

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

PETITION FOR REHEARING

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.

[Signature block on following page]

Respectfully submitted,

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September 1, 2022

EXHIBIT A

CONSTITUTION OF ST. PETER'S CHURCH

PREAMBLE

ARTICLE I

DUTIES AND COMPOSITION OF THE VESTRY

ARTICLE II

ANNUAL MEETINGS

SECTION 1

Purpose

SECTION 2

General

SECTION 3

Voter Requirements

SECTION 4

Method of Voting

ARTICLE III

ELECTION OF THE VESTRY

SECTION 1

Nominations

SECTION 2

Requirements for Vestrypersons

SECTION 3

Election of Wardens

SECTION 4

Requirements for Wardens

SECTION 5

Public Announcements

ARTICLE IV

ELECTION OF DIOCESAN CONVENTION DELEGATES

ARTICLE V

ELECTION OF CHARLESTON DEANERY DELEGATES

ARTICLE VI

VESTRY MEETINGS

SECTION 1

Frequency

SECTION 2

Quorum

SECTION 3

Notification

ARTICLE VII

VESTRY MEMBERSHIP FORFEITURES

ARTICLE VIII

VESTRY VACANCIES

ARTICLE IX

GOVERNMENT OF THIS PARISH

ARTICLE X

AMENDMENTS TO THE CONSTITUTION

CONSTITUTION OF ST. PETER'S CHURCH

Charleston, S. C.

PREAMBLE

This Church shall be known as St. Peter's Church, Charleston, South Carolina (Act. 367), as enacted by the General Assembly of South Carolina in 1929. It adopts the By-Laws and Canons of the Protestant Episcopal Church of the United States of America and of the Diocese of South Carolina.

ARTICLE I

DUTIES AND COMPOSITION OF THE VESTRY

All the temporal interests and affairs of this corporation shall be governed and controlled by the Vestry, which shall be composed of the Rector of the Church, who shall be chairman of the Vestry, the Assistant Rector, if there be one, two (2) Wardens and thirteen (13) Vestrypersons, who shall be nominated and elected as provided in Article III.

ARTICLE II

ANNUAL MEETINGS

Section 1 - PURPOSE

An annual Congregational Meeting shall be held in the Parish House or other suitable location on the second Monday in January or as soon thereafter as practical. At this time any old or new business may be brought before the Congregation by the Rector, Vestry or any member fulfilling the requirements of Section 3 of this Article. Also at this meeting those in charge of the various activities of the Church shall submit their written reports. The Vestry shall submit the Budget for action by the Congregation. Vestrypersons, Delegates and their Alternates to the Diocesan Convention and Deanery shall be elected at this time.

Section 2 - GENERAL

The Rector shall preside at all Congregational Meetings. In his absence the Assistant Rector if there be one, the Senior Warden, or the Junior Warden shall preside at any meeting in that order. Special meetings of the Congregation may be called when deemed necessary by the Rector, and he shall be required to call a Congregational Meeting at any time upon the written request of two-thirds (10) of the Vestry. Any business may be transacted at any congregational meeting.

Section 3 - VOTER REQUIREMENTS

Any person who is a Communicant of this Parish and who has attained the age of eighteen (18) years on or prior to the date of any given Congregational Meeting shall be eligible for voice and vote.

Section 4 - METHOD OF VOTING

The Wardens shall be in charge of the elections, or such Tellers as may be appointed by the presiding officer. Voting in elections for Vestrypersons shall be by secret ballot and those receiving the majority of votes cast shall be declared elected. Voting on business matters may be by vote or by secret ballot, at the discretion of the presiding officer.

ARTICLE III

ELECTION OF THE VESTRY

Section 1 - NOMINATIONS

Nominations for Vestrypersons shall be from the floor. Other nominations may be submitted by a nominating committee duly appointed by the Rector. Five (5) Vestrypersons shall be elected to serve terms of three (3) years each.

ARTICLE III - Continued

Section 2 - REQUIREMENTS FOR VESTRYPERSONS

To be eligible for election to the Vestry any person of good character must have attained the age of twenty-one (21) years; have been a Communicant of this Parish for at least six (6) months prior to election; communicated at least three times during the preceding year; paid at least 50% of his pledge of the preceding year, and has made a pledge of financial support to the Parish for the forthcoming year. No person shall be eligible for re-election after his term of office has expired until one (1) year has elapsed from the date of said expiration; however, a person duly elected to serve out the unexpired term of another member may be elected to a full three (3) year term without waiting one (1) year. Women shall be permitted to serve on the Vestry, however the number shall be limited to three (3) in any one year.

Section 3 - ELECTION OF WARDENS

The Wardens shall be elected at the Organizational Meeting of the Vestry by the Vestry, the Senior Warden upon nomination by the Rector, and the Junior Warden upon nomination from the floor. In the event there is no Rector the Senior Warden shall be nominated from the floor. Eleven (11) members shall constitute a quorum for election of Wardens. Election shall be by secret ballot. Wardens shall serve for one (1) year and until their successors are elected, and may be nominated and elected to successive terms.

Section 4 - REQUIREMENTS FOR WARDENS

Wardens must be Vestrypersons elected by an Annual Congregational Meeting, and must have served as a Vestryperson of the Parish for at least two (2) years.

Section 5 - PUBLIC ANNOUNCEMENT

Section two (2) of Article III shall be read at each Congregational Meeting prior to the call for nominations.

ARTICLE IV

ELECTION OF DIOCESAN CONVENTION DELEGATES

Four (4) delegates and four (4) alternates to the Diocesan Convention shall be elected at the Annual Meeting of the Congregation. At least eight (8) members shall be nominated including the Senior and Junior Wardens. Ballots shall be cast for four (4) delegates. The four (4) receiving the highest number of votes shall be declared delegates. The four (4) receiving the next highest number of votes shall be the Alternates. In the case that a full delegation of those duly elected cannot represent this Parish at the Diocesan Convention others may be elected by the Vestry or appointed by the Rector.

ARTICLE V

ELECTION OF CHARLESTON DEANERY DELEGATES

Four (4) delegates shall be elected to the Charleston Deanery at the Annual Congregational Meeting. At least one shall be a woman and one may be a Communicant under 18 years of age. In the event any of the delegates are unable to attend the Deanery Convocation, the Rector shall appoint an Alternate.

ARTICLE VI

VESTRY MEETINGS

Section 1 - FREQUENCY

The Vestry shall meet each month and shall be convened at other times by its Chairman whenever he shall deem it necessary, or whenever he shall be requested by any three (3) members thereof.

ARTICLE VI - Section 2 - QUORUM

Eight (8) members, at least one (1) of whom shall be a Warden, shall constitute a Quorum for all business, and all questions shall be determined by a majority of those present, except upon the election of a Rector, or on matters involving an alteration or amendments to this Constitution. In such case, a vote of two-thirds (10) of the Vestry shall be required.

Section 3 - NOTIFICATION

All members of the Vestry shall be notified by the Secretary of the time and place of all meetings.

ARTICLE VII

VESTRY MEMBERSHIP FORFEITURES

Any member of the Vestry who is absent from three (3) consecutive regular meetings of the Vestry, unless absent from the city, confined to his home due to illness, or absent due to his job or business, forfeits his place on the Vestry. The Chairman of the Vestry shall declare his place forfeited and shall proceed to elect another communicant to fill the unexpired term in accordance with Article VIII.

ARTICLE VIII

VESTRY VACANCIES

In case of a vacancy in the Vestry, or of a Warden an election by the Vestry to fill the unexpired term shall be held within sixty (60) days after the occurrence of the vacancy. The new member shall possess the qualifications outlined in Article III, Section 2 or 4.

ARTICLE IX

GOVERNMENT OF THIS PARISH

The Vestry shall compose such By-Laws that are consistent with this Constitution and expedient for the government of this Church and the dispatch of its business.

ARTICLE X

AMENDMENTS TO THE CONSTITUTION

This Constitution shall not be amended or changed until the proposed amendment has been submitted in writing to the Vestry. They shall pass upon it, as provided in Article VI Section 2, and shall give at least thirty (30) days written notice of the same to the Congregation before it can be voted upon by the congregation.

This Constitution was amended at the Congregational Meeting on January 16, 1977

CONSTITUTION OF ST. PETER'S CHURCH

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Frequency

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Quorum

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ARTICLE III - Continued

Section 2 - REQUIREMENTS FOR VESTRYPERSONS

To be eligible for election to the Vestry any person of good character must have attained the age of twenty-one (21) years; have been a Communicant of this Parish for at least six (6) months prior to election; communicated at least three times during the preceding year; paid at least 50% of his pledge of the preceding year, and has made a pledge of financial support to the Parish for the forthcoming year. No person shall be eligible for re-election after his term of office has expired until one (1) year has elapsed from the date of said expiration; however, a person duly elected to serve out the unexpired term of another member may be elected to a full three (3) year term without waiting one (1) year.

Section 3 - ELECTION OF WARDENS

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Wardens must be Vestrypersons elected by an Annual Congregational Meeting, and must have served as a Vestryperson of the Parish for at least two (2) years.

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Four (4) delegates shall be elected to the Charleston Deanery at the Annual Congregational Meeting. At least one shall be a woman and one may be a Communicant under 18 years of age. In the event any of the delegates are unable to attend the Deanery Convocation, the Rector shall appoint an Alternate.

ARTICLE VI

VESTRY MEETINGS

Section 1 - FREQUENCY

The Vestry shall meet each month and shall be convened at other times by its Chairman whenever he shall deem it necessary, or whenever he shall be requested by any three (3) members thereof.

ARTICLE VI - Section 2 - QUORUM

Eight (8) members, at least one (1) of whom shall be a Warden, shall constitute a Quorum for all business, and all questions shall be determined by a majority of those present, except upon the election of a Rector, or on matters involving an alteration or amendments to this Constitution. In such case, a vote of two thirds (10) of the Vestry shall be required.

Section 3 - NOTIFICATION

All members of the Vestry shall be notified by the Secretary of the time and place of all meetings, other than regularly scheduled monthly meetings.

ARTICLE VII

VESTRY MEMBERSHIP FORFEITURES

Any member of the Vestry who is absent from 25% of the regular meetings of the Vestry during a calendar year, unless the Rector or Senior Warden is notified of absence from the city, confinement to home due to illness, or absence due to business forfeits his/her place on the Vestry. The Chairman of the Vestry shall declare his place forfeited and shall proceed to elect another communicant to fill the unexpired term in accordance with Article VIII.

VESTRY VACANCIES

ARTICLE VIII

In case of a vacancy in the Vestry, or of a Warden an election by the Vestry to fill the unexpired term shall be held within sixty (60) days after the occurrence of the vacancy. The new member shall possess the qualifications outlined in Article III, Section 2 or 4.

ARTICLE IX

GOVERNMENT OF THIS PARISH

The Vestry shall compose such By-Laws that are consistent with this Constitution and expedient for the government of this Church and the dispatch of its business.

ARTICLE X

AMENDMENTS TO THE CONSTITUTION

This Constitution shall not be amended or changed until the proposed amendment has been submitted in writing to the Vestry. They shall pass upon it, as provided in Article VI Section 2, and shall give at least thirty (30) days written notice of the same to the Congregation before it can be voted upon by the congregation.

This Constitution was amended at the Congregational Meeting on May 20, 1979.

NO FURTHER AMENDMENTS AS OF February 1987