

## **Discussion of Authority in the Episcopal Church and the Dar es Salaam Primates Communiqué of February 2007**

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Information prepared at the request of Bonnie Anderson, President of the House of Deputies

At its March 2007 meeting, Executive Council passed Resolution EC 008 which called for the Presiding Officers to appoint a Work Group to:

. . . consider the role, responsibilities and potential response of the Executive Council to the issues raised by the Primates Communiqué issued February 19, 2007.

Bonnie Anderson, chair of the work group, requested that the PHoD Chancellor provide a memorandum for the Work Group on the authority of the Executive Council according to the Canons, By-laws of Executive Council and any other source regarding responding to the Communiqué.

### **Factual Background**

*The Dar es Salaam Primates Communiqué*

On February 19, 2007 the Primates of the Anglican Communion issued a Communiqué at the conclusion of their meeting. A substantial part of the Communiqué was directed to The Episcopal Church and especially its response to the Windsor Report.

The Communiqué asked the House of Bishops to take two actions prior to September 30, 2007:

- make an unequivocal common covenant that the bishops will not authorize any Rite of Blessing for same sex unions in their dioceses or through General Convention (cf Windsor Report, Para. 143, 144)
- confirm that the passing of Resolution B033 of the 75th General Convention means a candidate for Episcopal orders living in a same sex union shall not receive the necessary consent unless “some new consensus on these matters emerges across the Communion.” (cf Windsor Report, Para 134)

The Communiqué also purports to establish a “Pastoral Scheme” consisting of a Pastoral Council and Primatial Vicar to work with congregations and dioceses in The Episcopal Church who do not agree with the actions of General Convention regarding the

consecration of Bishop Robinson and the blessing of same sex unions. This portion of the Communiqué is lengthy, complicated, and stated in generalities rather than specifics.

The Communiqué purports to create Pastoral Council acting on behalf of the Primates made up of two persons nominated by the Primates, two appointed by the Presiding Bishop, and a Primate appointed by the Archbishop of Canterbury to chair the Council. The Council would work “in cooperation with The Episcopal Church, the Presiding Bishop and the leadership of the bishops participating in the scheme proposed below” to:

- negotiate structures for pastoral care complying with the Windsor Report and the Primates’ requests in the Lambeth Statement of October 2003;
- authorise (sic) protocols for the functioning of such a scheme, including the criteria for participation of bishops, dioceses and congregations;
- assure the effectiveness of the structures for pastoral care;
- act as a liaison with Primates who have care of parishes (in The Episcopal Church) to seek a secure way forward for those parishes within the scheme;
- facilitate and encourage healing and reconciliation within The Episcopal Church and between the Church and the rest of the Anglican Communion;
- advise the Presiding Bishop and the Instruments of Communion;
- monitor the response of The Episcopal Church to the Windsor Report;
- consider whether any course of action contemplated by paragraph 157 of the Windsor Report should be applied to The Episcopal Church or its bishops and recommend such to The Episcopal Church and its institutions and the Instruments of Communion;
- take whatever reasonable action is needed to give effect to this scheme and report to the Primates.

The Primates recommended that structures of pastoral care be established in conjunction with the Pastoral Council to enable individuals, congregations and clergy who feel unable to accept the direct ministry of their bishop or of the Presiding Bishop to exercise their ministries and congregational life within The Episcopal Church.

The Pastoral Council and the Presiding Bishop are to invite bishops expressing a commitment to “the Camp Allen principles” or, as otherwise determined by the Pastoral Council, to participate in the Pastoral Scheme. The participating bishops, in consultation with the Pastoral Council and with the consent of the Presiding Bishop, will nominate a Primatial Vicar responsible to the Council. The Presiding Bishop in consultation with the Pastoral Council will delegate specific powers and duties to the Primatial Vicar. The

Pastoral Council is directed to negotiate with AMiA and CANA and the Primates currently ministering to them to find a place for them within the Pastoral Scheme.

The fourth subject on which the Primates made a request to the Church is on property disputes. They urged representatives of The Episcopal Church and of those congregations in property disputes with it to suspend all actions in law arising in this situation. They also urged both parties to “give assurances that no steps will be taken to alienate property from The Episcopal Church without its consent or to deny the use of that property to those congregations.”

The Communiqué also discussed the Listening Process called for by the 1998 Lambeth Resolution 1.10 and the report of the Covenant Design Group, among other topics.

### *The House of Bishops' Response to the Communiqué*

The House of Bishops held its regularly scheduled spring meeting in March 2007. It took three actions in response to the Communiqué. It adopted a statement titled, “To the Archbishop of Canterbury and the members of the Primates’ Standing Committee” that stated in part:

Although we are unable to accept the proposed Pastoral Scheme, we declare our passionate desire to remain in full constituent membership in both the Anglican Communion and the Episcopal Church.

The statement invited the Archbishop and members of the Primates’ Standing Committee [sic] to join the House of Bishops for three days of prayer and conversation at the earliest possible opportunity. The Archbishop has indicated he will attend part of the House of Bishops meeting in September 2007 with members of the Joint Standing Committee of the Anglican Consultative Council and Primates Meeting.

It adopted “A Statement from the House of Bishops- March 20, 2007.” In this lengthy statement the House of Bishops gave five reasons the Pastoral Scheme would be injurious to the Church.

- It violates our church law in that it calls for a delegation of primatial authority not permitted under our Canons and compromises our autonomy not permitted under the Constitution;
- It changes the character of the Windsor process and the covenant design process;
- It violates our founding principles after our liberation from colonialism;
- It departs from our English Reformation heritage in abandoning the generous orthodoxy of our Prayer Book tradition and sacrifices “the emancipation of the laity for the exclusive leadership of high-ranking Bishops;”
- It is spiritually unsound because it encourages the breaking of relationships when we find them difficult.

The House of Bishops also adopted a “Mind of the House of Bishops Resolution Addressed to the Executive Council of the Episcopal Church.” After affirming its desire that The Episcopal Church remain a part of the councils of the Anglican Communion and stating that the meaning of the preamble of our Constitution is determined solely by the General Convention, the Resolution went on to say:

[T]he House of Bishops believes the proposed Pastoral Scheme of the Dar es Salaam Communiqué of February 19, 2007 would be injurious to The Episcopal Church and *urges that the Executive Council decline to participate in it*; (emphasis added)

The House of Bishops did not address the demands in the Communiqué regarding moratoriums on blessing of same sex unions and consents for bishop elections. It is anticipated it will take these up at its September 2007 meeting.

### **Analysis of the Primates’ Demands**

The four demands of the Primates must be considered separately because they raise different authority and governance issues.

#### *“Common Covenant” on Rites of Blessing Same Sex Unions*

The first demand is that the House of Bishops make an “unequivocal common covenant” that the bishops will not authorize any Rite of Blessing for same sex unions in their dioceses or through the General Convention.

The wording of this demand raises questions because it does not use the language of our Church’s polity. “Unequivocal” suggests something clear, absolute, something that does not allow for any question about its meaning, that leaves no doubt, or is unambiguous. The discussion in the Communiqué suggests that “unequivocal” speaks to the Primates’ frustration that the Church’s explanation of where it stands on same sex blessings “equivocates.” A dictionary definition of “equivocate” is “to avoid committing oneself in what one says” or “used to mislead or confuse.”

The term “common covenant” also raises questions. The sense of the phrase is that the Bishops will promise each other or promise the Primates they will not do something. “Covenant” is used in the Communion to mean a variety of things. For example, it can mean a promise, but something more sacred or fulsome than a mere promise, or it can mean a legally binding enforceable contract. In discussions about a potential Anglican Covenant the various nuanced meanings of “covenant” are being extensively analyzed and debated.

The Primates asked two things: that bishops not authorize Rites in their own dioceses and that bishops not allow General Convention to authorize such Rites. Bishops Diocesan have the authority to authorize such Rites for use in their dioceses. The Primates asked

the House of Bishops to “make a common covenant” not to do so. Whether or not the bishops have the authority to make such a “common covenant” is discussed below. With regard to the House of Bishops stopping the General Convention from authorizing Rites, the Primates’ language has at least two possible interpretations: the Primates are asking the House of Bishops to “make a common covenant” that would somehow prevent future General Conventions from authorizing Rites or they are asking the House of Bishops to covenant that it will not vote to authorize such Rites if that question comes before the House of Bishops during a General Convention.

### *Interpretation of B033*

The Primates’ second demand is for the House of Bishops to confirm that Resolution B033 of the 75th General Convention means a candidate for Episcopal orders living in a same sex union shall not receive the necessary consents to be consecrated. In the language of our polity it appears the House of Bishops is being asked to pass a resolution, make a statement, issue a Pastoral Letter, issue a teaching document or in some other manner assure the Primates that the meaning of B033 is what the Primates stated it is in the Communiqué. By using “confirm” the Primates may intend that the House of Bishops take action that would bind the Church in some way to prevent consents being given for a bishop-elect living in a same sex union.

### *Pastoral Scheme*

One of the challenges of the Communiqué is that while specific requests are made of the House of Bishops, no office or body in The Episcopal Church is asked to authorize or approve the Church’s participation in the Pastoral Scheme. The Primates may have believed no approval was necessary by any one in The Episcopal Church. If they had such a belief it may have been based on their own understanding, or what they were told about the Presiding Bishop’s authority to agree to the Church’s participation in the Pastoral Scheme, or they may have assumed they had the authority to impose the Pastoral Scheme on The Episcopal Church, or they may not have thought about it, or they thought about it but chose not to address it in the Communiqué.

Another challenge is that the Pastoral Scheme proposes something that has never been done anywhere in the Anglican Communion or in this Church, to the best of the author’s knowledge. Over the past decade or so we have seen terms used for positions, bodies, or ideas never used before and that are not been specifically authorized. For example, “Instruments of Unity,” and “Instruments of Communion” are not terms from the Anglican Communion’s history or polity but are descriptive phrases first used in the mid-1980’s. At the Anglican Consultative Council meeting in 1987 a paper drafted by a small working group, “Unity in Diversity within the Anglican Communion” noted “four traditional instruments for maintaining the unity in diversity of the Anglican Communion:” the Archbishop of Canterbury, the Lambeth Conference, the Primates’ Meetings and the Anglican Consultative Council.

Until the morning after the election of the Presiding Bishop the term “alternate primatial oversight” was virtually unknown. It is not a concept that is recognized by the Church or the Communion as part of its polity.

Similarly, “Primate Vicar” is a term that apparently has also come into use only in the past few months. The term was used on November 30, 2006 in “A Response to ‘An Appeal to the Archbishop of Canterbury’” prepared by a group of bishops, including the Presiding Bishop, to refer to a person in episcopal orders appointed by the Presiding Bishop to “serve as the Presiding Bishop’s designated pastor” in dioceses that petitioned the Archbishop of Canterbury for “alternative primatial oversight” or an “alternative primatial relationship.” In this Church the term “primatial oversight” is also new. None of these terms or concepts appear anywhere in our Constitution, Canons, Resolutions of General Convention or practices of the Church.

The utter newness of “Pastoral Council,” “Primate Vicar,” “primatial oversight,” “Pastoral Scheme,” “Alternate Primatial Oversight” and the like demonstrate they are completely outside of our polity. To the extent anything structural is contemplated by any of these terms, anything other than “pastoral care” as it has heretofore been understood, the Constitution or Canons would have to be amended to incorporate any of these concepts into our polity and life as a Church.

### *Property Disputes*

The Primate’s requests about suspending all litigation over property ownership, giving assurances that property won’t be transferred without The Episcopal Church’s consent and allowing dissenting congregations to continue to use the property they occupy are framed as “urging” the Church and congregations to take these actions. Presently there is on going litigation between dioceses and congregations who have “left” the Church but continue to occupy and assert ownership to parish property. The “national” church is a party in some but not all of these suits. In at least one instance several congregations sued their diocese to stop the diocese from transferring property out of the Church. The legal issues differ somewhat in each case and in each state.

### **Authority in The Episcopal Church**

I will discuss the respective authority of the General Convention, the Executive Council, the Presiding Bishop and the House of Bishops so the Executive Council may consider its response to the Primate’s Communiqué in the context of the respective authority of these bodies and offices of the Church.

### *Authority of the General Convention*

The General Convention holds all authority in The Episcopal Church, other than the authority to change the Core Doctrine of the Church. *In the Matter of Stanton v. Righter* (“*Stanton v. Righter*”), Court for the Trial of a Bishop, Opinion, pp. 5-7, May 15, 1996. It has chosen to delegate various responsibilities and authority to a number of bodies and offices created by it or recognized by it. The only limits on what General Convention may do or adopt are contained in the Constitution, Canons and *Book of Common Prayer* and it cannot act contrary to them. However, General Convention, and only General Convention, can amend the Constitution, Canons and *Book of Common Prayer*. It can interpret the Constitution and Canons and its interpretations are binding. No other body or office in the Church, other than ecclesiastical courts on the issues before them, can take actions that purportedly bind the Church on a subject covered by the Constitution, Canons, or *Book of Common Prayer*. One General Convention cannot bind future General Conventions except that it takes two successive Conventions to amend the Constitution and a longer process is involved to amend the *Book of Common Prayer*. In all other matters one General Convention can change anything a prior General Convention has done.

### *General Authority of the Executive Council*

Canon I.4.1(a) sets out the general authority and responsibilities of the Council:

... whose duty it shall be to carry out the program and policies adopted by the General Convention. The Executive Council shall have charge of the coordination, development and implementation of the ministry and mission of the Church.

Other responsibilities include reporting to General Convention:

... on the implementation of all concurred resolutions of the previous General Convention calling for action by the Executive Council, by its officers and staff, and by the jurisdictions of the Church. Canon I.4.1(b).

In its capacity as the Board of Directors of the Domestic and Foreign Missionary Society, the Council shall have the power to direct the disposition of the moneys and other property of said Society in accordance with the provisions of this Canon and the orders and budgets adopted or approved by the General Convention. Canon I.4.2(f).

The Council shall elect representatives of this Church to the Anglican Consultative Council (ACC) and to other Anglican and other ecumenical bodies for which no other procedure is provided. Canon I.4.2(g).

Canon I.4.2(e) provides:

The Council shall exercise the powers conferred upon it by Canon, and such further powers as may be designated by the General Convention, and between sessions of the General Convention may initiate and develop such new work as it may deem necessary.

Executive Council carries out its responsibilities through the work of its committees and task forces, preparation and monitoring of the budget, making a report to the General Convention, and passing Resolutions. A full reading of the Constitution and Canons demonstrates that while Executive Council is granted extensive authority to act for the Church between General Conventions, it is not vested with all of the powers of General Convention. For example, it cannot amend the Constitution or Canons, give consent to episcopal elections, adopt a budget for the Church, or vote dioceses into or out of the Church.

#### *General Authority of the Presiding Bishop*

The responsibilities and authority of the Presiding Bishop can generally be divided into several broad categories. The Presiding Bishop:

- Is the Chief Pastor and Primate of the Church;
- Makes appointments to various Church bodies and positions and fills vacancies in same; sometimes that is done solely by the Presiding Bishop, sometimes in consultation with someone else, and sometimes jointly with the President of the House of Deputies or someone else;
- Has responsibilities regarding bishops in the Church;
- Ensures a diocese has adequate services of a bishop when the episcopate is vacant;
- Oversees the election process of bishops;
- Takes order for the consecration of bishops and decides who the three chief consecrating bishops will be;
- Oversees the resignation of or removal of bishops for non-disciplinary reasons such as reaching the age of seventy-two or becoming incapacitated;
- Has responsibilities for unusual congregations and ministries;
  - in foreign lands and Area Missions
  - Christian congregations using their own rite

- Clergy serving in the Armed Forces
- Is the final arbiter of certain disputes in religious orders and communities
- Has responsibilities in the ecclesiastical discipline process of bishops;
- Presides over the House of Bishops;
- Sets the House of Bishops meeting schedule;
- Presides over Joint Sessions of General Convention;
  - May address the House of Deputies
  - May recommend legislation to either House
- Visits every diocese to consult with the bishop and lay and clerical leaders, preach the Word and celebrate the Holy Eucharist;
- Reports annually to the Church and may issue Pastoral Letters;
- Speaks God's Word to the Church and to the world as the representative of The Episcopal Church;
- Has responsibility for leadership in initiating and developing the policy and strategy of the Church and speaking for the Church on the policies, strategies and programs authorized by General Convention;
- Is the President of the Domestic and Foreign Missionary Society;
- Is the President, Chair and chief executive officer of the Executive Council;
- Calls special meetings of the Executive Council;

See Appendix A for a complete summary of the Canonical provisions on the authority of the Presiding Bishop.

As President of the Domestic and Foreign Missionary Society and President, Chair and chief executive officer of the Executive Council the Presiding Bishop “shall exercise the powers and perform the duties prescribed by the Canons and by these By-laws, together with all such duties as are incident to the office of the chief executive.” By-laws of the Executive Council of The General Convention and of the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America (“By-laws”), Art. 1, Sec. 1(a). The duties prescribed by the Canons are described above and in Appendix A. The By-laws also specify duties and responsibilities of the Presiding Bishop. These are set out in detail in Appendix B.

An exposition on the Canon on the duties of the Presiding Bishop states, “The office of Presiding Bishop is a constitutional office, the tenure and duties of which are prescribed

by canons, and he has no duties or powers save as so prescribed.” *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America otherwise known as The Episcopal Church* (“*Annotated Constitution and Canons*”), p. 203. The office is that of “Presiding Bishop,” not Primate, Chief Pastor, Archbishop, or Metropolitan.

The term “Chief Pastor” was added to Canon I.2.4, the description of the duties and responsibilities of the Presiding Bishop, in 1967 when that section was greatly expanded to prescribe the status and duties of the Presiding Bishop in much greater detail than previously existed. Originally it was “chief pastor” and was only capitalized by an amendment to the Canons in 1982. *Annotated Constitution and Canons*, 1991 Supplement, p.21.

The term “Primate” was added to the description of the duties and responsibilities of the Presiding Bishop in 1982. According to the *Annotated Constitution and Canons*:

The Standing Commission on the Structure of the Church recommended the Constitution be amended to delete the words *Presiding Bishop* and substitute therefore the term *Archbishop*. The rationale stated was that the term proposed was most descriptive of the office of Presiding Bishop and would place the Presiding Bishop on a titular par with other Anglican metropolitans, while implying no change in authority or any archiepiscopal jurisdiction. The constitutional amendment was rejected in favor of this revision of the Canons.

The House of Bishops passed a substitute Resolution adding *Primate* to the Canons, in which the House of Deputies concurred after considerable debate.

*Annotated Constitution and Canons*, 1991 Supplement, pp.21-22.

Whatever Metropolitan or Archbishop authority means, it is clear from the legislative history that those powers were not intended to be given to the Presiding Bishop by the addition of the title “Primate.”

Nothing further is said in the Constitution or Canons about what either “Chief Pastor” or “Primate” mean or what authority or responsibilities are conferred by those titles. There is no exposition in the *Annotated Constitution and Canons* on the meaning of “Chief Pastor” or “Primate.”

The Joint Nominating Committee for the Election of the 26<sup>th</sup> Presiding Bishop issued “A Call to Discernment” describing its vision of the role of the Presiding Bishop.

Chief Pastor: The Chief Pastor has enormous responsibility and presence as the chief preacher and liturgical leader. The Chief Pastor proclaims the Gospel with the Church. The Chief Pastor oversees the pastoral care and spiritual wellness of bishops.

Primate: The Primate of this church is a leader in the Anglican Communion. The Primate works for justice in domestic and international contexts in Anglican and ecumenical efforts to improve the human condition, to attend to the critical issues articulated by the General Convention, and to work toward the reconciliation of all persons as we live out the Gospel. The Primate plays a key role in working with leaders around the world in addressing issues of social justice and environmental stewardship.

### *General Authority of the House of Bishops*

One of the principle responsibilities of the House of Bishops is to participate as one of the two Houses of the Church's bicameral legislature, the General Convention. Other than certain specified actions each House is authorized to take without concurrent action by the other House, both Houses must concur for an action to be an act of the General Convention, and hence binding on The Episcopal Church.

This section discusses the authority of the House of Bishops to take action at meetings between General Conventions or actions it may take at the General Convention without the concurrence of the House of Deputies.

As with the Presiding Bishop, the authority of the House of Bishops can be generally divided into several broad categories.

- Consent to bishops' resignations;
- Elect bishops for non-diocesan ministries, including the Presiding Bishop, and for dioceses upon request of the diocese (some of these require consent of the House of Deputies or Standing Committees, others do not);
- Establish Missions within the boundaries of The Episcopal Church but outside diocesan boundaries;
- Elect bishops for Missionary Dioceses when requested by the Convention of a Missionary Diocese;
- Call special meetings of General Convention;
- Recognize Religious Communities and Christian Communities through one of its committees;
- Authorize some disciplinary actions against bishops and reduce or remit any Sentence against a bishop;

See Appendix C for a complete summary of the authority of the House of Bishops.

## **Authority to Respond to the Demands of the Primates Communiqué**

### *Authority of the Executive Council to Respond to the Demands of the Primates Communiqué*

#### Rites of Blessing:

The Primates requested that the House of Bishops make an unequivocal “common covenant” that bishops will not authorize any Rite of Blessing for same sex unions in their dioceses or through the General Convention unless some new consensus on these matters emerges across the Communion. Dar es Salaam Primates Meeting Communiqué, February 19, 2007.

Even though this demand was not addressed to the Executive Council, it should consider whether it has the authority to do as the Primates requested. Nothing in the authority granted to the Executive Council by the General Convention gives it the authority to prohibit bishops from authorizing Rites of Blessing in a bishop’s own diocese. That authority is given to bishops in the Constitution and the *Book of Common Prayer*:

And *Provided*, that nothing in this Article shall be construed as restricting the authority of the Bishops of this Church to take such order as may be permitted by the Rubrics of the Book of Common Prayer or by the Canons of the General Convention for the use of special forms of worship.

Constitution, Art. X.

The opening pages of the *Book of Common Prayer* in “Concerning the Service of the Church” state, in part:

In addition to the services and other rites contained in this Book, other forms set forth by authority within this Church may be used. Also, subject to the direction of the bishop, special devotions taken from this Book, or from Holy Scripture, may be used when the needs of the congregation so require.

For special days of fasting or thanksgiving, appointed by civil or Church authority, and for special occasions for which no service or prayer has been provided in this Book, the bishop may set forth such forms as are fitting to the occasion.

*Book of Common Prayer*, p. 13.

The Executive Council does not have the authority to change the Constitution, Canons or *Book of Common Prayer* regarding the authority of bishops to authorize forms of worship.

The Executive Council could make a non-binding statement or express of its opinion on whether or not bishops or the General Convention should authorize Rites of Blessing. Nothing in our polity prohibits the Executive Council from expressing its opinion. However, such an action could be viewed as inconsistent with the General Convention's action responding to the Windsor Report's request to the Church for a moratorium on Rites of Blessing. The Windsor Report incorrectly stated that the General Convention had made provision for the development of public Rites of Blessing. It went on to call for a moratorium on Bishops Diocesan authorizing the use of such Rites in their dioceses. The Windsor Report, par. 144. The Special Commission on The Episcopal Church and the Anglican Communion ("Special Commission") submitted Resolution A162 to the 2006 General Convention exhorting bishops not to authorize public Rites of Blessing for same sex unions until some broader consensus in the Anglican Communion emerges. *One Baptism, One Hope in God's Call, the Report of the Special Commission on The Episcopal Church and the Anglican Communion* ("*One Baptism, One Hope in God's Call*"), page 25. The General Convention took no action on Resolution A162. The House of Deputies did consider Resolution A161 as amended by the Special Legislative Committee. It stated in part:

Resolves that this General Convention not proceed to develop or authorize Rites for the Blessing of same-sex unions at this time ...

This Resolution was defeated by the House of Deputies and no other resolutions on Rites of Blessing were considered by either House at General Convention. For the Executive Council to respond to a request from the Primates barely a year after the General Convention declined to adopt a nearly identical request in the Windsor Report could be viewed as inconsistent with the action of the General Convention.

Consent to Elections:

The Primates requested the House of Bishops to:

... confirm that the passing of Resolution B033 of the 75th General Convention means that a candidate for Episcopal orders living in a same-sex union shall not receive the necessary consent unless some new consensus on these matters emerges across the Communion.

Dar es Salaam Primates Meeting Communiqué, February 19, 2007.

Even though this demand was not addressed to the Executive Council it should consider whether it has the authority to do as the Primates requested. Nothing in the authority granted to the Executive Council by the General Convention gives it the authority to change or make a binding interpretation of a General Convention resolution. The Executive Council could make a non-binding statement or express its opinion on the meaning of Resolution B033. Nothing in our polity prohibits the Executive Council from expressing its opinion. However, such an action could be viewed as inconsistent with the

General Convention's action on this subject in light of the Windsor Report's request to the Church "to effect a moratorium on the election and consent to the consecration of any candidate to the episcopate who is living in a same gender union until some new consensus in the Anglican Communion emerges." The Windsor Report, para. 134.

The General Convention spent extensive time and energy on this Windsor Report request. The Special Commission on The Episcopal Church and the Anglican Communion submitted Resolution A161 to the General Convention. It stated in part:

We urge nominating committees, electing conventions, Standing Committees, and bishops with jurisdiction to exercise very considerable caution in the nomination, election, consent to, and consecration of bishops whose manner of life presents a challenge to the wider church ..."

*One Baptism, One Hope in God's Call*, pages 24- 25.

The explanation of Resolution A161 by the Special Commission stated that it was set "within the parameters set by our Constitution and Canons." *One Baptism, One Hope in God's Call*, page 25. The Special Commission's use of "whose manner of life presents a challenge to the wider church" rather than the Windsor Report's language of "any candidate to the episcopate who is living in a same gender union" resulted from the Special Commission's concern that such language might be a violation of the Constitution or Canons as setting an additional requirement for bishops other than those already in the Constitution and Canons. Art. II.2 requires that bishops be at least thirty years of age. The Canons contain other provisions prohibiting discrimination on a number of bases including sexual orientation. To add an additional requirement or limitation on who may be a bishop would necessitate that it be added to the Constitution or Canons. Similarly, the Special Commission used "urge" rather than the Windsor Report's language of "effect a moratorium." The Windsor Report, para. 134. Again, this was due to the Special Commission's concern that a "moratorium" would be a prohibition on bishops "living in a same gender union" and to effect a moratorium would require amending the Constitution or Canons for the reasons stated above.

Resolution A161 was rejected by the House of Deputies. However, on the last day of General Convention Resolution B033 was proposed and passed. It stated in part:

That this Convention therefore call upon Standing Committees and bishops with jurisdiction to exercise restraint by not consenting to the consecration of any candidate to the episcopate whose manner of life presents a challenge to the wider church and will lead to further strains on communion.

Resolution B033 retained the "whose manner of life presents a challenge to the wider church" language of Resolution A161. Resolution B033 changed Resolution A161's "urge" language to "call upon Standing Committees and bishops with jurisdiction to exercise restraint by not consenting ..."

The General Convention spoke clearly on the Windsor Report's request on consent to elections. It considered several resolutions with different language. The debate on this request was extensive in both Houses. For the Executive Council to respond to a request from the Primates barely a year after the General Convention declined to adopt a nearly identical request in the Windsor Report could be viewed as inconsistent with the action of the General Convention.

#### Pastoral Scheme:

The Primates did not make any request of any office or body of The Episcopal Church with respect to the Pastoral Scheme. The Executive Council has no authority to approve any parts of the Pastoral Scheme or to change any provisions of the Constitution or Canons that would have to be changed to implement it. A non-binding expression of the Executive Council's opinion on the Pastoral Scheme was not requested but is within the authority of the Executive Council to give.

#### Property Disputes:

The Primates urged that all property litigation cease subject to certain conditions. The Executive Council has the authority to set policy regarding property disputes and to direct the Presiding Bishop to participate or not participate on behalf of the Church in property litigation. Canon I.4.2.(f) provides:

In its capacity as the Board of Directors of The Domestic and Foreign Missionary Society, the Council shall have the power to direct the disposition of the moneys and other property of said Society in accordance with the provisions of this Canon and the orders and budgets adopted or approved by the General Convention.

The Executive Council's authority to dispose of the property of the Domestic and Foreign Missionary Society is entirely consistent with the generally recognized authority of a board of directors to make decisions for the organization, decisions that may overrule prior decisions of the chief executive officer. The Executive Council cannot dictate to a diocese or congregation whether or not it should continue to pursue its interests through litigation. General Convention could adopt a Canon, policy or take other action to set policy on property disputes and the Church's participation in property litigation.

*Authority of the Presiding Bishop to Respond to the Demands of the Primates  
Communiqué*

Rites of Blessing and Consent to Elections:

Just as the Executive Council has no authority to amend or interpret the Constitution, Canons, or resolutions of the General Convention in any way that can be viewed as binding or definitive, neither does the Presiding Bishop. The Presiding Bishop can issue Pastoral Letters and speak God's Word to the Church and to the world. So, like any other body or office the Presiding Bishop may express her opinions and make recommendations about the Primates' demands for a moratorium on consents to elections and Rites of Blessing. She can request that bishops not authorize Rites of Blessing for use in their dioceses and she can request that bishops and deputies not vote to authorize such Rites if the issue comes before a General Convention. The Presiding Bishop has the specific authority to address a Joint Session of General Convention on the state of the Church and General Convention is obligated to act on any recommendations in such an address. The Presiding Bishop is also specifically authorized to propose legislation to either House at General Convention. Canon I.2.4(a). The Presiding Bishop could, therefore, propose legislation to and/or ask the General Convention to take the actions necessary to enact a moratorium on Rites of Public Blessing which may require amending the *Book of Common Prayer* and to adopt a resolution clarifying the meaning of Resolution B033 which would require amending the Constitution and Canons to prohibit a person living in a same sex union from being a bishop.

Pastoral Scheme:

The Presiding Bishop's authority with respect to the implementation of the Pastoral Scheme is limited. The Presiding Bishop is asked to appoint two persons to a Pastoral Council responsible to the Primates. There is no specific authority in the Constitution, Canons, or By-laws to make these appointments. However, the Presiding Bishop often makes appointments to groups and bodies with no express existence or recognition either in our polity documents or elsewhere. The question is not whether the Presiding Bishop can make appointments to an ad hoc group the Primates created but whether she can she make the appointments in light of the responsibilities expected to be given to the Pastoral Council.

The expectations laid out by the Primates for the work of the Pastoral Council are extraordinarily broad. The Council is to work "in cooperation with The Episcopal Church, the Presiding Bishop and the leadership of the bishops participating in the scheme" the implication is that "The Episcopal Church" must, through some group or authority other than the Presiding Bishop, agree to participate in the work of the Pastoral Council. This is further evidenced by the scope of work envisioned for the Council. It is to have responsibility for a Primatial Vicar nominated by "Camp Allen" bishops and appointed by the Presiding Bishop.

The Primate Vicar is to have “specific powers and duties” delegated to him by the Presiding Bishop. In order to delegate something it must be the Presiding Bishop’s to delegate in the first place. The Communiqué is silent on what powers or duties might be delegated to the Primate Vicar. Since the Primate Vicar is part of the Primates’ overall Pastoral Scheme, presumably the Primate Vicar is intended to provide or be involved in making provision for ministry to individuals, congregations and clergy who “feel unable to accept the direct ministry of their bishop or of the Presiding Bishop” to “enable such individuals, congregations and clergy to exercise their ministries and congregational life within The Episcopal Church.” Dar es Salaam Primates Meeting Communiqué, February 19, 2007. The Communiqué is silent on how this is to be done. Perhaps the Primates were deliberately silent on this point or perhaps given the requests for “alternate primate oversight” filed after the Presiding Bishop’s election, the role of the Primate Vicar was envisioned to be what the dioceses’ requesting “alternate primate oversight” requested, essentially providing them with a substitute Primate.

There are no provisions in the Constitution or Canons authorizing the Presiding Bishop to delegate any of the duties and responsibilities specified in the Canons except as follows. Though not specified in the Communiqué, one of the things dissenting dioceses are concerned about is that they will be forced to have the Presiding Bishop or other bishops they deem unacceptable perform the consecration of new bishops for their dioceses. Canon III.11.6 specifies the Presiding Bishop’s role in taking order for the consecration of new bishops:

Sec. 6. Upon receipt of the consents and assurance of the acceptance of the election by the Bishop-elect, the Presiding Bishop shall take order for the ordination of the Bishop-elect either by the Presiding Bishop or the President of the House of Bishops of the Province of which the Diocese for which the Bishop was elected is part, and two other Bishops of this Church, or by any three Bishops to whom the Presiding Bishop may communicate the testimonials.

This Canon specifically directs the Presiding Bishop to choose the bishops who will consecrate new bishops. The Presiding Bishop must authorize any three bishops of The Episcopal Church to perform the consecration. Someone might suggest that bishops not of The Episcopal Church could be delegated to perform the consecration of a bishop-elect. The language of this section has changed slightly over the years but there is no suggestion that when “bishop” is used in the Constitution or Canons it refers to bishops of churches other than The Episcopal Church except where it explicitly states otherwise. The history of this section is set forth in *Annotated Constitution and Canons*, pp. 693-722. The Presiding Bishop is not authorized to delegate the consecration of a bishop of this Church to bishops from other Provinces of the Anglican Communion. If the Pastoral Scheme contemplates that the Presiding Bishop delegate the consecration of bishops in dioceses participating in the Scheme to a “Primate Vicar” or other bishops not from the Episcopal Church, it would be impermissible under the Church’s Canons.

The Canons contain one other provision specifically authorizing the Presiding Bishop to delegate certain responsibilities. Canon I.2.4(c) provides:

(c) The Presiding Bishop shall perform such other functions as shall be prescribed in these Canons; and, to be enabled better to perform such duties and responsibilities, the Presiding Bishop may appoint, to positions established by the Executive Council of General Convention, officers, responsible to the Presiding Bishop, who may delegate such authority as shall seem appropriate.

The only functions permitted to be delegated under this Canon are those “prescribed in these Canons” and they must be delegated to persons in “positions established by the Executive Council.” A fair reading of this provision is that the Executive Council, in approving the positions, is also approving the scope of the delegation of the Presiding Bishop’s canonical functions.

The Presiding Bishop should not appoint any persons to the Pastoral Council or participate in any way in the Pastoral Scheme since delegation of her responsibilities is not permitted.

#### Property Disputes:

As President of the Domestic and Foreign Missionary Society and President, Chair, and chief executive officer of the Executive Council the Presiding Bishop may make decisions about the Church’s participation in property litigation in the absence of action by the Executive Council. Canon I.4.3(a) and Canon I.3. Article I, Sec.1(a) of the By-laws states that in these roles the Presiding Bishop, “... shall exercise the powers and perform the duties prescribed by the Canons and by these By-laws, *together with all such duties as are incident to the office of the chief executive.*” (emphasis added). In the absence of contrary provisions in the Canons, By-laws, or directive from the governing body, either Executive Council or General Convention, it is a well established legal principle that it is within the authority of a chief executive officer of an organization to make decisions about litigation on behalf of the organization.

#### *Authority of the House of Bishops to Respond to the Demands of the Primates Communiqué*

The House of Bishops does not have the authority to amend the Constitution, Canons, or *Book of Common Prayer*. It is not granted any authority to adopt resolutions that are binding upon the whole Church or take actions other than those specifically authorized by the Constitution and Canons. See Appendix C. It is not granted authority to interpret the Constitution or Canons or resolutions of the General Convention.

Although not provided for or referenced anywhere in the Constitution or Canons, the House of Bishops occasionally adopts “Mind of the House” Resolutions or Statements. These Mind of the House Resolutions are not part of the Discipline of the Church. Canon IV.15 provides that the “Discipline” of the Church is found in the Constitution, the Canons, and the Rubrics and the Ordinal of the *Book of Common Prayer*. They are not binding on the Church as only the concurrent action of the House of Bishops and House of Deputies at the General Convention can bind the Church. In *Stanton v. Righter*, the Court for the Trial of a Bishop considered the binding nature of House of Bishops resolutions:

The first four of these documents are statements or resolutions by the House of Bishops or by the Presiding Bishop and his Council of Advice. They do not express the decision of the Church acting in its corporate capacity through General Convention. They alone cannot establish the doctrine of the Episcopal Church nor command the Church’s obedience and discipline.

The Court holds that only General Convention can establish the doctrine of the Episcopal Church or delineate its discipline and even so it may not change the Core Doctrine of the Church.

Opinion of the Court, pp. 15-16, May 15, 1996.

A Mind of the House Resolution simply expresses the opinion of those bishops present at a particular meeting of the House of Bishops who voted for the Resolution.

Rites of Blessing:

The Primates requested that the House of Bishops:

make an unequivocal common covenant that the bishops will not authorize any Rite of Blessing for same-sex unions in their dioceses or through General Convention ... unless some new consensus on these matters emerges across the Communion.

Dar es Salaam Primates Meeting Communiqué, February 19, 2007.

The House of Bishops does not have the authority to prohibit a Bishop Diocesan from authorizing Rites of Blessing for same sex unions in a bishop’s own diocese. The Constitution, Canons, or *Book of Common Prayer* would have to be amended to give the House of Bishops that authority.

The House of Bishops cannot, by a resolution or “common covenant,” prohibit the General Convention from authorizing such Rites. It cannot bind itself as a body or bind individual bishops to vote against authorization of such Rites if a resolution on that question reached the floor of the House of Bishops at a General Convention.

Thus, the House of Bishops does not have the authority to give the Primates what they demanded. At most, the House of Bishops can express the non-binding opinion of the bishops voting for a Mind of the House resolution or “common covenant” that they will not authorize Rites or personally vote to authorize Rites. If such a resolution or “common covenant” was passed by the House of Bishops it would not be binding on the bishops who voted for it, on those who did not vote for it, on the House of Bishops as a body, or on the Church. Similarly, it would not constitute part of the Discipline of the Church and could not be the basis for disciplinary action against a bishop who did not follow the resolution.

It does not appear that a non-binding expression of the House of Bishops’ opinion is what the Primates requested. Nonetheless, the House of Bishops may consider whether or not to adopt a non-binding resolution, statement or “common covenant” on the issue of bishops or General Convention authorizing Rites of Blessing. The Windsor Report made a similar request of the Church and the General Convention chose not to make any statement on Rites of Blessing. For the House of Bishops to respond to a similar request barely a year after General Convention declined to do so could be viewed as undermining or attempting to overrule the action of General Convention.

Consent to Elections:

The Primates requested the House of Bishops to:

confirm that the passing of Resolution B033 of the 75th General Convention means that a candidate for Episcopal orders living in a same-sex union shall not receive the necessary consent unless some new consensus on these matters emerges across the Communion.

Dar es Salaam Primates Meeting Communiqué, February 19, 2007.

The House of Bishops cannot bind anyone in the Church, even themselves, to an interpretation of Resolution B033. See discussion above on Consent to Elections.

A non-binding expression of the House of Bishops’ opinion is not what the Primates requested. Nonetheless, the House of Bishops may consider whether or not to adopt a non-binding resolution or statement on the meaning of Resolution B033. The House of Bishops may want to refrain from making such a statement for the same reasons it may be imprudent for House of Bishops to make a statement on Rites of Blessing.

Pastoral Scheme:

The Primates Communiqué did not ask the House of Bishops to take any action regarding the Pastoral Scheme. In its March Statement, however, the House of Bishops commented

at length on issues it sees with the Pastoral Scheme and asked the Executive Council to “decline to participate in it.” As with all the other aspects of the Primates Communiqué, the House of Bishops may express its opinion and make non-binding recommendations to anyone.

The House of Bishops does not have the authority to approve any provisions of the Pastoral Scheme or to take any actions needed to change our polity to permit any parts of the Scheme to be implemented.

#### Property Disputes:

The Primates Communiqué did not ask the House of Bishops to take any action regarding property disputes. However, in many cases the bishop, or the bishop acting on behalf of the diocese, is a party to or decision maker regarding litigation over property. The House of Bishops did not address property disputes in its March statement. Individual bishops may have the authority, subject to Diocesan Constitutions, Canons, and state law, to make decisions regarding acquisition or disposition of property in her/his diocese. The House of Bishops as a body has no authority to bind individual bishops, dioceses, Church institutions, or the Church itself regarding civil property litigation or to make polity regarding the enforcement of the Church’s property interests.

## **Appendix A**

### Canons of the Authority of the Presiding Bishop

#### Title I – Organization and Administration

##### Canon I.1.2(c)

The Presiding Bishop appoints all the bishops to the Standing Commissions and appoints bishops to fill vacancies of bishops on the Commissions.

##### Canon I.1.2(e)

The Presiding Bishop is a member ex officio of every Standing Commission with seat and vote and may appoint personal representatives to attend in her/his stead, without vote.

##### Canon 1.1.3(a)

The Presiding Bishop issues the summons for special meetings of the General Convention with the consent or on the request of a majority of bishops.

##### Canon I.1.5(g)

The Presiding Bishop appoints a Registrar if there is a vacancy in the office.

##### Canon I.1.7(b)

The Presiding Bishop together with the President of the House of Deputies appoints a Treasurer of the Domestic and Foreign Missionary Society if there is a vacancy in the office.

##### Canon I.1.10

The Presiding Bishop approves the amount and terms of the bond for the Treasurer of the Domestic and Foreign Missionary Society.

##### Canon I.1.12

The Presiding Bishop approves the Treasurer's appointment of Assistant Treasurer.

##### Canon I.1.13

The Presiding Bishop and President of the House of Deputies jointly appoint the Executive Officer of General Convention

##### Canon I.1.14(e)

The Presiding Bishop and President of the House of Deputies may change the date and length of General Convention.

Canon I.2.4 is set out in full:

Sec. 4(a) The Presiding Bishop shall be the Chief Pastor and Primate of the Church, and shall:

Be charged with responsibility for leadership in initiating and developing the policy and strategy in the Church and speaking for the Church as to the policies, strategies and programs authorized by the General Convention;

Speak God's words to the Church and to the world, as the representative of this Church and its episcopate in its corporate capacity;

In the event of an Episcopal vacancy within a Diocese, consult with the Ecclesiastical Authority to ensure that adequate interim Episcopal Services are provided;

Take order for the consecration of Bishops, when duly elected; and, from time to time, assemble the Bishops of this Church to meet, either as the House of Bishops or as a Council of Bishops and set the time and place of such meetings;

Preside over meetings of the House of Bishops; and when the Two Houses of General Convention meet in Joint Session, have the right of presiding over such Session, of calling for such Joint Session, of recommending legislation to either House and, upon due notification, of appearing before and addressing the House of Deputies; and whenever addressing the General Convention upon the state of the Church, it shall be incumbent upon both Houses thereof to consider and act upon any recommendations contained in such address;

Visit every Diocese of this Church for the purpose of: (i) Holding pastoral consultations with the Bishop or Bishops thereof and, with their advice, with the Lay and Clerical leaders of the jurisdiction; (ii) Preaching the Word; and (iii) Celebrating the Holy Eucharist.

(b) The Presiding Bishop shall report annually to the Church, and may, from time to time, issue Pastoral Letters.

(c) The Presiding Bishop shall perform such other functions as shall be prescribed in these Canons; and, to be enabled better to perform such duties and responsibilities, the Presiding Bishop may appoint, to positions established by the Executive Council of General Convention, officers, responsible to the Presiding Bishop, who may delegate such authority as shall deem appropriate.

Canon I.2.5

The Presiding Bishop may appoint a Chancellor to the Presiding Bishop.

Canon I.3

The Presiding Bishop is the President of the Domestic and Foreign Missionary Society.

Canon I.4.1(c)

The Presiding Bishop serves ex officio as a member of Executive Council.

Canon I.4.3(a)

The Presiding Bishop serves ex officio as Chair and President of the Executive Council.

Canon I.4.3(a)

The Presiding Bishop is the chief executive office of the Executive Council and as such has “ultimate responsibility for the oversight of the work of the Executive Council in the implementation of the ministry and mission of the Church as may be committed to the Executive Council by the General Convention.”

Canon I.4.3(d)

The Presiding Bishop appoints, with the advice and consent of Executive Council, an executive director of the Executive Council.

Canon I.4.3(e)

The Presiding Bishop and President of the House of Deputies appoint a Financial Officer of the Executive Council.

Canon I.4.3(f)

The Presiding Bishop presides at meeting of the Executive Council and performs such other duties as are customary for such office and performs such other duties as are conferred by Canon and the By-laws of the Council.

Canon I.4.3(h)

The Presiding Bishop may recommend to the Executive Council the designation of duties to additional officers, agents and employees of the Executive Council.

Canon I.4.4(a)

The Presiding Bishop may convene additional meetings of the Executive Council.

Canon I.5.3

The Presiding Bishop appoints bishops to the Board of the Archives and appoints bishops to fill vacancies of bishops on the Board.

Canon I.11.3(b)

The Presiding Bishop, after consultation with various parties, takes the necessary steps for a Missionary Diocese beyond the borders of the United States to become a part of another Province or Regional Council in communion with this Church.

Canon I.15.6

The Presiding Bishop, when General Convention is not in session, accepts organizational documents of new congregations in foreign lands and instructs the Secretary of the House of Deputies to record the new congregation on the list of congregations in foreign lands.

Canon I.15.7

The Presiding Bishop may assign a bishop of The Episcopal Church or a bishop of a Church in communion with this Church to care for and have responsibility for the congregation and clergy in foreign lands.

Canon I.15.9

The Presiding Bishop may authorize a Council of Advice to the bishop for foreign congregations to act as the Ecclesiastical Authority.

Canon I.15.10

The Presiding Bishop approves the judgment of the disciplinary Commission hearing a matter against a Clergy in charge of a congregation in a foreign land. The Commission may also ask the Presiding Bishop to proceed against the Clergy so that a more severe discipline may be imposed.

Canon I.16.1

The Presiding Bishop, upon application, may grant affiliation with this church to a congregation of Christian people while allowing them to retain use of their own rite.

Canon I.16.3

The Presiding Bishop approves the regularity of the ordination of Clergy of such Christian congregations ordained by a bishop not in communion with this Church.

Canon I.16.5

The Presiding Bishop, upon the request of the bishop where such congregation of Christian people is located, may commission another bishop to have oversight of the congregation.

Title II – Worship

Canon II.3.6(b)

The Presiding Bishop, together with the President of the House of Deputies, upon resolution of the Standing Commission on Liturgy and Music, may authorize variations and adjustments to, or substitutions or alterations in texts for trial use of the *Book of Common Prayer*.

Canon II.3.7

The Presiding Bishop, with consent of the Executive Council, fills any vacancy in the office of Custodian of the Standard *Book of Common Prayer*.

Title III – Ministry

Canon III.9.3(d)(2)

The Presiding Bishop may designate a bishop other than the Bishop Suffragan of the Armed Forces to supervise Priests serving with the Armed Services.

Canon III.11.1(c)

The Presiding Bishop receives notification of the name of the person elected bishop from the body electing a bishop and receives acceptance or declination of the election by the bishop-elect.

Canon III.11.3(b)

The Presiding Bishop notifies the Standing Committee of the electing diocese and the bishop-elect when a majority of bishops exercising jurisdiction consent to the election when the election occurs within 120 days of General Convention.

Canon III.11.4(a)

The Presiding Bishop notifies every bishop with jurisdiction of the Presiding Bishop's receipt of the required certificates for a bishop-elect elected more than 120 days before General Convention and notifies the Standing Committee of the electing diocese and the bishop-elect when a majority of bishops have consented to the election.

Canon III.11.5

The Presiding Bishop declares the election of a bishop null and void if sufficient consents of bishops and Standing Committees are not received within the required time.

Canon III.11.6

The Presiding Bishop, upon sufficient consents and acceptance of the election by the bishop-elect, takes order for the consecration of the bishop-elect "either by the Presiding Bishop or the President of the House of Bishops of the Province of which the diocese for which the bishop was elected is part, and two other bishops of this Church, or by any three bishops to whom the Presiding Bishop may communicate the testimonials."

Canon III.11.9(a)

The Presiding Bishop requests the Court of Review of the Province of the diocese electing a bishop to investigate objections to the election process filed by at least 10 percent of the electing delegates.

Canon III.11.9(c)

The Presiding Bishop includes the report of the Court of Review in the communication to bishops exercising jurisdiction.

Canon III.10(a)4

The Presiding Bishop receives a certificate from the Standing Committee of a diocese desiring the ordination of a Bishop Coadjutor that this section has been complied with.

Canon III.11.10(c)(3)(iii)

The Presiding Bishop takes order for the consecration of a bishop-elect for a Missionary Diocese.

Canon II.11.10(c)(6)

The Presiding Bishop certifies to the Secretary of the House of Bishops the change in status of a Missionary Bishop elected to be a bishop of a diocese.

Canon III.12.6(b)

The Presiding Bishop declares a Missionary Diocese's jurisdiction vacant upon the permanent impairment of its bishop.

Canon III.12.7

The Presiding Bishop receives renunciations from bishops, accepts the renunciation upon the consent of the Advisory Council and pronounces the bishop's release from the obligations of office and removal.

Canon III.12.8

The Presiding Bishop receives and accepts resignations of bishops upon reaching age seventy-two.

Canon III.12.8(c)

The Presiding Bishop certifies the failure of a bishop to resign at age seventy-two to the House of Bishops. Upon acceptance by the House of Bishops, the Presiding Bishop pronounces the bishop's position terminated.

Canon III.12.8(d-e)

The Presiding Bishop receives notices of resignation from bishops, notifies all bishops and the Standing Committee of the resignation, and upon acceptance by the bishops, notifies the bishop and Standing Committee of the acceptance of the resignation.

Canon III.12.8(f)

At General Convention the Presiding Bishop gives the House of Deputies a list of all bishops' resignations accepted since the last General Convention.

Canon III.12.8(p)

The Presiding Bishop receives certificates from medical doctors, psychologists or psychiatrists that a bishop is incapable of authorizing another bishop of the diocese or the Standing Committee to act as the Ecclesiastical Authority. Upon the advice of the bishops of five neighboring dioceses selected by the Presiding Bishop declares another bishop of the diocese or the Standing Committee to be the Ecclesiastical Authority until the Presiding Bishop certifies the Bishop Diocesan competent to resume official duties.

Canon III.13.1

The Presiding Bishop consults with a diocese without a bishop for the diocese to be placed under the provisional charge and authority of another bishop.

Canon III.14.1(d)

The Presiding Bishop receives petitions from persons under vows in Religious Orders to be released from vows, appoints a Board of three bishops to consider the petition and

make recommendations to the Presiding Bishop, and makes the final ruling on the petition.

Canon III.14.2(d)

The Presiding Bishop receives petitions from persons under full commitment in a Christian Community to be released from his/her commitment, appoints a Board of three bishops to consider the petition and make recommendations to the Presiding Bishop, and makes the final ruling on the petition.

Canon III.15

The Presiding Bishop, in consultation with the Chair of the Board, may appoint up to four members of the General Board of Examining Chaplains.

Canon III.16

The Presiding Bishop appoints four bishops to the Board for Church Deployment and fills any vacancies of bishop members.

Title IV – Ecclesiastical Discipline

Canon IV.1.5

The Presiding Bishop may issue a Temporary Inhibition against a bishop charged with an Offense or against whom serious acts are complained of and may dissolve or modify it. The consent of the Standing Committee is needed for a Bishop Diocesan.

Canon IV.1.6

The Presiding Bishop may issue an Inhibition against a bishop against whom a Presentment has been issued, or who has been convicted of a crime involving immorality or against whom a judgment has been entered involving immorality. The consent of the Standing Committee is needed for a Bishop Diocesan.

Canon IV.2(B)

The Presiding Bishop may enter into a Waiver and Voluntary Submission to Discipline with a bishop against whom a Presentment has been issued or against whom a Charge has been filed or an alleged commission of an Offense has been made known to the Presiding Bishop. The Review Committee must approve the Sentence.

Canon IV.3(B)21

The Presiding Bishop serves a copy of a Request for a Statement of Disassociation against a bishop, fixes the date for a response by the bishop and transmits the Request and response and briefs to each member of the House of Bishops. If a Presentment is issued, the Presiding Bishop fixes a date for the filing of an answer and brief and then transmits the Presentment, answer and other documents to each member of the House of Bishops.

Canon IV.3(C)22

When a bishop is convicted in a criminal court of certain offenses or has a civil judgment issued against him/her involving immorality, the Presiding Bishop must make an inquiry and have the Chancellor to the Presiding Bishop issue a Presentment if the conviction or judgment is established.

Canon IV.3(C)23(b)

The Presiding Bishop may inform the Review Committee when he/she has sufficient reason to believe a bishop has committed an Offense.

Canon IV.3(C)23(c)

The Presiding Bishop must investigate rumors, reports or allegations affecting a bishop's personal or official character when requested by the bishop with the advice and consent of two other bishops.

Canon IV.3(C)25

The Presiding Bishop may appoint an Advocate for certain victims and other persons in the disciplinary process.

Canon IV.3(C)26

The Presiding Bishop forwards Charges filed against bishops to the Review Committee.

Canon IV.3(C)27 and 32

The Presiding Bishop appoints the episcopal members of the Review Committee and fills vacancies of episcopal members.

Canon IV.8.2

The Presiding Bishop may accept the renunciation of a bishop with the consent of the Review Committee.

Canon IV.9

The Presiding Bishop inhibits a bishop upon receipt of certification of the bishop's abandonment of the Communion by the Review Committee with the consent of the three senior bishops with jurisdiction. The Presiding Bishop determines whether the bishop retracts the statements or acts leading to the finding of abandonment and if the retraction is not sufficient, presents the matter to a vote of the House of Bishops.

Canon IV.12.1

The Presiding Bishop may, with the approval of the bishop with jurisdiction, place a Priest or Deacon on the Special List of Clergy back on a Diocesan Clergy Role. The Presiding Bishop may depose Priests and Deacons on the List who have not made the required annual report to the Presiding Bishop.

Canon IV.10

The Presiding Bishop pronounces Sentence upon bishops.

## Appendix B

### Duties and Responsibilities of the Presiding Bishop according to the By-laws of the Executive Council of The General Convention and of the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America

- Presides at all meetings of the Executive Council and the Society. By-laws, Art. 1, Sec.1(a).
- With consent of the Executive Council appoints the Executive Director to be the chief operating office of the Executive Council. By-laws, Art. 1, Sec. 2.
- With consent of the Executive Council appoints Assistant Secretaries of the Executive Council. By-laws, Art.1, Sec.3.
- Together with the President of the House of Deputies nominates a Financial Officer of the Executive Council who also acts as the Treasurer of the Society. By-laws, Art.1, Sec 5.
- With the consent of the Executive Council appoints Assistants to the Financial Officer of the Executive Council who also serve as Assistant Treasurers of the Society. By-laws, Art. 1, Sec. 6.
- After consultation with the Audit Committee and with the consent of the Executive Council appoints a Controller for the Executive Council and Society. By-laws, Art. 1, Sec.7.
- Employs persons deemed necessary to carrying out the canonical responsibilities of the Executive Council and Society. By-laws Art. 1, Sec. 9.
- Serves on the Joint Agenda Committee of the Executive Council and Society. By-laws, Art. II, Sec. 5.
- Together with the President of the House of Deputies nominates the members of the four Standing Committees of the Executive Council. By-laws, Art. II, Sec. 6.
- Together with the President of the House of Deputies appoints the chair of the four Standing Committees of the Executive Council. By-laws, Art. II, Sec.6.
- Together with the President of the House of Deputies nominates four members of the Audit Committee of the Executive Council and Society. By-laws, Art. III, Sec. 1.
- Together with the President of the House of Deputies appoints the Chair of the Audit Committee of the Executive Council and Society. By-laws, Art. III, Sec. 2.
- Serves as a member of the Investment Committee of the Executive Council. By-laws, Art IV, Sec. 1.
- Together with the President of the House of Deputies nominates one member of the Executive Council to serve on the Investment Committee of the Executive Council. By-laws, Art. IV, Sec. 1(a).
- Together with the President of the House of Deputies nominates six to nine other persons to serve on the Investment Committee of the Executive Council. By-laws, Art. IV, Sec. 1(b).

- Together with the President of the House of Deputies nominates persons to fill vacancies on the Investment Committee of the Executive Council. By-laws, Art. IV, Sec. 1.
- Appoints the Chair and Vice-Chair of the Investment Committee of the Executive Council from among the Committee's members. By-laws, Art. IV, Sec. 2.

## **Appendix C**

### Constitution and Canons on Authority of the House of Bishops

All of the Canons specifying that the House of Bishops elects persons to various bodies and positions or has to consent to elections by the House of Deputies are not set forth below. References to the authority for a majority of bishops to take an action even if it does not have to be taken in the context of a meeting of the House of Bishops are set forth.

#### Constitution

##### Article II, Section 6

The House of Bishops must give its consent to a bishop's resignation of jurisdiction.

##### Article II, Section 7

The House of Bishops elects a Suffragan Bishop for the chaplains in the Armed Forces, Veterans' Administration Medical Centers, and Federal Correctional Institutions.

##### Article II, Section 8

The House of Bishops must consent to the resignation and renunciation of the right of succession of a Bishop Coadjutor elected as a bishop in another diocese.

##### Article III

The House of Bishops must consent to the consecration of bishops for foreign lands.

##### Article VI, Section 1

The House of Bishops may establish Missions in any area not within the boundaries of this Church and elect or appoint a bishop for such Mission.

#### Canons

##### Title I – Organization and Administration

###### Canon I.1.3(a)

A majority of bishops can requisition or must consent to the calling of a special meeting of General Convention;

###### Canon I.1.5(c)

The House of Bishops prescribes the forms of Letters of Ordination and Consecration.

###### Canon I.2.1(e)

The House of Bishops elects the Presiding Bishop with the consent of the House of Deputies.

Canon I.2.1(f)

The House of Bishops elects a person to fill a vacancy in the office of Presiding Bishop with the consent of a majority of Standing Committees.

Canon I.11.2(a)

The House of Bishops may establish a Mission in any area not within the boundaries of a diocese of this Church, or of a Church in communion with this Church and the House of Bishops approves the conditions and agreements related to the Mission.

Title III - Ministry

Canon III.11.1(b)

The House of Bishops elects a bishop for a diocese upon request of the Convention of the diocese. The election must be approved by the House of Deputies or a majority of Standing Committees.

Canon III.11.10(c)

The House of Bishops elects a bishop for a Missionary Diocese upon request of the Convention of the Missionary Diocese. The election must be approved by a majority of Standing Committees.

Canon III.12.8(d)

The House of Bishops accepts or refuses the resignation of bishops.

Canon III.14.1

The Committee on Religious Communities of the House of Bishops must officially recognize Religious Communities and Christian Communities.

Canon III.15.1

The House of Bishops fills any vacancies on the General Board of Examining Chaplains between General Conventions.

Title IV – Ecclesiastical Discipline

Canon IV.3(B)21(b)

The House of Bishops may issue a Statement of Disassociation from doctrine alleged to be contrary to that held by this Church upon filing of a request for same.

Canon IV.3(B)21(c)

One-third of the House of Bishops must approve of a Presentment against a bishop for an Offense of doctrine.

Canon IV.9(2)

The House of Bishops must consent to the deposition of a bishop for Abandonment of the Communion.

Canon IV.13

The House of Bishops may remit, terminate, or modify any judicial Sentence imposed on a bishop.

## Appendix D

### Prior Relevant Actions of the House of Bishops

The House of Bishops has previously taken actions that some have interpreted as intended to interpret portions of the Constitution, the Canons, or to bind bishops in ways not authorized by the polity of the Church.

The House of Bishops passed a Mind of the House Resolution some misunderstood as enacting a “moratorium” along the lines of what the Primates demanded. Paragraph 134 of the Windsor Report (2004) invited The Episcopal Church:

... to effect a moratorium on the election and consent to the consecration of any candidate to the episcopate who is living in a same gender union until some new consensus in the Anglican Communion emerges.

At its meeting in March 2005, the House of Bishops adopted “A Covenant Statement of the House of Bishops” in response to the Windsor Report which stated in paragraph 3:

The Windsor Report has invited the Episcopal Church “to effect a moratorium on the election and consent to the consecration of any candidate to the episcopate who is living in a same gender union until some new consensus in the Anglican Communion emerges” Windsor Report, para. 134. Our polity, as affirmed both in the Windsor Report and the Primates Communiqué [Dromantine 2005], does not give us the authority to impose on the dioceses of our church moratoria based on matters of suitability beyond the well-articulated criteria of our canons and ordinal. Nevertheless, this extraordinary moment in our common life offers the opportunity for extraordinary action. In order to make the fullest possible response to the larger communion and to re-claim and strength our common bonds of affection, this House of Bishops takes the following provisional measure to contribute to a time for healing and for the educational process called for in the Windsor Report. Those of us having jurisdiction pledge to withhold consent to the consecration of any person elected to the episcopate after the date hereof until the General Convention of 2006, and we encourage the dioceses of our church to delay episcopal elections accordingly.

The Statement went on in paragraph 4 to state, in part:

In response to the invitation in the Windsor Report that we effect a moratorium on public rites of blessing for same sex unions, it is important that we clarify that the Episcopal Church has not authorized any such liturgies, nor has General Convention requested the development of such rites. ... Some in our church hold such “pastoral care” to include the blessing of same sex relationships. Others hold that it does not. Nevertheless, we pledge not to authorize any public rites for the

blessing of same sex unions, and we will not bless any such unions, at least until General Convention 2006.

In both paragraphs the House of Bishops “pledge[d]” not to take actions bishops may legitimately take under our Constitution and Canons. While they recognized in paragraph 3 that they did not have authority to enact a moratorium on the election and consent to bishops living in same sex unions, and that such an action would, in fact, violate the Canons, they pledged to not consent to any person elected a bishop until at least General Convention. Whether or not this action was within the House of Bishops authority, the effect was that all dioceses who had elections scheduled requiring consents prior to General Convention 2006 postponed their elections so the consent process occurred at General Convention or later.

The March 2005 House of Bishops meeting at which this extraordinary Mind of the House Resolution was passed was the first meeting of the bishops after the Windsor Report was issued in the fall of 2004. The bishops knew General Convention was more than a year away. A majority of the bishops at that meeting pledged not to consent to the election of ANY bishop prior to General Convention and agreed not to authorize or conduct any blessings of same sex unions. The bishops understood they did not have the authority to adopt a moratorium on consents or to prohibit blessings. The Resolution expressed the opinion and personal pledge of those who voted for it to not take the actions described. Other bishops at the meeting made it clear they would not refrain from those actions. No disciplinary action could have been taken against a bishop for failure to follow the Resolution.

The March 2005 Mind of the House Resolution was an extraordinary interim response to the Windsor Report intended to show the House of Bishops’ concern for the issues raised in the Report and to make a response since it would be more than a year before the General Convention could take up the Report. The Primates demand for a moratorium or “common covenant” was made after the Church had an opportunity to study and consider the Windsor Report and after the General Convention had decided how the Church should respond to it. Since the supreme governing body of the Church has recently spoken on the issues raised by the Primates, there is no reason for any extraordinary response by the House of Bishops.

The Primates also requested that the House of Bishops “confirm that the passing of Resolution B033 of the 75th General Convention means that a candidate for Episcopal orders living in a same sex union shall not receive the necessary consent.” This raises the question of whether or not the bishops have the authority to interpret resolutions of General Convention. As discussed above, the House of Bishops does not have that authority. Nonetheless, there are several examples of the House of Bishops appearing to adopt a Mind of the House Resolution interpreting a Canon, a Canon being one type of General Convention resolution.

At its meeting in Port St. Lucie, Florida in 1977 following the General Convention’s approval of the ordination of women in 1976, the House of Bishops adopted a lengthy

“Statement of Conscience” discussing whether or not the Canon on the ordination of women was intended to be permissive or mandatory. At the end of the Statement was the following language:

(4) In the light of all this and in keeping with our intention at Minneapolis [the location of the 1976 General Convention], we affirm that no Bishop, Priest, Deacon or Lay Person should be coerced or penalized in any manner, nor suffer any canonical disabilities as a result of his or her conscientious objection to or support of the 65th General Convention’s action with regard to the ordination of women to the priesthood or episcopate.

Resolution, Journal of the General Convention of the Protestant Episcopal Church in the United States of America [New York: General Convention, 1979], B-192-193.

This Statement may be viewed by some as an interpretation of the Canon on the ordination of women. Others may view it as expressing an opinion that even if the Canon was mandatory, as a matter of conscience it should not be enforced against those who disagreed with it.

At its meeting in Portland, Oregon in 1995 the House of Bishops adopted another resolution on the ordination of women interpreting the Canon on the ordination of women:

Resolved, it is the mind of the House that Canon III.8.1 is mandatory in all dioceses of this church.

Resolution, Journal of the General Convention of the Protestant Episcopal Church in the United States of America [New York: General Convention, 1997], p. 406.

The Resolution was not binding on the bishops or on the Church. It expressed the non-binding opinion of the majority of bishops at that meeting.

The House of Bishops has also taken action which could be seen as interpreting a provision of the Constitution. At General Convention 2003 the House of Bishops adopted a House of Bishops Rule of Order, Standing Rule X, stating its “understanding of the intent of the pertinent terms [“advanced age,” “bodily infirmity,” “office created by the General Convention,” and “mission strategy”] of that provision of the Constitution ...[Article I.2].”

There is no provision in the Constitution and Canons authorizing the House of Bishops to interpret any portion of the Constitution, Canons, or Resolutions of General Convention whether by adoption of a Mind of the House resolution, a Rule of Order or otherwise. The Court in *Stanton v. Righter* held that resolutions of the House of Bishops cannot demand obedience from the Church. Opinion of the Court, p. 15, May 15, 1996. Therefore, the House of Bishops cannot bind the Church to an interpretation of the Constitution, Canons or resolutions of General Convention or in any other way change

the polity of the Church. It cannot bind an individual bishop, whether or not a bishop voted for the measure. It cannot bind the House of Bishops.