

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

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Appellate Case No. 2020-000986

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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.

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MOTION FOR RELIEF FROM JUDGMENT

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1. Introduction.

Appellants hereby move the Court for an Order granting them relief from this Court's declaratory judgment that Respondents The Vestries and Church Wardens of the Parish of St. Andrew, Charleston ("Old St. Andrew's") and The Church of the Holy Cross, Stateburg ("Holy Cross") created revocable trusts of their real and personal property in favor of Appellants and revoked those trusts.

2. Procedural bases for motion.

Appellants recognize that a motion seeking relief from a judgment is typically filed in a trial court and not an appellate court. However, the unique nature and procedural posture of this case not only make the present motion appropriate in this Court but also make this Court the only court with the present authority to grant the requested relief.

As detailed in Appellants' Petition for Rehearing filed herewith, the Circuit Court never addressed in this case the questions of when Old St. Andrew's and Holy Cross created trusts via accession to the Dennis Canon and whether their dates of accession affected the revocability of those trusts. Moreover, this Court did not take up those issues prior to Old St. Andrew's' and Holy Cross' Petitions for Rehearing; instead, it ruled in 2017 and again on April 20, 2022, that the trusts were irrevocable. Thus, in ruling on Old St. Andrew's' and Holy Cross' Petitions for Rehearing, this Court for the first time issued a declaratory judgment on those two questions.

In doing so, the Court acted, in effect, like a trial court in issuing its ruling.<sup>1</sup> Indeed, the Court has often recognized its authority to exercise jurisdiction over actions seeking declaratory

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<sup>1</sup> In fact, one of the bases for Appellants' Petition for Rehearing is that this Court should have instead remanded these issues to the Circuit Court or assumed original jurisdiction over these issues so that the parties would have a full and fair opportunity to submit evidence relevant to the issues. The present motion is not contrary to that request but is offered as an alternative means for relief from the declaratory judgment in the event the Court denies the Petition for Rehearing.

judgments. *See, e.g., Bailey v. S.C. State Election Comm'n*, 430 S.C. 268, 844 S.E.2d 390 (2020); *Medlock v. Univ. Health Servs., Inc.*, 404 S.C. 25, 743 S.E.2d 830 (2013); *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 725 S.E.2d 704 (2012); *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 629 S.E.2d 624 (2006); *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 270 (2000); *Doe v. Condon*, 341 S.C. 22, 532 S.E.2d 879 (2000).

If this Court denies Appellants' Petition for Rehearing and issues its remittitur, Appellants will be unable to advance this motion in Circuit Court inasmuch as the Circuit Court will lack the authority to grant relief from a declaratory judgment issued by the Supreme Court. Therefore, the present motion is properly before this Court – the court that issued the judgment from which Appellants seek relief.

Because the Court acted as a *de facto* trial court in issuing the declaratory judgment at issue, when it rules on this motion, it should be governed by the same standards applicable to a trial court in addressing a similar request for relief. Specifically, the Court should consider the instant motion in light of Rule 60, SCRCP, regarding relief from judgments, as well as common law principles. In doing so, it should “balance the interest of finality against the need to provide a fair and just resolution of the dispute.” *Chewing v. Ford Motor Co.*, 354 S.C. 72, 79-80, 579 S.E.2d 605, 609 (2003) (citing *Hagy v. Pruitt*, 339 S.C. 425, 529 S.E.2d 714 (2000)).

As relevant here, Rule 60 provides:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); [or]
- (3) fraud, misrepresentation, or other misconduct of an adverse party....

Rule 60(b), SCRCP.

Old St. Andrew's and Holy Cross agree the Court has the authority to revisit and to alter its declaratory judgment, when appropriate. In their Brief, they cited *Atkins v. Wilson*, 417 S.C. 3, 17 n. 12, 788 S.E.2d 228, 235 n.12 (Ct. App. 2016), for the proposition: "So long as the same case remains alive, there is power to alter or revoke earlier rulings." (Respondent's Brief, p. 12).

3. Factual bases for motion.

In 1979, The Episcopal Church ("TEC") adopted the Dennis Canon regarding trusts in favor of TEC and The Episcopal Church in South Carolina ("TECSC") over parish property. The Court held that both Old St. Andrew's and Holy Cross thereafter acceded to that canon and thereby created trusts over their real and personal property in favor of TEC and TECSC.

In section III.E. of its Re-filed Opinion No. 28095, the Court for the first time focused on whether these parishes' accession actions occurred before or after January 1, 2006, the effective date of an amendment to the Trust Code that changed the presumption of irrevocability of a trust.

In issuing its declaratory judgment on this issue, the Court found "the Church of the Holy Cross, Stateburg and the Vestries and Church Wardens of the Parish of St. Andrew, Charleston ... took the actions we hold amount to accession *after* January 1, 2006." *Protestant Episcopal Church v. Episcopal Church*, Op. No. 28095 (S.C. Sup. Ct. re-filed August 17, 2022) (Howard Adv. Sh. No. 29 at 26) ("Re-filed *Protestant Episcopal Church II*"). Section III.E. of the Re-filed Opinion did not specify the evidence upon which the Court relied to determine the dates on which these parishes acceded to the Dennis Canon; to the contrary, the only evidence of their accession the Court mentioned in that section of the Re-filed Opinion was "a five-page summary of accession from the National Church, *which did not reference any documents created after 2006*, that was included in the prior record on appeal." *Id.* (emphasis added). Therefore, one must review other sections of the Re-filed Opinion for other evidence upon which the Court may have relied.

a. Old St. Andrew's.

In section III.B.vi. of the Re-filed Opinion, the Court concluded Old St. Andrew's (and several other parishes) acceded to the Dennis Canon. *Id.* at 20-21. But that section did not cite any evidence specific to Old St. Andrew's. The only other place in the Re-filed Opinion where the Court discussed evidence related to Old St. Andrew's was in its Addendum. *Id.* at 35.

There, the Court cited two versions of the parish's governing documents. One was trial Exhibit D-OSA-8, which the Court labelled "2007 Constitution and Canons." (R. p. 6252). This is a misnomer. The exhibit is actually only the first four pages of a six-page document. (R. p. 6255 ("pp 5-6 missing)). It has no date; rather, its date would presumably have been listed on the missing sixth page, as is demonstrated by the last page of trial Exhibit D-OSA-11, the "2010 Constitution and Canons." (*See* R. p. 6260). While there is a handwritten note on the first page of Exhibit D-OSA-8 that states "in 2007 Vestry Book," that note is not dispositive as to when Old St. Andrew's adopted that version of its Constitution and Canons but only tells the reader when it was included in a Vestry Book. This fact is borne out when one considers Exhibit D-OSA-11, which the Court acknowledged were the "2010 Constitution and Canons": That exhibit was clearly adopted in 2010 the handwritten note on it that states "in 2012 Vestry Book." (R. p. 6256).

In short, the only evidence upon which the Court could have relied to find Old St. Andrew's acceded to the Dennis Canon after 2006 was Exhibit D-OSA-8<sup>2</sup> (R. p. 6252) but its actual date is not in the record. If the Court is to undertake – for the first time in this litigation – an analysis of

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<sup>2</sup> Old St. Andrew's may argue the Court could also rely upon its 2010 Constitution and Canons. However, as the Court ruled with respect to other parishes, once a parish accedes to TEC's and/or TECSC's Constitution and Canons, a subsequent restatement of accession is inadequate to create an accession to the Dennis Canon. Re-filed *Protestant Episcopal Church II*, Howard Adv. Sh. No. 29 at 21-22. In other words, if Old St. Andrew's acceded to the Dennis Canon before 2006, a later expression of accession would not constitute a new accession to the Dennis Canon and therefore could not change the irrevocable nature of the trust that was already created.

the actual date on which Old St. Andrew's acceded to the Dennis Canon, it should only do so on a clear record regarding the date of that document, particularly when the Court expressly acknowledges there is evidence in the record, upon which it relied in its 2017 decision, that Old St. Andrew's acceded to the Dennis Canon before 2006. Re-filed *Protestant Episcopal Church II*, Howard Adv. Sh. No. 29 at 26.

In fact, that Old St. Andrew's acceded to the Dennis Canon after 1979 but before 2006 can be deduced from documents produced by Old St. Andrew's during discovery. These documents were not introduced into evidence earlier because they were, at best, cumulative to the fact that Old St. Andrew's acceded to the Dennis Canon and were not otherwise relevant until this Court ruled that the date of its accession was important. The Court should therefore consider these documents per Rule 60(b).

Attached hereto as Exhibit A are copies of Old St. Andrew's' Response to Request for Production number 4, along with copies of minutes of its annual parish meetings from January 12, 1992 to January 22, 2006 that were produced therewith.<sup>3</sup>

These demonstrate that, between January 12, 1992 and January 22, 2006, Old St. Andrew's made only two changes to its Constitution and Canons. Those changes were on January 12, 1992, and January 21, 1996, and affected Articles III, VI, and VII. None of those Articles contained the accession language at issue; rather, it was contained in Articles I and II. Therefore, the version that existed as of the annual meeting on January 22, 2006, should be the same as the version adopted on January 21, 1996, and any accession language would have predated January 21, 1996.

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<sup>3</sup> Minutes from the annual meetings for 1998, 1999, and 2002 are omitted because they were not produced by Old St. Andrew's in discovery.

The January 22, 2006 minutes show that Old St. Andrew's amended only Article VIII, Section 2 of its Constitution and Canons to change the term of delegates to the diocesan convention from two years to one year. This is significant because the version of the Constitution and Canons considered by the Court (Exhibit D-OSA-8; R. p. 6252) does not reflect this change in Article VIII, Section 2. Rather, Article VIII, Section 2 of Exhibit D-OSA-8 continues to state that delegates' terms are for two years. This proves that Exhibit D-OSA-8 (particularly its accession language in Articles I and II) was the version of the Constitution and Canons that predated the 2006 annual meeting. And, since there is no evidence of any parish meeting or other amendment between January 1, 2006, and January 22, 2006, that version also existed before the change to the Trust Code.<sup>4</sup>

Attached hereto as Exhibit B is an Affidavit by Mary Rose Murray, a former employee of Old St. Andrew's, along with a copy of the version of Old St. Andrew's Constitution and Canons that, according to its last page, were "amended at a Special Meeting, May 24, 1992." Notably, Old St. Andrew's did not produce a copy of this version of its Constitution and Canons in discovery, nor did it produce a copy of the minutes from the May 24, 1992 meeting. This document further demonstrates that Old St. Andrew's acceded to the Dennis Canon before 2006.

Importantly, when TEC and TECSC learned about the information outlined in and attached to Ms. Murray's affidavit, they provided that information to counsel for Old St. Andrew's. (*See* Exhibit C, attached hereto).<sup>5</sup> Despite knowledge of this information, Old St. Andrew's based its

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<sup>4</sup> There is additional evidence that Exhibit D-OSA-8 reflects the version of the Constitution and Canons adopted at the 1996 annual parish meeting. Article VII (which was amended in 1996) of Exhibit D-OSA-8 contains the language "[a]fter January 1, 1997." (R. p. 6254).

<sup>5</sup> At that juncture, the trial and appellate records were closed, so TEC and TECSC did not submit the evidence to the Court. Plus, there was no reason for them to do so because (1) the record already contained evidence that this Court has held was sufficient to constitute accession and (2)

Petition for Rehearing on the premise that it created the trust at issue in 2007, without any mention of its 1992 version of the Constitution and Canons. (Petition for Rehearing, p. 3). This is the type of situation that this Court held in *Chewning v. Ford Motor Co.* may constitute a “fraud on the court” sufficient to provide relief from a judgment. *Chewning*, 354 S.C. at 82-83, 579 S.E.2d at 610-11 (an attorney’s concealment of documents effectively precludes his “opposing party from having his day in court” and constitutes extrinsic fraud).

In summary, Exhibit D-OSA-8 contains language that the Court concluded constitutes Old St. Andrew’s’ accession to the Dennis Canon and is sufficient to create a trust in favor of TEC and TECSC. That document is not dated. In light of the Court’s inquiry about revocability, the question is whether Articles I and II of that exhibit were adopted before January 1, 2006. There are three reasons one can conclude Old St. Andrew’s adopted Articles I and II before 2006:

1. Exhibit D-OSA-8 does not include amendments to Article VIII, Section 2 that were adopted on January 22, 2006, which shows it predated the change to the Trust Code.
2. Exhibit D-OSA-8 includes amendments that were adopted in 1996 and there were no other amendments before January 22, 2006; therefore, Exhibit D-OSA-8 must be the version of the Constitution and Canons generated as a result of the 1996 parish meeting.
3. The 1992 version of the Constitution and Canons shows the same accession language four years earlier, after adoption of the Dennis Canon but well before the change to the Trust Code.

In its search for the truth and in an effort to reach the correct legal conclusion, and consistent with the purposes set forth in Rule 60(b) and the policies outlined in *Chewning*, the Court should consider these additional documents which were either unavailable to Appellants at the time of the trial before Judge Goodstein or irrelevant to the issues in this case before this Court’s ruling in the Re-filed Opinion.

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the question of whether the date of accession affected revocability (*i.e.*, the precise date of accession) was not in issue.

In addition, it is noteworthy for Rule 60(b) purposes that the following documents were not produced by Old St. Andrew's in discovery. The Court should require their production to have a complete record on the date of Old St. Andrew's accession to the Dennis Canon.

- A complete copy (all six pages) of Exhibit D-OSA-8 (R. p. 6252).
- The minutes of the May 24, 1992 special congregational meeting.
- A copy of the May 24, 1992 Constitution and Canons (if St. Andrew's disputes the copy offered herewith).

b. Holy Cross.

In section III.B.viii. of its Re-filed Opinion, the Court concluded Holy Cross acceded to the Dennis Canon. Re-filed *Protestant Episcopal Church II*, at 22-24. In that section and in the Opinion's Addendum, *id.* at 37, the Court cited Holy Cross' Bylaws, which were amended at its annual parish meeting on January 23, 2011. (Trial Exhibit HCS-11; R. p. 6446). The Court held that Article I, Section 1, and Article IV, Section 7 of Exhibit HCS-11 constituted accession to the Dennis Canon and the Diocesan Canon. Re-filed *Protestant Episcopal Church II*, at 22.

Clearly, Holy Cross' Bylaws existed before January 23, 2011, because they were simply amended rather than created at that time. The questions, therefore, are whether the amendments adopted at that annual parish meeting included addition of the language in Article I, Section 1, and Article IV, Section 7, or whether that language predated that meeting; and, if the latter, when Holy Cross adopted that language.

The record provides no answers to these questions. The reason for this is simple: The questions were not raised until Holy Cross' Petition for Rehearing. Before that, TEC and TECSC had provided to the Court adequate evidence of its accession to the Dennis Canon and there was no need for any party to prove when that accession occurred.

Attached as Exhibit D is a copy of the minutes of Holy Cross' January 23, 2011 annual congregational meeting.<sup>6</sup> These minutes demonstrate that the amendments adopted on that date did not affect the accession language cited by the Court. Therefore, Holy Cross adopted that accession language at some point before January 23, 2011. In other words, contrary to the Court's declaratory judgment in response to Holy Cross' Petition for Rehearing, the date of the accession language upon which that judgment hinges is actually unknown.

In light of the above, there are two ways one could show whether Holy Cross adopted the accession language after January 1, 2006. First, one could review all meeting minutes and/or versions of the Bylaws before January 1, 2006, to see if they reflect an amendment to include this language prior to that date. Second, one could review all meeting minutes from January 1, 2006 to January 23, 2011 in attempt to "prove a negative" that Holy Cross made no amendments during that timeframe and, therefore, the accession language predated the change to the Trust Code.

Attached as Exhibit E are copies of the minutes of Holy Cross' annual congregational meetings from January 12, 1992 to January 18, 2004 and special congregational meetings on May 15, 1993 and September 7, 2003, all of which Holy Cross produced in discovery.<sup>7</sup> Holy Cross did not amend its Bylaws with respect to the accession language at any of these meetings. This evidence is therefore inconclusive as to the date of accession.

Attached as Exhibit F is a copy of the minutes of Holy Cross' annual parish meeting on February 18, 2007, which Holy Cross produced in discovery. This was the only set of minutes it produced for any meetings held from January 1, 2006 until January 23, 2011. These minutes show

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<sup>6</sup> The Court should entertain this evidence and the other attached exhibits as contemplated by Rule 60(b).

<sup>7</sup> Holy Cross did not produce minutes for meetings in 1997, 1999, 2005, or 2006, so those are not included in Exhibit E.

that Holy Cross did not amend its Bylaws at the February 18, 2007 meeting. If this exhibit indeed represents the minutes from all meetings from the change in the Trust Code until the January 23, 2011 meeting, then this “proves the negative” that the accession language predated January 1, 2006. In fairness, though, Holy Cross likely held its congregational meetings at least annually, so it appears there are additional minutes that were not produced.

In short, the record upon which the Court based its declaratory judgment does not establish the date of Holy Cross’ accession to the Dennis Canon. Similarly, the documents produced by Holy Cross in discovery do not fully answer that question. Therefore, the Court should require production of all meeting minutes to have a complete record on the date of Holy Cross’ accession to the Dennis Canon and should conduct further proceedings on that issue with a full record.

4. Relief requested.

Based on the foregoing, Appellants respectfully request that the Court issue an Order granting them relief from the declaratory judgment in favor of Old St. Andrew’s and Holy Cross by reversing its earlier declaratory judgment and declaring that the trusts they created in favor of Appellants were not revocable or, in the alternative, vacating its earlier declaratory judgment and ordering further fact-finding whereby the parties may conduct discovery related to the revocability issue, followed by a hearing at which the parties will have a full and fair opportunity to introduce evidence relevant to that topic.

Dated: September 1, 2022

Respectfully submitted,

/s/ Bert G. Utsey, III

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