

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY

CALVARY EPISCOPAL CHURCH; THE  
EPISCOPAL DIOCESE OF PITTSBURGH;  
THE REVEREND DR. HAROLD T. LEWIS;  
PHILIP RICHARD ROBERTS; and HERMAN  
S. HARVEY,

Plaintiffs,

v.

THE RIGHT REVEREND ROBERT  
WILLIAM DUNCAN; THE RIGHT  
REVEREND HENRY SCRIVEN;  
BABATUNDE FAPOHUNDA; ROBERT  
MANSON; JAMES MOORE; JOHN  
MORGAN; LYNN PATTERSON; DONALD  
PEPLER; THOMAS RAMPY; BRUCE G.  
SEILING; JOHN STEVENSON; RICHARD  
THOMAS; DOUGLAS WICKER; THE  
REVEREND CATHERINE BRALL;  
KATHLEEN MARKS; THE REVEREND J.  
DOUGLAS McGLYNN; THE REVEREND  
SCOTT T. QUINN; WILLIAM ROEMER; and  
THE EPISCOPAL DIOCESE OF  
PITTSBURGH,

Defendants,

and

THE EPISCOPAL CHURCH, an  
unincorporated association, by THE RIGHT  
REVEREND JOHN C. BUCHANAN, as  
Trustee *Ad Litem*,

Plaintiff-in-Intervention.

CIVIL DIVISION

No. GD-03-020941

PETITION TO INTERVENE

FILED ON BEHALF OF:

The Episcopal Church, by the Right Reverend  
John C. Buchanan, as Trustee *Ad Litem*

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## PETITION TO INTERVENE

The Episcopal Church, through the Right Reverend John C. Buchanan, as Trustee *Ad Litem*, petitions this Court pursuant to Pennsylvania Civil Procedure Rules 2327 and 2328 to permit it to intervene in this Action as a party plaintiff. In support of its petition, The Episcopal Church states as follows:

1. The Episcopal Church, also known as The Protestant Episcopal Church in the United States of America (“The Episcopal Church” or the “Church”), is an unincorporated association with its headquarters in New York, New York. The Episcopal Church petitions this Court through the Right Reverend John C. Buchanan, one of its Bishops and the Parliamentarian of the Church’s House of Bishops, as Trustee *Ad Litem*.

2. The Episcopal Church is not a party to this Action and seeks to intervene as a party plaintiff.

3. The Episcopal Church is a hierarchical religious denomination, comprising 111 geographically-defined, subordinate entities known as “dioceses” and nearly 7,700 worshipping congregations, usually called “parishes,” in the United States and other countries.

4. The Episcopal Church has a three-tiered structure and representative form of government prescribed by its Constitution and bylaws known as “canons.”

5. At the highest level, the Church is governed by a legislative body called its “General Convention,” which is comprised of a “House of Bishops” and a “House of Deputies” consisting of clergy and lay persons elected by the Church’s subordinate dioceses. The General Convention is the supreme legislative authority of the Church and has adopted and from time to time amends a Constitution and canons, which are binding upon all units and members of the Church. The General Convention has adopted and from time to time amends The Book of

Common Prayer of the Church, which contains the forms of worship generally to be used in all congregations of the Church and whose “directions” are binding on all units and members of the Church.

6. The next level of the Church’s organization and governance is the diocese. A diocese may be formed only by action of the General Convention, and only with an unqualified accession to The Episcopal Church’s Constitution and canons. The governing body of each diocese, generally called its “Convention,” is a legislative body comprised of clergy of the diocese and laity elected by their congregations. Each diocesan Convention adopts and from time to time amends its own diocesan Constitution and canons that supplement and may not conflict with the Church’s Constitution or canons.

7. Each diocese is generally under the authority of a bishop elected by the diocesan Convention and “ordained” and installed with the consent of the leadership of a majority of the other dioceses. The Bishop is in charge of both ecclesiastical and temporal affairs within that diocese. The Bishop is advised by and as to certain matters shares authority with a “Standing Committee” of ordained and lay persons elected by the diocesan Convention. In some dioceses, the Standing Committee serves as the governing authority when the office of Bishop is vacant.

8. At the third level of governance, the 111 dioceses contain and exercise ecclesiastical and temporal authority over the Church’s nearly 7,700 worshipping congregations, generally called parishes.

9. Under the Church’s Constitution, canons, and polity, no diocese or parish may unilaterally divide, separate, or otherwise disaffiliate from the Church.

10. The Episcopal Church Constitution and canons prescribe the methods by which a new diocese of the Church may be formed. Since its founding, The Episcopal Church has

required that a new diocese of the Church be formed only with the consent of the General Convention and only if the new diocese accedes to the legislative authority of the General Convention as expressed in the Constitution, canons, or both.

11. Once formed, a diocese of the Church is a subordinate unit of the Church, bound by the provisions of the Church's Constitution and canons, which govern both temporal and ecclesiastical matters, and by The Book of Common Prayer of the Church.

12. Article VIII of the Church's Constitution and the Ordination service of The Book of Common Prayer of the Church provide that an individual may not be ordained deacon, priest, or bishop unless he or she subscribes to the following written declaration:

“I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.”

This oath is generally referred to as the “Declaration of Conformity.” The Service for Ordination of a Bishop in The Book of Common Prayer requires that an individual being ordained as a bishop of the Church promise to “guard the faith, unity, and discipline of the Church” and to “share with [his or her] fellow bishops in the government of the whole Church.”

13. Canon I.17(8) of The Episcopal Church applies to all officers at each level of governance and requires that “[a]ny person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised.”

14. The Episcopal Diocese of Pittsburgh (the “Diocese”) has been a subordinate constituent unit of The Episcopal Church since the Diocese's creation by the Church in 1865.

15. In 1865, Article V of the Church's Constitution provided that a new diocese could be formed only with the consent of the General Convention and “on [the new diocese's]

acceding to [The Episcopal Church] Constitution.” Episcopal Church Canon III.6 provided at the time that the formation of a new diocese “shall have been ratified by the General Convention.”

16. In November 1865, the Diocese adopted a Constitution and canons. Article I of the Diocese’s first Constitution stated: “This Church, as a constituent part of the Protestant Episcopal Church of the United States of America, accedes to, recognizes, and adopts the general Constitution of that Church and acknowledges its authority accordingly.” Article I of the Constitution of the Diocese has always contained language in which the Diocese accedes to the legislative authority of the General Convention as expressed in the Constitution, canons, or both.

17. Throughout its history and at least until the present dispute arose, the Diocese has consistently participated in the life of the Church as a subordinate unit and has generally complied with the requirements imposed on it by the Church’s Constitution, canons, and The Book of Common Prayer as set forth in Paragraph 11 above.

18. Defendant the Right Reverend Robert W. Duncan was formerly an ordained member of the clergy of The Episcopal Church and Bishop of the Diocese. Prior to his ordinations as deacon, priest, and bishop of the Church, defendant Bishop Duncan signed the Declaration of Conformity described in Paragraph 12 above, as required by the Church’s Constitution and The Book of Common Prayer, and was ordained Bishop of the Diocese in 1997 with the consents of the leadership of a majority of the other dioceses of the Church, pursuant to the constitutional, canonical, and liturgical requirements of the Church.

19. Each clergy and lay person who holds any office in the Diocese is bound by Church Canon I.17(8) to faithfully execute his or her office in accordance with the Constitutions and canons of the Church and the Diocese, as described in Paragraph 13 above; and the clergy

are bound to obey the Constitution and canons of the Church by the Declaration of Conformity, as described in Paragraph 12 above, that each signed prior to ordination.

20. At its November 2007 meeting, at the urging of defendant Bishop Duncan and other individuals who were dissatisfied with certain aspects of The Episcopal Church, the Annual Convention of the Diocese passed a resolution intended to amend the Diocese's Constitution, purportedly to effect the withdrawal of the Diocese from the Episcopal Church. According to the Diocese's Constitution, amendments to it must be passed by two successive Annual Conventions.

21. Following the November 2007 meeting of the Diocese's Convention, under the Constitution and canons of The Episcopal Church, defendant Bishop Duncan was determined to have abandoned the Communion of the Church by an open renunciation of the Doctrine, Discipline, or Worship of the Church in attempting to remove the Diocese from the Church in contradiction to the Church's Constitution and canons. In September 2008, defendant Bishop Duncan was removed from the ordained ministry of the Church, pursuant to Church Canon IV.9, and he thereby ceased being a bishop of the Church or the Diocese.

22. Following the removal of Bishop Duncan, under the Constitutions and canons of the Church and the Diocese, the Diocese's Standing Committee became the Ecclesiastical Authority of the Diocese.

23. At an October 4, 2008 meeting of the Convention of the Diocese, at the urging of the individual defendants described in Paragraph 24, the November 2007 resolution intended to amend the Diocese's Constitution as described in Paragraph 21 received a majority of the votes cast on its second reading, over an objection of a member of the Standing Committee of the

Diocese. At that October meeting, the Convention purported to adopt a new canon declaring its membership in a different church.

24. Those individual defendants comprising the former leadership of the Diocese who supported the purported withdrawal of the Diocese from The Episcopal Church and the purported affiliation of the Diocese with another church by those acts left The Episcopal Church, violated their obligations under the Church's Declaration of Conformity and/or Canon I.17(8), and were not eligible to hold any office in The Episcopal Church, the Diocese, or any of its other subordinate units, and thus, their offices became vacant.

25. The Diocese held a special meeting of its Convention in December 2008. At that meeting, the remaining vacant offices in the leadership of the Diocese, including the Standing Committee, were filled; resolutions were passed declaring the Constitutional and canonical amendments described in Paragraphs 20 and 23 void and of no effect; and clergy and lay deputies to the Church's 2009 meeting of the General Convention were elected.

26. Following the special meeting of the Diocese's Convention described in Paragraph 25 above, the Standing Committee of the Diocese appointed an Assisting Bishop to provide interim episcopal oversight for the Diocese.

27. The Church has recognized the Assistant Bishop described in Paragraph 26 above as the Bishop with episcopal oversight of the Diocese; the members of the Standing Committee described in Paragraph 25 as the Ecclesiastical Authority of the Diocese; and the persons described in Paragraph 25 as the elected deputies or representatives of the Diocese to the Church's General Convention.

28. The Episcopal Church is informed and believes that defendant former Bishop Duncan, as well as the other individual defendants described in Paragraph 24 who were formerly

part of the leadership of the Diocese, control an entity of unknown form that uses the name “Episcopal Diocese of Pittsburgh” and hold that entity out as the Diocese; have asserted authority over Episcopal parishes, congregations, and other organizations in the Diocese; and have exclusive possession and control of substantially all of the real and personal property of the Diocese.

29. On October 10, 2008, the Chancellor of the Diocese wrote to a lawyer for defendant Bishop Duncan and the group claiming to be aligned with the Anglican Province of the Southern Cone and requested that his clients effect an “orderly transition of control [of the assets and property of the Diocese] to the rightful Standing Committee or their designees.” The Episcopal Church is informed and believes that neither defendant Bishop Duncan nor any of the other individual defendants described in Paragraph 24 has complied with this request.

30. On January 20, 2009, defendants filed motions in which they took the position, *inter alia*, that Andrew Roman does not represent the Episcopal Diocese of Pittsburgh but represents an entity that is “newly-created,” and thus, Mr. Roman’s client was not entitled to the relief sought, pursuant to Paragraph 1 of this Court’s October 14, 2005 Stipulation and Order, in the Request to Special Master filed on January 8, 2009.

31. The Episcopal Church takes the position that the actions described in Paragraphs 20, 23, and 28 are contrary to the Constitution and canons of The Episcopal Church and are otherwise contrary to law and without any effect; that all property held by or for the Diocese is held and may only be used for the mission of the Church and the Diocese subject to the Constitutions and canons of the Church and the Diocese; that the Diocese remains a subordinate part of the Church for all purposes including application of Paragraph 1 of this Court’s October 14, 2005 Stipulation and Order; and that the persons now in the leadership of the Diocese, as

recognized by the Church, are the proper authorities entitled to the use and control of the real and personal property of the Diocese.

32. The issues raised by defendants in their motions for this Court to decide thus directly impact the substantial legally enforceable interests of The Episcopal Church. The Episcopal Church has an interest in ensuring that any determination by this Court regarding the ability of the Diocese to disaffiliate from The Episcopal Church or the identity of the persons now comprising the leadership of the Diocese, including in connection with an interpretation or application of Paragraph 1 of the October 14, 2005 Stipulation and Order, does not contravene The Episcopal Church's Constitution, canons, or polity, including the requirement that all Church property may only be used for the mission of the Church subject to the Constitution and canons of the Church, guaranteed to the Church under the First Amendment.

Wherefore, The Episcopal Church respectfully requests for leave to intervene as a plaintiff, for the relief set forth in the Complaint-in-Intervention attached as Exhibit 1, and for such other and further relief as the Court may deem necessary and proper.

Dated: February 13, 2009

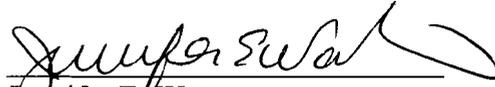
Respectfully submitted,

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Attorneys for Plaintiff-in-Intervention  
The Episcopal Church, by the Right Reverend John  
C. Buchanan, as Trustee *Ad Litem*

VERIFICATION

I, John C. Buchanan, hereby aver that I am a Bishop of The Episcopal Church and a member and Parliamentarian of the Church's House of Bishops; that as such, I have been authorized to sign this Verification on The Episcopal Church's behalf; and that the facts set forth in the foregoing Petition to Intervene, and in the Complaint-in-Intervention attached as Exhibit 1 thereto, are true and correct based upon by personal knowledge or upon information and belief. I make this Verification subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

  
John C. Buchanan

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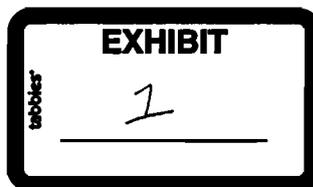
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## COMPLAINT-IN-INTERVENTION

### Parties

1. Plaintiff-in-Intervention is The Episcopal Church, also known as The Protestant Episcopal Church in the United States of America (“The Episcopal Church” or the “Church”), an unincorporated association, with its headquarters in New York, New York. The Episcopal Church brings this Complaint-in-Intervention through the Right Reverend John C. Buchanan, one of its Bishops and the Parliamentarian of the Church’s House of Bishops, as Trustee *Ad Litem*. Bishop Buchanan resides in Mt. Pleasant, South Carolina.

2. The Episcopal Church is a hierarchical religious denomination, comprising 111 geographically-defined, subordinate entities known as “dioceses” and nearly 7,700 worshipping congregations, usually called “parishes,” in the United States and other countries.

3. The Episcopal Diocese of Pittsburgh (the “Diocese”) is an unincorporated association and one of The Episcopal Church’s subordinate units. It encompasses eleven Pennsylvania counties, including Allegheny County, and is headquartered in Pittsburgh, Pennsylvania. The original complaint in this action named the Diocese as a plaintiff acting through plaintiff Calvary Episcopal Church as Trustee *Ad Litem*. The Diocese was permitted to intervene as a defendant by order of this Court dated March 5, 2004.

4. Plaintiff Calvary Episcopal Church is a non-profit corporation located in Pittsburgh, Pennsylvania, and is a parish of The Episcopal Church and the Diocese.

5. Plaintiff the Reverend Dr. Harold T. Lewis is Rector of plaintiff Calvary Episcopal Church and resides in Allegheny County, Pennsylvania.

6. At the commencement of this action, plaintiff Philip Richard Roberts was Senior Warden of plaintiff Calvary Episcopal Church.

7. Plaintiff Herman S. Harvey has been a member of St. Stephens Church in Sewickley, Pennsylvania and resides in Sewickley, Pennsylvania. Mr. Harvey was permitted to intervene as a plaintiff by order of this Court dated December 23, 2003.

8. Defendant the Right Reverend Robert W. Duncan is a resident of Pittsburgh, Pennsylvania. He was formerly an ordained member of the clergy of The Episcopal Church and Bishop of the Diocese.

9. At the commencement of this action, defendant the Right Reverend Henry Scriven was a resident of Pittsburgh, Pennsylvania and Assistant Bishop of the Diocese. He is no longer a member of the clergy of The Episcopal Church and resides in Oxford, England.

10. At the commencement of this action, defendants Babatunde Fapohunda, Robert Manson, James Moore, John Morgan, Lynn Patterson, Donald Pepler, Thomas Rampy, Bruce G. Seiling, John Stevenson, Richard Thomas, and Douglas Wicker were members of the Board of Trustees of the Diocese and, on information and belief, were sued in their representative capacities.

11. At the commencement of this action, defendants the Reverend Catherine Brall, Kathleen Marks, the Reverend J. Douglas McGlynn, the Reverend Scott T. Quinn, and William Roemer were members of the Standing Committee of the Diocese and, on information and belief, were sued in their representative capacities.

#### Structure of The Episcopal Church

12. The Episcopal Church has a three-tiered structure and representative form of government prescribed by its Constitution and bylaws known as “canons.”

13. At the highest level, the Church is governed by a legislative body called its “General Convention,” which is comprised of a “House of Bishops” and a “House of Deputies”

consisting of clergy and lay persons elected by the Church's subordinate dioceses. The General Convention is the supreme legislative authority of the Church and has adopted and from time to time amends a Constitution and canons, which are binding upon all units and members of the Church. The General Convention has adopted and from time to time amends The Book of Common Prayer of the Church, which contains the forms of worship generally to be used in all congregations of the Church and whose "directions" are binding on all units and members of the Church.

14. The "Presiding Bishop" is the "Chief Pastor and Primate" of the Church and is elected by the General Convention. The Presiding Bishop is charged with leadership in initiating and developing Church policy, strategy, and programs; speaking for the Church on such matters; and carrying out appointive and disciplinary functions prescribed by the General Convention.

15. The Episcopal Church has an Executive Council comprised of elected bishops, priests, and lay persons who manage the fiscal and programmatic affairs of the Church between meetings of the General Convention under the leadership of the Presiding Bishop.

16. The next level of the Church's organization and governance is the diocese. A diocese may be formed only by action of the General Convention, and only with an unqualified accession to The Episcopal Church's Constitution and canons. The governing body of each diocese, generally called its "Convention," is a legislative body comprised of clergy of the diocese and laity elected by their congregations. Each diocesan Convention adopts and from time to time amends its own diocesan Constitution and canons that supplement and may not conflict with the Church's Constitution or canons.

17. Each diocese is generally under the authority of a bishop elected by the diocesan Convention and "ordained" and installed with the consent of the leadership of a majority of the

other dioceses. The Bishop is in charge of both ecclesiastical and temporal affairs within that diocese. The Bishop is advised by and as to certain matters shares authority with a “Standing Committee” of ordained and lay persons elected by the diocesan Convention. In some dioceses, the Standing Committee serves as the governing authority when the office of Bishop is vacant.

18. At the third level of governance, the 111 dioceses contain and exercise ecclesiastical and temporal authority over the Church’s nearly 7,700 worshipping congregations, generally called parishes.

19. Each Episcopal parish generally has an ordained priest as its “rector,” who has charge of the spiritual and certain temporal affairs of the parish and is elected by the parish’s governing body called a “vestry,” which is comprised of the rector and lay persons elected by the parish.

20. The Episcopal Church’s hierarchical structure provides for representative participation in each level of governance. Parishes send representatives to the diocesan Convention, and dioceses send bishops, other clergy, and lay representatives to the Church’s General Convention.

21. Canon I.17(8) of The Episcopal Church applies to all officers at each level of governance and requires that “[a]ny person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised.”

22. Under the Church’s Constitution, canons, and polity, no diocese or parish may unilaterally divide, separate, or otherwise disaffiliate from the Church.

### The Anglican Communion

23. The Anglican Communion is a worldwide fellowship of 38 autonomous, independent regional churches generally known as “Provinces.” The Episcopal Church is a member Province of the Anglican Communion.

24. The Anglican Province of the Southern Cone, encompassing Argentina, Bolivia, Chile, Paraguay, Peru, and Uruguay, is a member Province of the Anglican Communion.

25. It is a historic tradition of the Anglican Communion that each Province exercises jurisdiction within its own distinct geographic territory and not in any other Province.

### Dioceses of The Episcopal Church

26. The Episcopal Church Constitution and canons prescribe the methods by which a new diocese of the Church may be formed. Since its founding, The Episcopal Church has required that a new diocese of the Church be formed only with the consent of the General Convention and only if the new diocese accedes to the legislative authority of the General Convention as expressed in the Constitution, canons, or both.

27. Once formed, a diocese of the Church is a subordinate unit of the Church, bound by the provisions of the Church’s Constitution and canons, which govern both temporal and ecclesiastical matters, and by The Book of Common Prayer of the Church. The Constitution and canons, as well as in some instances The Book of Common Prayer,

a. Govern the ordination, installation, spiritual and temporal duties, discipline, and retirement of bishops;

b. Require dioceses and parishes to adopt prescribed business methods, including submission of annual reports with the Church’s Executive Council, annual audits by certified public accountants, and adequate insurance of all buildings and their contents;

- c. Set forth requirements and conditions for the formation and operation of parishes and other worshipping congregations under the oversight of the dioceses;
- d. Provide requirements for the care, control, use, and disposition of Church property; and
- e. Provide rules under which dioceses may select, train, ordain, deploy, and supervise the clergy of parishes and other worshipping congregations.

28. Episcopal Church canons permit and set forth the process by which a “Missionary Diocese” of the Church may leave the jurisdiction of the Church and join another Province of the Anglican Communion. A “Missionary Diocese” is a defined geographic area outside of any of the Church’s established dioceses that is entrusted to the pastoral care of a bishop elected by the Church’s House of Bishops under Article VI of the Church’s Constitution.

29. The Episcopal Diocese of Pittsburgh is not a Missionary Diocese. The Constitution and canons of The Episcopal Church do not provide for the autonomy, release, withdrawal, or transfer of any diocese that is not a Missionary Diocese.

#### Ordination and Discipline of Bishops by The Episcopal Church

30. Article VIII of the Church’s Constitution and the Ordination service of The Book of Common Prayer of the Church provide that an individual may not be ordained deacon, priest, or bishop unless he or she subscribes to the following written declaration:

“I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.”

This oath is generally referred to as the “Declaration of Conformity.” The Service for Ordination of a Bishop in The Book of Common Prayer requires that an individual being ordained as a

bishop of the Church promise to “guard the faith, unity, and discipline of the Church” and to “share with [his or her] fellow bishops in the government of the whole Church.”

31. Article II.2 of the Church’s Constitution provides that a bishop may be ordained and take office in a diocese only after obtaining the consent of the leadership of a majority of the other dioceses of the Church.

32. Article II.6 of the Church’s Constitution and Church Canon III.12(8) provide that a Diocesan Bishop may not resign his or her office without the consent of a majority of the House of Bishops.

33. Church Canons IV.1 and IV.9 provide that grounds for the discipline, including the involuntary removal or “deposition,” of a bishop include a violation of the Constitutions or canons of the Church or of the diocese in which he or she is resident, violations of the vows required of a bishop by the Church at ordination, and “abandonment of the Communion” of the Church.

34. Church Canon IV.9 provides that if a “Review Committee” of the Church certifies that a bishop has “abandoned the Communion” of the Church, “it shall be the duty of the Presiding Bishop to present the matter to the House of Bishops” for its consent to the bishop’s deposition by the Presiding Bishop from the ordained ministry of the Church.

#### History of the Episcopal Diocese of Pittsburgh

35. The Episcopal Diocese of Pittsburgh was formed in 1865 by the division of the Episcopal Diocese of Pennsylvania into two dioceses pursuant to the Constitution and canons of the Church. In 1865, Article V of the Church’s Constitution provided that a new diocese could be formed only with the consent of the General Convention and “on [the new diocese’s] acceding to [The Episcopal Church] Constitution.” Episcopal Church Canon III.6 provided at

the time that the formation of a new diocese “shall have been ratified by the General Convention.”

36. At its October 1865 meeting, the Church’s General Convention approved the division of the Diocese of Pennsylvania into two dioceses, with the western portion to become the new diocese, the Episcopal Diocese of Pittsburgh.

37. In November 1865, the Diocese adopted a Constitution and canons. Article I of the Diocese’s first Constitution stated: “This Church, as a constituent part of the Protestant Episcopal Church of the United States of America, accedes to, recognizes, and adopts the general Constitution of that Church and acknowledges its authority accordingly.” Article I of the Constitution of the Diocese has always contained language in which the Diocese accedes to the legislative authority of the General Convention as expressed in the Constitution, canons, or both.

38. Throughout its history and at least until the present dispute arose, the Diocese has consistently participated in the life of the Church as a subordinate unit and has generally complied with the requirements imposed on it by the Church’s Constitution, canons and The Book of Common Prayer as set forth in Paragraph 27 above.

a. The Diocese has consistently sent representatives to meetings of both Houses of the Church’s General Convention.

b. The Diocese and the clergy of the Diocese have participated in the Church Pension Fund reserved solely for clergy and institutions of the Church.

c. All seven Diocesan Bishops and the one Suffragan Bishop of the Diocese have been elected, ordained, and installed pursuant to the requirements of the Church’s Constitution, canons, and The Book of Common Prayer; and the one Assistant Bishop of the Diocese was appointed and installed pursuant to the Constitution and canons of the Church.

d. The clergy of the Diocese have been ordained or received, and parish rectors and other ordained clergy have been elected or installed, pursuant to requirements of the Constitution, canons, and The Book of Common Prayer of the Church.

e. The Episcopal Church is informed and believes that the Diocese has adopted business methods prescribed by the Church's canons, submitted annual reports with the Church's Executive Council, conducted audits by certified public accountants, and maintained adequate insurance of all buildings and their contents, in compliance with the Church's requirements.

f. The Episcopal Church is informed and believes that the Diocese has overseen the formation and operation of parishes and other worshipping congregations of the Diocese according to the Church's requirements.

g. The Episcopal Church is informed and believes that the Diocese has provided for the care, control, use, and disposition of Church property according to the Church's requirements.

39. Prior to his ordinations as deacon, priest, and bishop of the Church, defendant Bishop Duncan signed the Declaration of Conformity described in Paragraph 30 above, as required by the Church's Constitution and The Book of Common Prayer, and was ordained Bishop of the Diocese in 1997 with the consents of the leadership of a majority of the other dioceses of the Church, pursuant to the constitutional, canonical, and liturgical requirements of the Church.

40. The clergy and lay members of the Standing Committee and the Board of Trustees of the Diocese are bound by Church Canon I.17(8) to faithfully execute their offices in accordance with the Constitutions and canons of the Church and the Diocese, as described in

Paragraph 21 above; and the clergy members of these bodies are bound to obey the Constitution and canons of the Church by the Declaration of Conformity, as described in Paragraph 30 above, that each signed prior to ordination.

#### Recent Developments in the Diocese

41. At its November 2007 meeting, at the urging of defendant Bishop Duncan and other individual defendants described in Paragraph 45 who were dissatisfied with certain aspects of The Episcopal Church, the Annual Convention of the Diocese passed a resolution intended to amend the Diocese's Constitution to remove references to The Episcopal Church and to permit the Diocese to specify by canon the Province of the Anglican Communion of which it would be a member. According to the Diocese's Constitution, amendments to it must be passed by two successive Annual Conventions.

42. Following the November 2007 meeting of the Diocese's Convention, under the Constitution and canons of The Episcopal Church, defendant Bishop Duncan was determined by a disciplinary Review Committee of the Church to have abandoned the Communion of the Church within the meaning of Church Canon IV.9 by an open renunciation of the Doctrine, Discipline, or Worship of the Church in attempting to remove the Diocese from the Church in contradiction to the Church's Constitution and canons. In September 2008, the Presiding Bishop of the Church, with the consent of the House of Bishops, deposed defendant Bishop Duncan from the ordained ministry of the Church pursuant to Church Canon IV.9, and he thereby ceased being a bishop of the Church or the Diocese.

43. Following the deposition of Bishop Duncan, under the Constitutions and canons of the Church and the Diocese, the Diocese's Standing Committee became the Ecclesiastical Authority of the Diocese.

44. At an October 4, 2008 meeting of the Convention of the Diocese, at the urging of the individual defendants described in Paragraph 45, the November 2007 resolution intended to amend the Diocese's Constitution described in Paragraph 41 received a majority of the votes cast on its second reading, over an objection of a member of the Standing Committee of the Diocese. At that October meeting, the Convention purported to adopt a new canon declaring its membership in the Anglican Province of the Southern Cone.

45. Those individuals comprising the former leadership of the Diocese who supported the purported withdrawal of the Diocese from The Episcopal Church and the purported affiliation of the Diocese with the Anglican Province of the Southern Cone by those acts left The Episcopal Church, violated their obligations under the Church's Declaration of Conformity and/or Canon I.17(8), and were not eligible to hold any office in The Episcopal Church, the Diocese, or any of its other subordinate units, and thus, their offices became vacant.

46. The Diocese held a special meeting of its Convention in December 2008. At that meeting, the remaining vacant offices in the leadership of the Diocese, including the Standing Committee, were filled; resolutions were passed declaring the Constitutional and canonical amendments described in Paragraphs 41 and 44 void and of no effect; and clergy and lay deputies to the Church's 2009 meeting of the General Convention were elected.

47. Following the special meeting of the Diocese's Convention described in Paragraph 46 above, the Standing Committee of the Diocese appointed an Assisting Bishop to provide interim episcopal oversight for the Diocese.

48. The Church has recognized the Assistant Bishop described in Paragraph 47 above as the Bishop with episcopal oversight of the Diocese; the members of the Standing Committee described in Paragraph 46 as the Ecclesiastical Authority of the Diocese; and the persons

described in Paragraph 46 as the elected deputies or representatives of the Diocese to the Church's General Convention.

49. The Episcopal Church is informed and believes that defendant former Bishop Duncan, as well as the other individual defendants described in Paragraph 45 who were formerly part of the leadership of the Diocese, control an entity of unknown form that uses the name "Episcopal Diocese of Pittsburgh," and hold that entity out as the Diocese; have asserted authority over Episcopal parishes, congregations, and other organizations in the Diocese; and have exclusive possession and control of substantially all of the real and personal property of the Diocese.

#### The Current Dispute

50. In October 2005, this Court entered an Order pursuant to a Stipulation by Counsel intended to settle and resolve certain claims at issue in the present suit (the "Stipulation and Order").

51. In December 2006, plaintiffs filed a Petition for Enforcement of Settlement and Order, which reopened the proceedings in this action.

52. In July 2008, plaintiffs filed a Supplement to their December 2006 Petition for Enforcement of Stipulation and Order described in Paragraph 51, including a Request for Appointment of a Monitor to Inventory and Oversee Property Held or Administered by the Episcopal Diocese of Pittsburgh to Assure Compliance with This Court's Order of October 14, 2005.

53. In September 2008, this Court ordered the appointment of Masters to prepare an inventory of the real and personal property of the Diocese, file periodic reports with the Court, and report any alleged violations of the October 14, 2005 Stipulation and Order.

54. On October 10, 2008, the Chancellor of the Diocese wrote to a lawyer for defendant Bishop Duncan and the group claiming to be aligned with the Anglican Province of the Southern Cone and requested that his clients effect an “orderly transition of control [of the assets and property of the Diocese] to the rightful Standing Committee or their designees.” The Episcopal Church is informed and believes that neither defendant Bishop Duncan nor any of the other individual defendants described in Paragraph 45 has complied with this request.

55. In January 2009, plaintiffs filed a Request to Special Master, requesting the “immediate termination of any use by Robert Duncan and his followers of the Property subject to Paragraph 1 of the Stipulation and Court Order of October 14, 2005; and [t]he provision of immediate access to and control by the Episcopal Diocese of Pittsburgh of the Episcopal Church of the United States of America of the endowments, checking accounts, and other Property subject to Paragraph 1 of the Stipulation and Court Order of October 14, 2005.”

56. In January 2009, defendants filed motions directed to issues raised by plaintiffs’ Request to Special Master, in which they contend, *inter alia*, that they continue to comprise the leadership of the Diocese and that they have withdrawn the Diocese from The Episcopal Church to join the Anglican Province of the Southern Cone.

57. The Episcopal Church takes the position that the actions described in Paragraphs 41, 44, and 49 are contrary to the Constitution and canons of The Episcopal Church and are otherwise contrary to law and without any effect; that all property held by or for the Diocese is held and may only be used for the mission of the Church and the Diocese subject to the Constitutions and canons of the Church and the Diocese; that the Diocese remains a subordinate part of the Church for all purposes including application of Paragraph 1 of the Stipulation and Order; and that the persons now in the leadership of the Diocese, as recognized by the Church,

are the proper authorities entitled to the use and control of the real and personal property of the Diocese.

58. The Church is informed and believes that defendant Bishop Duncan and the other individual defendants described in Paragraph 45 take the position that they are properly in control of the governance of the Diocese; that they have withdrawn the Diocese from The Episcopal Church to join the Anglican Province of the Southern Cone; that they are thus entitled to the use and control of the real and personal property of the Diocese; and that their actions are not in conflict with Paragraph 1 of the Stipulation and Order.

59. An actual controversy exists, therefore, between the parties regarding the legal issues identified in Paragraphs 57 and 58 above. A declaratory judgment is therefore necessary and proper to determine the parties' rights and duties with respect to those issues.

WHEREFORE, Plaintiff-in-Intervention The Episcopal Church prays for:

a. A declaration that the persons in the leadership of the Episcopal Diocese of Pittsburgh, as recognized by The Episcopal Church, are the proper authorities entitled to the use and control of the real and personal property of the Episcopal Diocese of Pittsburgh;

b. A declaration that all property held by or for the Episcopal Diocese of Pittsburgh is held for and may be used only for the mission of The Episcopal Church and the Episcopal Diocese of Pittsburgh subject to the Constitutions and canons of The Episcopal Church and Episcopal Diocese of Pittsburgh;

c. An order requiring defendant Bishop Duncan and the individual defendants described in Paragraph 45 to vacate the offices of the Episcopal Diocese of Pittsburgh and to relinquish to the proper authorities of the Episcopal Diocese of Pittsburgh, as recognized by The Episcopal Church, possession and control of all real and personal property of the

Diocese, including all property held by the Episcopal Diocese of Pittsburgh for the benefit of its parishes and other congregations and institutions;

d. An order requiring defendant Bishop Duncan and the individual defendants described in Paragraph 45 to provide an accounting of all real and personal property of the Episcopal Diocese of Pittsburgh held on October 4, 2008; and

e. Such further relief as may be necessary and proper.

Dated: February \_\_, 2009

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**CERTIFICATE OF SERVICE**

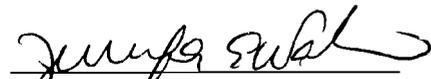
I hereby certify that on this 13th day of February, 2009, a true and correct copy of the foregoing **PETITION TO INTERVENE** was served via email and regular mail upon the following:

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