

# EXHIBIT A

CAUSE NO. 141-237105-09

THE EPISCOPAL CHURCH, THE RT.  
REV. C. WALLIS OHL, ROBERT HICKS  
FLOYD MCKNEELY, SHANNON SHIPP,  
DAVID SKELTON, and WHIT SMITH

Plaintiffs

VS.

FRANKLIN SALAZAR, JO ANN PATTON,  
WALTER VIRDEN, III, ROD BARBER, CHAD  
BATES, THE RT. REV. JACK LEO IKER, JUDY  
MAYO, JULIA SMEAD, THE REV. CHRISTOPHER  
CANTRELL, THE REV. TIMOTHY PERKINS, and  
THE REV. RYAN REED

Defendants/Counter-Defendants

THE ANGLICAN PROVINCE OF THE SOUTHERN  
CONE'S "DIOCESE OF FORT WORTH"

Defendant/Third-Party Plaintiff/Counter-  
Defendant

THE ANGLICAN PROVINCE OF THE SOUTHERN  
CONE'S "CORPORATION OF THE EPISCOPAL  
DIOCESE OF FORT WORTH"

Intervenor/Third-Party Plaintiff/  
Defendant/Counter-Defendant

ST. ANTHONY OF PADUA CHURCH (Alvarado),  
ST. ALBAN'S CHURCH (Arlington), ST. MARK'S  
CHURCH (Arlington), CHURCH OF ST. PETER and  
ST. PAUL (Arlington), CHURCH OF ST. PHILIP  
THE APOSTLE (Arlington), ST. VINCENT'S  
CATHEDRAL (Bedford), ST. PATRICK'S CHURCH  
(Bowie), ST. ANDREW'S CHURCH (Breckenridge),  
GOOD SHEPHERD CHURCH (Brownwood), ST.  
JOHN'S CHURCH (Brownwood), CHURCH OF ST.  
JOHN THE DIVINE (Burkburnett), HOLY  
COMFORTER CHURCH (Cleburne), ST.  
MATTHEW'S CHURCH (Comanche), TRINITY  
CHURCH (Dublin), HOLY TRINITY CHURCH  
(Eastland), CHRIST THE KING CHURCH (Fort  
Worth), HOLY APOSTLES CHURCH (Fort Worth),  
IGLESIA SAN JUAN APOSTOL (Fort Worth),

IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

141<sup>ST</sup> DISTRICT COURT

IGLESIA SAN MIGUEL (Fort Worth), ST. )  
 ANDREW’S CHURCH (Fort Worth), ST. ANNE’S )  
 CHURCH (Fort Worth), CHURCH OF ST. )  
 BARNABAS THE APOSTLE (Fort Worth), ST. )  
 JOHN’S CHURCH (Fort Worth), ST. MICHAEL’S )  
 CHURCH (Richland Hills), CHURCH OF ST. SIMON )  
 OF CYRENE (Fort Worth), ST. TIMOTHY’S )  
 CHURCH (Fort Worth), ST. PAUL’S CHURCH )  
 (Gainesville), GOOD SHEPHERD CHURCH )  
 (Granbury), CHURCH OF THE HOLY SPIRIT )  
 (Graham), ST. ANDREW’S CHURCH (Grand )  
 Prairie), ST. JOSEPH’S CHURCH (Grand Prairie), ST. )  
 LAURENCE’S CHURCH (Southlake), ST. MARY’S )  
 CHURCH (Hamilton), TRINITY CHURCH )  
 (Henrietta), ST. MARY’S CHURCH (Hillsboro), ST. )  
 ALBAN’S CHURCH (Hubbard), ST. STEPHEN’S )  
 CHURCH (Hurst), CHURCH OF ST. THOMAS THE )  
 APOSTLE (Jacksboro), CHURCH OF OUR LADY )  
 OF THE LAKE (Laguna Park), ST. GREGORY’S )  
 CHURCH ) (Mansfield), ST. LUKE’S CHURCH )  
 (Mineral Wells), CHURCH OF ST. PETER BY THE )  
 LAKE (Graford), ALL SAINT’S CHURCH )  
 (Weatherford), ALL SAINT’S CHURCH (Wichita )  
 Falls), CHURCH OF THE GOOD SHEPHERD )  
 (Wichita Falls), CHURCH OF ST. FRANCIS OF )  
 ASSISI (Willow Park), and CHURCH OF THE )  
 ASCENSION & ST. MARK (Bridgeport) )

Intervenors/Third-Party Plaintiffs/  
 Defendants/Counter-Defendants )

VS. )

MARGARET MIEULI, ANNE T. BASS, WALT )  
 CABE, THE REV. CHRISTOPHER JAMBOR, THE )  
 REV. FREDERICK BARBER, THE REV. DAVID )  
 MADISON, ROBERT M. BASS, CHERIE SHIPP, )  
 DR. TRACE WORRELL, THE REV. JAMES )  
 HAZEL, THE REV. JOHN STANLEY, THE RT. )  
 REV. EDWIN F. GULICK, JR. and KATHLEEN )  
 WELLS, )

Third-Party Defendants/Counterclaimants )

THE EPISCOPAL CHURCH, )

Third-Party Defendant )

**AFFIDAVIT OF THE RT. REV. C. WALLIS OHL IN SUPPORT OF EPISCOPAL  
PARTIES' MOTIONS FOR SUMMARY JUDGMENT**

STATE OF TENNESSEE    §  
  §  
COUNTY OF FRANKLIN   §

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared  
The Rt. Rev. C. WALLIS OHL, who, being by me personally sworn, upon his oath stated:

1. My name is C. Wallis Ohl. I am over eighteen (18) years of age, of sound mind, and fully capable and competent to make this Affidavit. I have personal knowledge of the facts stated herein, and all facts stated herein are true and correct.

2. I am the former Bishop of The Episcopal Church's Diocese of Northwest Texas, having served in that capacity from 1997, when I was ordained a bishop in The Episcopal Church, until January 1, 2009, when I retired. I was ordained to the priesthood in The Episcopal Church in 1974 and served in congregations in two other dioceses before becoming bishop of Northwest Texas in 1997.

3. I was elected by the Convention of the Episcopal Diocese of Fort Worth and installed as the provisional bishop of the Episcopal Diocese of Fort Worth at the 27<sup>th</sup> Annual Meeting of the Diocesan Convention on November 14, 2009. Since November 14, 2009, I have served and continue to serve as the provisional bishop of The Episcopal Church's Diocese of Fort Worth, exercising "all the duties and offices" of the Bishop of the Diocese as authorized under Episcopal Church Canon III.13.

**Diocese of Fort Worth**

4. I attended the 27<sup>th</sup> Annual Meeting of the Diocesan Convention on November 13 - 14, 2009. At that meeting, Bishop Gulick resigned as provisional bishop effective November 14,

2009. On that day I was elected by the Convention of the Episcopal Diocese of Fort Worth and was installed as the provisional bishop of the Episcopal Diocese of Fort Worth. Since November 14, 2009, I have continued to serve as the provisional bishop of The Episcopal Church's Diocese of Fort Worth, exercising "all the duties and offices" of the Bishop of the Diocese as authorized under Episcopal Church Canon III.13. **Some of the actions taken at the 27th Annual Meeting of the Diocesan Convention on November 13 -14, 2009 include:**

a. **I was elected and installed as the second provisional bishop of the Episcopal Diocese of Fort Worth, in consultation with the Presiding Bishop, pursuant to Church Canon III.13.1;**

b. **Elections were held for positions on the Standing Committee and Board of Trustees of the Diocesan Corporation, and for Chancellor, among other positions, which resulted in the same persons holding those positions as were in place after the Special Meeting of the Convention held on February 7, 2009;**

c. The Convention adopted Resolution 1, which ratified the adoption of Resolution 1 at the Special Meeting of the Convention and which declared null and void certain actions taken at and prior to the November 15, 2008 Annual meeting of the Convention under former Bishop Iker's control, including purported amendments of the diocesan Constitution and canons and a resolution purporting to affiliate the Diocese with the Anglican Province of the Southern Cone. A true and correct copy of Resolution 1 is attached hereto as pages 2-4 of **Exhibit 1;**

d. **The Convention adopted Resolution 2, which ratified the actions of the February 7, 2009 Special Meeting of the Convention, including a declaration of vacancies in various diocesan offices such as members of the Standing Committee, trustees of the Diocesan**

Corporation, Chancellor, and other diocesan offices. A true and correct copy of Resolution 2 is attached hereto as pages 5-6 of **Exhibit 1**;

e. The Convention adopted Resolution 3 regarding church property and litigation, which declared in part that the property of certain parishes and missions of the Diocese, including the property held by each of the Intervening Congregations in the above-referenced litigation, is not being held in compliance with Church Canon I.7.4 or the Constitution and Canons of The Episcopal Church, that those currently in control of the property have no authority to do so, and which commended the Presiding Bishop and Diocesan officials for their leadership in protecting, recovering, and enforcing the interest in diocesan, parish, and mission property for the use and benefit of The Episcopal Church and the Diocese. A true and correct copy of Resolution 3 is attached hereto as pages 7-10 of **Exhibit 1**;

f. The Convention received letters of congratulations and commendation from the Most Rev. Katharine Jefferts Schori, Presiding Bishop and President of the House of Bishops of The Episcopal Church, and from Bonnie Anderson, President of the House of Deputies of the General Convention of The Episcopal Church. True and correct copies of the letters are attached hereto as **Exhibit 2**; and

g. The Convention approved the amendment of the Diocesan Constitution and Canons to remove certain provisions that purportedly were added or changed since the original documents had been adopted in 1982 and which additions or changes were inconsistent with the Constitution and/or Canons of The Episcopal Church.

#### **Episcopal Church Recognition of Leaders of the Continuing Diocese of Fort Worth**

5. In addition to the evidence set out in the Affidavit of the Rt. Rev. Edwin F. Gulick (dated July 28, 2009), since November 14, 2009, when I was elected and installed as Provisional

Bishop of the Episcopal Diocese of Fort Worth, The Episcopal Church has recognized me as the Bishop of The Episcopal Church's Diocese of Fort Worth and has recognized the current leadership of the Diocese as the persons authorized to govern the Diocese. For example:

a. As the person serving as the Bishop of the Diocese, I have been asked to give my canonical consent to the ordination of new bishops who have been elected by other dioceses of the Church;

b. The Standing Committee, elected by the Conventions of the Diocese on February 7, 2009 and November 14, 2009, has been asked to give its canonical consent to the ordination of new bishops who have been elected by other dioceses of the Church;

c. I have been recognized and accepted by the Church's House of Bishops as the person holding the office of the Bishop of Fort Worth, and I attended the March 2010 and September 2010 meetings of the House of Bishops of The Episcopal Church in that capacity;

d. The Episcopal Church's Executive Council has accepted the 2009 annual report of the Diocese submitted under my supervision as required by Episcopal Church Canon I.6;

e. The Episcopal Church Annual for 2010, the standard directory of clergy, dioceses, parishes, and congregations of The Episcopal Church, continues to include the Episcopal Diocese of Fort Worth and identifies me as the Provisional Bishop of that Diocese;

f. The Diocese was the host diocese for the triennial National Chancellors' Conference in Fort Worth of the Episcopal Chancellors' Conference on May 6-8, 2010, where over 75 chancellors from across the other 110 dioceses of The Episcopal Church were registered,

and the diocesan chancellor, Kathleen Wells, served on several panels making presentations at the conference;

g. The Diocese was the host diocese for a regional and Province VII training on 2009 revisions to the Title IV ecclesiastical disciplinary canons on May 5, 2010, with church officials from numerous other dioceses attending;

h. The Executive Council of the Episcopal Church has scheduled its quarterly meeting in Fort Worth on February 16-18, 2011. Katie Sherrod, the Communications Director of the Diocese, was elected as a member of the Executive Council at the 2009 meeting of General Convention and continues to serve on that body of the Church;

i. The Church's CREDO program led a seminar entitled "Strength for the Journey," on September 24-25, 2010 in Arlington, Texas, for more than 150 clergy and lay leaders of the Diocese of Fort Worth to encourage and to instruct in means to continue the reorganization of the ministry of the continuing Diocese, despite the disruptions caused by former leaders who left the Church and the Diocese and continue to possess temporarily its property and funds; and

j. Four of the deputies from Fort Worth to the Church's 2009 General Convention were appointed by Church authorities to various committees, commissions, agencies, and boards of The Episcopal Church: Katie Sherrod to the Communications Committee; The Rev. Canon Courtland Moore to the Social and Urban Concerns Committee; Kathleen Wells to the Standing Commission on Constitution and Canons; and The Rev. David Madison to the Program Budget and Finance Committee.



**Leaders of the Episcopal Diocese of Fort Worth,  
Corporation of the Episcopal Diocese of Fort Worth, and  
Fund for the Endowment of the Episcopate**

6. I have read the affidavit of The Rt. Rev. Edwin F. Gulick, Jr. (dated July 28, 2009), that previously was filed in this case. Since November 14, 2009 the unauthorized actions of Bishop Iker and other persons described by Bishop Gulick have continued as they use and/or possess most of the property, including real and personal property, records, funds, and the distinctive seal and trade names of The Episcopal Church's Diocese of Fort Worth, Corporation of the Episcopal Diocese of Fort Worth, and Fund for the Endowment of the Episcopate, even though those persons no longer have any connection with The Episcopal Church, its Diocese of Fort Worth, or the Diocesan Corporation or Endowment Fund, and despite demand that such property be returned for use in support of the continued mission of The Episcopal Church and its Diocese of Fort Worth.

7. The faction or entity headed by Jack Leo Iker is not the Episcopal Diocese of Fort Worth, and its agents, including their counsel, have no authority to speak for the Episcopal Diocese of Fort Worth or the Corporation for the Episcopal Diocese of Fort Worth that were formed effective 1983.

8. As indicated above, I am—and Jack Leo Iker is not—the legitimate and duly and properly elected Bishop of the Episcopal Diocese of Fort Worth that was formed effective 1983.

9. The Rev. James Hazel, Cherie Shipp, Trace Worrell, Robert M. Bass, The Rev. John Stanley, and I—and not Franklin Salazar, Jo Ann Patton, Walter Virden III, Rod Barber, Chad Bates, and Jack Leo Iker—are the legitimate and duly and properly elected Trustees of the Corporation of the Episcopal Diocese of Fort Worth that was formed effective 1983.

10. Margaret Mieuli, Walt Cabe, Anne T. Bass, The Rev. J. Frederick Barber, The Rev. Christopher Jambor, and The Rev. David Madison—and not Judy Mayo, Franklin Salazar, Julia Smead, the Rev. Christopher Cantrell, the Rev. Timothy Perkins, and the Rev. Ryan Reed—are the legitimate and duly and properly elected members of the Standing Committee of the Episcopal Diocese of Fort Worth that was formed effective 1983.

11. Robert Hicks, Floyd McKneely, Shannon Shipp, David Skelton, Whit Smith, the Rev. James Hazel, and Anne T. Bass—and not Franklin Salazar, Jo Ann Patton, Walter Virden III, Rod Barber, and Chad Bates—are the legitimate and duly and properly elected members of the Board of the Fund for the Endowment of the Episcopate of the Episcopal Diocese of Fort Worth formed effective 1983.


12. Effective July 6, 2009, Bishop Gulick inhibited a number of members of the diocesan clergy who had abandoned The Episcopal Church and refused to recognize the authority of Bishop Gulick and instead had begun doing ministry under the authority of Jack Leo Iker and the Anglican Province of the Southern Cone after November 15, 2008. Pursuant to the procedures required by the Canons of the Church, I then deposed some 57 of those clergy on February 15, 2010, including the Rev. Thomas E. Hightower, the Rev. Christopher Cantrell, the Rev. Timothy Perkins, and the Rev. Ryan Reed, who purport to serve on the Standing Committee under Bishop, and most of the purported clergy serving in the Intervening Congregations. A true copy of the notice of deposition is attached as **Exhibit 3**.

13. Each of the 55 parishes and missions that were part of the Diocese on November 14, 2008 is still a part of The Episcopal Church and its Episcopal Diocese of Fort Worth and remains subject to The Episcopal Church and its Constitution and Canons. Some of the missions are still in the process of reorganizing; some of the parishes and missions are forced to meet in

temporary space because former Episcopalians are wrongfully possessing and using the property given for the ministry and mission of the Episcopal Church and its continuing Diocese of Fort Worth.

  
The Rt. Rev. C. Wallis OHL

SUBSCRIBED AND SWORN TO BEFORE ME this 13 day of October, 2010.

  
Notary Public, State of Tennessee

My commission expires:

3/18/14



**TAB 1**



REPORT OF THE  
RESOLUTIONS COMMITTEE

27<sup>th</sup> ANNUAL CONVENTION  
NOVEMBER 13-14, 2009

**RESOLUTION 1**

**RESOLUTION RATIFYING ACTION ADOPTING RESOLUTION 1 AT SPECIAL CONVENTION AND DECLARING NULL AND VOID CERTAIN PROVISIONS OF DIOCESAN CONSTITUTION AND CANONS AND RESOLUTIONS**

WHEREAS, some of the former leadership of the Episcopal Diocese of Fort Worth embarked on a plan to leave the Episcopal Church and purportedly for the Diocese to dissolve its affiliation with the Episcopal Church; and

WHEREAS, in a series of Annual Diocesan Conventions steps were taken by diocesan leadership to modify the Diocesan Constitution and Canons in furtherance of that plan, and in 2007 and 2008 a majority of the delegates voted in favor of certain changes to the Diocesan Constitution and Canons and passed a Resolution, all in an attempt to effect their plan to leave the Episcopal Church; and

WHEREAS certain of those actions are null and void on their face because they are in contravention of the Constitution and/or Canons of the Episcopal Church and/or applicable law and thus are unenforceable, including but not limited to the attempted unilateral disassociation of the Diocese itself from the Episcopal Church, a continuing claim of former diocesan leadership to church property in the Diocese, and an attempted affiliation of the Diocese with the Anglican Province of the Southern Cone; and

WHEREAS, at the Special Meeting of the Convention on February 7, 2009 the Convention adopted Resolution 1 and acknowledged that the need existed to immediately declare those actions to be unenforceable until such time as those governing documents can be formally amended to bring them into conformity with the Constitution and Canons of the Episcopal Church, as provided in the Diocesan Constitution and Canons, beginning at the next Annual Diocesan Convention in 2009; and

WHEREAS, at this Annual Meeting of the Convention, which is the first annual meeting following the illegal actions taken at the November 15, 2008 Annual Meeting of the Convention and following the Special Meeting of the Convention on February 7, 2009, the Convention will be able to amend the canons under Diocesan Constitution Article 18 to delete the illegal provisions of the canons to be effective upon adjournment of this meeting but will only be able to cast the first of two votes required under Diocesan Constitution Article 19 to amend the provisions of the Constitution to delete the illegal provisions to be effective at the adjournment of the Convention's annual meeting in 2010; and

WHEREAS the Convention desires to reaffirm and ratify its action taken at the Special Meeting of Convention on February 7, 2009 in its adoption of Resolution 1 to declare certain provisions of the Constitution, Canons, and Resolutions purportedly adopted as of November 15, 2008 to be null and void and unenforceable from their inception; and

WHEREAS the Convention further desires to declare that the illegal provisions of the Constitution that cannot be formally amended until the Annual Meeting of the Convention in 2010 be declared null and void and unenforceable until they are formally amended.

BE IT THEREFORE RESOLVED, that the Convention reaffirms and ratifies its action taken at the Special Meeting of Convention on February 7, 2009 in its adoption of Resolution 1 to declare the following certain provisions of the Constitution, Canons, and Resolutions to be null and void and unenforceable from their inception; and

BE IT FURTHER RESOLVED, that the Convention further declares that during the time between this Annual Meeting of Convention in 2009 and the Annual Meeting of Convention in 2010, the following illegal provisions of the Constitution that cannot be formally amended until the Annual Meeting of the Convention in 2010 be and are hereby declared null and void and unenforceable until they are formally amended:

Reference	Unenforceable Provision	Reason
Constitution: Preamble (revised 2008)	Deletion of the phrase: "The Episcopal Church, resident in that portion of the State of Texas constituting what is known as . . ."	The Diocese needs geographic boundaries to determine jurisdiction, in conformity with historic understanding of the episcopacy. The provision also needs a reference to Lay and Clergy as being members of the Episcopal Church.
Constitution Article I— Anglican Identity (revised 2008)	Entire Article	The Article deletes all reference to the diocese as a constituent diocese in The Episcopal Church and the authority of its General Convention.
Constitution Article I— Authority of General Convention (revised 1997)	Inclusion of the phrase: ". . . , provided that no action of General Convention which is contrary to Holy Scripture and the Apostolic Teaching of the Church shall be of any force or effect in this Diocese."	Episcopal Church Constitution Article V.1 requires the diocese to maintain an unqualified accession to the Constitution and Canons of the Episcopal Church. See July 25, 2007 Resolution of the Executive Council of the Episcopal Church.
Constitution Article 18—	Deletion of the phrase: ". . .	Episcopal Church

Canons (revised 2008)	and the Constitution and Canons of the Episcopal Church,” in the first sentence.	Constitution Article V.1 requires the diocese to maintain an unqualified accession to the Constitution and Canons of the Episcopal Church. See July 25, 2007 Resolution of the Executive Council of the Episcopal Church.
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Submitted by: The Constitution and Canons Committee

**EXPLANATION:**

Under Constitution Article 18 the illegal provisions of the canons can be amended effective the adjournment of the Convention. However, it takes votes in two consecutive Annual Conventions to amend the Constitution. This resolution continues the February 7, 2009 declaration of Resolution 1 to declare the illegal provisions of the Constitution to be null and void and unenforceable as we await the second vote at the Annual Convention in 2010 to formally remove that illegal language from the Constitution that is inconsistent with the Church Constitution and canons.



**RESOLUTION 2**

**RESOLUTION RATIFYING RETROACTIVELY ACTIONS OF FEBRUARY 7, 2009  
SPECIAL MEETING OF CONVENTION**

WHEREAS, as a result of the actions taken at the November 15, 2008 Annual Convention of the Diocese, a significant number of diocesan leaders, both lay and clergy, left the Episcopal Church and its Episcopal Diocese of Fort Worth and claim to have become members of the Anglican Province of the Southern Cone; and

WHEREAS, on December 5, 2008 the Presiding Bishop of the Episcopal Church accepted the renunciation by the former bishop, The Rt. Rev. Jack L. Iker, of his ministry in the Episcopal Church; and

WHEREAS, on December 15, 2008 the Presiding Bishop declared that the members of the Standing Committee of the Diocese were no longer qualified to serve on the Diocesan Standing Committee as they had left the Episcopal Church; and

WHEREAS, because of the actions of former diocesan leaders the Diocese was without a bishop, a standing committee, or other critical diocesan officials to continue the work of the Diocese and the mission of the Episcopal Church; and

WHEREAS, the Presiding Bishop called a special meeting of the Convention of the Episcopal Diocese of Fort Worth for February 7, 2009 to elect a provisional bishop and fill other vacancies in Diocesan offices and take other actions necessary to reorganize the Diocese; and

WHEREAS, at this Annual Meeting the Convention desires to ratify and confirm the calling of that Special Meeting, seating of delegates from the various congregations, and its actions taken at that Special Meeting, including but not limited to each of the resolutions adopted by the Convention and each election and appointment to fill vacant Diocesan offices; and

WHEREAS, despite extensive notice and publicity before and after the February 7, 2009 Special Meeting of Convention regarding the reorganization of the Diocese, including the filling of vacant Diocesan offices, and the continued mission of The Episcopal Church through its reorganized Episcopal Diocese of Fort Worth under the leadership of Bishop Edwin F. Gulick, Jr. and further despite numerous opportunities after February 7, 2009, none of the former Diocesan officials, whose positions were declared to be vacant and which positions were filled on or after February 7, 2009, have made known to Bishop Edwin F. Gulick, Jr. or any other Diocesan or Church officials that the official was qualified to exercise and desired to exercise the duties of that office in the continuing, reorganized Diocese because the official had not left The Episcopal Church and still was a member of the clergy or a lay member in good standing in The Episcopal Church and would conform to his or her ordination vows and/or meet the fiduciary duties required by Church canons in the continued work of the reorganized Diocese; and

WHEREAS, the procedures provided by the Diocesan Constitution and Canons to call the Special Meeting of Convention, select delegates from the various congregations in the

Diocese, or to fill those Diocesan positions so vacated by former diocesan leaders were impossible to comply with as a direct result of the actions of former Diocesan leaders; and

WHEREAS, the Diocese was and remains otherwise burdened by the extraordinary circumstances created by the decisions made at the 26<sup>th</sup> Diocesan Convention in 2008 and consequent abandonment of the Episcopal Church and its Episcopal Diocese of Fort Worth by Diocesan leaders; and

WHEREAS, under these extraordinary circumstances strict application of the provisions of the Diocesan Constitution and Canons regarding filling vacant Diocesan offices would have paralyzed the Diocese and worked an injustice, contrary to the intention and purpose of the Constitution and Canons; and

WHEREAS, it was and is in the best interest of the Episcopal Church and its continuing Episcopal Diocese of Fort Worth for the Convention of the Diocese to have met in February 7, 2009 and to have declared certain offices to be vacant and to have expeditiously selected and installed qualified officials to fill the offices vacated by those who have left the Episcopal Church so that the work and mission of the Diocese may have proceeded in the months proceeding this Annual Meeting of the Convention, which it has done.

BE IT THEREFORE RESOLVED that the Convention hereby declares that, in addition to those offices previously declared vacant by the Presiding Bishop, the offices filled by election or appointment on and after February 7, 2009 were in fact vacant on February 7, 2009 and the procedures for filling those vacancies are hereby ratified and regularized even if there were not technical compliance with the applicable governance provision in doing so.

IT IS FURTHER RESOLVED that the Convention hereby declares that each of the resolutions, elections, appointments, and other actions taken at the Special Meeting of the Convention, including but not limited to the call of the Special Meeting of Convention, the selection and qualification of deputies from the various congregations in the Diocese, and the filling of those Diocesan positions so vacated by former diocesan leaders, be and are hereby declared to be ratified retroactively to February 7, 2009.

IT IS FURTHER RESOLVED that, to the extent it was impossible to comply with the procedures established by the Constitution or Canons or other applicable authority to fill the vacancies in these offices, the Convention finds that the procedures used to fill those vacancies at and after that Special Meeting of the Convention be and are hereby declared to be valid.

Submitted by: The Resolutions Committee

#### EXPLANATION

The actions of former diocesan leaders made it impossible to comply with certain canonical and constitutional provisions related to the Special Convention. By this resolution the Convention at its Annual Meeting ratifies and acknowledges that those actions are valid.

**RESOLUTION 3**

**CHURCH PROPERTY AND LITIGATION**

WHEREAS Church Canon I.7.4 documents the existing trust interest of The Episcopal Church and its Episcopal Diocese of Fort Worth in all parish and mission property, real and personal, in the Diocese; and

WHEREAS Canon I.7.4 conditionally grants limited authority and power to local parish and mission officials to use and control the property only “so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons;” and

WHEREAS since at least November 15, 2008 the real and personal property, including dedicated and consecrated churches and chapels, funds, and records, of certain parishes and missions which, though they are still part of The Episcopal Church and this Diocese, have been adversely held, used and controlled by those who claim not to be subject to The Episcopal Church and its Constitution and Canons and have permitted unauthorized use of the parish or mission property in violation of Church and Diocesan Constitution and Canons, including the conditional authority granted under Church Canon I.7.4; and

WHEREAS such actions constitute a violation of the fiduciary duties imposed on church officials under Church Canon I.17.8, and/or a violation of oaths of ordination to “conform to the Doctrine, Discipline, and Worship of The Episcopal Church” under Church Constitution Article VIII; and

WHEREAS, despite ample opportunity since November 15, 2008, those persons have failed to acknowledge the authority of the Provisional Bishop and other officials of the Diocese or of The Episcopal Church and failed to acknowledge the interest of the Church and the Diocese in the property.

BE IT THEREFORE RESOLVED that the Convention does hereby declare that as of on or about November 15, 2008 the real and personal property, including dedicated and consecrated churches and chapels, funds, and records, of the following parishes and missions of the Diocese have not been held in compliance with the conditional grant of authority to parish and mission leaders to use and control the property under Church Canon I.7.4:

City	Non Compliant
Alvarado	<i>St. Anthony M</i>
Arlington	St. Alban**
Arlington	St. Mark
Arlington	St. Peter/Paul
Arlington	<i>St. Philip M</i>
Bedford	St. Vincent
Bowie	<i>St. Patrick M</i>
Breckenridge	St. Andrew
Brownwood	Good Shepherd

Brownwood	St. John
Burkburnett	<i>St. John the Divine M</i>
Cleburne	Holy Comforter
Comanche	<i>St. Matthew M</i>
Dublin	<i>Trinity M</i>
Eastland	<i>Holy Trinity M</i>
Fort Worth	Christ the King**
Fort Worth	Holy Apostles**
Fort Worth	<i>San Juan Apostol M</i>
Fort Worth	St. Andrew
Fort Worth	St. Anne**
Fort Worth	<i>St. Barnabas M</i>
Fort Worth	St. John
Fort Worth	St. Michael
Fort Worth	<i>San Miguel</i>
Fort Worth	St. Simon Cyrene**
Fort Worth	<i>St. Timothy M</i>
Gainesville	St. Paul
Graford	<i>St. Peter by the Lake M</i>
Graham	<i>Holy Spirit M</i>
Granbury	Good Shepherd**
Grand Prairie	St. Andrew
Grand Prairie	<i>St. Joseph M</i>
Grapevine	St. Laurence
Hamilton	<i>St. Mary M**</i>
Henrietta	<i>Trinity M</i>
Hillsboro	<i>St. Mary M**</i>
Hubbard	<i>St. Alban M</i>
Hurst	St. Stephen**
Jacksboro	<i>St. Thomas the Apostle M</i>
Laguna Park	<i>Our Lady of the Lake M</i>
Mansfield	St. Gregory
Mineral Wells	<i>St. Luke</i>
Weatherford	All Saints**
Wichita Falls	All Saints**
Wichita Falls	Good Shepherd**
Willow Park	St. Francis of Assisi**
Wise County	<i>Ascension/St. Mark M</i>

[\*\* For these congregations the vestry or bishop's committees have reorganized but are not in possession or control of the real and personal property of the parish or mission that existed as of November 15, 2008.]

BE IT FURTHER RESOLVED that the Convention declares that the persons who are adversely occupying, possessing, and controlling the above-referenced parish and mission property have no authority to do so.

BE IT FURTHER RESOLVED that the Convention ratifies and supports the efforts of Presiding Bishop Katharine Jefforts-Schori and Bishop Edwin F. Gulick, Jr. and other Church and Diocesan leaders for their stewardship and strong leadership to protect and enforce the interest of The Episcopal Church and the Episcopal Diocese of Fort Worth in, and to protect and

recover possession of, the diocesan, parish and mission property for the mission, use, and benefit of The Church and its Diocese.

**EXPLANATION:**

Canon I.7.4 (the "Dennis Canon") was adopted by General Convention in 1979 before the formation of the Diocese. The Diocese made an unqualified accession as a condition of its formation, with consent of General Convention in 1982, from the Diocese of Dallas in 1983. The Dennis Canon recognizes the long-standing trust interest of The Episcopal Church and its Episcopal Diocese of Fort Worth in parish and mission property in the Diocese. It provides a condition, however, that the various congregations may exercise authority over the property "so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons."

The reality is that since November 15, 2008 in some of the congregations of the Diocese the persons who are currently in possession and control of the property now claim to not to be subject to the Episcopal Church or its Constitution and Canons and instead claim to be subject to the Anglican Province of the Southern Cone. Since November 15, 2008 these persons have also permitted the property to be used for the use and benefit of a church which is not The Episcopal Church, a use not authorized by The Episcopal Church or the Diocese, in violation of the Church and Diocesan Constitution and Canons.

Despite this misuse of the property, these Episcopal congregations and their property are still a part of this Church and the Diocese. In some congregations the loyal Episcopalians who remain have reorganized their vestries and called clergy as they actively continue the mission of the congregation; in others the loyal Episcopalians have not yet reorganized.

This resolution declares that the real and personal property of those congregations, as it existed on November 15, 2008, is not being administered by the persons in control in compliance with the Dennis Canon and thus those persons have and have had no authority to control the property since November 15, 2008. The resolution also ratifies the actions of the Church and Diocese to protect and recover possession and use of this property.

Below are excerpts (emphasis added) of some of the canons related to this resolution:

**EPISCOPAL CHURCH CANON I.7.4 (DENNIS CANON)**

Sec.4. All real and personal property held by or for the benefit of any Parish, Mission, or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

**EPISCOPAL CHURCH CANON II.6.4**

Sec. 4. Any dedicated and consecrated Church or Chapel shall be subject to the trust declared with respect to real and personal property held by any Parish, Mission, or Congregation as set forth in Canon I.7.4.

**DIOCESAN CANON 30  
USE OF DEDICATED AND CONSECRATED CHURCHES**

Sec. 30.1 The dedicated and consecrated Churches and Chapels of the several Parishes and Missions of the Diocese may be opened only for the services, rites and ceremonies, or other purposes, either authorized or approved by this Church, and for no other use.

Submitted by The Resolutions Committee

**RESOLUTION 4**

**PROVISIONAL BISHOP**

WHEREAS, the Rt. Rev. Edwin F. Gulick, Jr. has given notice of his intention to resign as Provisional Bishop of the Episcopal Diocese of Fort Worth (the "Diocese"); and

WHEREAS the Standing Committee of the Diocese has consulted pursuant to Canon III.13.1 of the General Convention of the Episcopal Church, with the Presiding Bishop Katharine Jefferts Schori regarding continued placement of the Diocese under the provisional charge and authority of a Bishop of another Diocese or of a resigned Bishop, and recommends The Rt. Rev. \_\_\_\_\_ to serve as the second Provisional Bishop of the Diocese and calls for his election.

BE IT THEREFORE RESOLVED that this Convention, regretfully but with gratitude for his exemplary service to the Diocese and the Church, accepts the resignation of the Rt. Rev. Edwin F. Gulick, Jr. as Provisional Bishop of the Diocese, effective the date of his resignation.

BE IT FURTHER RESOLVED that, pursuant to Canon III.13.1 of the General Convention of the Episcopal Church, this Convention, in consultation with the Presiding Bishop Katharine Jefferts Schori, places the Diocese under the provisional charge and authority of the Rt. Rev. \_\_\_\_\_ (the "Provisional Bishop"), a resigned bishop in good standing with the Episcopal Church to serve beginning the effective date of Bishop Gulick's resignation.

BE IT FURTHER RESOLVED that the Provisional Bishop, who shall serve with jurisdiction, shall be authorized to exercise all the duties and offices of Bishop of the Diocese until such time a bishop is elected and ordained for the Diocese or until this action is revoked by this Convention.

BE IT FURTHER RESOLVED that the Standing Committee of the Diocese shall be authorized to enter into an agreement with the Provisional Bishop providing for the compensation and benefits of the Provisional Bishop.

**EXPLANATION:**

A Provisional Bishop has the same authority, duties and responsibilities as a Diocesan Bishop. It is critical that a Provisional Bishop be utilized to successfully meet the current pastoral, governance, and legal challenges facing the Diocese. The utilization of a Provisional Bishop with the authority of a Diocesan Bishop will ensure that the necessary tools and authority be available and utilized to ensure a successful continued reorganization of the Diocese and the protection of the Diocese and its assets.

Below is an excerpt of the relevant Church Canon regarding provisional bishops:

**TITLE III, CANON 13, Sec. 1.** A Diocese without a Bishop may, by an act of its Convention, and in consultation with the Presiding

Bishop, be placed under the provisional charge and authority of a Bishop of another Diocese or of a resigned Bishop, who shall by that act be authorized to exercise all the duties and offices of the Bishop of the Diocese until a Bishop is elected and ordained for that Diocese or until the act of the Convention is revoked.

Submitted by the Resolutions Committee.



**TAB 2**



THE EPISCOPAL CHURCH

The Most Reverend Katharine Jefferts Schori  
Presiding Bishop and Primate

November 12, 2009

To the People of Fort Worth:

I give thanks for your strong and faithful ministry over the last year. You continue to witness to the power of the resurrection, giving an account of the faith that is within you. You give hope to others as well!

I am abundantly grateful for the highly effective and courageous leadership of Bishop Gulick in your midst, and hope you will say farewell to him in appropriate ways. I know that he will carry you with him in his heart. People of faith are changed by common experience of grief and trauma like yours. You have walked through the valley of the shadow of death, and you have known God's presence in your midst. Thank God for Bp. Gulick's ministry of accompaniment!

I am also very grateful for the willingness of Bishop Ohl to join you for the next stage of your journey. I know his gifts of clarity and good humor will be important as you continue your climb out of the valley and begin to survey the landscape around you. Ask him about the Llano Estacado, and what it may have to say about the journey ahead.

Keep walking, and know who walks with you. You continue in my prayers. I remain

Your servant in Christ,

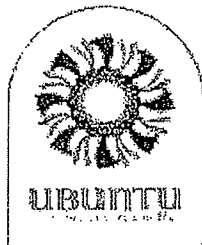
A handwritten signature in cursive script that reads "Katharine Jefferts Schori".

Katharine Jefferts Schori



THE EPISCOPAL CHURCH  
THE GENERAL CONVENTION

BONNIE ANDERSON, D.D.  
PRESIDENT OF THE HOUSE OF DEPUTIES



November 6, 2009

Dear Deputies and First Alternates,

My thoughts and prayers are with you and the Diocese of Fort Worth as you approach the 27th gathering of the people of God at the diocesan convention.

I would like to offer my sincere thanks to you for your generosity of spirit in your preparation for General Convention and for your faithful participation in all that the House of Deputies accomplished at General Convention in Anaheim.

For the 76th time in the history of The Episcopal Church, in Anaheim we experienced how the Holy Spirit works through our governance structure, fashioned by our founders, that requires the equal participation of laity, clergy and bishops. Centered in our community worship, we navigated difficult decisions with care and prayer.

Now we begin again, clergy, bishops, laity, all taking our places in the councils of the Church as called for in our Catechism. Your diocesan convention offers the opportunities for relationship building, mission development and leadership. All are enabled by God in a unique gathering of all the baptized. As deputies, elected by and trusted by your diocese, you have been called into continuing leadership.

Leadership in "tough times" is challenging. We are called to do more ministry with fewer material resources. But our spiritual resources have not been diminished. Our spiritual resources are strengthened and increased as we come together in Christian community. Jesus is as close to us as our own breath.

I pray that the convention of the Diocese of Fort Worth is spirit-filled, generous and joyful and that you are happy and at peace.

In thanksgiving for your ministry,

*Bonnie Anderson*

Bonnie Anderson, D.D.  
President, The House of Deputies

# EXHIBIT B

CAUSE NO. 141-237105-09

THE EPISCOPAL DIOCESE OF	)	IN THE DISTRICT COURT OF
FORT WORTH ET AL.,	)	TARRANT COUNTY, TEXAS
Plaintiffs,	)	
v.	)	
FRANKLIN SALAZAR ET AL.,	)	141st JUDICIAL DISTRICT
Defendants.	)	

**AFFIDAVIT OF THE RT. REV. EDWIN F. GULICK, JR.**

1. My name is Edwin F. Gulick, Jr. I am over eighteen (18) years of age, of sound mind, and fully capable and competent to make this Affidavit. I have personal knowledge of the facts stated herein, and all facts are true and correct.

2. I am the Bishop of The Episcopal Church's Diocese of Kentucky and have my offices in Louisville, Kentucky. I have served in that capacity since 1994 when I was ordained a bishop in The Episcopal Church. Since February of this year, I have also served as the Bishop of The Episcopal Church's Diocese of Fort Worth, exercising "all the duties and offices" of the Bishop of the Diocese as authorized under Episcopal Church Canon III.13.

3. On February 7, 2009, The Episcopal Church's Presiding Bishop called to order a special meeting of the Convention of The Episcopal Church's Diocese of Fort Worth, at which the Diocese, in consultation with the Presiding Bishop, elected me as Provisional Bishop of the Diocese pursuant to the Church's Canon I.13(1). In this capacity, I also serve as the Chair of the Board of the Corporation of the Episcopal Diocese of Fort Worth (the "Diocesan Corporation"), pursuant to Article VI of the Articles of Incorporation of the Diocesan Corporation and Diocesan Canon 17.2.

LIBW/1711075.1

4. At its February 7, 2009, special meeting, the Diocesan Convention recognized and declared that numerous leadership positions within the Diocese were vacant, including on the Standing Committee, Executive Council, Board of Trustees of the Diocesan Corporation,, and Board for the Fund for the Endowment of the Episcopate. The Convention then elected members of the Standing Committee of the Diocese, as well as Deputies to the forthcoming meeting of the Church's General Convention in July 2009. Vacant seats on the Executive Council were filled either by the Convention on February 7, 2009, or immediately following the meeting of the Convention by various Diocesan entities entitled under the canons of the Diocese to fill particular seats on the Executive Council.

5. On February 7, 2009, acting pursuant to Article II.9 of the Diocesan Corporation's 2006 bylaws and Diocesan Canon 17, and with the advice of the Diocesan Convention, I appointed the following five clergy and laity of the Diocese to serve as Trustees of the Diocesan Corporation: The Rev. James Hazel, Cherie Shipp, Trace Worrell, Robert M. Bass, and The Rev. John Stanley. I also appointed the following persons as Trustees for the Fund for the Endowment of the Episcopate: Anne T. Bass, Tad Bird, The Rev. James Hazel, Robert Hicks, Floyd McKneely, Shannon Shipp, David Skelton, and Whit Smith.

6. At its February 7, 2009, special meeting, the Diocesan Convention also passed a resolution recognizing and declaring that the 2008 purported amendment to the Diocesan Constitution to eliminate the Diocese's accession to the rules and governance of The Episcopal Church, as well as certain other Constitutional and canonical amendments, were *ultra vires* and void.

7. Since February 7, 2009, The Episcopal Church has recognized me as the Bishop of The Episcopal Church's Diocese of Fort Worth and has recognized the current leadership of the Diocese as the persons authorized to govern the Diocese. For example:

a. As the person serving as the Bishop of the Diocese, I have been asked to give my canonical consent to the ordination of new bishops who have been elected by other dioceses of the Church.

b. My Standing Committee, elected by the Convention of the Diocese on February 7, 2009, has been asked to give its canonical consent to the ordination of new bishops who have been elected by other dioceses of the Church.

c. I have been recognized and accepted by the Church's House of Bishops as the person serving as the Bishop of Fort Worth.

d. I was the episcopal representative of The Episcopal Church's Diocese of Fort Worth at the Church's meeting of the General Convention in July 2009.

e. The Deputies to the General Convention elected by the Convention of the Diocese on February 7, 2009, were credentialed by The Episcopal Church and, along with me, represented the Episcopal Diocese of Fort Worth at the meeting of the General Convention in July 2009.

f. At its July, 2009, meeting, the General Convention adopted a resolution which explicitly commended Episcopalians in the Diocese of Fort Worth and three other dioceses "for their unflagging efforts to continue to live as witnesses to the mission of The Episcopal Church during recent difficult times as they reorganize their continuing dioceses," and further resolved that "the leadership in each of those four continuing dioceses be commended for their similar efforts, including in particular the Rt. Rev. Edwin F. Gulick, Provisional Bishop of



Diocese of Fort Worth . . . and especially the strong lay leadership of each diocese;" and that "the deputations from those four continuing dioceses be extended a special welcome to this 76<sup>th</sup> General Convention of The Episcopal Church."

g. The Episcopal Church's Executive Council has accepted the annual report of the Diocese that Episcopal Church Canon I.6 requires each diocese to file, which the Diocese, under my supervision, submitted earlier this year.

h. The Episcopal Church Annual for 2009, the standard directory of clergy, dioceses, parishes, and congregations of The Episcopal Church, continues to include the Episcopal Diocese of Fort Worth and identifies me as the Provisional Bishop of that Diocese.

8. Since February 7, 2009, The Episcopal Church's Diocese of Fort Worth has recognized me and the other persons serving as trustees of the Diocesan Corporation as the persons duly authorized to serve in that capacity.

9. At a meeting on April 4, 2009, the other trustees of the Diocesan Corporation and I recognized that the 2006 purported amendments to the Diocesan Corporation's Articles and Bylaws were *ultra vires* and void and approved "Amended and Restated Articles of Incorporation." The Amended and Restated Articles of Incorporation reinstate the original provisions linking the Diocesan Corporation to The Episcopal Church's Diocese of Fort Worth and stating that the property is to be administered in accordance with the Diocesan Constitution and canons, and accurately identify the current trustees of the Corporation as the current Bishop of The Episcopal Church's Diocese of Fort Worth and the other trustees now recognized and approved by The Episcopal Church's Diocese of Fort Worth. A certified copy of the April 4, 2009 Amended and Restated Articles of Incorporation are attached as part of Exhibit 1. The Amended and Restated Articles were filed with the Texas Secretary of State on April 14, 2009.

10. On April 21, 2009, defendant Iker caused to be filed with the Secretary of State a purported "correction" to the Amended and Restated Articles of Incorporation, claiming that he and the other individual defendants in this action are the current trustees of the Diocesan Corporation.

11. The Diocesan Corporation holds title to or administers certain real and personal property of the Diocese. That property includes various parcels of real property, including Camp Crucis and the Diocesan Center, and funds such as the Diocesan Fund, the Revolving Fund, the Joe & Jessie Crump Fund (on information and belief currently part of the Revolving Fund), the Memorial and Scholarship Fund, the Meek Fund (on information and belief currently part of the Memorial and Scholarship Fund), the E.D. Farmer Fund, the Anne S. and John S. Brown Trust, the Betty Ann Montgomery Farley Fund, the Reverend Efrain Huerta Fund benefiting Hispanic Ministries, Memorial Scholarship Fund out of Common Trust (Growth Fund and Income Fund), St. Paul's Memorial Fund, and the E.D. Farmer Foundation.

12. Other property, including operating accounts and other funds of the Diocese, such as the Fund for the Endowment of the Episcopate, is to be and historically has been held and controlled by The Episcopal Church's Diocese of Fort Worth and other of its officers.

13. After November 15, 2008, defendant Iker has been acting as the Bishop of defendant Southern Cone Diocese; the former members of the Diocesan Standing Committee have been acting as the Standing Committee of the Southern Cone Diocese; and the former Trustees of the Diocesan Corporation, defendants Salazar, Patton, Virden, Barber, Bates, and Iker, have been acting as trustees of and exercising control over the Diocesan Corporation and, on information and belief, the Fund for the Endowment of the Episcopate on behalf of and as an instrument of the Southern Cone Diocese.

14. I demanded that the defendants relinquish control of the real and personal property of the Diocese. A true and correct copy of the letter dated March 3, 2009, sent by my chancellor at my direction, is attached hereto as Ex. 2.

15. Since November 15, 2008, defendant Iker and the other defendants have exercised exclusive control over most of the property that belongs to The Episcopal Church's Diocese of Fort Worth, even though they no longer have any connection with The Episcopal Church or its Diocese of Fort Worth, and even though I, on behalf of The Episcopal Church's Diocese of Fort Worth and the Diocesan Corporation, have demanded that control over such property be returned to them for their use in support of the mission of The Episcopal Church and its Diocese of Fort Worth.

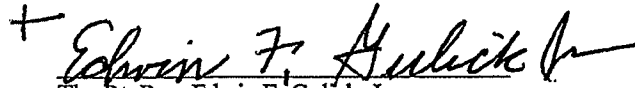
16. Since November 2008, defendant Iker and the other defendants have continued to use the distinctive seal and trade names of The Episcopal Church's Diocese of Fort Worth while acting on behalf of the Southern Cone Diocese, without authorization by, and contrary to the interests and demands of, The Episcopal Church and its Diocese of Fort Worth and causing confusion in the community and further emotional turmoil among loyal Episcopalians in the Diocese.

State of Kentucky

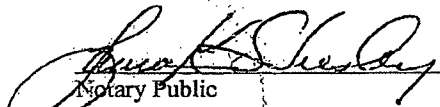
County of Jefferson

I, the Rt. Rev. Edwin F. Gulick, Jr., am above the age of eighteen (18 years) and am fully competent to make this affidavit. All the statements contained in this affidavit are true and correct and are within my personal knowledge.

This ~~25<sup>th</sup>~~ 28<sup>th</sup> day of July, 2009.

+   
The Rt. Rev. Edwin F. Gulick, Jr.

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this 28<sup>th</sup> day of July, 2009.

  
Notary Public

My commission expires: November 8, 2012

TAB 1

APR-14-2009 TUE 10:54 AM TAYLOR OLSON ADKINS

FAX NO. 817 332 4740

P. 03

FILED  
In the Office of the  
Secretary of State of Texas

APR 14 2009

AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
CORPORATION OF THE EPISCOPAL DIOCESE OF FORT WORTH  
Corporations Section

CORPORATION OF THE EPISCOPAL DIOCESE OF FORT WORTH (the "Corporation") is a Texas non-profit corporation certified by the Texas Secretary of State on February 28, 1983, Charter No. 644932.

Pursuant to the provisions of Article 1396-4.06 of the Texas Non-Profit Corporations Act, the Corporation hereby adopts the following Amended and Restated Articles of Incorporation, which accurately copy the Articles of Incorporation and all amendments thereto that are in effect to date and as further corrected and amended by such restated Articles of Incorporation. These Amended and Restated Articles of Incorporation contain revisions in Articles IV, V and VI; former Article VII was deleted; and new Articles VII and VIII are added. These Amended and Restated Articles of Incorporation contain no other change in any other provision thereof.

These Amended and Restated Articles of Incorporation were approved by a unanimous vote at a meeting of a quorum of the members of the Board for the Corporation held April 4, 2009. The Corporation has no members with voting rights.

ARTICLE I

The name of the Corporation is CORPORATION OF THE EPISCOPAL DIOCESE OF FORT WORTH.

ARTICLE II

The Corporation is a non-profit corporation.

ARTICLE III

The period of its duration is perpetual.

ARTICLE IV

The purpose or purposes for which the Corporation is organized are:

- (1) To receive and maintain a fund or funds or real or personal property, or both, from any source including all real property acquired for the use of the Episcopal Diocese of Fort Worth as well as the real property of all of the Diocese's parishes, missions and diocesan institutions, subject to the limitations and restrictions hereinafter set forth, and to use and apply the whole or any part of the



APR-14-2009 TUE 10:54 AM TAYLOR OLSON ADKINS

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income therefrom and the principal thereof exclusively for charitable, religious, scientific, literary, or educational purposes either directly or by contributions to organizations that qualify as except organizations under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended.

(2) The Corporation and the property so held pursuant to (1) supra shall be administered in accordance with the Constitution and Canons of the Episcopal Diocese of Fort Worth and the Episcopal Church of the United States and the Bylaws of the Corporation as they now exist or as they may hereafter be amended.

(3) No part of the net earnings of the Corporation shall inure to the benefit of any trustee or officer of the Corporation, or any private individual; provided, however, that nothing in these Amended and Restated Article of Incorporation shall preclude the payment of reasonable compensation for services rendered or a reasonable salary to any private individual or a trustee or officer of the Corporation. No trustee or officer of the Corporation, or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation. No substantial part of the activities of the Corporation shall be carrying on of propaganda, or otherwise attempting, to influence legislation, and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

(4) Notwithstanding any other provision of these Amended and Restated Articles of Incorporation, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended, or by an organization, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code and Regulations as they now exist or as they may hereafter be amended.

(5) Upon dissolution of the Corporation or the winding up of its affairs, the assets of the Corporation shall be distributed exclusively to the charitable, religious, scientific, testing for public safety, literary, or educational organizations which would then qualify under the provisions of Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended.

ARTICLE V

The street address of the registered office of the Corporation is 3550 Southwest Loop 820, Fort Worth, Texas 76133, and the name of the Corporation's registered agent at that address is The Rev. James Hazel.

ARTICLE VI

AMENDED AND RESTATED ARTICLES OF INCORPORATION-  
CORPORATION OF THE EPISCOPAL DIOCESE OF FORT WORTH

PAGE 2

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P. 05

The number of trustees constituting the Board is six (6). The Bishop of the Episcopal Diocese of Fort Worth shall be a Trustee and the Chairman of the Board. The manner of election and the period of time for which the remaining five (5) trustees shall hold office shall be fixed by the Constitution and Canons of the Episcopal Diocese of Fort Worth and the Bylaws as the same may be adopted and from time to time amended.

The names and addresses of the current trustees are:

The Rt. Rev. Edwin F. Gulick, Jr.  
3550 Southwest Loop 820  
Fort Worth, Texas 76133

The Rev. James Hazel  
3550 Southwest Loop 820  
Fort Worth, Texas 76133

The Rev. John Stanley  
3550 Southwest Loop 820  
Fort Worth, Texas 76133

Mr. Robert M. Bass  
3550 Southwest Loop 820  
Fort Worth, Texas 76133

Ms. Cherie Shipp  
3550 Southwest Loop 820  
Fort Worth, Texas 76133

Dr. Trace Worrell  
3550 Southwest Loop 820  
Fort Worth, Texas 76133

ARTICLE VII

No Trustee of the Corporation shall be personally liable to the Corporation for monetary damages for an act or omission in the Trustee's capacity as a Trustee, except that this paragraph does not eliminate or limit the liability of a Trustee for (1) a breach of a Trustee's duty of loyalty to the Corporation, (2) an act or omission not in good faith that constitutes a breach of duty of the Trustee to the Corporation or that involves intentional misconduct or a knowing violation of the law, (3) a transaction from which a Trustee received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the Trustee's office, or (4) an act or omission for which the liability of a Trustee is expressly provided for by statute. Neither the amendment nor repeal of this Article shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit, or claim that, but for this paragraph, would accrue or arise, prior to such amendment or repeal. If the Texas Non-Profit Corporation Act, the Texas Miscellaneous Corporation Laws Act, or any successor statutes, are hereinafter amended to authorize corporate action further eliminating or limiting the personal liability of Trustees, then the liability of a Trustee of the Corporation shall be eliminated or limited to the fullest extent permitted by the Texas Non-Profit Corporation Act, the Texas Miscellaneous Corporation Laws Act, or any successor statutes, as so amended from time to time.

ARTICLE VIII

(A) To the fullest extent permitted by Texas law, the Corporation shall indemnify any person who is or was a Trustee or an officer of the Corporation, and may indemnify any person ("Discretionary Indemnitee") who is or was an employee or agent of the Corporation and any person who serves or served at the Corporation's request as a director, officer, trustee, agent, (including any person appointed by the Corporation to act on any of the Corporation's



APR-14-2009 TUE 10:57 AM TAYLOR OLSON ADKINS

FAX NO. 817 332 4740

P. 06/12

committees), employee, partner, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise. Neither the future amendment nor repeal of this Article shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit, or claim that, but for this paragraph, would accrue or arise, prior to such amendment or repeal. *provided, however, that this paragraph (A) shall apply only to the following persons: (1) a person who became a Trustee by virtue of an advisory election by delegates to a Special Convention of the Episcopal Diocese of Fort Worth and subsequent appointment by the Provisional Bishop as Trustee on or about February 7, 2009 and his or her successors; (2) a person who was elected as an officer of the Corporation on or about February 12, 2009 and his or her successors; and (3) a Discretionary Indemnitee who was appointed, elected, or requested to serve by a person identified in (A)(1) or (A)(2) above, on or after February 7, 2009.*

(B) Unless otherwise prohibited by Texas law, the Corporation shall reimburse or pay in advance any reasonable expenses (including court costs and attorneys' fees) which may become subject to indemnification under this Article, upon request by or on behalf of the person subject to such indemnification.

(C) The Corporation shall pay or reimburse expenses incurred by a present or former Trustee or officer of the Corporation who is eligible to be indemnified pursuant to paragraph (A) of this Article in connection with his or her appearing as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding, upon request by such person.

(D) The provisions of this Article shall be applicable to claims, actions, suits or proceedings made or commenced after the adoption of this Article, whether arising from acts or omissions to act occurring before or after adoption hereof, and shall continue as to a person who has ceased to hold a position named in paragraph (A) of this Article and will inure to such person's heirs, executors, and administrators.

(E) The indemnification provided by this Article shall not be exclusive of any other rights to which a person may be entitled by law, bylaw, agreement, vote of Trustees, or otherwise and shall not restrict the power of the Corporation to make any indemnification permitted by law.

(F) The Corporation may purchase and maintain insurance on behalf of any person who holds or has held any position named in paragraph (A) above against any liability incurred by such person in any such position, or arising out of such person's status as such, whether or not the Corporation would have power to indemnify such person against such liability under this Article.

(G) In no case, however, shall the Corporation indemnify, reimburse, or insure any person in any instance where, or to the extent that, such indemnification, reimbursement or insurance is inconsistent with section 4958 of the Internal Revenue Code and its Regulations, or any other provision of the Internal Revenue Code and its Regulations applicable to corporations described in section 501(c)(3) of the Internal Revenue Code and its Regulations, as they now exist or as they may hereafter be amended.

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(H) If any part of this Article shall be found in any action, suit, or proceeding to be invalid, illegal, unenforceable or ineffective, only that provision shall be modified in a manner designed to uphold the intent and purpose of such provision as written to the maximum extent permitted by law. The validity and the effectiveness of the remaining parts shall not be affected.

Dated: April 4, 2009

CORPORATION OF THE  
EPISCOPAL DIOCESE OF FORT WORTH

By:   
The Rev. James Hazel, President

AMENDED AND RESTATED ARTICLES OF INCORPORATION--  
CORPORATION OF THE EPISCOPAL DIOCESE OF FORT WORTH

PAGE 5

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**TAB 2**

6000 WESTERN PLACE, SUITE 200  
I-30 AT BRIZANT-IRVIN ROAD  
FORT WORTH, TEXAS 76107-4654  
EMAIL: TOASE@TOASE.COM



TELEPHONE: (817) 332-2580  
TOLL FREE: (800) 318-3400  
FACSIMILE: (817) 332-4740  
WEBSITE: WWW.TOASE.COM

KATHLEEN WELLS  
Ext. 209  
[kwells@toase.com](mailto:kwells@toase.com)

March 3, 2009

The Hon. William T. McGee, Jr.  
Law Offices of William T. McGee, Jr.  
1701 River Run, Ste 501  
Fort Worth, TX, 76107-6548

Re: Episcopal Diocese of Fort Worth property transition

Dear Judge McGee,

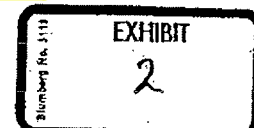
I am writing this letter in my capacity as Chancellor for the continuing Episcopal Diocese of Fort Worth, a diocese of the Episcopal Church. I am writing to you because I understand that you still represent Bishop Iker and others who have recently left the Episcopal Church and the Diocese yet still maintain possession and control of property of the Diocese and/or its congregations. I am also sending a copy of this letter to Rickey Brantley, who we understand also acts as counsel for some of these same persons. I ask that you please forward a copy of this letter to any other attorneys who represent those persons.

As you are aware, Bishop Iker is no longer a bishop of the Episcopal Church nor, therefore, of the Episcopal Diocese of Fort Worth. The former members of the Diocesan Standing Committee who withdrew from the Episcopal Church to affiliate with the Anglican Province of the Southern Cone no longer hold their former positions in the Diocese. Other Diocesan leaders similarly vacated their offices by withdrawing from the Episcopal Church. Many of those offices were filled on February 7, 2009 in a Special Meeting of the Diocesan Convention. The Rt. Rev. Edwin F. Gulick, Jr. now serves as Provisional Bishop of the Diocese, and other Diocesan offices, including the Standing Committee and the Board of Trustees for Corporation for the Episcopal Diocese of Fort Worth ("Corporation"), have been filled by qualified persons who remain in the Episcopal Church.

On behalf of Bishop Gulick, the Diocese, and the Corporation, I respectfully request that Bishop Iker and those working with him or otherwise claiming authority from him take no action inconsistent with the reorganization of the continuing Diocese or with the continuing interest of the Episcopal Church in church property of the Diocese and its congregations. In addition I ask that they preserve and protect all funds, records, and other real and personal property of the Diocese and its congregations currently under their control. Finally, I ask that they cooperate with us to effect an orderly transfer of the possession and control of that church property to the proper officials in the continuing Diocese and its congregations. Please know that we will happily cooperate to provide copies of any relevant documents needed by those who have left the Episcopal Church.

ECUSA 000350

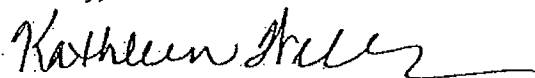
In addition I ask that those who claim to be affiliated with the Anglican Province of the Southern Cone cease using the name of and claiming authority under the "Episcopal Diocese of Fort Worth" and each of its congregations, e.g., "St. Stephen's Episcopal Church," as well using as the



official logos and seals of the Diocese and its congregations, respectively. Their continued use of these names and emblems is not authorized, violates the existing rights of the Diocese and its congregations in those names and emblems, and unnecessarily creates confusion among third parties.

Would you please contact me upon your receipt of this letter so that we may schedule a meeting to plan the orderly transition of these Diocesan and congregation assets? I look forward to working with you and others to accomplish this transition and hope that we can offer a model to others in the manner that we effect these remaining details of this sad chapter in the life of our spiritual community.

Sincerely,



Kathleen Wells

KW/sr

Cc: Rickey Brantley  
Jose, Henry, Brantley, MacLean and Alvarado, LLP  
675 N. Henderson  
Fort Worth, Texas 76107

The Rt. Rev. Edwin F. Gulick, Jr.

ECUSA 000351

# EXHIBIT C

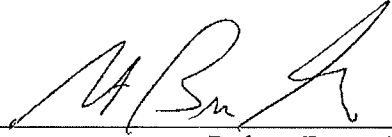
CAUSE NO. 141-237105-09

THE EPISCOPAL CHURCH ET AL.,	)	
	)	IN THE DISTRICT COURT OF
Plaintiffs,	)	
	)	
AND	)	
	)	
MARGARET MIEULI ET AL.,	)	
	)	
Third-Party Defendants and	)	
Counterclaimants,	)	TARRANT COUNTY, TEXAS.
	)	
v.	)	
	)	
FRANKLIN SALAZAR ET AL.,	)	
	)	
Defendants.	)	141 <sup>st</sup> JUDICIAL DISTRICT

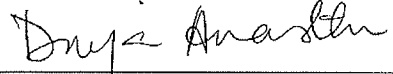
**THIRD AFFIDAVIT OF DR. ROBERT BRUCE MULLIN**

Before me, the undersigned authority, personally appeared **Dr. Robert Bruce Mullin**, who, being by me duly sworn, deposed and said:

1. My name is Robert Bruce Mullin. I am of sound mind, capable of making this Affidavit, and have personal knowledge of the facts herein stated.
2. Attached to this Affidavit is Statement by me regarding the history, formation, and governance of The Episcopal Church. In making this Statement, I personally reviewed the historical documents cited therein. It is my belief that the representations made in the Statement are true. The opinions expressed therein I continue to hold.
3. My qualifications are set out in the attached Statement.

  
\_\_\_\_\_  
Robert Bruce Mullin

SUBSCRIBED AND SWORN TO BEFORE ME on this 13<sup>th</sup> day of October, 2010.

  
\_\_\_\_\_  
Notary Public in and for the State of New York

**DIVYA AVASTHI**  
**Notary Public, State of New York**  
**No. 01AV6197655**  
**Qualified in Queens County**  
**Commission Expires December 8, 2012**



**TAB 1**

STATEMENT OF ROBERT BRUCE MULLIN

1. I am an historian and teacher at the General Theological Seminary in New York City, one of the accredited seminaries of The Episcopal Church (“the Church”). I serve as the Professor of Modern Anglican Studies and the Society for the Promotion of Religion and Learning Professor of History and World Mission. I have held these positions since 1998. I received my Bachelor’s degree in history from the College of William and Mary and my Ph.D. in the History of Christianity from Yale University in 1984. I also received Master’s degrees in religion from Yale Divinity School and from the Berkeley Divinity School at Yale, another accredited seminary of The Episcopal Church.

2. Since 1984, I have been teaching, researching, and publishing in the area of religion in America, with a special focus on The Episcopal Church. Prior to obtaining my current positions, I taught in these fields at North Carolina State University, Duke Divinity School, the University of North Carolina, Wesleyan University, and Yale University.

3. In connection with litigation involving certain former members of The Episcopal Church who have claimed the right to control and use Episcopal diocesan and parish property for the mission of other churches, I have been asked by the Church’s Presiding Bishop to render expert opinions in the following general area within my professional expertise: The current and historical hierarchical organization and structure of The Episcopal Church and the consequent reasons why dioceses and parishes of the Church, as opposed to their individual leaders, may not, consistent with the Church’s polity, articulated in its Constitution, canons, and Book of Common Prayer, unilaterally withdraw or disaffiliate from the Church and its governing body, the General Convention, or, in the case of parishes, their dioceses.

4. My conclusions are based on over 30 years of study and publication in the fields of American history, American religious history, the history of The Episcopal Church, and the history of the Anglican Communion. In addition to the general knowledge that I have gained in that work, in preparation for this statement I have extensively surveyed the Journals of the General Convention of The Episcopal Church; the diocesan journals of many of the Church's dioceses; the Church's Constitution and canons; the standard commentaries on the Church's Constitution and canons; the Constitutions and canons of many of the Church's dioceses; various Episcopal journals that cast light on the understanding of the Church's relationship to property; relevant contemporary historical sources that shed light on the question of churches and property law; contemporary literature on various questions concerning the history of the Church; the standard Episcopal Church histories; modern monographs on the history of the Church; comparative studies of other denominational families in order to identify Episcopal distinctiveness; and journalistic accounts that shed light on the Nineteenth- and Twentieth-Century history of the Church. I have also incorporated the understanding of the international Anglican Communion that I have acquired through almost 20 years of participation in ecumenical dialogue. Finally, I have incorporated the insights I have gained from having directed a number of doctoral dissertations in the field of Episcopal/Anglican studies.

#### INTRODUCTION

5. The following is an analysis of the question of whether and to what extent The Episcopal Church has been and has understood itself to be a hierarchical church over its history, and of the subsidiary question of whether, consistent with the Church's polity, a diocese may exercise a purported right to withdraw from participation in and the governance of the General Convention of the Church. The present disagreements within the Church flow

from two distinct positions. On the one side are those persons wishing to separate themselves and their dioceses from the Church and join a rival church, arguing that their dioceses are not subject to the Church's central legislative body, the General Convention. On the other side is the Church itself and the persons in those dioceses who wish to remain in the Church who hold that the General Convention represents and legislates for the whole Church and that dioceses may not unilaterally absent themselves from the General Convention's governance.

6. The separatists' fundamental thesis is that The Episcopal Church is not hierarchical but is rather a confederation, or a strictly voluntary association of independent dioceses. The separatists therefore argue that entire dioceses (not merely individual members) may detach themselves from the Church at will and join a different denomination of their choosing. Indeed, some profess a right to join a different Anglican church within the United States that they contend should be recognized both nationally and internationally as an authentic Anglican entity.<sup>1</sup>

7. This argument relies on a number of specific claims. Most basically, it assumes that the Constitution of the Church should be seen as analogous to the United States Constitution. In this view, the Constitution preceded, defines, and limits the authority of the General Convention. That body and the laws or "canons" it has passed are seen as later

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<sup>1</sup> Some of the recent statements advancing aspects of this view are Mark McCall, "Is the Episcopal Church Hierarchical?" (Anglican Communion Institute, 2008); George Conger, "The Concept of Hierarchy in the Episcopal Church of the Nineteenth Century," (Anglican Communion Institute, 2010); "Bishops' Statement on the Polity of the Episcopal Church" (2009), available at [www.anglicancommunioninstitute.com/2009/04/bishops-statement-on-the-polity-of-the-episcopal-church/](http://www.anglicancommunioninstitute.com/2009/04/bishops-statement-on-the-polity-of-the-episcopal-church/); Affidavit of the Rt. Rev. William C. Wantland, The Episcopal Church in the Diocese of Connecticut v. Ronald S. Gauss (Sept. 28, 2009); Declaration of the Rt. Rev. William C. Wantland, The Episcopal Diocese of San Diego v. St. John's Parish (Episcopal), Fallbrook, California (Oct. 10, 2009); and Affidavit of the Rev. Canon George A. M. Conger, The Episcopal Church in the Diocese of Connecticut v. Ronald S. Gauss (Oct. 7, 2009).

additions which individual dioceses may accept or reject at will. Secondly, when dioceses have formally subscribed or “acceded” to the Constitution and canons of the Church (as every diocese is required to do), this has represented merely a temporary and mutual agreement between independent sovereigns (the Church and the diocese) — in legal terms, a treaty rather than a contract, and one that can be unilaterally rescinded by either party. These claims have no basis, as a systematic study of the nature of The Episcopal Church – not undertaken by those cited in note 1 – will demonstrate.

8. I understand that a “hierarchical” church has been defined by the courts to be, in essence, a religious denomination that is organized as a united body of constituent regional and/or local affiliates with a common convocation or ecclesiastical head, and in which the regional bodies and individual worshipping congregations are subject to the rules, regulations, and authority of that common convocation or ecclesiastical head. This definition, which I have been asked by counsel for the Presiding Bishop to accept as legally sound, also comports with my understanding, as a researcher and teacher in church history and polity, of what constitutes a hierarchical church in the United States. Under this definition, The Episcopal Church has been, and has understood itself to be, throughout its existence without question a hierarchical church. That being so, as I demonstrate below, the separatists’ arguments fall.

9. What follows in Part I is a brief discussion of the English roots of The Episcopal Church and an overview of the hierarchical structure of the Church. Parts II through V then contain an extended historical and theological analysis of the development of the Church’s hierarchical structure from its earliest days to the present. This analysis also responds to a series of essays and other statements that have recently claimed that there is no – or perhaps only partial – hierarchical authority vested in the General Convention of the Church and that

ultimate authority in the Church is vested in its dioceses and not the synodical or general Church. That discussion will focus on five areas of inquiry:

Evidence from the period of the organization of the Church from 1784 to 1789 (Part II);

Evidence from the first Church canons and subsequent Constitution in 1789 (Part III);

Evidence from actions by the General Convention from 1790 to the present (Part IV);

Evidence from Nineteenth-Century commentators on the polity of the Church (Part V); and

Evidence from the Civil War era (Part VI).

10. What will become evident is that the Church has understood itself as a hierarchical church, governed ultimately by its General Convention, from its very beginning. What will also become clear is that the ultimate source of authority in the Church is the General Convention, not its individual dioceses, and that every diocese, once formed and admitted into union with the General Convention, remains bound by the rules of the Church and may not unilaterally withdraw or disaffiliate from the General Convention.

I. THE EPISCOPAL CHURCH IS HIERARCHICAL.

A. Formation from English Roots

11. The Episcopal Church has its roots in the extension of the Church of England into the colonies of the New World. Permanently planted in the colonies in 1607, the Church of England was present in all of the original colonies during the Colonial period.

12. From its beginning, the Church of England has been a national church, whose bishops make up and are subordinate to the Church's Synod, or governing body. The Church of England was, and is, a three-tiered hierarchical church, governed at present by a national synod

at the topmost level, with regional, geographically-defined “dioceses” at the middle tier, and local congregations (usually called “parishes”) at the lowest tier.<sup>2</sup> Each diocese was, and is, under the oversight of a bishop who visits and oversees the parishes and other congregations of the diocese. Congregations in the New World colonies were under the oversight of the Bishop of London, who appointed a special representative to the colonial congregations.

13. The governmental authority of the Church of England was historically rooted in synodical bodies of bishops and clergy meeting in convocation. Since the coming of St. Augustine to Britain in the Sixth Century, the English Church has been organized synodically, and since the mid-Eighth Century it has been grouped into two provinces, Canterbury and York. In these two provinces the clergy (both bishops and priests) would gather in what was known as Convocation for the passing of legislation and governance.

14. The synodical principle was crucial in Anglicanism. Nineteenth-Century American canonist, John Fulton, explained the authority of the synod over individual bishops.

“ [W]e must remember that the Bishop was himself, in fact as well as theory, the executive and representative of an authority superior to his own. The episcopate of the whole world was held to be a unit to which, as a never dying College of Apostles, was committed the ingathering and safe-keeping of the Flock of Christ. Of this Sacred College every Bishop in his Parish was the representative. ... And as the power of the Episcopate was exercised by one Bishop over the people of one Parish, so the Bishops of every Province, acting in their corporate capacity, exercised the power of their united Episcopate over every Bishop and every Parish within their jurisdiction. ... Even when he [a Bishop] had been validly elected, duly consecrated, and canonically constituted Bishop of his See, they still retained the power to try him for malfeasance, to reverse his unwise judgments, and if need were, to withdraw the jurisdiction they had given him. The Provincial

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<sup>2</sup> This is somewhat complicated by the formal relationship between Church and State, which involves Parliament and the Crown in key decisions.

Synod, therefore, in which the Bishops of the Province assembled twice a year, was a real power in every parish.”<sup>3</sup>

15. The Eighteenth-Century and present governmental structure of the Church of England was given shape by events of the English Reformation which, in the words of one scholar, “incorporated the Church of England with the constitution of the realm.”<sup>4</sup> Through the Acts of Supremacy and Uniformity, the older synodical governance of the Church of England was grafted upon the political structure of the realm, and the provinces fell under the authority of King and Parliament. The King became the “Supreme Governor” of the Church of England, and the Church became the official or “established” church of the realm.

16. Synodical legislation, once approved by the Crown, was binding on all parts of the Church of England. For example, in 1603-1604, canons were passed which governed the English Church on a variety of levels. They dictated worship practices; outlined the duties and responsibilities of clergy and other church officials; dictated educational requirements for clergy; outlined the proper maintenance of church property; and set forth a system of discipline. These canons bound all clergy and church officials and served as the basis of governance of the Church. They were national in nature and were an essential part of the national Church. Indeed, they were expressly binding even upon members who chose not to be present at their enactment.<sup>5</sup>

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<sup>3</sup> John Fulton, Index Canonum: The Greek Text, An English Translation, and a Complete Digest of the Entire Code of Canon Law (New York, 1872) at 44-45 and 99. This principle continues to be reflected in the current Constitution of The Episcopal Church.

<sup>4</sup> James S. M. Anderson, The History of the Church of England in the Colonies and Foreign Dependencies of the British Empire, 2 vols. (London: Francis and John Rivington, 1845-8) at 1:130. Anderson here was quoting Henry Hallam, The Constitutional History of England: From the Accession of Henry VII to the Death of George II.

<sup>5</sup> Canon CXL of the Canons of 1603-1604.



17. The model of the Church of England as a national church was further embodied in Article XXXIV of the Articles of Religion (the Sixteenth-Century statement of doctrine) which enunciated an important responsibility of a national church:

“Every particular or national Church hath authority to ordain, change and abolish, ceremonies or rites ordained only of man’s authority, so that all things be done to edifying.” BCP (1662) at 708.

The revision of liturgy and ceremony could only properly be undertaken on the national level.<sup>6</sup>

18. The concept of diocesan autonomy that is being advocated in some quarters had no standing in the world of Anglican Christianity in the Seventeenth and Eighteenth centuries. The central governing model was the national Church. Furthermore, church division, or schism, was deemed one of the most onerous of sins. The great Litany, the oldest part of the Book of Common Prayer, stated, “from all false doctrine heresy and schism...Good Lord deliver us.” BCP (1662) at 70.

19. The American Revolution created a crisis for the Church of England congregations in this country. Political independence meant that American worshipping congregations could no longer be part of the Church of England, because, *inter alia*, the leaders and members of these congregations could no longer take an oath of loyalty to the English Crown as the Church of England’s rules required. Independence also meant that the Church of England liturgy would have to be revised to remove prayers that reflected royal supremacy. But the American Anglicans fervently wanted to retain their Anglican identity, traditions, and mode of worship, as well as their church buildings and other properties, in the new country. A new general church had to be formed, therefore, to succeed to the old.

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<sup>6</sup> American Episcopalians would later also connect national organization and liturgical reform.

20. As I set out more fully below, in 1784, Anglicans from several of the colonies gathered for the purpose of “the revival” of their church “which had existed before the Revolution”; and in 1785, clergy and laity from the former congregations of the Church of England in seven new states met in what was styled as the first meeting of the “Convention of the Protestant Episcopal Church.”<sup>7</sup>

21. After several more meetings, in 1789, clergy and laity from the former colonial congregations met again, this time with two of three newly-ordained bishops in attendance, as an entity that they called “the General Convention of the Protestant Episcopal Church in the United States of America”; in August, the entity adopted bylaws, called “canons,” and in October it adopted a Constitution for the entity.

22. The canons and thereafter the Constitution of the newly-formed Episcopal Church set out a structure that mirrored that of the Church of England – and was significantly different from that of the new United States, whose Constitution was also adopted in 1789. As its predecessor, the new Episcopal Church was a three-tiered hierarchical church, governed by a national parliamentary body and comprised of regional bodies containing local parishes.<sup>8</sup> And, the American Church continued the English principle of bishops in synod, requiring the consent of the General Convention to the consecration of every new bishop and contemplating discipline of bishops. 1789 Const. Art. 6; Canon II. JGC 1789 at 1:99-100. The American

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<sup>7</sup> William Stevens, Perry, ed. Journals of the General Conventions of the Protestant Episcopal Church in the United States, 1785-1835, 2 vols. (Claremont, N.H.: The Claremont Manufacturing Co., 1874) at 1: 11-29. The Journals of the General Convention of the Protestant Episcopal Church have been published individually as well as in collected reprints. From this point forward they will be cited as “JGC” unless otherwise noted, and all references to General Conventions through 1835 will be from these volumes.

<sup>8</sup> JGC 1789 at 99-100 (Articles 1-3 of 1789 Constitution, describing General Convention), 101 (setting out Deputies by state and parish).

Church was distinctive, however, in allowing lay participation in church governance and having both lay and clerical representatives elect bishops, as well as in lodging the highest authority in the Church in its General Convention.

B. The General Church

23. The same basic three-tiered structure exists today. At the highest tier is The Episcopal Church, traditionally a national body that in the Twentieth Century has expanded into several other countries. Next are regional, geographically-defined dioceses, which belong to, are subordinate to, and are under the jurisdiction of the Church. Finally, there are local worshipping congregations, generally called parishes or missions, which belong to, are subordinate to, and are under the jurisdiction of the Church and the individual dioceses in which the congregations are located.

24. As stated above, at the topmost level the Church is governed by its General Convention, a bicameral legislative body made up of a House of Bishops, composed of most of the Church's active and resigned bishops, and a House of Deputies, composed of clergy and lay representatives elected from each of the Church's dioceses. Const. Arts. I.2, .4. Legislation must be approved by both houses. Const. Art. I.1.

25. The General Convention establishes the policies, rules, and programs of the Church. It has adopted and from time to time amends the Church's governing documents, its Constitution, canons, and Book of Common Prayer. Together, these documents are the ultimate authoritative statements governing the spiritual and temporal affairs of the Church and are applicable to every tier of the Church as well as to the persons in those tiers, including bishops, other clergy, and laity.

26. The General Convention is the body that articulates the Doctrine, Discipline, and Worship of the Church and cannot be limited by actions of other bodies in the Church, including its dioceses or bishops.

27. The “Chief Pastor and Primate” of the Church is its Presiding Bishop, who is elected by the General Convention. The Presiding Bishop is charged with, among other duties, responsibility for leadership in initiating and developing policy and strategy in the Church and speaking for the Church as to the policies, strategies, and programs authorized by the General Convention. Const. Art. I.3; Canon I.2(4).

28. Between meetings of the General Convention, an elected Executive Council of bishops, priests, and laypersons manages the fiscal and programmatic affairs of the Church under the direction of the Church’s Presiding Bishop as Chair. Canons I.4(1), (3).

C. The Dioceses

29. At the next level, the Church is comprised of 111 dioceses in the United States and other countries. Episcopal Church Annual (2010) at 16-19. All dioceses are “formed, with the consent of the General Convention and under such conditions as the General Convention shall prescribe by General Canon or Canons.” Const. Art. V.1.

30. All dioceses and their clergy acknowledge the applicability to them of the Constitution and canons of the general Church and their authoritative nature. All dioceses, as a condition of their formation as entities in “union” with the General Convention, promise “an unqualified accession to the Constitution and Canons of this Church.” Const. Art. V.1; *see also* Canon I.10(4) (new diocese “shall have . . . acceded to the Constitution of the General

Convention in accordance with Article V, Section 1 of the Constitution”).<sup>9</sup> All clergy at their ordinations subscribe to the following written declaration (known as the “Declaration of Conformity”):

“I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.” Const. Art. VIII; Ordination Services of the Book of Common Prayer at 513, 526, 538.

Since 1979 this oath has become part of the public service of ordination, emphasizing to the congregation as well as the candidate its importance and solemnity.

31. In addition, a bishop-elect is required by the Prayer Book to promise to “guard the faith, unity, and discipline of the Church” and to “share with [his or her] fellow bishops in the government of the whole Church.” Book of Common Prayer at 518. And, all persons accepting “office[s]” in the Church “shall well and faithfully perform the duties of [those] office[s] in accordance with the Constitution and Canons of [the] Church and of the Diocese in which the office is being exercised.” Canon I.17(8).

32. The governing body of each diocese is generally called its “Convention,” or sometimes its “Council” or “Synod,” and is comprised of the Bishop of the diocese, other bishops and clergy, and lay members elected by the worshipping congregations in that diocese.

33. Each diocese’s Convention has adopted, and from time to time amends, its own Constitution and canons that supplement, and must not be inconsistent with, the Church’s

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<sup>9</sup> The term “unqualified” was added to Article V in 1982, when that provision was reworded; the new version was adopted with virtual unanimity. JGC 1982 at D-28, C-23. Only the lay and clerical deputies from the Diocese of Haiti voted against it. Divided votes were recorded by the clerical deputies from the Diocese of Lexington and the lay deputies from the Diocese of the Northern Philippines. Records of the General Convention, Group 312, Archives of The Episcopal Church, Austin, TX (through communication with Archivist, May 3, 2010).

Constitution and canons. Const. Art. V.1; Canon I.10(4). The Constitution and canons of each diocese are authoritative for the governance of the diocese and the worshipping congregations in that diocese. As a matter of history, dioceses have generally required of all parishes accession to the Constitutions and canons of the general Church and of the diocese.

34. Each diocese has a diocesan bishop, a person elected by the diocesan Convention and ordained as a bishop by at least three bishops with the consent of the leadership of a majority of the other dioceses. Const. Art. II.1, .2; Canons III.11(1), (3), (4).<sup>10</sup> The diocesan bishop serves as the “Ecclesiastical Authority” and chief executive officer in charge of both spiritual and temporal affairs within that diocese. Const. Arts. II.3, .5; Canon III.12(3), IV.15. The diocesan bishop is advised by, and as to certain matters shares authority with, a “Standing Committee,” a body of clergy and laity elected by the diocesan Convention. Const. Art. IV; Canon I.12(1). When a diocese has no bishop, the Standing Committee serves as the Ecclesiastical Authority. Const. Art. IV; Canon IV.15.

D. The Parishes

35. At the third level of governance, the 111 dioceses together contain the Church’s approximately 7,400 worshipping congregations. Episcopal Church Annual, supra, at 16-19. Most of these congregations are called parishes; others, usually newly-forming congregations that do not meet all of the requirements for parish status, are generally called missions; and still

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<sup>10</sup> In one instance in the Constitution and canons the diocesan Bishop is referred to as the “Ordinary,” Const. Art. II.8, where it is clear that the term is used to differentiate between the diocesan bishop and a coadjutor. Claims in the “Bishops’ Statement” (pp. 3-4) that the use of this term suggests an authority in diocesan bishops to preempt General Convention are baseless. I have found no support for such claims in either the legislative history or in contemporary accounts of the legislation. *See* JGC 1964 at 267-268; The Living Church (October 26, 1964) at 5.

others include cathedrals, chaplaincies at educational institutions, and other institutions. *See, e.g., id.* at 132-34 (listing congregations in the Diocese of Alabama).

36. An Episcopal parish has a governing body called a “vestry,” which is comprised of the rector of the parish and lay persons elected by the voting membership of the parish. Canons I.14(1)-(3). Members of the vestry serve as officers of the parish. Canons I.14(1), (2).

37. The rector of a parish in the Church is a priest elected by the vestry in consultation with the bishop of that diocese and is in charge of the spiritual and temporal affairs of the parish. Canons I.6(1); I.17(4); III.9(3)(a), (5).

E. Anglican Communion Membership

38. The Episcopal Church is “a constituent member of the Anglican Communion.” *See, e.g.,* Constitution Preamble. The “Anglican Communion” is a name generally used to describe a worldwide fellowship among a group of churches “in communion with the See [*i.e.*, seat of the Archbishop] of Canterbury.” *Id.* The churches of the Anglican Communion have their roots in the Church of England and were generally established in their respective countries or regions by English immigrants or missionaries adhering to the Church of England’s doctrine and worship.

39. Each individual member church, or “Province,” within the group is self-governing and autonomous: Each of the 38 individual member churches has its own prime bishop (in the United States, the Presiding Bishop), governing bodies, Constitution, canons, and Prayer Book. While The Episcopal Church is a hierarchical church, the Anglican Communion is not.

40. The term “Anglican Communion” dates back only to the mid-Nineteenth Century, long after a number of the churches that currently comprise the Anglican Communion were

formed; and the first meeting of the bishops of those churches as such did not occur until 1867.<sup>11</sup> Since that time, the bishops of the churches in the Communion have generally met every ten years for united worship and common council at gatherings known as “Lambeth Conferences.” They were never understood to be a legislative sessions. Indeed, at the very outset the Archbishop of Canterbury noted, “such a meeting would not be competent to make declarations or lay down definitions on points of doctrine.”<sup>12</sup> Because the member churches of the Anglican Communion are not themselves “governed” by the Lambeth Conference or by the Archbishop of Canterbury, Lambeth resolutions are not binding on a particular member church.<sup>13</sup>

41. The historic tradition of the Anglican Communion as regularly enunciated through the Lambeth Conferences is that each Province forms its own constituent units and exercises jurisdiction within its own geographic territory, and not within the geographic territory of any other Province. Indeed, Anglican churches have inherited this principle from their Roman Catholic predecessor and its adoption of canons at the Council of Nicaea in 325 A.D.

II. THE HIERARCHICAL NATURE OF THE EPISCOPAL CHURCH WAS EVIDENT DURING THE CHURCH’S ORGANIZATIONAL PERIOD, 1784-1789.

42. The founders of The Episcopal Church thus created a national church with an authoritative General Convention. During the colonial period there had been no tradition of ecclesiastical legislation at the level of individual colonies; all ecclesiastical legislation had originated from the Church of England, and the goal of a General Convention was to continue

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<sup>11</sup> Colin Podmore, Aspects of Anglican Identity (London: Church House Publishing, 2005) at 36-38.

<sup>12</sup> Quoted in, The Five Lambeth Conferences... (London: Society for Promoting Christian Knowledge, 1920) at 6.

<sup>13</sup> See “Lambeth Conference,” in Don S. Armentrout and Robert Slocum, eds., An Episcopal Dictionary of the Church (New York: Church Publishing, 2000) at 291-292.



this practice of national legislation. Only such an organization could assure a united Church and the reception of the episcopate from the Church of England.

A. Development of the General Convention

43. The hierarchical nature of The Episcopal Church was clear from the very beginning of its organization in the decade of the 1780s. An obvious illustration is the name that was assumed. In contrast with the political trends at the time that strove to establish a federation of states (*i.e.*, The United States of America), Episcopalians strove to establish a unified church (The Protestant Episcopal Church in the United States of America). This was in keeping with their heritage of a national Church -- *i.e.*, a church representing the communicants of a sovereign state. Political independence necessarily divorced them from the Church of England, and made the organization of their own church, in the model of the English church, a crucial concern. But unlike the Church of England, where the topmost authority of the Church was vested in Parliament and the Crown, The Episcopal Church placed ultimate authority in a General Convention consisting of a House of Bishops and a House of clerical and lay Deputies. The inclusion of laity in the Church's governance structure was another innovation, one that may be attributed in part to William White of Pennsylvania, the architect of the organization of The Episcopal Church in America, whose organizational plan was laid out in The Case of the Episcopal Churches in the United States Considered (1782).<sup>14</sup>

44. Early movement towards organization of the Protestant Episcopal Church in the United States of America was in evidence at a meeting of clergy and laity in New Brunswick, New Jersey, in May 1784. This led to a first, informal "convention" of clergy and laity from

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<sup>14</sup> William White, The Case of the Episcopal Churches in the United States Considered, edited by Richard G. Salomon ([Philadelphia]: Church Historical Society, 1954).

different states in New York City later in 1784, which then called for a formal meeting of a “general convention” in Philadelphia, Pennsylvania, in 1785.

45. The first principle of ecclesiastical union recommended by the members at the New York meeting was that “there shall be a general convention of the Episcopal Church in the United States of America.”<sup>15</sup>

46. For this to occur, members of the newly-forming Episcopal Church would need to be officially represented in the General Convention (there were no official representatives at the New York meeting). Thus, the New York meeting called for the Episcopal Church in each state to organize and send delegates to a meeting in Philadelphia in 1785.<sup>16</sup> Hence, the second recommendation by the members of the meeting for ecclesiastical union was that “the Episcopal Church in each state, send deputies to the convention, consisting of clergy and laity.”<sup>17</sup> *Id.*

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<sup>15</sup> William White, Memoirs of the Protestant Episcopal Church in the United States of America, 2<sup>nd</sup> ed. (New York: Swords, Stanford, and Co., 1836) at 80.

<sup>16</sup> An exception is the Episcopal Church in Maryland, which had been an established church during colonial times. Episcopalians there found it necessary between 1783 and 1784 to organize a successor entity to the Church of England in order to retain the property that had been held during colonial times by Church of England parishes. See the documents reprinted in William Stevens Perry, ed., Historical Notes and Documents Illustrating the Organization of the Protestant Episcopal Church in the United States of America (Claremont, HH: The Claremont Manufacturing Co, 1879) at 20-24. A similar situation arose in Virginia, where the church was organized in 1784-1785 to protect its properties. See George MacLaren Brydon, Virginia's Mother Church and the Political Conditions Under Which it Grew, 2 vols. (Philadelphia: Church Historical Society, 1952) at 2: 447-453.

<sup>17</sup> In the discourse of the 1780s, the language referred to Episcopalians organizing themselves into state conventions at the behest of the newly-forming General Convention; one sees no discussion of dioceses, which was an independent ecclesiastical category and not present in early America.

47. What ones sees here is that, far from dioceses “creating” the General Convention, it was the need for delegates to establish the General Convention that led to the subsequent organization of the State conventions that at a later date would be called “dioceses.”<sup>18</sup>

48. The various states chose different means for gathering to choose deputies to the General Convention. In Pennsylvania and New York, Episcopalians organized themselves for the first time into formal state conventions, calling themselves “The protestant Episcopal church in the state of Pennsylvania”<sup>19</sup> and “the Protestant Episcopal Church in the State of New York.”<sup>20</sup> In other states, such as New Jersey, Episcopalians simply came together, without formally organizing, to choose delegates,<sup>21</sup> and in still others, such as Delaware (which had only two congregations in the state), there is no evidence that any meeting was even held.<sup>22</sup>

49. In each of these instances the national nature of the Church was clearly recognized. These state meetings did not speak of state churches. Rather, they referred to the Episcopal Church in a given state. I have found almost no evidence of any language of the

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<sup>18</sup> This historical fact is in itself enough to demonstrate the error in the claims of the authors of the “Bishops’ Statement” (p. 4ff) that the dioceses created the General Convention.

<sup>19</sup> Journal of the Meetings Which Led to the Institution of a Convention of the Protestant Episcopal Church in the State of Pennsylvania (Philadelphia, 1790) at 12.

<sup>20</sup> Journals of the Conventions of the Protestant Episcopal Church in the Diocese of New York (New York: Henry M. Onderdonk, 1844) at 6.

<sup>21</sup> Proceedings of a Convention of the Protestant Episcopal Church in the State of New Jersey (NP, 1785) NP.

<sup>22</sup> Charles A. Silliman, The Episcopal Church in Delaware, 1785-1954 (Wilmington: The Diocese of Delaware, 1982) at 6.

Episcopal churches or of the Episcopal Church of a given state.<sup>23</sup> A unified national model was clearly presupposed.

50. The first meeting of the General Convention was in Philadelphia in September of 1785, with representatives from seven states and presided over by William White. This Convention undertook three primary projects.

51. First, it began the task of revising the Book of Common Prayer, which, we have seen, under Anglican principles only a national church could do.

52. Second, it addressed a letter to the Archbishops and other bishops of the Church of England requesting the bestowal of the office of the episcopacy. In the members' view, this request could not be made by any body lesser than the General Convention itself. Thus the Convention stated in its letter to the English bishops:

“[I]t was not until this Convention that sufficient powers could be procured for addressing your Lordships on this subject.” JGC 1785 at 1: 26.

This view was subsequently affirmed by the English archbishops and bishops who responded by stating that they would not consider any candidates for the episcopacy who did not come with the approval of the General Convention.<sup>24</sup>

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<sup>23</sup> Here again, Maryland was the exception. In the early 1780s, one finds occasional reference to the "Protestant Episcopal Church of Maryland." *See supra* n. 16. But, significantly, after acceding to the Church's Constitution in 1789, it began referring to itself as "The Protestant Episcopal Church in the State of Maryland." *Viz, Journal of a Convention of the Protestant Episcopal Church in the State of Maryland Held in St. Paul's Church in the Town of Baltimore (Baltimore, 1789).*

<sup>24</sup> The English bishops required a testimony from the General Convention for prospective bishops, even providing the wording: "We whose names are under written, fully sensible how important it is that the sacred office of a Bishop should not be unworthily conferred, and firmly persuaded that it is our duty to bear our testimony on this solemn occasion without partiality or affection, do in the presence of almighty God, testify that A.B. is not, so far as we are informed, justly liable to evil report either for error in religion or for viciousness of life, and that we do not

53. Third, the General Convention in 1785 drafted a proposed Constitution, which in a modified form would be approved in 1789. This version included a series of “whereas” clauses that explained why such a General Convention was necessary:

“The...Deputies being now assembled, and taking into consideration the importance of maintaining uniformity in doctrine, discipline, and worship in the said Church, do hereby determine and declare: That there shall be a General Convention of the Protestant Episcopal Church in the United States of America....” *Id.* at 1: 21.

54. The General Convention, therefore, was to be the instrument to “maintain[] uniformity in doctrine, discipline, and worship” in the American Church. In the words of the Hon. Murray Hoffman, the leading Nineteenth-Century expert on Episcopal Church law:

“Now what could possibly achieve the object of maintaining uniformity in discipline and worship, but this principle of ultimate authority in some constitutional body? What else could fulfil the primitive law of unity and perfection in a national Church—what else could have met the exigencies of those days?”<sup>25</sup>

Further,

“From the foundation of Christianity, there has never been a Church without a body in which resided the ultimate and absolute power of government....It is

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know or believe there is any impediment or notable crime, on account of which he ought not to be consecrated to that holy office, but that he hath led his life, for the three years last past, piously, soberly, and honestly.” *Id.* at 1:55. It was only through such assurance that the English bishops were able to persuade Parliament to pass “An Act to empower the Archbishop of Canterbury, or the Archbishop of York, for the time being to consecrate to the Office of a Bishop, Persons being Subjects or Citizens of Countries out of His Majesty’s dominions.” This act presupposed that only bishops who were members of a larger Church would be eligible for such ordinations, and not individual bishops reflecting lone dioceses: “And be it furthermore enacted, that a certificate of such consecration shall be given under the hand and seal of the Archbishop who consecrates, containing the name of the person so consecrated, with the addition as well of the country whereof he is a subject or citizen, as of the Church in which he is appointed Bishop.” *Id.* at 1:56 (emphasis added). The candidates must be from organized churches, and not simply from independent dioceses.

<sup>25</sup> Murray Hoffman, A Treatise on the Law of the Protestant Episcopal Church in the United States (New York: Stanford and Swords, 1850) at 114.

anomalous and contradictory to speak of such a Church without it. When then, in 1789, the whole Church of the United States, through its competent representatives, declared, 'there shall be a General Convention of the Protestant Episcopal Church in the United States,' it enunciated the great principle that this was a national Church, and that such a Convention was to be its highest Council. The mere act of establishing this Council involved and attached to it every power inherent in such a body, and not expressly refused to it." *Id.* at 54.

The role of the General Convention in securing uniformity in worship and discipline was for Hoffman the crowning achievement of the organizational period.

55. The General Convention met twice in 1786, in Philadelphia in June and Wilmington, Delaware, in October. In both meetings, the authority of the General Convention over the state conventions was reasserted. One such instance involved the ratification of the Book of Common Prayer. The General Convention of 1785 had invited the state conventions to comment on proposed changes to the Prayer Book, and the result was a cacophony of voices and liturgical diversity. As William White described, this evidenced "the necessity of a duly constituted ecclesiastical body"; moreover, a system in which the individual states exercised controlling authority "appeared so evidently fruitful of discord and disunion, that it was abandoned from this time." White, *Memoirs, supra* at 115 (emphasis added). Hence, Article IX of the proposed Constitution was reworked to permit state conventions to determine whether to use the proposed revised Prayer Book only until "further provision is made, in that case by the first General Convention which shall assemble with sufficient power to ratify a Book of Common Prayer for the Church in these States." JGC 1786 at 1:42. This declaration of the authority of the General Convention alone to adopt changes in the Book of Common Prayer was crucial in asserting the national nature of the Church.

56. The General Convention meeting in Wilmington in 1786 approved the election and credentials of William White of Pennsylvania and Samuel Provoost of New York to the

episcopate and sanctioned them to proceed to England to be ordained. Significantly, however, the Convention rejected William Smith of Maryland. Although he had been elected by the church in Maryland, the Convention had doubts about his morality and refused to sign a testimonial. Smith never became a bishop. Hence, from the very beginning the General Convention exercised final authority on who might become a bishop.<sup>26</sup>

57. The General Convention meeting in Philadelphia in 1786 also rewrote Article XI of the proposed Constitution to state that the Constitution would be ratified not by the individual state conventions, but by the General Convention itself. The 1785 wording had stated that “This General Ecclesiastical Constitution, when ratified by the Church in the different States, shall be considered fundamental, and shall be unalterable by the convention of the Church in any State.” JGC 1785 at 1: 23. After rewriting, it provided:

“This Constitution of the Protestant Episcopal Church in the United States of America, when ratified by the Church in a majority of the States assembled in General Convention, with sufficient power for the purpose of such ratification, shall be unalterable by the Convention of any particular State, which hath been represented at the time of said ratification.” JGC 1786 at 1: 40 (emphasis added).

58. Significantly, just as under White’s Case in 1782, no ultimate rights were reserved for the states or the dioceses. This decision was remarkable in that it flew in the face of the overwhelming political sentiment of the time. Whereas other organizations regularly expressed a fear of centralization and emphasized that power should be kept on the lowest level possible,

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<sup>26</sup> See the extensive correspondence reproduced in William Stevens Perry, ed., Historical Notes and Documents Illustrating the Organization of the Protestant Episcopal Church in the United States of America (Claremont, NH: The Claremont Manufacturing Co., 1874) at 334-341.

Episcopalians chose a different course. As a cardinal example, the General Convention would ratify its own Constitution!<sup>27</sup>

B. The Connecticut Experience

59. While William White and the Episcopalians of the southern and middle states were planning to organize by means of a General Convention, some Episcopalians in the northern states were acting on a different front. In response to the publication of White's Case, which called for the organization of The Episcopal Church before bishops could be secured, Episcopalians in Connecticut, New York, and Massachusetts argued that the office of the bishop was essential for any church organization. Despite this difference, they held the same view as their southern counterparts of the preeminence of a national church over its dioceses.

60. In 1783, Connecticut clergy elected Samuel Seabury to seek episcopacy from the Church of England. Although elected by the clergy of Connecticut, he was always understood to be representing a larger community. For example, Seabury's application for the episcopacy received the testimonial of clergy from New York.<sup>28</sup> One contemporary described the office he sought as "Bishop for America."<sup>29</sup>

61. For a variety of reasons, the English bishops refused Seabury's request. Seabury did, however, receive the support of the unestablished (and politically marginal) Episcopal Church of Scotland, which consecrated him to the episcopate.

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<sup>27</sup> The authors of the "Bishops' Statement" (p. 6) thus err in claiming that "our first Constitution was ratified by the preexisting state (diocesan) churches."

<sup>28</sup> Francis L. Hawks and William Stevens Perry, ed., Documentary History of the Protestant Episcopal Church in the United States of America, 2 vols. (New York: James Pott, 1864) at 2:217.

<sup>29</sup> E. E. Beardsley, Life and Correspondence of the Right Reverend Samuel Seabury, D.D. (Boston: Houghton, Mifflin and Co, 1881) at 104.



62. Once consecrated by the Episcopal Church of Scotland, Seabury's actions confirmed that he regarded himself, and was regarded, as a bishop of the American Church. For example, he claimed the right to ordain candidates from states other than Connecticut. Among his early ordinands, two were from New Jersey, and one was a candidate from Maryland.<sup>30</sup>

63. Thus, when Seabury and his supporters from Connecticut and Massachusetts joined the General Convention in 1789 and signed the newly-adopted Constitution, they did so not in the spirit of an autonomous diocese, but as representing a part of The Episcopal Church. In order to accommodate Seabury and the New England churches, the Constitution was modified to reflect their view of the importance of the episcopate, by allowing a separate House of Bishops and making lay deputies optional. No modification was made, however, affecting the powers of the General Convention vis-à-vis the rest of the Church.

64. Unlike the representatives from the Church in the other states, Seabury and his supporters had not been officially chosen to represent the Church in their states at the 1789 General Convention. For this reason, on October 1, 1790, the Convocation of the Episcopal clergy of Connecticut affirmed a resolution stating, "we confirm the doings of our Proctors in the General Convention at Philadelphia, on the 2d day of October 1789."<sup>31</sup> Also in 1790, the clergy in Connecticut formally adopted the Constitution and Prayer Book. However, even before this action was taken, Seabury urged the clergy in that state to use the Prayer Book that had been adopted by the General Convention in 1789.<sup>32</sup> And, in 1792, the convention of the Protestant

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<sup>30</sup> Beardsley, Seabury, *supra*, at 238.

<sup>31</sup> Joseph Hooper, ed., Diocese of Connecticut: The Records of Convocation, A.D. 1790-A.D. 1848 (New Haven, Printed for the Convention, 1904) at 35.

<sup>32</sup> Paul Victor Marshall, One Catholic and Apostolic: Samuel Seabury and the Early Episcopal Church (New York, 2004) at 261-63.

Episcopal Church in Connecticut decreed that a congregation that did not approve the “the Constitution of the Protestant Episcopal Church as settled by the General Convention at Philadelphia in October 1789” could not be a member of The Episcopal Church in Connecticut.<sup>33</sup>

C. Conclusion

65. The goal of Episcopalians in the organizational period was the creation of a national Church with an authoritative General Convention. A national church was crucial for the continuance of the Episcopal Church in America. Only such an organization could assure a united Church and the reception of the episcopate from the Church of England. Significantly, in 1801 General Convention adopted the Articles of Religion, including Article XXXIV with its claim that “every particular or national Church hath authority to ordain, or change Ceremonies or Rites of the Church.” The Episcopal Church had organized itself, among other reasons, to adopt and revise its liturgy.

III. THE HIERARCHICAL NATURE OF THE EPISCOPAL CHURCH WAS REFLECTED IN THE 1789 CONSTITUTION AND CANONS.

66. The Constitution of The Episcopal Church as it developed between 1785 and 1789 was a unique document, in that it reflected a political vision far different from that in other contemporary political discourse. The Church’s first canons – adopted before the Constitution was ratified – echoed the same vision.

A. Relation of the General Convention to the Church Constitution

67. It is a common misunderstanding to assert parallels between the organization of The Episcopal Church and the federal government, and to interpret the Church Constitution in terms of the federal Constitution of the United States. The Federal Constitution created and

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<sup>33</sup> Diocese of Connecticut: The Records of Convocation A.D. 1790 - A.D. 1848 at 40-41.

empowered the structures of the national government (*i.e.*, Congress, the Executive, and the courts), carefully delineating their powers. Judges and others speak of certain legislative acts as being “unconstitutional,” *i.e.*, not authorized by the Constitution. This has not been the case with the Church: The Church’s Constitution was a product of the General Convention and was never intended to limit the power of the General Convention.<sup>34</sup>

68. Rather than the creation and empowerment of the General Convention, the Church Constitution’s primary goal was to ensure continuing meetings of the General Convention – whose existence and authority was assumed. As William White explained, the Constitution was expressly written so that further meetings of the General Conventions would occur:

“In order that the present convention might be succeeded by bodies of the like description, they framed an ecclesiastical constitution....” White, *Memoirs, supra*, at 24.

69. None of the actions taken at the first meeting of the General Convention was explicitly authorized by any language found in the Constitution. The General Convention acted on its own authority and did so for the well-being of the Church. The Constitution gave no indication of how and by whom episcopacy would be extended to the fledgling Church. Instead, the General Convention assumed the authority, just as it had in authoring a Constitution.

70. This unique relationship of the Convention to the Constitution gave to the Church Constitution a number of distinctive aspects.

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<sup>34</sup> This is one of the fundamental errors of McCall’s reading of the Church’s Constitution and canons, and his claim that certain canonical actions should be seen as unconstitutional. See “Is the Episcopal Church Hierarchical,” pp. 3 and 21ff. A far better understanding of the Constitution and canons is found in James A. Dator’s dissertation, “Government in the Protestant Episcopal Church in the United States of America—Confederal, Federal or Unitary,” (Ph.D. diss., American University, 1959). Dator, after exhaustive independent analysis, finds the polity of the Church to be “unitary” and thus purely hierarchical.