

**IN THE MATTER OF
THE EPISCOPAL CHURCH v. THE RT. REV. WILLIAM H. LOVE**

**OPPOSITION OF THE CHURCH TO RESPONDENT'S
CROSS MOTION FOR SUMMARY JUDGMENT AND
MOTION TO VACATE RESTRICTION ON MINISTRY
and
BRIEF IN SUPPORT**

The Episcopal Church (Church) respectfully opposes the Cross Motion of the Rt. Rev. William H. Love (Respondent) for Summary Judgment and Respondent's Motion to Vacate the Restriction on Ministry (Respondent's Motions).

For the reasons set forth in the Church's Brief below, the Church moves that the Hearing Panel deny the Respondent's Motions and grant summary judgment on the claim of the Church in its Motion for Summary Judgment and Brief in Support (collectively, "Church's Motion") that the Respondent has failed to abide by the promises made at his Ordination as a bishop in violation of the standard of conduct established in Canon IV.4.1(c).

TABLE OF CONTENTS

I. INTRODUCTION 1

II. RESPONDENT’S MOTION TO VACATE THE RESTRICTION ON MINISTRY IS NOT PROPERLY BEFORE THE HEARING PANEL AT THIS TIME 2

III. RESPONDENT’S PASTORAL DIRECTION VIOLATED ARTICLE X AND CANON II.3.6 3

 A. The Underlying Purpose and the Text of Resolution B012 Establish that the Authorized Marriage Rites were Intended as Proposed Revisions of the Book of Common Prayer 3

 B. The Terms of Resolution B012 Were Linked to the Ongoing Prayer Book Revision Process 5

 C. Accepting Respondent’s Position Would Require the Hearing Panel to Overturn a Duly Adopted Act of the General Convention 6

 D. Respondent’s Claims are Based on Extrinsic Evidence Consisting of Press Releases and a News Account Commenting on Language in the Original Version of Resolution B012 that Subsequently was Materially Amended During the Legislative Process..... 7

 E. Respondent’s Intentional Noncompliance with Resolution B012 Violated Constitution Article X and Canon II.3.6 8

IV. NEITHER RESOLUTION B012 NOR CANON I.8 VIOLATES THE DOCTRINE OF THE CHURCH 9

 A. Matters Concerning Marriage are not Within the Scope of Doctrine as Defined in Canon IV.2 9

 B. The Doctrinal Teaching of The Episcopal Church Affirms that Both Same-Sex and Opposite-Sex Couples May Celebrate the Sacramental Rite of Marriage 11

V. THE ALBANY MARRIAGE CANONS ARE INCOMPATIBLE WITH CANON I.18 CONCERNING SAME-SEX MARRIAGE 12

 A. The Albany Marriage Canons Conflict with Canon I.18 by Prohibiting Albany Clergy from Officiating at Same-Sex Liturgies 12

 B. The Albany Marriage Canons Have Lacked Legal Force Concerning Same-Sex Marriage Since I Advent 2015 14

 C. Canon I.18 and Resolution B012 Require that Members of the Clergy in All Dioceses Must be Permitted to Use the Authorized Marriage Rites 16

VI. THE RUBRICS IN THE MARRIAGE RITES OF THE 1979 PRAYER BOOK ARE NOT A CANONICAL BARRIER TO THE AUTHORIZED MARRIAGE RITES 16

VII. RESOLUTION B012 NEITHER NULLIFIES NOR REQUIRES THE RELINQUISHMENT OF EPISCOPAL AUTHORITY OF DIOCESAN BISHOPS 19

VIII. BY DENYING ACCESS TO THE AUTHORIZED MARRIAGE RITES TO SAME-SEX COUPLES RESPONDENT HAS FAILED TO CONFORM TO THE WORSHIP OF THE EPISCOPAL CHURCH..... 20

IX. CONCLUSION..... 22

I. INTRODUCTION

The following brief supports the motion of the Church that the Hearing Panel (i) deny the Respondent's Cross Motion, (ii) grant summary judgment for the Church that the Respondent committed a Title IV Offense by not abiding by the promises made at his Ordination, and (iii) take no action at this time on the Respondent's Motion to Vacate the Partial Restriction on the Ministry of the Respondent. These promises include the promise made by the Respondent at his ordination "to conform to the Doctrine, Discipline, and Worship of The Episcopal Church."

In this Brief, the Church reaffirms its specific claims, as expressed in the Motion of the Church for Summary Judgment, that the Respondent has failed to conform to the Discipline of the Church and the Worship of the Church in the following respects:

1. The Respondent has failed to conform to the Worship of the Church by repudiating the application of Resolution B012 in the Diocese of Albany and by issuing a pastoral direction forbidding clergy in the Diocese of Albany from using the same-sex marriage rites authorized by Resolution B012.
2. The Respondent has failed to conform to the Discipline of the Church by issuing a pastoral direction, in conflict with the provisions of Canon I.18, that forbids all clergy in the Diocese of Albany from solemnizing the marriage of same-sex couples.
3. The Respondent also has failed to conform to the Discipline of the Church by repudiating and failing to comply with Resolution 2018-B012, in violation of Constitution Article X and Canon II.3.6, which provide for General Convention's

authorization of trial use of liturgies proposed as revisions of the Book of Common Prayer.

II. RESPONDENT'S MOTION TO VACATE THE RESTRICTION ON MINISTRY IS NOT PROPERLY BEFORE THE HEARING PANEL AT THIS TIME

On January 11, 2019 the Most Reverend Michael B. Curry, Presiding Bishop of The Episcopal Church, issued a Partial Restriction on the Ministry of the Respondent (ROM) (Exhibit A). The ROM was directly related to the Respondent's issuance of a Pastoral Letter and Pastoral Directive on November 10, 2018 (Pastoral Direction). For the following reasons, the Hearing Panel should take no action on the Respondent's Motion to Vacate the ROM at this time:

- Respondent's Motion to Vacate is beyond the scope of the Summary Judgment proceedings before the Hearing Panel. Further, the applicable sections of Canon IV.7 (*i.e.*, IV.7.10 – IV.7.12) (Exhibit B) contemplate that Hearing Panel consideration of action relating to any pertinent restriction of ministry or pastoral direction is to take place separately from the hearing on the merits of the charges brought by the Church.
- By its terms, the ROM continues "until any Title IV matter pending against Bishop Love is resolved." In light of the stated duration of the ROM, the ROM will expire by its terms upon the completion of this Title IV proceeding, and no separate action on the ROM by the Hearing Panel may be necessary at that time. Any consideration by the Hearing Panel concerning the ROM should be separate from these Summary Judgment proceedings.

III. RESPONDENT’S PASTORAL DIRECTION VIOLATED ARTICLE X AND CANON II.3.6

A. The Underlying Purpose and the Text of Resolution B012 Establish that the Authorized Marriage Rites were Intended as Proposed Revisions of the Book of Common Prayer

The underlying purpose for promulgating the Authorized Marriage Rites was to address the necessity for providing permanent marriage liturgies incorporating the 2015 amendment of Canon I.18 that authorized same-sex marriage within The Episcopal Church.

During the four decades since the adoption of the 1979 Prayer Book, General Convention has approved or authorized the use of a large volume and a wide variety of liturgical texts for use in Episcopal Church worship. These liturgies range from short-term authorization for the use of various COCU liturgies in the 1980s to Lesser Feasts & Fasts and its successor volumes to liturgies in the Enriching our Worship Series. None of these liturgies was approved for use pursuant to Article X of the Constitution. Indeed, in 2012 when General Convention approved a liturgy for the blessing of same-sex relationships, it did not invoke the authority of Article X¹.

The adoption of revisions to Canon I.18, however, necessitated the inclusion in the Prayer Book of liturgical rites embodying the doctrinal teaching of The Episcopal Church that was the foundation for the 2015 revisions to Canon I.18. The current use of the trial liturgies authorized

¹ General Convention is well-acquainted with the expression of approval for the use of liturgies other than for the purpose of revising the Book of Common Prayer. In fact, since 1976, General Convention only rarely has invoked the provisions of Constitution Article X that authorize approval of worship liturgies for trial use as revisions of the Book of Common Prayer. During that time, it has been common for the General Convention to commend, approve or authorize the use of a large number and range of liturgical material, including many additions to commemorations associated with the Calendar, and a large number of liturgical resources such as those included in *Lesser Feasts and Fasts*; *Holy Women, Holy Men*; and *Enriching Our Worship*.

Respondent’s Reply Brief devotes extended attention to the practical reality that the Constitution and Canons of The Episcopal Church do not establish an explicit “vessel” to contain liturgies that General Convention approves as other than proposed revisions of the Book of Common Prayer. Respondent makes note of several efforts to amend the Constitution. Because it is clear that the liturgies authorized by Resolution B012 constitute proposed revisions of the Book of Common Prayer, it is not necessary to address this discussion in Respondent’s Reply Brief.

by Resolution B012 (Authorized Marriage Rites) in 100 of the 101 domestic dioceses of The Episcopal Church demonstrates that the essential need for the Authorized Marriage Rites is no mere hypothetical proposition.

Both the text and purpose of Resolution B012 (Exhibit C) and the context surrounding its adoption establish that Resolution B012 was adopted for the purpose of revising the Book of Common Prayer. General Convention's statement within the text of the first two resolves in Resolution B012, that the rites are authorized "in accordance with Article X of the Constitution and Canon II.3.6" conclusively establishes that these rites are authorized for the purpose of revising the Book of Common Prayer².

Respondent's Brief in Support of Cross Motion and Opposition to the Church's Motion (Respondent's Reply Brief) twice notes that Resolution B012 was "heavily amended" during the legislative process. Despite the intensive attention that Resolution B012 received on the floors of both houses of the General Convention and in their respective legislative committees, there was no change to the invocation of Article X's authority during the legislative process. The Church is not aware of any indication that the authorization of the Authorized Marriage Rites as proposed revisions of the Book of Common Prayer was controversial during the 79th General Convention. It cannot credibly be contended either that General Convention didn't know what it was doing or that Resolution B012 somehow slipped through the legislative process without intensive scrutiny.

² Article X speaks with a generality typically found in constitutional instruments that are intended to have governing authority for a long period of time. Neither Article X nor Canon II.3.6 specify any particular language that is required to be included in actions by General Convention that carry out the authority grounded in Article X for General Convention to authorize trial liturgies for the purpose of Prayer Book revision. For example, there is no legal or canonical difference associated with whether a General Convention resolution authorizing liturgies for trial use under Article X uses the words "in accordance with Article X of the Constitution and Canon II.3.6" (as in Resolution B012), or the words "pursuant to Article X(b) of the Constitution" as in Resolution 2018-D078.

B. The Terms of Resolution B012 Were Linked to the Ongoing Prayer Book Revision Process

Among the matters of great importance and interest before the 79th General Convention was the ongoing work of liturgical and Prayer Book revision. In 2015, General Convention had directed the Standing Commission on Liturgy and Music to prepare a plan for the comprehensive revision of the current Book of Common Prayer; in 2018 General Convention adopted Resolution 2018-A068 creating a Task Force on Liturgical and Prayer Book Revision.

Having launched the process of Prayer Book revision, General Convention necessarily was faced with the need to resolve whether any pending proposed revision of the Book of Common Prayer should proceed separately from or in conjunction with the formal process of comprehensive Prayer Book revision. The General Convention chose the latter of these alternatives³.

The General Convention in 2018 adopted two resolutions authorizing trial use of liturgies constituting proposed revision of the Book of Common Prayer. In addition to the trial use of the Authorized Marriage Rites included in Resolution B012, General Convention adopted Resolution 2018-D078 (Exhibit D). Resolution 2018-D078 authorized trial use of *The Holy Eucharist: Rite II, including Eucharistic Prayers A, B, and D (Expansive Language)*.

Notably, the period of trial use is the same in both Resolution B012 and Resolution D078: “the period of trial use for these liturgies shall extend until the completion of the next comprehensive revision of the Book of Common Prayer.” General Convention’s establishment of

³ The practice of authorizing liturgies for trial use in conjunction with comprehensive revision of the Prayer Book reflects the practice used in the Church during the last such effort that took place between 1964-1979. The Constitutional concept of authorized “trial rites” became a part of the Constitution in 1964. A succession of trial rites, including Liturgy of the Lord’s Supper (1967), Services for Trial Use (1970), Authorized Services (1973) preceded the Draft Proposed Book of Common Prayer (1976) preceded the adoption of the 1979 Prayer Book.

explicit linkage between Resolution B012 and the ongoing work of the Task Force on Liturgical and Prayer Book Revision provides further substantiation that General Convention's act of adopting Resolution B012 was consciously intended to authorize the trial use of proposed revisions of the Book of Common Prayer under Constitution Article X and Canon II.3.6.

C. Accepting Respondent's Position Would Require the Hearing Panel to Overturn a Duly Adopted Act of the General Convention

Although Respondent's Reply Brief does not bring attention to the issue, a decision by the Hearing Panel to adopt Respondent's position that the liturgies authorized by Resolution B012 are not proposed revisions of the Book of Common Prayer would, at least for the purpose of this Title IV matter, either effectively revise or overturn the act of General Convention in adopting Resolution B012. At a minimum, such a holding would cast doubt on the validity of Resolution B012 for other purposes. In addition, the Church notes that there is no evident canonical authority for Hearing Panels to take such action.

When courts of law in the United States confront challenges to official actions in similar circumstances, they often invoke a historic evidentiary maxim of Anglo-American law commonly known as the Presumption of Regularity.⁴ The Presumption of Regularity calls for a tribunal to make a presumption as to the due legitimacy and regularity of a challenged official action unless the absence of regularity can be demonstrated.⁵ As addressed elsewhere, the Respondent's Reply Brief makes much of statements on behalf of the proposers of the original version of Resolution B012 before the 79th General Convention had even convened to do business. However, the Respondent does not suggest any procedural or other irregularity in the

⁴ The presumption of regularity derives from a legal maxim in Anglo-American law of "*omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium*," a phrase understood to mean: All things are presumed to have been done rightly and with due formality unless it is proved to the contrary." Black's Law Dictionary (4th ed. 1976).

⁵ Id.

legislative process at General Convention that would overcome the Presumption of Regularity of Resolution B012. There is no reason to do other than give effect to the literal text and the plain meaning of Resolution B012 as legislation duly adopted to authorize trial use of proposed revisions of the Book of Common Prayer.

D. Respondent’s Claims are Based on Extrinsic Evidence Consisting of Press Releases and a News Account Commenting on Language in the Original Version of Resolution B012 that Subsequently was Materially Amended During the Legislative Process

Respondent’s Reply Brief asserts that “Resolution B012 was not a ‘proposed revision’ of the Book of Common Prayer.” In substantiation of that claim, Respondent cites (i) a press release published by the diocese of one of the proposers of the original form of Resolution B012 dated June 28, 2018, (ii) a quote from the issue of *The Living Church* dated July 3, 2018, noting that “Resolution B012 offers open-ended trial use without any eventual amendment of the Book of Common Prayer,” and (iii) a quote from an Episcopal News Service (ENS) press release on July 9, 2018 that “the original B012 would have continued trial use of the two trial-use marriage rites without a time limit and without seeking a revision of the prayer book.”

None of these purported sources substantiates the Respondent’s claim that Resolution B012 is not a proposed revision of the Book of Common Prayer but, instead, some kind of supplemental liturgy not adopted under the authority of Constitution Article X and Canon II.3.6. Both the June 28, 2018 press release concerning Resolution B012 by a proposer of the original version of that resolution and the July 3, 2018 issue of the Living Church pre-date the opening of the 79th General Convention on July 5, 2018 and thus neither of these sources reflected any action taken during the legislative process of the 79th General Convention. The ENS press release dated July 9, 2018 was issued four days before the final adoption of Resolution B012 on July 13,

2018—and therefore could not reflect the completed legislative process during which Resolution B012 was “heavily-amended.”

Finally, the material in Respondent’s Reply Brief from both the *Living Church* article and in the ENS press release is heavily focused on the provision in the original version of Resolution B012 that the authorized period of trial use was to be “without time limit.” In conjunction with this discussion, the Respondent’s Reply Brief makes the erroneous claim that this detail from the original version of Resolution B012 “was not changed” during the legislative process (Respondent’s Reply Brief at p. 7). As noted above, the final version of Resolution B012, as adopted, provided that “the period of trial use for these liturgies shall extend until the completion of the next comprehensive revision of the Book of Common Prayer.”

E. Respondent’s Intentional Noncompliance with Resolution B012 Violated Constitution Article X and Canon II.3.6

The Church’s Motion contends that Resolution B012 is enabling legislation anticipated and authorized by Constitution Article X and Canon II.3.6 and that, for this reason, Respondent’s noncompliance with Resolution B012 constitutes a failure to comply with Canon II.3.6. As such, the Church’s Motion asserts that the Respondent’s noncompliance constituted a violation of the Discipline of the Church as that term is defined in Canon IV.2.

The Respondent’s Reply Brief acknowledges that the Respondent’s Pastoral Direction was contrary to the intention of Resolution B012 (Respondent’s Reply Brief at p. 8). The Respondent sought to establish that this violation of Resolution B012 did not constitute a violation of the Discipline of the Church because Resolution B012 was not a proposed revision of the Book of Common Prayer and therefore was not adopted under the authority of Constitution Article X and Canon II.3.6.

For the reasons set forth above, Respondent has failed to establish its claim that Resolution B012 was not a proposed revision of the Book of Common Prayer adopted pursuant to Constitution Article X and Canon II.3.6. The Church reaffirms its claim that Resolution B012 was duly adopted pursuant to Constitution Article X and Canon II.3.6 and that Respondent's noncompliance with the requirements of Resolution B012 violates the Discipline of the Church as defined in Canon IV.2.

IV. NEITHER RESOLUTION B012 NOR CANON I.8 VIOLATES THE DOCTRINE OF THE CHURCH

The Church does not contend that the Respondent has engaged in conduct in violation of the Doctrine of the Church in violation of Canon IV.4.1(c). The Church claims that the Respondent's actions, including the issuance of the Pastoral Direction, violate the Discipline and Worship of the Church.

One of the principal foundations of Respondent's defense is the claim that the current Doctrine of the Church prohibits the use of same-sex marriage rites. For the reasons set forth below, the Church disagrees and urges that the Hearing Panel reject Respondent's claim to the contrary.

A. Matters Concerning Marriage are not Within the Scope of Doctrine as Defined in Canon IV.2

For the purposes of Title IV matters, Canon IV.2 specifies that "Doctrine shall mean the basic and essential teachings of the Church and is to be found in the Canon of Holy Scripture as understood in the Apostles and Nicene Creeds and in the sacramental rites, the Ordinal and Catechism of the Book of Common Prayer." This definition of Doctrine, which General Convention added to Canon IV.2 in 1997, essentially codifies the holding concerning the meaning of Doctrine that was included in the decision of the Court for the Trial of a Bishop on

May 15, 1996 in the Title IV proceeding against the Rt. Rev. Walter Righter. Ecclesiastical charges had been brought against Bishop Righter based on the allegation that his ordination to the priesthood of a “practicing non-celibate homosexual person” violated the Doctrine of The Episcopal Church in violation of Title IV. The Court’s opinion in that matter can be found beginning on page 70 of the Supplement to the Respondent’s Reply Brief.

The opinion of the Court in the Righter matter is among the most definitive sources of authority concerning what constitutes Doctrine for purposes of Title IV. Briefly stated, the Righter Court concluded that for purposes of Title IV, it is critical to distinguish between what it called “Core Doctrine” and what is variously labeled as the Church’s teaching, “the didache,” “doctrinal teaching,” or “traditional teaching.” Core Doctrine is understood to include the essence of Christianity and what necessary for salvation and is therefore binding on all who are baptized—and is unchangeable. Core Doctrine, the Court concluded, constitutes the Doctrine that is enforceable under Title IV.

The Righter Court held that doctrinal teachings of the Church are very important, yet subject to changes in context over time:

Alongside the Core Doctrine through the ages has stood the Church's teaching, the didache. Various sources, including documents submitted to the Court, call this teaching 'doctrine,' 'doctrinal teaching,' and 'traditional teaching.' The terms are frequently used interchangeably...Doctrinal teachings are of vital importance for the life of the Church. They are the deposit of the Church's tradition from age to age, understood and expounded by the gift of reason which integrates the lived experience of the people of God in particular times and places, under the guidance of the Holy Spirit.” (Respondent’s Supplement at p. 74)

...

The Court understands that doctrinal teaching in the broad sense includes belief, practice, faith, and morals. Stability of doctrinal teaching is important for the order and unity of the Church. Nevertheless, the context in which we live, worship and carry out our ministry does change. As the context changes, the Church's teaching may also change in order to guide us in living the Christian life as we face new circumstances and

understandings. Changes in doctrinal teaching must always seek to be in conformity and obedience to the Core Doctrine as interpreted by the Church in its corporate capacity. (Respondent's Supplement at p. 75)

Of importance to the present proceeding, the Righter Count specifically considered the place of marriage in the doctrinal hierarchy:

Similarly, the Church for generations also interpreted New Testament passages on divorce and remarriage as a fixed and unchangeable law which prohibited remarriage in the Church after divorce. We have come to see and understand that marriages can die and even be places of destruction which may justify their termination. Furthermore, as the Episcopal Church now recognizes, remarriage in the light of the Gospel can be a new beginning grounded upon God's forgiveness and reconciliation. (Respondent's Supp. at p. 75)

The Church asserts that the Righter Court's characterization of Church's teachings on marriage as within the scope of "doctrinal teaching" rather than Core Doctrine should apply in this Title IV matter. The opinion of the Righter Court stands as the most authoritative expression on issues of Doctrine under Title IV. The reasoning in the Righter decision on the issues it considers is well-documented, researched and persuasive. The stature of the decision of the Righter Court concerning issues of Doctrine under Title IV is further evidenced by the Respondent's reliance on this decision. The Hearing Panel should defer to the Righter Court's reasoning and conclusions pertaining to the character of marriage as doctrinal teaching and not Core Doctrine.

B. The Doctrinal Teaching of The Episcopal Church Affirms that Both Same-Sex and Opposite-Sex Couples May Celebrate the Sacramental Rite of Marriage

In the two decades between the Righter case and the amendment of Canon I.18 in 2015, the Church, after study, prayer, listening, and holy discernment, at the 77th General Convention in 2012 authorized for provisional use, under the direction and subject to the permission of the bishop exercising ecclesiastical authority, "The Witnessing and Blessing of a Lifelong Covenant" from "Liturgical Resources I: I Will Bless You and You Will Be a Blessing."

At the 78th General Convention in 2015, Resolution 2015-A036 was adopted to revise Canon I.18 to permit same-sex marriages and Resolution 2015-A054 was adopted to authorize two rites for same-sex marriage. Recognizing that the clergy and people of the Episcopal Church were not all of one mind concerning same-sex marriage, Resolution 2015-054 made the use of the same-sex liturgies “under the direction and with the permission of the bishop exercising ecclesiastical authority.”

The adoption of canonical amendments permitting same-sex marriage and authorizing rites for solemnizing those unions evidence the evolution and current position of the doctrinal teaching of The Episcopal Church on this issue.

V. THE ALBANY MARRIAGE CANONS ARE INCOMPATIBLE WITH CANON I.18 CONCERNING SAME-SEX MARRIAGE

A. The Albany Marriage Canons Conflict with Canon I.18 by Prohibiting Albany Clergy from Officiating at Same-Sex Liturgies

By their terms, the Albany Marriage Canons provide that all clergy canonically resident, resident, or licensed in the Episcopal Diocese of Albany (Albany Clergy) “shall neither officiate at, nor facilitate, nor participate in, any service...for the Celebration or Blessing of a Marriage or any other union except between one man and one woman.” The Church maintains that the Albany Marriage Canons are in direct conflict with Canon I.18 concerning liturgies for the marriage of same-sex couples. The direct conflict is illustrated by the following:

- Under Canon I.18 a member of the Clergy in the Episcopal Church (Member of the Clergy) who is willing⁶ to solemnize the marriage of a same-sex couple meeting the

⁶ Since at least 1904, the Canons have provided that all Members of the Clergy have possessed complete discretion to determine whether to solemnize or bless any marriage. Canon I.18.7 provides that “It shall be within the discretion of any Member of the Clergy of this Church to decline to solemnize or bless any marriage.” The continued applicability of this right is affirmed in Resolve 9 of Resolution B012.

canonical conditions⁷ for Holy Matrimony may marry that couple using the Authorized Marriage Rites.

- Under the Albany Marriage Canons, a Member of the Albany Clergy who is otherwise willing to solemnize the marriage of a same-sex couple meeting the canonical conditions for Holy Matrimony would be (i) precluded from doing so and (ii) subject to disciplinary charges for violating the Albany Marriage Canons and for violating the Pastoral Direction.

By prohibiting in the Diocese of Albany a sacramental act that is permissible throughout The Episcopal Church under Canon I.18 of the Canons of the General Convention, the Albany Marriage Canons directly conflict with the Canons of the General Convention. In fact, the Pastoral Direction's requirement to continue enforcement of the Albany Marriage Canons converts participation in the celebration of Holy Matrimony for a same-sex couple--an act of rightful discretion under the Canons of General Convention--to a canonical offense under the Albany Marriage Canons⁸. The Albany Marriage Canons cannot stand, nor may the Respondent rely on them.

⁷ Section 3 of Canon I.18 establishes the following requirements: Sec. 3. Prior to the solemnization, the Member of the Clergy shall determine: (a) that both parties have the right to marry according to the laws of the State and consent to do so freely, without fraud, coercion, mistake as to the identity of either, or mental reservation; and (b) that at least one of the parties is baptized; and (c) that both parties have been instructed by the Member of the Clergy, or a person known by the Member of the Clergy to be competent and responsible, in the nature, purpose, and meaning, as well as the rights, duties and responsibilities of marriage.

⁸ As stated in footnote 4 in the Church's Motion, among other variations from the requirements of Canon IV.7 (Exhibit B) for concerning pastoral directions, the Respondent's Pastoral Direction violates the requirement in Canon IV.7.2(e) that pastoral directions not be "...in any way contrary to the Constitution and Canons of the General Convention or the Diocese." Respondent's Pastoral Direction requires compliance with a standard concerning marriage that directly conflicts with Canon I.18. As such, the Pastoral Direction is contrary to the Canons.

B. The Albany Marriage Canons Have Lacked Legal Force Concerning Same-Sex Marriage Since I Advent 2015

It is not permissible for the canons of a diocese to be in conflict with the Canons of the General Convention. As explained in the Church’s Motion, such a conflict is contrary to the fundamental hierarchical polity of The Episcopal Church and violates Article V of the Constitution of the Church (Constitution). Article V incorporates the hierarchical polity of The Episcopal Church into the Church’s organic legal structure by requiring that the constitution of all dioceses of The Episcopal Church include “an unqualified accession to the Constitution and Canons of this Church...”⁹ As asserted in the Church’s Motion, the conflicting provisions of the Albany Marriage Canons may not take precedence over Canon I.18. To the extent that the Albany Canons forbid the participation of the Albany Clergy in the celebration of Holy Matrimony for a same-sex couple they are not enforceable and may not be used by the Respondent either as the basis for the Pastoral Direction or as a defense to the allegations in this proceeding.

The conflict between the Albany Marriage Canons and Canon I.18 first came into being on I Advent 2015, the effective date of the revisions to Canon I.18 that were adopted by the 78th General Convention in 2015. The fact of this conflict alone renders the conflicting provisions of the local canons—the limitation of Holy Matrimony to opposite-sex couples—canonically ineffective.

The Respondent’s Reply Brief expresses apparent surprise at this fact, noting that “[i]n the three years between 2015 and 2018 Bishop Love enforced Albany Canon 16, but no one charged him with a violation of Canon I.18 or with “repealing” it in the diocese” before the

⁹ In fact, the constitution of the Diocese of Albany also requires that the canons of the Diocese of Albany must be “consistent” with the Constitution and Canons of the General Convention.

adoption of Resolution B012 (Respondent’s Reply Brief at p. 21).” The reason the conflict between the Albany Marriage Canons and Canon I.18 was not prominent during the three years following I Advent 2015 is actually quite simple: By its terms, Resolution 2015-B054, which authorized the same-sex marriage rites that General Convention authorized in 2015, provided that the use of the same-sex marriage rites in effect during the ensuing three years was subject to “the direction and with the permission of the bishop exercising ecclesiastical authority.”

But for that provision in Resolution 2015-B054, this Title IV matter could have been initiated at any time following I Advent 2015. However, pursuant to the terms of Resolution 2015-B054, Respondent’s enforcement of the policy of the Diocese of Albany in the Albany Marriage Canons concerning same-sex marriage during 2015-2018 was permissible. As explained in the Church’s Motion (at pp. 11-13), effective on I Advent 2018 Resolution B012 discontinued the requirement of the diocesan bishop’s approval for the use of the same-sex marriage rites.

The Church reaffirms its position that the conflict between the Albany Marriage Canons, which limits eligibility for Holy Matrimony in the Diocese of Albany to opposite-sex couples, directly conflicts with Canon I.18, which makes Holy Matrimony available to both opposite-sex and same-sex couples. Therefore, in accordance with the polity of The Episcopal Church and Article V of the Constitution, the conflicting portions of the Albany Marriage Canons cannot have binding effect and are not a valid basis for the Respondent’s Pastoral Direction.

C. Canon I.18 and Resolution B012 Require that Members of the Clergy in All Dioceses Must be Permitted to Use the Authorized Marriage Rites

Respondent's Reply Brief states that "there is no mandate whatsoever in Canon I.18 regarding same sex marriage rites" (Respondent's Reply Brief at p.20). It is not precisely clear to the Church what meaning the Respondent intends by this statement. Clearly, Canon I.18 does not provide that "all Members of the Clergy must solemnize the marriages of all same-sex couples who otherwise meet the requirements of Canon I.18" since such a "mandate" would violate the principle of Canon I.18.7 under which any Member of the Clergy has the canonical right to exercise discretion not to solemnize "any marriage." Nor does Canon I.18 require that all Members of the Clergy use the Authorized Marriage Rites.

What Canon I.18 does establish is that all Members of the Clergy possess the right to exercise their individual pastoral discretion whether to marry both opposite-sex couples and same-sex couples who meet the other canonical standards for marriage. By their essential nature, the provisions of the Canons are binding in all dioceses of The Episcopal Church and to that extent Canon I.18 should be considered to impose a mandate.

VI. THE RUBRICS IN THE MARRIAGE RITES OF THE 1979 PRAYER BOOK ARE NOT A CANONICAL BARRIER TO THE AUTHORIZED MARRIAGE RITES

The Respondent's Reply Brief acknowledges that the revision to Canon I.18 removed the canonical prohibition on same sex marriage that was previously stated in that canon, but goes on to assert that the revisions to Canon I.18 do "nothing to remove other canonical barriers, including the canonical requirements to conform to the Rubrics...Canons III.9.6 and IV.4" (Respondent's Reply Brief at p.20). These canons provide, in pertinent part, as follows:

- Canon III.9.6(a) pertains to rectors and priests-in-charge and their duties. It provides—

The Rector or Priest-in-Charge shall have full authority and responsibility for the conduct of the worship and the spiritual jurisdiction of the Parish, subject to the Rubrics of the Book of Common Prayer, the Constitution and Canons of this Church, and the pastoral direction of the Bishop.

- Canon IV.4.1 pertains to Standards of Conduct of clergy for purposes of Title IV and provides--

In exercising his or her ministry, a Member of the Clergy shall ... (b) conform to the Rubrics of the Book of Common Prayer.

The Church rejects Respondent’s contention that either Canon III.9.6 or Canon IV.4 establishes, in any respect, that the Rubrics of the Book of Common Prayer constitute a canonical barrier to the legality of the Authorized Marriage Rites or would constitute a defense to the violations of the Standards of Conduct by the Respondent that are at issue in this Title IV proceeding:

- Canon III.9.6(a) is entirely inapposite to this Title IV proceedings. Canon III.9.6 pertains to the duties of rectors and priests-in-charge, and by its terms simply states that the authority of rectors and priests-in-charge is subject to the “Rubrics of the Book of Common Prayer, the Constitution and Canons of this Church, and the pastoral direction of the Bishop.” This proceeding relates to actions of a bishop, not a rector or priest-in-charge. Further, pastoral directions of a Bishop may not, pursuant to Canon IV.7, may not be “in any way contrary to” the Canons of the General Convention
- Concerning the requirement in Canon IV.4.1, that a Member of the Clergy conform to the Rubrics of the Book of Common Prayer, the Church asserts:

- Rubrics, as ceremonial or other liturgical directions in liturgies of The Episcopal Church¹⁰, are not included with Discipline or Doctrine, as those terms are used in Title IV. Rubrics may include commentary on matters of both Core Doctrine and doctrinal teaching. However, the mere fact that a subject is included within the Catechism does not make it Core Doctrine that is enforceable under Title IV.
- Rubrics by their nature are specific to the particular liturgical rites or group of rites to which they relate. They do not have general normative authority or effect that is pertinent to this proceeding. The Church has made no Title IV charge that the Respondent's canonical offense has anything to do with whether he has or has not violated the Rubrics.
- The 1979 Prayer Book was adopted at a time when the prevailing understanding of marriage was as the union of a man and a woman. As such, revisions will be required during the forthcoming comprehensive revision of the Book of Common Prayer to reflect the change in doctrinal teachings on marriage that are reflected in the current version of Canon I.18. Neither the nature of Rubrics nor the provisions of the Canons referenced by the Respondent elevate the Rubrics and the need to update the Rubrics in the 1979 Book of Common Prayer to a canonical barrier that makes it improper for Members of the Clergy to use the Authorized Marriage Rites.
- Respondent's Reply Brief states that the Task Force on Marriage in its Report (2018 Blue Book, v. II at p. 792) reported that issues concerning the Rubrics "remained a problem that still needed fixing." In fact, the Rubrics issue noted in

¹⁰ Armentrout and Slocum, *An Episcopal Dictionary of the Church* (Church Publishing 1999) at p. 450.

the Task Force’s Report was not a substantive “problem,” but related to the timing of the process of Prayer Book revision.¹¹

For these reasons, the contentions in the Respondent’s Reply Brief concerning the Rubrics are without merit or relevance concerning the issues before the Hearing Panel in this proceeding.

VII. RESOLUTION B012 NEITHER NULLIFIES NOR REQUIRES THE RELINQUISHMENT OF EPISCOPAL AUTHORITY OF DIOCESAN BISHOPS

The Respondent’s Reply Brief expresses concern that Resolution B012 attempts to “mandate the relinquishment of episcopal authority by the diocesan bishop in violation of Constitution Article II.3 and Canon II.12.3(3)” (Respondent’s Reply Brief at p. 23). The Church rejects this contention as contrary to the provisions of Resolution B012.

The provisions of Resolution B012 apply in dioceses, like the Diocese of Albany, where the diocesan bishop does not embrace the theology of same-sex marriage. In such cases, the diocesan bishop, “as necessary,” must invite another bishop “to provide *pastoral support* to the couple, the Member of the Clergy involved and the congregation or worshipping community” (emphasis supplied). The invitation is narrow in scope and limited in time. Resolution B012 does not authorize the invited bishops to engage in any episcopal acts or confer any authority on the invited bishop to do other than provide pastoral support.

The cited Constitutional and Canonical provisions in Respondent’s Reply Brief as prohibiting invited bishops to function as provided in Resolution B012 are not applicable. Specifically, Constitution Article II.3 and Canon II.12.3(3) are not directed at the functioning of

¹¹ The quoted language from the Report of the Task Force on Marriage was in the context of the suggestion by some members of the Task Force that the 79th General Convention might treat the action of the 78th General Convention (i.e., Resolution 2015-054) as the first reading the two same-sex marriage liturgies first authorized in 2015.

bishops who are invited to provide the assistance as contemplated by Resolution B041.¹² Article II.3 of the Constitution is addressed to the requirement that bishops confine their episcopal ministry to the diocese in which they are elected. Canon III.12.3(e) largely tracks Article II.3 but notably authorizes invited bishops to provide “license or permission” to serve. The ministry of bishops invited to provide pastoral support under Resolution B012 would be similar in nature to the services permitted under Canon III.12.3(e).

VIII. BY DENYING ACCESS TO THE AUTHORIZED MARRIAGE RITES TO SAME-SEX COUPLES RESPONDENT HAS FAILED TO CONFORM TO THE WORSHIP OF THE EPISCOPAL CHURCH

Respondent’s Reply Brief observes that the term “Worship” is not included among the defined terms in Canon IV.2 and offers an operational definition of Worship for purposes of Title IV that would be limited to the liturgical use of (i) the Book of Common Prayer, (ii) proposed revisions of the Book of Common Prayer approved by General Convention; (iii) changes in the lessons and psalms approved by General Convention; and (iv) “special forms of worship” approved by the bishop.

Although the Church accepts that these four elements are included within the meaning of Worship as used in the Declaration of Conformity, these four elements do not exhaust or fully comprehend the scope of Worship within the Declaration of Conformity. It is important to note, however, since the Authorized Marriage Rites constitute proposed revisions of the Book of

¹² Constitution Article II.3 provides: “A Bishop shall confine the exercise of such office to the Diocese in which elected, unless requested to perform episcopal acts in another Diocese by the Ecclesiastical Authority thereof, or unless authorized by the House of Bishops, or by the Presiding Bishop by its direction, to act temporarily in case of need within any territory not yet organized into Dioceses of this Church.”

Canon III.12.3(e) provides: “No Bishop shall perform episcopal acts or officiate by preaching, ministering the Sacraments, or holding any public service in a Diocese other than that in which the Bishop is canonically resident, without permission or a license to perform occasional public services from the Ecclesiastical Authority of the Diocese in which the Bishop desires to officiate or perform episcopal acts.”

Common Prayer, they would be included within the scope of Worship proposed by the Respondent for the purposes of this Title IV proceeding.

The Church disagrees with Respondent's extremely narrow definition of Worship.¹³ The Church suggests that if General Convention believed such a restricted scope of liturgical sources would define "Worship," it would have incorporated such a definition in the Canons when, in 1997, it added definitions to Canon IV.2 for Discipline and Doctrine. Among other things, Respondent's definition would exclude liturgies authorized by the General Convention that have become a part of the liturgical life of a large number of congregations in The Episcopal Church.

The Respondent's proposed definition of "Worship" is deficient because it ignores the actual ongoing life and experience of The Episcopal Church. The Church submits that "Worship" is not synonymous with the four liturgies suggested in Respondent's Reply Brief. The Catechism captures the broad and organic character—the life inherent in "Worship"—by its response to the question "What is corporate worship?" The Catechism responds: "In corporate worship, we unite ourselves with others to acknowledge the holiness of God, to hear God's Word, to offer prayer, and to celebrate the sacraments." The Catechism's response captures the presence of the Spirit that makes "Worship" more than liturgical texts.

The Authorized Marriage Rites are different in purpose and character than the supplemental liturgies included in various worship materials approved by General Convention that are alternatives to forms of worship already existing in the Book of Common Prayer. In

¹³ The Respondent's Reply Brief cites a brief extract relating to the action of the General Convention in 1901 concerning missionary districts of the Church from the *Annotated Constitution and Canons* authored by White and Dykman. Characterizing White and Dykman's work as "canonical commentary prepared at the direction of the General Convention, Respondent over-reads the statement that "the discipline and worship" of the Church would have "entailed the use of the Prayer Book." The Church notes that "entailed the use of the Prayer Book" does not suggest that "worship" is exclusively limited to the Prayer Book. Indeed, the concept of "trial use" did not exist in the Canons until its addition in 1961.

contrast, the same-sex marriage liturgies in the Authorized Marriage Rites are worship services for rites for which there currently are no authorized liturgies in the Book of Common Prayer.

The Authorized Marriage Rites rest upon a foundation of prayerful corporate discernment in The Episcopal Church that extended over a period of decades and are validated by actual use by the People of God in all domestic dioceses of The Episcopal Church other than the Diocese of Albany. The Respondent's prohibition of the use of the Authorized Marriage Rites denies to same-sex couples in the Diocese of Albany the experience of same-sex couples in the other 100 domestic dioceses of The Episcopal Church: the opportunity to celebrate in the sacramental rite of Holy Matrimony in their home congregation.

The denial of access to sacramental rites is the essence of Respondent's violation of the Worship of the Church. Respondent's requirement that the Albany Clergy not make the sacramental rite of Holy Matrimony available to same-sex couples—and, in particular, his issuance of the Pastoral Direction under which Albany Clergy who participate in a same-sex marriage are subject to discipline under Title IV—constitutes a failure to conform to the Worship of The Episcopal Church.

IX. CONCLUSION

The Church agrees that the principal question before the Hearing Panel is whether the Respondent's issuance of the Pastoral Direction violated standards of conduct for clergy in Title IV of the Canons. The issuance of the Pastoral Direction turns the concept of a pastoral direction upside-down. The Pastoral Direction issued by the Respondent does not operate to achieve or require compliance with the Canons, which is the underlying purpose and rationale for Pastoral Directions under Canon IV.7. Instead, the Pastoral Direction makes it canonically

impermissible—under pain of a Title IV disciplinary proceeding—for Albany Clergy to act in accordance with the Constitution and Canons of The Episcopal Church.

For the reasons set forth in the Church’s Motion and in this Brief, the Respondent has failed to conform to the Discipline of the Church and the Worship of the Church as he promised to do at the time of his ordination. As detailed in the Church’s Motion, these failures are both “material and substantial” and of “clear and weighty importance to the ministry of the Church” as required by Canon IV.3.3. The Hearing Panel should enter an Order that the Respondent has committed a Canonical Offense by failing to abide by the promises made at his ordination, in violation of Canon IV.4.1(c).

Respectfully submitted,



Paul E. Cooney
Church Attorney
8 Rice Court
Rockville, MD 20850
pecooney@gmail.com
202-288-4417

March 30, 2020

Copies to:

The Rt. Rev. W. Nicholas Knisely
Office of the Bishop
275 North Main Street
Providence, Rhode Island 02903
Nicholas@episcopalri.org

The Rev. William E. Strickland, Jr.
208 Angora Way
Summerville, SC 29485
Chipstrickland11@gmail.com

Ms. Diane E. Sammons
Nagel Rice LLP
103 Eisenhower
Parkway00
Roseland, NJ 07068
dsammons@nagelrice.com

LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Page</u>
A	Partial Restriction on the Ministry of a Bishop (January 11, 2019)	A - 1
B	Canon IV.7 - Of Pastoral Direction, Restricted Ministry and Administrative Leave	B - 1
C	Resolution 2018-B012	C - 1
D	Resolution 2018 - D078	D - 1

Partial Restriction on the Ministry of a Bishop
The Rt. Rev. William H. Love, Bishop of Albany

In recent weeks, I have learned of and studied a Pastoral Letter and Pastoral Directive to his Diocese issued by Bishop Love of the Diocese of Albany on November 10, 2018, regarding the Church's continued acceptance of the use of a trial rite for performing same-sex marriages in the Church pursuant to Resolution B012 of the General Convention in 2018. Copies of Bishop Love's statement and Resolution B012 are available [here](#) and [here](#). In that statement, Bishop Love articulates his belief that same-sex marriage is contrary to Scripture and the "official teaching" of this Church and as a consequence directs that same-sex marriages may not be performed by any canonically resident or licensed clergy of his Diocese, and requires full compliance with the Diocese of Albany's Canon XVI, which forbids the same clergy from "officiat[ing] at," "facilitat[ing]," or "participat[ing] in" such marriages; forbids the recognition of such marriages in that Diocese; and forbids the use of church property as the site of such marriages.

After discussions with Bishop Love, I released a statement in partial response on November 12, 2018, a copy of which is [here](#). Representatives of my Office have since met with members of the Standing Committee and the Chancellor of the Diocese of Albany.

These documents and discussions form the basis of the temporary action that I now take regarding Bishop Love's ministry as Bishop of Albany. While I am persuaded of the sincerity and good will of Bishop Love in these difficult circumstances, I am convinced that Resolution B012 was intended by the Convention to be mandatory and binding upon all our Dioceses, particularly in the light of its provision that a diocesan bishop "hold[ing] a theological position that does not embrace marriage for [such] couples" and confronted with a same-sex couple wishing to marry in that bishop's diocese, "shall invite, as necessary, another bishop of this Church to provide pastoral support to the couple, the Member of the Clergy involved and the congregation or worshipping community in order to fulfill the intention of this resolution that all couples have convenient and reasonable local congregational access to these rites." I am therefore persuaded that as Presiding Bishop I am called upon to take steps to ensure that same-sex marriage in The Episcopal Church is available to all persons to the same extent and under the same conditions in all Dioceses of the Church where same-sex marriage is civilly legal.

I am aware that Bishop Love's conduct in this regard may constitute a canonical offense under Canon IV.4(1)(c) ("abide by the promises and vows made when ordained") and Canon IV.4(1)(h)(9) ("any Conduct Unbecoming a Member of the Clergy"), and that conduct has been referred to the Rt. Rev. Todd Ousley, Bishop for Pastoral Development and Intake Officer for disciplinary matters involving bishops. Accordingly, in order to protect the integrity of the Church's polity and disciplinary process and, thereby, the good order and welfare of the Church, and pursuant to Canons IV.7(3), (4), and IV.17(2), I hereby place the following partial restriction on the exercise of Bishop Love's ministry:

During the period of this restriction, Bishop Love, acting individually, or as Bishop Diocesan, or in any other capacity, is forbidden from participating in any

manner in the Church's disciplinary process in the Diocese of Albany in any matter regarding any member of the clergy that involves the issue of same-sex marriage.

Nor shall he participate in any other matter that has or may have the effect of penalizing in any way any member of the clergy or laity or worshipping congregation of his Diocese for their participation in the arrangements for or participation in a same-sex marriage in his Diocese or elsewhere.

This restriction is effective immediately and shall continue until any Title IV matter pending against Bishop Love is resolved. In the meantime, I or my successor, should this matter continue after my term, shall review the continued necessity of this restriction from time to time and amend or lift it as appropriate.

This document shall be served upon Bishop Love today and hereby informs him of his right to have any objections to this restriction heard pursuant to Canon IV.7.

Dated: January 11, 2019



(The Most Rev.) Michael Bruce Curry
XXVII Presiding Bishop of the Episcopal Church

The Most Reverend Michael Curry
PRESIDING BISHOP AND PRIMATE



**Canon IV.7:
Of Pastoral Direction, Restricted Ministry and Administrative Leave**

Sec. 1. At any time the Bishop Diocesan may issue a Pastoral Direction to a Member of the Clergy, canonically resident, actually resident, or licensed in the Diocese.

Sec. 2. A Pastoral Direction must (a) be made in writing; (b) set forth clearly the reasons for the Pastoral Direction; (c) set forth clearly what is required of the Member of the Clergy; (d) be issued in the Bishop Diocesan's capacity as the pastor, teacher and overseer of the Member of the Clergy; (e) be neither capricious nor arbitrary in nature nor in any way contrary to the Constitution and Canons of the General Convention or the Diocese; and (f) be directed to some matter which concerns the Doctrine, Discipline or Worship of the Church or the manner of life and behavior of the Member of the Clergy concerned; and (g) be promptly served upon the Member of the Clergy.

Sec. 3. If at any time the Bishop Diocesan determines that a Member of the Clergy may have committed any Offense, or that the good order, welfare or safety of the Church or any person or Community may be threatened by that member of the Clergy, the Bishop Diocesan may, without prior notice or hearing, (a) place restrictions upon the exercise of the ministry of such Member of the Clergy or (b) place such Member of the Clergy on Administrative Leave.

Sec. 4. Any restriction on ministry imposed pursuant to Canon IV.7.3(a) or placement on Administrative Leave pursuant to Canon IV.7.3(b) must (a) be made in writing; (b) set forth clearly the reasons for which it is issued; (c) set forth clearly the limitations and conditions imposed and the duration thereof; (d) set forth clearly changes, if any, in the terms of compensation and the duration thereof; (e) be neither capricious nor arbitrary in nature nor in any way contrary to the Constitution and Canons of the General Convention or the Diocese; (f) be promptly served upon the Member of the Clergy; and (g) advise the Member of the Clergy of his or her right to be heard in the matter as provided in this Canon. A copy of such writing shall be promptly provided to the Church Attorney.

Sec. 5. The duration of restriction on ministry or Administrative Leave may be for a stated period or to continue until the occurrence of a specified event or the satisfaction of a specified condition.

Sec. 6. Pastoral Directions, restrictions on ministry and Administrative Leaves (a) may be issued and imposed in any chronological order; (b) may be issued and imposed concurrently; and (c) may be modified at any time by the issuing Bishop or that Bishop's successor, provided that the Pastoral Direction, restriction on ministry or Administrative leave, as modified, meets the requirements of this Canon.

Sec. 7. Any Pastoral Direction, restriction on ministry or Administrative Leave under this Canon shall be effective upon service of the writing setting it forth on the subject Member of the Clergy as provided in Canon IV.19.20.

Sec. 8. If imposition of restriction on ministry or placement on Administrative Leave occurs prior to the receipt of information by the Intake Officer, as provided in Canon IV.6, then the Bishop may forward a copy of the writing setting forth the restriction or Administrative Leave to the Intake Officer, who shall receive such information as a report of an Offense and proceed as provided in Canon IV.6.

Sec. 9. The Bishop Diocesan may disclose such information concerning any Pastoral Direction, restriction on ministry or Administrative Leave as the Bishop Diocesan deems pastorally appropriate or as necessary to seek or obtain Diocesan authority for resolution of the matter or any part thereof.

Sec. 10. Every imposition of restriction on ministry or placement on Administrative Leave shall be subject to review upon the request of the Member of the Clergy at any time in the duration thereof. A request for review must be in writing and addressed to the president of the Disciplinary Board and the Church Attorney, with a copy to the Bishop Diocesan. A Member of the Clergy who requests review shall become a Respondent under this Title. Reviews shall be conducted within fifteen days of the delivery of the request for review to the president of the Disciplinary Board, unless extended by consent of the Respondent. If a restriction on ministry or placement on Administrative Leave has been reviewed once, a second request for review may be made only if there has been a substantial change of circumstances from the time of the first request or if there has been a modification of the restriction on ministry or placement on Administrative Leave.

Sec. 11. If a request for review of restriction on ministry or Administrative Leave is made prior to referral to the Conference Panel, then the review shall be conducted by the Conference Panel. If a request for review of restriction on ministry or Administrative Leave is made subsequent to referral to the Conference Panel but prior to referral to the Hearing Panel, the review shall be conducted by the Conference Panel. If a request for review of restriction on ministry or Administrative Leave is made subsequent to referral to the Hearing Panel, the review shall be conducted by the Hearing Panel. The question before a Panel reviewing a restriction on ministry or Administrative Leave is whether, at the time of the review and based upon information then available to the Panel, the restrictions on ministry or Administrative Leave and the terms and conditions thereof are warranted. The review may be conducted either personally or telephonically. The Intake Officer, the Respondent, the Respondent's Advisor, the Respondent's counsel, if any, the Bishop Diocesan, the Chancellor and the Church Attorney shall each be afforded the opportunity to be present, either personally or telephonically, at the review, and any such person present shall be heard by the Panel if such person desires to be heard. The Panel may hear from other persons at the Panel's discretion.

Sec. 12. After conducting the review and hearing from the persons designated in Canon IV.7.11 who desire to be heard, the Panel shall confer privately and make a determination to (a) dissolve the restriction on ministry or Administrative Leave;(b) affirm the restriction on ministry or Administrative Leave and the terms and conditions thereof; or (c) affirm the restriction on ministry or Administrative Leave, but with modification of the terms and conditions thereof. The Panel's determination shall be in writing and shall be delivered to the Respondent, the Church Attorney, the Bishop Diocesan and the Intake Officer, and shall be binding in the same manner as provided in Canon IV.7.7. In the event of the dissolution of the restriction on ministry or Administrative Leave, the Bishop Diocesan may give notice thereof to such persons and Communities having notice of the restriction on ministry or Administrative Leave as the Bishop Diocesan deems appropriate.

Sec. 13. Any Accord or Order resulting from Canons IV.9, IV.10, IV.12 or IV.13, unless otherwise specified, shall supersede any restriction on ministry or Administrative Leave then in effect.

79th General Convention of The Episcopal Church

B012 - Authorize Trial Liturgies for Same-Sex Marriage

Resolved [1], the House of Deputies concurring, That the 79th General Convention authorize for continued trial use, in accordance with Article X of the Constitution and Canon II.3.6, “The Witnessing and Blessing of a Marriage” and “The Celebration and Blessing of a Marriage 2” (as appended to the report of the Task Force for the Study of Marriage to the 79th General Convention); and be it further

Resolved [2], That the 79th General Convention authorize for trial use, in accordance with Article X of the Constitution and Canon II.3.6, “The Blessing of a Civil Marriage 2” and “An Order for Marriage 2” (as appended to the report of the Task Force for the Study of Marriage to the 79th General Convention), beginning the first Sunday of Advent, 2018; and be it further

Resolved [3], That the period of trial use for these liturgies shall extend until the completion of the next comprehensive revision of the Book of Common Prayer; and be it further

Resolved [4], That the SCLM monitor the use of these rites as part of their work of revising the Book of Common Prayer; and be it further

Resolved [5], That the material prepared by the TFSM with regard to paragraph one of “Concerning the Service” of Marriage, the proper prefaces for Marriage and the Catechism be referred to the SCLM for serious consideration as they engage in the process of revision of the Book of Common Prayer; and be it further

Resolved [6], That all of this material be authorized for publication as part of Liturgical Resources 2 (as appended to the report of the TFSM) and be made available electronically in English, Spanish, French, and Haitian Creole at no cost by the first Sunday of Advent, 2018; and be it further

Resolved [7], That under the canonical direction of the Rector or Member of the Clergy in charge and where permitted to do so by civil law, provision will be made for all couples desiring to use these marriage liturgies in their local congregation or worshipping community, provided that nothing in this Resolve narrows the authority of the Rector or Priest-in-Charge (Canon III.9.6(a)); and be it further

Resolved [8], That in dioceses where the bishop exercising ecclesiastical authority (or, where applicable, ecclesiastical supervision) holds a theological position that does not embrace marriage for same-sex couples, and there is a desire to use such rites by same-sex couples in a congregation or worshipping community, the bishop exercising ecclesiastical authority (or ecclesiastical supervision) shall invite, as necessary, another bishop of this Church to provide pastoral support to the couple, the Member of the Clergy involved and the congregation or worshipping community in order to fulfill the intention of this resolution that all couples have convenient and reasonable local congregational access to these rites; and be it further

Resolved [9], That the provision of Canon I.18.7 applies by extension to these liturgies, namely, “It shall be within the discretion of any Member of the Clergy of this Church to decline to solemnize or bless any marriage”; and be it further

Resolved [10], That the provisions of Canon I.19.3 regarding marriage after divorce apply equally to these liturgies; and be it further

Resolved [11], That bishops exercising ecclesiastical authority, or where appropriate ecclesiastical supervision, who hold a theological position that does not embrace marriage for same sex couples, shall in the case of remarriage after divorce, invite another bishop of this Church to oversee the consent process and to receive any report of such Marriages, as provided in Canon I.19.3(c); and be it further

Resolved [12], That bishops continue the work of leading the Church in comprehensive engagement with these materials and continue to provide generous pastoral response to meet the needs of members of this Church; and be it further

Resolved [13], That this Church continue to honor theological diversity in regard to matters of human sexuality; and be it further

Resolved [14], That the 79th General Convention request the Joint Standing Committee on Program, Budget, and Finance to consider a budget allocation of \$100,000 for the implementation of this resolution; and be it further

Resolved [15], That the 79th General Convention direct the Secretary of General Convention and the Custodian of the Standard Book of Common Prayer, in consultation with the outgoing Chair of the Task Force on the Study of Marriage and the Chairs of the Legislative Committees to whom this legislation is referred, to finalize and arrange with Church Publishing for the publication (in English, Spanish, French, and Haitian Creole) of the material contained in “Liturgical Resources 2” as approved by the 79th General Convention; the General Convention Office to make these materials available electronically at no cost no later than the first Sunday of Advent 2018.



Resolution Number: 2018-D078
Title: Authorize The Holy Eucharist: Rite II (Expansive Language) for Trial Use
Legislative Action Taken: Concurred as Amended
Final Text:

*Resolved, That the 79th General Convention authorize **The Holy Eucharist: Rite II, including Eucharistic Prayers A, B, and D, (Expansive Language)** for trial use throughout this church as a proposed revision within pages 355-382 of the Book of Common Prayer pursuant to **Article X(b) of the Constitution**; and be it further*

Resolved, That the period of trial use for these liturgies shall extend until the completion of the next comprehensive revision of the Book of Common Prayer; and be it further

Resolved, That The Holy Eucharist: Rite II, Eucharistic Prayer C, be referred to the Standing Commission on Liturgy and Music for possible revision for trial use; and be it further

*Resolved, That **The Holy Eucharist: Rite II, including Eucharistic Prayers A, B, and D, (Expansive Language)** be provided to the church at no cost via electronic distribution; and be it further*

*Resolved, That the Standing Commission on Liturgy and Music be directed to engage a dynamic equivalence translation of **The Holy Eucharist: Rite II, including Eucharistic Prayers A, B, and D, (Expansive Language)** into the Spanish, French, and Hatian Creole languages; and be it further*

Resolved, That the General Convention request the Joint Standing Committee on Program, Budget and Finance to consider a budget allocation of \$12,500 for the implementation of this resolution; and be it further

Resolved, That the Standing Commission on Liturgy and Music be directed to develop a process for evaluation of the ongoing use of The Holy Eucharist: Rite II, including Eucharistic Prayers A, B, and D,(Expansive Language) among the dioceses and congregations of this church.

[Liturgical Text Omitted]