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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable 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.

PETITION FOR REHEARING

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Pursuant to Rules 221 and 240 of the South Carolina Rules of Appellate Procedure, Respondent The Church of the Good Shepherd, Charleston, SC (“Good Shepherd”), through its undersigned counsel, respectfully petitions this Court for rehearing and reconsideration of the Court’s August 17, 2022 Opinion in *Protestant Episcopal Church in the Diocese of South Carolina v. Episcopal Church*, Op. No. 28095 (S.C. Sup. Ct. filed Aug. 17, 2022) (Howard Adv. Sh. No. 29 at 14) (hereinafter the “August 2022 Opinion”)¹ based on facts, points, and arguments overlooked or misapprehended as set forth herein.²

The August 2022 Opinion includes a new footnote acknowledging that Good Shepherd’s 2006 Constitution post-dates the enactment of the South Carolina Trust Code (and its accompanying presumption of revocability), but nevertheless concludes Good Shepherd created an irrevocable trust in favor of the National Church³ sometime prior to 2006 because “the only indication in the record before [the Court] is that this language was not a new addition to [Good Shepherd’s] Constitution in 2006.” August 2022 Opinion at 42 n.17. The August 2022 Opinion did not determine **when** such accession language was added to Good Shepherd’s Constitution.

¹ The August 2022 Opinion is a substituted opinion for the Court’s opinion in *Protestant Episcopal Church in the Diocese of South Carolina v. Episcopal Church*, Op. No. 28095 (S.C. Sup. Ct. filed Apr. 20, 2022) (Howard Adv. Sh. No. 14 at 24 n.9) (the “April 2022 Opinion”) and contains new conclusions with respect to Good Shepherd and other parishes, providing Good Shepherd with an opportunity to file a new petition for rehearing with respect to the August 2022 Opinion. *See* Rule 221 of the South Carolina Rules of Appellate Procedure.

² Good Shepherd’s prior petition for rehearing was based on the Court’s finding in the April 2022 Opinion that the **only** evidence in the record supporting Good Shepherd’s creation of a trust in favor of the National Church was the accession language quoted from Good Shepherd’s 2006 Constitution. April 2022 Opinion at 24 n.9 (stating that the Addendum to the April 2022 Opinion “contains a summary of *all* the potential evidence of ‘accession’ for each Parish.”). Good Shepherd petitioned the Court for rehearing of the April 2022 Opinion on the basis that its post-January 1, 2006 accession to the Dennis Canon pursuant to its 2006 Constitution created a revocable trust. Nevertheless, despite the Court’s prior conclusion that Good Shepherd’s 2006 Constitution was the only evidence in the record supporting the creation of a trust, the August 2022 Opinion concluded that the accession language found in Good Shepherd’s 2006 Constitution was first added to its Constitution sometime prior to 2006 without identifying when that accession language was added and without citing any document or documents in the record. Good Shepherd’s petition addresses that issue *infra*.

³ For the avoidance of confusion, Good Shepherd uses the same defined terms employed by the Court in its August 2022 Opinion.

Both the April 2022 Opinion and the August 2022 Opinion recognize that only documents found in the record may create a trust in parish property. Both opinions listed the entirety of the record evidence supporting the creation of a trust by each parish in their respective Addendums. April 2022 Opinion at 24 n.9; August 2022 Opinion at 30 n.9. Yet, the Court accepted the National Church's inference that Good Shepherd's accession language must have existed prior to 2006 without citing any evidence in the record to support that conclusion.

This Court has accepted the inference that the accession language existed prior to 2006 and has made an additional assumption to reach its conclusion that Good Shepherd created an irrevocable trust in favor of the National Church. Specifically, in order to satisfy the present intent requirement of trust creation, the Court assumed the accession language was added to Good Shepherd's Constitution after the adoption of the Dennis Canon but prior to 2006. This is a false assumption. The accession language the National Church says created a trust interest has existed in Good Shepherd's Constitution since at least 1977, two years prior to the adoption of the Dennis Canon. *See Exhibit A at 2 (1977 Constitution)*.⁴ All subsequent amendments to Good Shepherd's Constitution have maintained the status quo with continued use of the accession language until Good Shepherd amended its Constitution in 2011. Accordingly, there was never any positive action taken by Good Shepherd that would exhibit both present action and present intent to create a trust since the Dennis Canon did not exist at the time of the adoption of the 1977 Constitution. This is the same factual scenario as *The Church of the Holy Comforter, Sumter, The Vestry and Church Wardens of St. Jude's Church of Walterboro, Saint Luke's Church, Hilton Head, and Trinity Church of Myrtle Beach*. With respect to each of those

⁴ Notably, the Record reflects that Good Shepherd's Constitution was amended on May 20, 1979, also prior to the adoption of the Dennis Canon. R. at 7094. That Constitution also contains the same accession language found in Good Shepherd's 1977 and 2006 Constitutions. *See Exhibit B at 2. (1979 Constitution)*.

parishes, this Court found that when a party fails to show present action coupled with present intent there cannot be the creation of a trust under South Carolina law.

The holding of the Court in Section III(C)(vi) of the August 2022 Opinion that Good Shepherd amended its constitution or bylaws after the National Church adopted the Dennis Canon in 1979 and after the Lower Diocese adopted the Diocesan Canon in 1987 to include phrases such as we “adopt” or “accede” to the Canons of the National Church and the Lower Diocese is factually incorrect. The Court should find that the accession language in Good Shepherd’s constitution existed since at least 1977, prior to the adoption of the Dennis Canon, and a trust was therefore never created under South Carolina Trust Law.

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Respectfully submitted,

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