

PEP Argument Briefing Paper

Title: Legal Considerations
Applicable to: Proposed Constitutional Amendment: Article I, Section 1
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Date: 11/6/2003

Summary

This resolution is an effort to supercede the Church's constitution and canons and to substitute decisions made by the diocese and its bishop for decisions made by the Episcopal Church, USA (ECUSA). The resolution states, in effect, that any canon or other action the Church may take of which the bishop or other diocesan authority does not approve is not legally binding. As such, the amendment is null and void on its face, although there may be adverse consequences for any who support it. Acting, or intending to act, contrary to canon law may be considered a declaration that one has separated from the Church, and may well be now in violation of ordination vows and/or fiduciary responsibilities.

Argument

- This proposed amendment purports to uphold the “historic Faith and Order” of the Church against any alleged encroachment by ECUSA’s laws or actions. However, the authority underlying this “historic Faith and Order” is unclear, and its meaning is not specified. The “historic Faith and Order” is set forth in the Book of Common Prayer, and, under ECUSA’s Constitution, authority for interpreting and applying the Book of Common Prayer is accorded to the General Convention. If the diocese now claims a preëminent ability to understand and implement the historic Faith and Order, that ability is founded neither on tradition nor on the constitution, canons, convention, or other sources of authority that our Church has used to guide our worship and practice.
- If this superior ability to enact the “historic Faith and Order” is supposedly based upon the movement of the Holy Spirit, rather than on the documents and structures of the Church, the diocese has not explained why it has a better claim to being directed by the Spirit than does the Church at large. If this ability is based on a reading of Scripture alone, then the diocese is rejecting two of the three foundations of our Church, tradition and reason, and constraining its faith in Scripture to its understanding of it at a particular moment.
- General Convention is empowered to (among other things) approve any amendments or additions to the Book of Common Prayer (Article X), admit new dioceses (Article V) and to amend the Constitution of the ECUSA (Article XI). This amendment attempts to circumvent not only those canons and resolutions most strenuously criticized by the American Anglican Council; it also alters the very basis of Church polity.
- At the 2002 diocesan convention, this diocese exercised its right to refuse to recognize certain acts of General Convention. However, this amendment exceeds

both the physical boundaries and the authority of our diocese and attempts to change the structure of the ECUSA. Supplanting the ECUSA's Constitution and Canons with those of the Diocese of Pittsburgh borrows the logic of 19th-century nullification theorists and secessionists—and is likely to meet with the same success.

- This amendment not only replaces the authority by which all dioceses have agreed to abide (*i.e.* ECUSA's Constitution and Canons, and General Convention), but also its rejection of law invites the intervention of civil authorities. More than a century ago, the United States Supreme Court held that those who join a hierarchical church agree to government and control by that hierarchy, and that “property owned by subordinate groups is held for the ultimate benefit of the entire group and may not be alienated by a particular group possessing temporal control at a particular time.” See White & Dykman, *Annotated Constitution and Canons*, Vol. I, Comment on (former) Title I, Canon 6. Specifically, in *Jones v. Watson*, 80 U.S. 679 (1872), the Supreme Court held that:

The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine and to create tribunals for the decision of controverted questions of faith within the association and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves do so with an implied consent to this government and are bound to submit to it.

Subsequent courts have held that, for the purposes of determining issues such as ownership of property, ECUSA is indeed a hierarchical church. By electing to join, or by continuing to affiliate with, a hierarchical denomination, we have given consent to follow the precepts of that hierarchy and its canons, and to accede even where we do not agree. Certainly, many denominations do not recognize the authority of a central governing body, or establish parallel lines of authority, but allowing diocesan authority to supercede national authority is not Anglican, Episcopalian, or legal.

Supporting Information

From page C1 of the materials provided to deputies to the 2003 Annual Convention:

PROPOSED CONSTITUTIONAL AMENDMENT: Article I, Section 1

Resolved, by this 138th Annual Convention of the Episcopal Diocese of Pittsburgh, that a second sentence be added to Article 1 [*sic*], Section 1 of the Constitution:

In cases where the provisions of the Constitution and Canons of the Church in the Diocese of Pittsburgh speak to the contrary, or where resolutions of the Convention of said Diocese have determined the Constitution and Canons of the Protestant Episcopal Church in the United States of America, or resolutions of its General Convention, to be contrary to the historic Faith and Order of the one holy catholic and apostolic church, the local determination shall prevail.