705, 5715 [St. Jude’s]; 8505-06, 8510 [St. Luke’s]; 8136, 8139, 8141 [Trinity]).

Legislature agrees with this Court’s interpretation” of the statute). Rather, each Petitioner’s decision to maintain accession language after 1979 is a reaffirmation and ratification of its previous agreement to be bound by all of TEC’s and TECSC’s canons and is direct evidence of its present intent to create a trust consistent with the Dennis Canon – particularly where they made other changes to their governing documents and retained that accession language. This conclusion is illustrated in a decision from our sister State of Georgia:

Christ Church’s action of re-recording its 1918 charter amendment⁸ in the office of the Secretary of State of Georgia in 1981 can only be seen as a ratification and reaffirmation of Christ Church’s accession to the doctrine, discipline, worship, constitution and canons of the National Episcopal Church and the Georgia Diocese as of 1981, after the enactment of the Dennis Canon. We note that Christ Church failed to take any steps to disavow the canon or attempted to remove itself from the reach of the Dennis Canon in the more than 30 years since the National Episcopal Church adopted the express trust provision.

Rector, Wardens & Vestrymen of Christ Church in Savannah v. Bishop of the Episcopal Diocese of Ga., 305 Ga. App. 87, 96, 699 S.E.2d 45, 53 (Ct. App. 2010); *accord Episcopal Diocese v. Harnish*, 11 N.Y.3d 340, 351-52, 870 N.Y.S.2d 814, 819, 899 N.E.2d 920, 925 (2008) (“In agreeing to abide by all ‘canonical and legal enactments,’ [before adoption of the Dennis Canon] it is unlikely that the parties intended that the local parish could reserve a veto over every future change in the canons. We find it significant, moreover, that All Saints never objected to the applicability or attempted to remove itself from the reach of the Dennis Canons in the more than 20 years since the National Church adopted the express trust provision.”).

⁸ The 1918 charter at issue stated: “This church does hereby acknowledge and accede to the doctrine, discipline, and worship and the Constitution and Canons of the [National] Episcopal Church in the United States of America, and the Constitution and Canons of the same church in the Diocese of Georgia.” *Rector, Wardens & Vestrymen of Christ Church in Savannah v. Bishop of the Episcopal Diocese of Ga.*, 305 Ga. App. 87, 93, 699 S.E.2d 45, 50-51 (Ct. App. 2010).

Indeed, the current argument appears at odds with these same Petitioners' position before the Court in *Protestant Episcopal Church I*. There, in support of their Petition for Rehearing, they asserted:

When some parishes acceded to “the Constitution and Canons,” they could only have acceded to the canons as they existed, collectively, at the time of such accession. The word “canons” is used – the plural word. Therefore, it follows that when any of the canons were ever changed by alternation, amendment, deletion or addition after the accession occurred, *it would take a new accession to the collective new “canons.”* After every accession occurred, there indeed occurred changes, deletions, or additions to “the canons.” Thus, there is no “accession” to the changed canons. One might argue that until a particular canon is changed, the accession necessarily remains to the unchanged canons. But that would not be the case. There is no basis to say the accession remains to one canon but not to another. The accession was to “canons” plural, and no differentiation is made as to this or that canon [sic]. ... Thus, if TEC changes “the canons” after an accession, then there is no longer any applicable accession.

(R. p. 1329) (emphasis added).

In short, the subject Petitioners argued in 2017 that TEC's adoption of a new canon rendered each parish's previous accession moot and, to accede to a newly adopted canon of TEC, a parish would have to do exactly what each of them did – restate in a governing document that it is adopting or acceding to TEC's and TECSC's canons (plural). As such, they have admitted that the post-1979 evidence is sufficient evidence of accession.

And, considering these Petitioners' argument practically, what more should be required? If the Court were to agree with them and conclude that their post-1979 constitutions or canons needed to say more than their pre-1979 language (which the Court has held would have effected accession), what would that additional language be? “We accede to the canons of TEC and TECSC, *and we really mean it?*” Certainly, this kind of hairsplitting form-over-substance is at odds with the “minimal burden” for a religious organization to create a trust that the United States Supreme Court sanctioned in *Jones v. Wolf*, 443 U.S. 595, 606 (1979).

Good Shepherd, Holy Comforter, St. Jude's, St. Luke's, and Trinity rely on the Court's analysis of Christ Church, Mount Pleasant in support of their petitions. That reliance is misplaced. Christ Church last amended its Bylaws in 1980 and, therefore, did not do so with express knowledge of TECSC's adoption of the Diocesan Canon. The Court correctly characterized Christ Church as "different" from the other parishes on the basis of this fact (although it went on to conclude that other evidence satisfied the requisite intent to create a trust). *Protestant Episcopal Church II*, at *34. This fact distinguishes Christ Church's knowledge from that of the subject Petitioners, whose knowledge of TECSC's adoption of the Diocesan Canon is unchallenged. Moreover, because Christ Church's accession clause was adopted in 1980, the Court's discussion of that parish sheds no light on Petitioners' argument that their post-1979 accession clauses are rendered meaningless by having been originally adopted before 1979.

If the Court were to grant rehearing on this argument, its relief would be limited to the five Petitioners that sought rehearing on this basis. However, if it were to reject this argument – which it should, for one or more of the reasons set forth above – the Court must deny the Petitions for Rehearing by Holy Comforter, St. Jude's, St. Luke's, and Trinity.

If the Court rejects both arguments, it must deny Good Shepherd's Petition for Rehearing.

CONCLUSION

For the reasons set forth above, Appellants respectfully ask the Court to deny Petitioners' Petitions for Rehearing in their entirety and end this appeal with finality.

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Respectfully submitted,

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