

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Diane Schafer Goodstein, Circuit Court Judge

SEP 25 2017

S.C. SUPREME COURT

Appellate Case No. 2015-000622

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

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

Respondents,

v.

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

Appellants.

REPLY IN SUPPORT OF PETITION FOR REHEARING

I. This is an *interchurch* dispute, not an *intrachurch* dispute.

Appellants' Return raises several issues which all derive from one false argument: that this action is an *intrachurch* dispute. First, it is argued that the Dennis Canon is about The Episcopal Church's governance, which is an issue of The Episcopal Church's polity, not property. Plainly, however, the issue is whether a trust in property was created. Appellants then endeavor to support their argument using decisions of this Court which either predate the adoption of neutral principles¹ or involve *intrachurch* decisions that support undisputed concepts such as a religious organization's right to hire and fire its ministers free from court interference,² or its rights to expel members.³ Similarly, the arguments about the burden on proving church structure all arise out of *intrachurch* disputes.⁴ The Court's determination of any property interest the Dennis Canon might

¹ *Seldon v. Singletary*, 284 S.C. 48, 326 S.E.2d 147 (1985); *Adickes v. Adkins*, 264 S.C. 394, 215 S. E. 2d 442 (1975).

² *Williams v. Wilson*, 349 S.C. 336, 563 S.E.2d 320 (2002) (dismissal of minister); *Knotts v. Williams*, 319 S.C. 473, 462 S.E.2d 288 (1995) (dismissal of minister); *Pearson v. Church of God*, 325 S.C. 45, 478 S.E.2d 849 (1996) (effect of ministry revocation on right to pension payments); *Hozanna-Tabor Evangelical Lutheran Church V. E.E.O.C.*, 656 U.S. 171 (2012) (dismissal of lay minister).

³ *Bowen v. Green*, 275 S.C. 431, 272 S.E.2d 433 (1980).

⁴ *Williams*, 349 S.C. at 342, 563 S.E.2d at 323; *Bowen*, 275 S.C. at 435, 272 S.E.2d at 435.

create in parish church property is resolved without regard to the form of a church's structure (polity). Resp. Br. at 26; *Jones*, 443 U.S. at 605; *All Saints Par. Waccamaw v. Protestant Episcopal Church in Diocese of S.C.*, 385 S.C. 428, 444, 685 S.E.2d 163, 172 (2009); *Diocese of San Joaquin v. Gunner*, 246 Cal. App. 4th 254, 202 Cal. Rptr. 3d 51, 63-64 (2016); *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 650 (Tex. 2013). Finally, Appellants' Return ignores United States Supreme Court jurisprudence on how properly a court is to involve itself in disputes between competing religious organizations.

Constitutional rights in pursuit of lawful aims are protected in association with others just as they would be if pursued individually. *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984). The positive right to associate with others in pursuit of common goals, such as shared religious beliefs, includes its negative counterpart, the right not to associate. *Id.* ("Freedom of association... plainly presupposes a freedom not to associate"). As this Court recognized, in the exercise of their associational rights, the Protestant Episcopal Church in the Diocese of South Carolina (the "Disassociated Diocese") and the parish churches maintaining their association with it, withdrew from The Episcopal Church. The existence of each of these non-profit corporations, now disassociated from The Episcopal Church, continues as it was before except for the change in relationship with The Episcopal Church. Given the decision by a majority of the Court that neutral principles of law continue to be the standard to be applied in cases such as this, absent some neutral principle of South Carolina law, which turns on that disassociation, their property interests continue unaffected by the associational relationship change.

Appellants' Return is premised on the fallacy that the issues here involve a single religious association. There are two different religious groups of associated entities before this Court. Each assert rights over the same real, personal and intellectual property and each claim the right to the

free exercise of their religion in different ways. This is not an *intrachurch* dispute; it is an *interchurch* dispute. It is precisely this set of facts which most emphasizes the importance of using neutral principles of law to resolve resulting disputes over civil rights to property.

Both religious groups are constitutionally entitled to assemble, associate and worship in the free exercise of their different religious beliefs. Both are equally entitled to freedom from a court's establishment of one religion with its religious beliefs over the other. Both have the right to the selection and termination of their own ministers without court interference. *Jones v. Wolf* did not require that the free exercise rights of one religious group permitted its establishment over the free exercise rights of the other religious group; it prohibits it. 433 U.S. 732 (1979). The origin of neutral principles as a method that would allow a court to adjudicate disputes over property without infringing on First Amendment freedoms came with the understanding that "neutral principles of law, developed for use in all property disputes" would not only preserve free exercise rights, but when applied neutrally, these principles would not establish churches to which property is awarded. *Presbyterian Church v. Hull*, 393 U.S. 440, 449 (1969).⁵ The majority no longer applies civil law principles neutrally as this Court did in *All Saints*, it does so by favoring one religious group at the expense of the other religious group in its creation of a differing standard under South Carolina's trust law for religious organizations. It applied that standard to the facts in a manner that establishes The Episcopal Church's free exercise of its religious beliefs over those

⁵ The neutral-principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. *Jones*, 443 U.S. at 606.

of the Disassociated Diocese and its parish churches. That is a violation of the First Amendment's Establishment Clause and Free Exercise Clause.⁶

It is the appropriate recognition and balance of the well-recognized tension between the free exercise and establishment clauses that properly grounds the United States Supreme Court decisions involving property disputes when, typically the result of doctrinal differences,⁷ one religious group disassociates from another.⁸ Principles of civil law are inherently neutral regardless of differing religious beliefs which may be exercised in differing forms of church government. *Jones*, 443 U.S. at 606. Their *neutral* application creates no governmental favoritism since the same principles are applied to the religious dispute context as they would be to a similar secular dispute. *Jones* created no constitutionally required "church-only" rule which a State must follow in the application of its neutral legal principles to religious disputes involving property. Nor can South Carolina constitutionally create such a rule.

That this might cause The Episcopal Church's desired trust interest here to fail would not be attributable to judicial infringement on its free exercise of religion, it would be the result of The Episcopal Church's failure properly to structure its civil relationship with the Disassociated Diocese and member churches in a manner that not only accomplishes the desired result, but also

⁶ Adopting a different standard to apply to the same essential parties and the same essential facts, also violates Petitioners' due process rights. (See Pet. Reh'g at 16-17.)

⁷ (Resp. Br. at 24-26); *Diocese of Quincy v. Episcopal Church*, 14 N.E.3d at 1258 (Ill. App. 4th Dist. 2014); *Masterson v. Diocese of Nw. Texas*, 422 S.W.3d 594, 597 (Tex. 2013) ("Due to doctrinal differences with The Episcopal Church . . ."); *Episcopal Diocese of Ft. Worth v. The Episcopal Church*, 422 S.W. 3d 646, 648 (Tex. 2013) ("Doctrinal controversy arose . . .").

⁸ "We have said these two Clauses often exert conflicting pressures . . ." *Hozanna-Tabor*, 132 S. Ct. 694, 702 (2012) (internal quotation omitted); *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707, 719-720 (1981) ("The Court correctly recognizes that there is a 'tension' between the Free Exercise and Establishment Clauses of the First Amendment of the United States Constitution.").

does so by using legally cognizable South Carolina trust law requirements applicable to any similar secular organization. The United States Supreme Court has repeatedly noted the obligation of religious organizations to structure relationships involving church property consistent with neutral principles of state law so that disputes between religious organizations over property can be resolved without infringing on First Amendment freedoms. *Presbyterian Church*, 393 U.S. at 449; *Jones*, 443 U.S. at 604. This Court cannot constitutionally compel a different result than that which the religious organizations accomplished when they failed to structure their civil relationships involving property in a manner consistent with a desired result under neutral principles of South Carolina trust law “developed for use in all property disputes.” *Presbyterian Church*, 393 U.S. at 449.⁹

The effect of this Court’s “church-only” rule is to unintentionally favor one side on the issues underlying the schism. This might be a natural result of preselected, mutually desired results arising from structured civil relationships embodied in “legally cognizable” forms provided by South Carolina laws of neutral applicability. In that situation, the religious parties would get what they intended to get by following South Carolina law to achieve those results. However, a court may not constitutionally assist either party when they have failed properly to structure the relationships under neutral principles of state law to achieve that result. It is clear beyond question that “the government may not displace the free religious choices of its citizens by placing its weight behind a particular religious belief, tenet or sect.” *Serbian Orthodox Diocese v. Milivojovich*, 426

⁹ The constitutional requirement of denominational neutrality satisfies both First Amendment goals. See *Larson v. Valente*, 456 U.S. 228, 256 (“Justice Goldberg cogently articulated the relationship between the Establishment Clause and the Free Exercise Clause when he said that “[t]he fullest realization of true religious liberty requires that government . . . effect no favoritism among sects . . . and that it work deterrence of no religious belief.” (citation omitted)).

U.S. 696, 733 (1976) (Rehnquist, J., joined by Steven, J., dissenting).¹⁰ When neutral principles of law are properly applied to this dispute, the Petitioners prevail.¹¹

II. A civil court cannot be asked to find that the Dennis Canon is an effective trust without also being able to find that it is not.

Appellants' argument presents the Court with a judicial "Catch-22." The Court is asked to enforce the Dennis Canon against parish church property under South Carolina's neutral principles of law as an express trust, yet Appellants contend the Dennis Canon is an internal governance rule which the Court cannot declare "meaningless and valueless." (Return p. 2.) Appellants' desire to enforce the Dennis Canon in a civil court requires the Court to "scrutinize" it on "purely secular terms, and not rely on religious precepts in determining whatever the document indicates the parties have intended to create a trust." *Jones*, 443 U.S. at 604. Obviously, if it fails to create a trust under South Carolina law, then it would be rendered "meaningless." That would be a function of Appellants' failure to structure their civil law relationships with Respondents in compliance with South Carolina trust law, not an intrusion by the Court. Asking a court to enforce the Dennis Canon under South Carolina neutral principles of law as a "legally cognizable" express trust while

¹⁰ Although from the *Serbian* dissent, Professor Tribe notes that all nine Justices agree with this principle. Lawrence H. Tribe, *American Constitutional Law*, 1240 (Foundation Press, 2nd ed. 1988).

¹¹ Though unconstitutional and based on an argument first made on appeal ("minimal burden"), two members of the majority have articulated reasons for their result as to the parish churches. Chief Justice Beatty states that he disagrees with "much" of their analysis and he adheres to neutral principles of law. However, he does not set forth a neutral principle of South Carolina law for his finding about Camp St. Christopher that "the disassociated Diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina." Op. at 53 n.29. Appellants rely on this conclusion. (Return p. 1.) This conclusion is in error. As recognized by the California Court of Appeals and the Illinois Court of Appeals, the Dennis Canon does not create a trust in Diocesan property. *Diocese of Joaquin v. Gunner*, 246 Cal. App. 254, 270, 202 Cal. Rptr. 3d 51, 64 (2016); *Diocese of Quincy v. The Episcopal Church*, 14 N.E. 2d 1245, 1258 (Ill. 2014).

simultaneously maintaining that the Court cannot find it ineffective because it is part of its “governance” does indeed render something meaningless—the Court’s ability to adjudicate the issue at all. Appellants’ flawed reasoning should thus be rejected.

III. Rehearing should be granted because the Court’s Opinion is inconsistent with South Carolina trust law.

A. Petitioners’ arguments on accession, revocability, and the statute of limitations have not been waived by the failure to previously contest those issues.

Appellants argue that Petitioners waived the arguments regarding accession, revocability, and the statute of limitations by failing to previously raise those arguments and are precluded from making those arguments in their Petition for Rehearing. (Return pp. 9-12.) Appellants’ waiver argument misinterprets this Court’s rules regarding prior dispositive issues and ignores the record.

Under this Court’s rules, a respondent need not obtain a ruling from the lower court on all issues and arguments in order to raise them on appeal as additional reasons the appellate court should affirm the lower court’s ruling. *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). “It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review.” *Id.* Further, neither the lower court nor the appellate courts will address remaining issues when disposition of a prior issue is dispositive. *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010). When this Court has reversed a lower court on an issue that the lower court found to be dispositive, its procedure has been to remand to that lower court for additional proceedings on the subsequent issues rather than ruling on those issues in the first instance. *See Bridges v. Daniel*, 121 S.C. 464, 114 S.E. 422, 425 (1922) (reversing decision of special referee, which failed to decide other issues; stating, “under these circumstances, this court will not consider them in the first instance, but will remand the case for a new trial in accordance

with these conclusions.”); *see also Young v. Charleston Cty. Sch. Dist.*, 397 S.C. 303, 311, 725 S.E.2d 107, 111 (2012) (reversing result of review of administrative hearing that failed to satisfy due process and remanding for proper proceedings; declining to address additional issues raised by appellant); *King v. Am. Gen. Fin., Inc.*, 386 S.C. 82, 91, 687 S.E.2d 321, 325 (2009) (reversing trial court’s grant of summary judgment to creditor in attorney preference action and remanding for further proceedings, declining to address borrower’s arguments that creditor should be liable for violation of statute).

The trial court found that no express trust was created because no writings exist that were both signed by the settlor and manifest the settlor’s intention to create the trust, as required by the South Carolina Trust Code. (R. 77-78.) Accordingly, under *I’On*, Petitioners were not required to obtain a separate ruling from the trial court that the individual parishes’ accession documents, when combined with the Dennis Canon, also fail to create an express trust. Nor were Petitioners required to obtain a ruling from the trial court that, if it had found that a trust was created, the trust would be revocable. Nor was there any requirement to get a ruling on vested rights or statute of limitations issues. All of these issues were disposed of by the trial court’s ruling on the prior issue that no trust was created since there were no signed writings by the settlor intending to create a trust.

The result of a majority of the opinions of the Justices is the first time that Petitioners lost the issue of whether a trust was created. However, rather than remanding to the trial court for further proceedings on the subsequent issues, which should have been done, the Court reached a final decision itself. As a result, Petitioners properly may raise all of these issues in the petition for rehearing and point out this procedural problem. Indeed, it would be a denial of due process to find that Petitioners waived argument on the issues that were ruled upon for the first time by

this Court in its Opinions when Petitioners had no prior opportunity or reason to present the arguments.

Regardless, Appellants' claim that "Respondents did not contest the evidence" is meritless. (Return p. 9.) Petitioners have maintained throughout this proceeding that the evidence shows that no writings satisfy the South Carolina Trust Code's requirements for the creation of an express trust. (See Resp. Br. pp. 42-44.) The accession documents at the heart of the majority's analysis in favor of Appellants are not even in the Record. What is in the Record is mere belated argument in a TEC legal memorandum, not evidence. (See Pet. Reh'g pp. 26-27.) Whether an express trust was created under South Carolina law is at the heart of this dispute and the trial court's decision, and to claim that Petitioners do not contest the evidence on this key issue is without merit.

B. Rehearing should be granted to correct the Opinion's findings that an express, irrevocable trust was created.

Under the South Carolina Trust Code, the writing creating an express trust must be signed by the settlor and manifest the settlor's intent to create a trust. S.C. Code Ann. § 62-7-401(a)(2); S.C. Code Ann. § 62-7-103(17). Rather than attempting to explain how these elements could have been met, Appellants argue only that the writings create express trusts because "the documents acknowledge, in one form or another, Respondents' understanding that they were a part of The Episcopal Church and subject to its rules." (Return pp. 9-10.) An understanding that one is subject to church rules is simply not enough to create a trust under the South Carolina Trust Code. None of the individual parishes' accession documents both expressly state an intent to create a trust and are signed by the owner of the property. (See Pet. Reh'g pp. 28-32.) The Court must grant rehearing to correct the holding that an express trust was created under a specialized body of trust law.

Even if a trust were created, it was revocable and properly revoked by Petitioners. Appellants argue that the trust was irrevocable because South Carolina law presumes that trusts created before 2006 are irrevocable, and by quoting the terms of the Dennis Canon. (Return p. 10 (citing R. 1799).) However, the Dennis Canon itself may be amended or repealed by TEC at any time. (See R. 1563, 1703.) In response, Appellants argue that the trust may be irrevocable because South Carolina law allows irrevocable trusts to be modified by beneficiaries if the court finds that modification of the trust is not inconsistent with the material purpose of the trust. (Return p. 10 (citing S.C. Code Ann. § 62-7-411).) This statute cited by the Appellants demonstrates exactly why neutral principles of South Carolina law cannot support the majority's holding that an irrevocable trust was created. The purpose of requiring court approval of a modification of an irrevocable trust is to ensure that the *settlor's intent in creating the trust* will still be effected despite the beneficiary's modification. Because the Dennis Canon may be unilaterally modified by TEC at any time without court oversight, there is no way for Petitioners or a court to ensure that Petitioners' intent in creating the trust (assuming *arguendo* such intent existed) would not be destroyed by the modification. The protections created by South Carolina Trust Code are thus not followed by the majority.

Further, any modification to the relevant language of the Dennis Canon by TEC would necessarily infringe on the current terms of the Dennis Canon to which certain Petitioners allegedly acceded, which terms allow Petitioners to retain power and authority over the property. (R. 1799.) This inherent inconsistency demonstrates the fundamental error in the majority's reasoning: a trust document unilaterally modifiable by the beneficiary cannot create a valid trust that is irrevocable by the settlor, especially where the settlor is retaining a legal or equitable interest. Neither the individual accession documents nor the Dennis Canon prove that Petitioners intended to place their

property in an irrevocable trust. Rehearing must be granted to vacate the Court's Opinion and find in favor of Petitioners that no trust was created, or at a minimum, remand to the trial court for fact-finding on this issue.

The error of the majority is perhaps best exposed by looking at the Dennis Canon in isolation first, and the accession documents next. A majority of the Court correctly finds that the Dennis Canon, standing alone, does *not* create a trust. Chief Justice Beatty's opinion necessarily presupposes that accession must be a one-time, permanent event. But there is no evidence that this is true. Under a majority of the Court's holdings, the one-time accession to canons by a parish generally irrevocably places their property in trust for TEC, which TEC can subsequently unilaterally modify in any way TEC wishes. There is no evidence of the accession documents in the Record for the vast majority of the parishes, much less any evidence that, when a parish agreed to accession, that it intended to create a trust or that the accession could never be changed.

The accession documents, which do not mention the Dennis Canon by name or even use the word "trust," clearly do not create any trust alone. There thus should be no presumed irrevocability with respect to the accession documents alone. Further, when viewing the Dennis Canon in isolation, it is clearly modifiable, and modifiable by TEC as TEC can modify any of its canons, and it does not itself create a trust. Despite this, a majority of the Court reaches the result that an irrevocable trust has been created. This ruling is simply inconsistent with long-standing neutral law with respect to trusts. At a minimum, this issue should be remanded to the trial judge for a determination of whether the parishes actually intended to create a trust, and also whether they intended to create an irrevocable trust, through the accession documents.

IV. Appellants' Return failed to address a number of arguments in the Petition for Rehearing, and at a minimum, remand is warranted.

A. Appellants failed to address Petitioners' arguments.

In their Return, Appellants did not address many of Respondents' arguments for rehearing and failed to even mention the following grounds that support a rehearing in this important dispute:

- The Court's opinions depended on the conclusion that *Jones* mandated minimal burdensomeness, which issue was not preserved;
- The Court's action constitutes a deprivation and a taking of the private property of respondents without due process of law in violation of the 5th and 14th Amendments to the United States Constitution;
- The fact question of the parishes' intent to create a trust in favor of TEC via accession documents should be remanded for fact findings by the trial judge;
- That The Vestries and Churchwardens of The Parish of St. Andrews ("Old St. Andrew's") was the eighth parish allowed to retain their property rights under the current ruling;
- The trial court is being improperly reversed based on arguments and points that were not preserved, are procedurally barred, or which are unsupported by the record on appeal:
 - The trial judge is being reversed on issues on which she did not rule;
 - TEC's Rule 41(C) motion for nonsuit was insufficient;
 - The trial court should not be reversed based on an issue not included in the statement of issues on appeal;
 - In order to support reversal of the trial court, an issue must have been argued in the appellant's initial appeal brief;
 - The trial judge is being improperly reversed based on matters not appearing in the record; and
 - The actual proof at trial regarding accession does not support the Opinions of the court and rehearing must be granted.
- Rehearing must be granted to eight parishes based on vested rights; and
- The ruling as to Camp St. Christopher is erroneous.

Many other arguments are not addressed substantively, although they are mentioned. For the reasons set forth in the Petition for Rehearing, the Court should grant rehearing to correct these errors.

B. Appellants failed to address the outstanding factual questions, which should be remanded to the trial court for further factual findings.

Factual questions are unanswered, even if the Court's standard remains, for almost all of the parishes. By way of example, St. Philip's Church never expressly acceded to the Dennis Canon and therefore cannot be divested of its property. Other than the Appellant's *legal argument* (as opposed to evidence in the record), there is nothing in the record on appeal or in the evidence introduced at trial wherein St. Philip's Church expressly acceded to the Dennis Canon. Different, but equally important, questions exist as to the rest of the parishes.

The Court's finding that St. Philip's Church expressly acceded to the Dennis Canon has its genesis in footnote 38 of the Opinion, which states that the national church "acknowledged" in its brief that "29 of the 36 parishes made express promises in their governing documents to comply with the [n]ational [c]hurch's rules after those rules had been amended to include the Denis Canon in 1979", citing page 38 of the Appellants' *Brief*. Page 38 of the Appellant's Brief contains the following *argument* (as opposed to fact proven at trial): "...the Defendants set out in an 89-page proposed order and repeated in their motion for reconsideration, 29 of the 36 parishes made express promises in their governing documents to comply with the National Church's rule after those rules had been amended to include the Dennis Canon in 1979," citing the Record on Appeal, pages 101-106. Page 101 to 106 of the Record on Appeal quotes from a *proposed* Order submitted by Appellants and makes the following *argument* with respect to St. Philip's Church: "St. Philip's:

1987 Articles of Restatement describing the purpose of the parish corporation as ‘in accord with the Articles of Religion of the Protestant Episcopal Church in the United States of America’...”

The sole basis on which Appellants have argued, and the Court has so held, that St. Philip’s should be divested of its property is that St. Philip’s Church, in 1987, acknowledged the purpose of the parish corporation as being “in accord with the Articles of Religion” of the national church. The Articles of Religion of the national church were established in 1801, one hundred and seventy eight years prior to the Dennis Canon. The Articles of Religion, similar to those for other protestant churches, contain nothing more than a summary of the religious doctrine, theology and beliefs of the national church and St. Philip’s Church. The Articles of Religion do not mention the constitution or any of the canons of the national church, let alone the Dennis Canon adopted 178 years after the establishment of the Articles of Religion. Appellants failed to respond to the factual issues like this raised by all Respondents in detail in the Motion for Rehearing.

CONCLUSION

There is no basis under this Court’s or the United States Supreme Court’s precedents or South Carolina trust law for the outcome that the Court reached based on the principles the Court stated that it applied. If this is a secular church dispute to which neutral principles of law are applicable, as the Court found, then South Carolina trust law mandates the result that Petitioners are the owners of their property. The result reached by the majority, however, is incompatible with South Carolina law. The Court should grant rehearing.

The Court should adopt Acting Justice Toal’s dissent *in toto*, affirm the decision of the trial court, and find that Petitioners are the fee simple owners of the property at issue because: (1) the Supreme Court’s decision in *Jones* and this Court’s decision in *All Saints* mandates the application

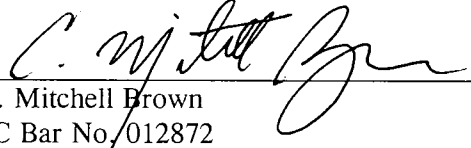
of the neutral principles approach; (2) under neutral principles of South Carolina trust law, no express trust was created; and (3) the trustee corporation holds title for Camp St. Christopher.

Failing the above, the Court should adopt Justice Kittridge's dissent *in toto* and find that: (1) the Supreme Court's decision in *Jones* and this Court's decision in *All Saints* mandates the application of the neutral principles approach; (2) under neutral principles of South Carolina trust law, the twenty-eight parishes which acceded to the Dennis Canon created a revocable trust in favor of TEC, but subsequently took steps to revoke the trust; (3) eight parishes which did not accede had vested property rights; and (4) the trustee corporation holds title for Camp St. Christopher.

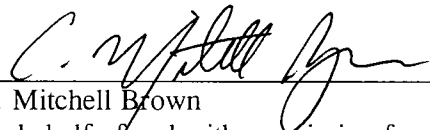
Lastly, failing both of the above, the Court should find that (1) the Supreme Court's decision in *Jones* and this Court's decision in *All Saints* mandates the application of the neutral principles approach; and (2) vacate the remainder of its Opinion and remand to the trial court for further proceedings on the application of neutral principles of law to determine Petitioners' intent to create a trust through accession documents and all other issues not previously reached by the trial court, including but not limited to revocation and the applicability of the statute of limitations.

Signature Page Attached

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2015-000622

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

Church of Myrtle Beach; Trinity Episcopal Church;
Trinity Episcopal Church, Pinopolis; Vestry and Church
Wardens of the Episcopal Church of The Parish of
Christ Church; Vestry and Church Wardens of The
Episcopal Church of the Parish of St. John's,
Charleston County, The Vestries and Churchwardens of
The Parish of St. Andrews,.....

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RESPONDENTS SUPREME COURT

v.

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

Appellants.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins
Riley & Scarborough LLP, attorneys for Respondents, do hereby certify that I have served all
counsel in this action with a copy of the pleading(s) hereinbelow specified by e-mailing a copy
of the same to the following address(es):

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