

Dear Bishops Allison, Benitez, Dickson, Wantland and Wood:

On July 14, four of you released via electronic mail “An Open Letter to Executive Council,” which raised some concerns about “recent actions of the Executive Council” and about litigation in which The Episcopal Church has been engaged. On August 27, with a fifth Bishop added on, you released “A Second Open Letter” to Council that raised some of the same points and noted that you had received no reply to the first “open letter.”

Of course you will appreciate that Council had not met between the dates of these two communications, which explains the lack of response to the first.

Council now has met and discussed this matter and has asked us, as chairs of the two relevant standing committees of Council, to respond.

I.

Your first “Open Letter” does not identify the “recent actions” of Council about which concerns were expressed. The next sentence of the letter refers to “leveling charges and threats of litigation at four dioceses of the Episcopal Church,” but this language does not help identify the “recent actions” you are referring to. In any event, Council has taken no action that “levels charges” or “threats” at any diocese.

If the letters refer to Resolution NAC 023, which was adopted at Council’s meeting held June 11-14, 2007, a review of the action taken by Executive Council may help clarify any misperceptions. The Resolution is entitled “Accession of Dioceses to the Constitution of The Episcopal Church.” It states as follows:

“Resolved, That the Executive Council, meeting in Parsippany, New Jersey from June 11-14, 2007, reminds the dioceses of The Episcopal Church that Article V, Section 1 of the Constitution of The Episcopal Church requires each Diocese to have a Constitution which shall include ‘an unqualified accession to the Constitution and Canons of this Church’; and be it further

“Resolved, That any amendment to a diocesan Constitution that purports in any way to limit or lessen an unqualified accession to the Constitution and Canons of The Episcopal Church is null and void; and be it further

“Resolved, That the amendments passed to the Constitutions of the Dioceses of Pittsburgh, Ft. Worth, Quincy, and San Joaquin, which purport to limit or lessen the unqualified accession to the Constitution and Canons of The Episcopal Church, are accordingly null and void and the Constitutions of those dioceses shall be as they were as if such amendments had not been passed.”

The “Explanation” states as follows:

“Some dioceses of The Episcopal Church have purported to pass amendments to their diocesan Constitutions that repeal or limit the extent to which those dioceses are subject to the Constitutions and Canons of The Episcopal Church. The Dioceses of Pittsburgh, Ft. Worth, Quincy, and San Joaquin have done so, and other dioceses have taken initial steps to do so. Because such actions violate the Constitution of The Episcopal Church as a whole, they can have no force or effect and must accordingly be considered as completely ineffective.”

If this is indeed the action that motivated your first “open letter,” you will see that it does not “level charges” or “threaten litigation.” Instead, the Resolution simply reminds people of something we believe is obvious, namely, that the very essence of a Diocese of this Church is that it has stated its “unqualified accession” to the Constitution and Canons of this Church: Article V, Section 1, of the Constitution of The Episcopal Church states very plainly that when a new Diocese is formed, “after consent of the General Convention,” the new Diocese must file with the Secretary of the General Convention “a certified copy of the duly adopted Constitution of the new Diocese,” which must “include an unqualified accession to the Constitution and Canons of this Church” Upon approval of the Diocesan Constitution by the Executive Council, “such new Diocese shall thereupon be in union with the General Convention.” See also Canon I.10.4.

In enacting Resolution NAC 023, as the Explanation states, Council was motivated by the actions of several Diocesan Conventions that purported to qualify their previously stated accessions to the Constitution and Canons of this Church. These are alarming actions.

Although this Resolution, contrary to the language in your “open letter,” does not contain “threats of litigation,” it is the case that Canon I.17.8 provides that

“Any person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with Constitution and Canons of this Church and of the Diocese in which the office is being exercised.”

Moreover, any violation of the Constitution or Canons of the General Convention by a “Bishop, Priest, or Deacon of this Church” is a presentable offense. Canon IV.1.1(e).

We very much hope and pray that there will be no further occasion to refer to these provisions.

II.

Your “open letters” also make reference to litigation in which The Episcopal Church is engaged, and you express your deep unhappiness with that litigation.

Please be assured that Executive Council shares your unhappiness. We are quite frankly stunned to learn of the actions of priests and lay leaders who undertake to leave

The Episcopal Church and yet to maintain control and ownership of church buildings and other assets that belong to the Church and have been held by them only in trust.

As you know, that Canons of the Church are very plain on this subject. The first sentence of Canon I.7.4 states unequivocally that

“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.” See also Canons I.7.5 and II.6.4.

Canon I.7.4 goes on to state

“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.” (Emphasis added.)

In case after case, state and federal courts have ruled that, inasmuch as The Episcopal Church is a “hierarchical church,” its decisions must be respected by the courts. This means that the Canons quoted above must be honored by church leaders, and if they are not so honored the courts will enforce them. We do not understand how, in the face of this clear canonical language and the long line of precedent, priests and lay leaders, and the lawyers who advise them, insist on retaining title to the property of a Parish even as the individuals decide to leave The Episcopal Church. If they leave, they leave as individuals, and the property remains part of the Church they have left.

If these persons would acknowledge the undisputed provisions of the Canons, and the court cases enforcing them, there would be no need for litigation, and there would be no need for The Episcopal Church or its Dioceses or its Parishes to expend on litigation funds that should be devoted to the mission of the Church.

We have no knowledge of the amounts that are spent by Dioceses and Parishes on this litigation. As for the “national” Church, we know the amounts expended (none from the Church Pension Fund), and we also know of the many hours of lawyer time that have been donated at no charge to the Church. As it happens, we are both lawyers with very many years of experience with state and federal court litigation. We give you our professional opinion that the Church is receiving extraordinary value for the funds it does expend.

III.

We reiterate that the Executive Council has no wish or intention to “level charges” or to “threaten litigation.” But we and the Presiding Officers have a responsibility to protect the assets of The Episcopal Church and to preserve its structure.

That structure, as set forth in the Constitution and Canons, confers on the General Convention the sole authority to make changes in the identity and responsibilities of Dioceses. Unilateral actions by Diocesan leadership that are contrary to the Constitution and Canons should not be tolerated by any active or retired Bishop. We hope and pray that such unilateral actions, and the litigation that these actions trigger, can come to a peaceful end.

Very truly yours,

Josephine Hicks
Chair, Executive Council Standing
Committee on Administration and Finance

John Vanderstar
Chair, Executive Council Standing
Committee on National Concerns