

PEP Argument Briefing Paper

Title: The Two-year Period of Adjustment is Contradictory
Applicable to: Resolution Two (granting parishes a two-year discernment period)
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Summary

Resolution Two proposes giving parishes an extended time of discernment to adjust their articles of incorporation or bylaws to conform to “realignment,” i.e., secession from The Episcopal Church.

Background

This resolution will be presented only if the second reading of the constitutional amendment removing accession to the constitution and canons of The Episcopal Church (TEC) passes. Almost every parish has a clause in its bylaws acceding to the constitution and canons of TEC because that is a requirement for admission to the diocese. Incorporated parishes have also been required to include such a clause in their articles of incorporation. The resolution proposes a period of two years of discernment during which parishes would remove the TEC accession from their governing documents

Argument

- Those “realigning” are claiming that parishes will automatically be “realigned” should the diocese approve the constitutional amendments and canon changes at the October 4 convention. However, this fact is contradicted by the admission that parishes actually will still be bound to follow the Episcopal Church constitution and canons by their parish governing documents.
- There will continue to be an Episcopal Diocese of Pittsburgh that is a part of TEC, however. Parishes that do not change their bylaws or articles of incorporation will, by default, remain in compliance with the constitution and canons of that diocese. Contrary to what the resolution states, there will be no need to petition leaders who are no longer part of TEC for permission to remain in TEC. (Congregations should make their intention to stay in the church public, however.)
- Because the convention does not have the authority to change its accession to the constitution and canons of TEC or to “realign” with another province, those actions are null and void, though supporters of “realignment” will argue otherwise.” (See, for example, the PEP briefing paper “Replacing the Accession Clause is Unconstitutional,” AC07-A01-02, prepared for the 2007 convention, <http://progressiveepiscopalians.org/html/AC07-A01-02.html>.) Thus the convention votes would not supersede the provisions in parish bylaws or articles of incorporation acknowledging the authority of TEC.

- Many parish bylaws require more than a simple majority (often two-thirds or three-quarters) of voting members for amendment. Deeply divided parishes, even if a slight majority wishes to “realign,” may not be able to garner enough votes to change their governing documents, whether or not such an amendment would be proper.
- The two-year period of discernment is more illusion than fact. Parishes will have to choose whether they are affiliated with the “realigned,” or with the diocese that remains a part of TEC almost immediately after the vote. Parish treasurers will need to know to which of the two entities they should send diocesan assessments. Within a year, all parishes will have had to receive a visitation from a bishop representing one or the other “diocese” and will have had to decide to participate in one of two diocesan conventions. Other administrative matters (insurance, etc.) will force an early decision by parishes. (Although some parishes may attempt to participate in both “dioceses” or neither, this is unlikely to be a viable option.)
- The section of the resolution discussing property negotiation reverses established legal understandings. The position of TEC on property is clear. Canon I.7.4 specifies that TEC has a trust interest in any and all parish property. A 1935 Pennsylvania statute specifies that property disputes among parties in a church will be decided according to the canons of that church. Individuals are free to leave the church at any time, but parishes and dioceses cannot leave. Thus, the section of the resolution specifying that parishes wishing not to “realign” will have to negotiate for their property is contrary to the canons of the church and to state law.
- Parishes should notice, furthermore, that the leaders of the “realignment” movement are not granting all congregations the right to withdraw. “Charity” in withdrawing extends only to those who can settle their debts and any “diocesan” claims on the property.

Conclusions

The resolution is an admission that, in fact, no parishes are realigned by diocesan vote. Arguably, nothing can “realign” a parish. Furthermore, parishes will make de facto decisions about “realignment” long before the end of a two-year period as they go about the normal business of parish life—paying assessments, arranging for episcopal services, sending deputies to convention. The resolution is based on a series of questionable legal assumptions that ignore the continuity of the Episcopal Diocese of Pittsburgh within TEC.

Supporting Documents

Resolution Two (from page C7 of the 2008 Pre-Convention Journal, <http://progressiveepiscopalians.org/html/2008prejournal.pdf>)

Whereas, Diocesan Provincial Realignment is a matter to be considered by the 143rd Annual Convention in the form of a second reading of a series of Constitutional changes; and

Whereas, a new Canon I establishing Provincial alignment with the Anglican Province of the Southern Cone is also proposed; and

Whereas, the decision of Convention takes effect immediately, and supersedes all local existing provisions to the contrary; and

Whereas, many congregations will require a season of discernment about whether to accept re-alignment or to petition to break their union with Convention; and

Whereas, some congregations will require a season of discernment about whether to accept re-alignment or petition to break their union with Convention; and

Whereas, charity and generosity continue to be embraced as virtues in diocesan life where matters of fidelity and direction profoundly divide us;

Therefore be it resolved, by this 143rd Annual Convention of the Episcopal Diocese of Pittsburgh, that all parishes of the diocese shall have twenty-four months to bring their By-Laws and/or Articles of Incorporation into conformity with the Provincial alignment adopted by this Convention; and be it

Further Resolved, that the Diocesan Council shall have the authority to lengthen the discernment period on a parish by parish basis, as shall seem wisest to Council and to the representatives of particular parishes; and be it

Further Resolved, that negotiation between any parish seeking to break its union with the Convention over the matter of Provincial alignment shall be undertaken with Christian grace and charity, and conducted in good faith, consistent with the Constitution and Canons of the Diocese, consistent with all legal obligations, and consistent with the settlement of debts and other diocesan interests related to the parish property or assets.

Episcopal Church Canon I.7.4 (Dennis Canon)

(http://www.episcopalarchives.org/e-archives/canons/CandC_FINAL_11.29.2006.pdf)

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

The Act of 1935, in part (10 P.S. 81)

Whensoever any property, real or personal has heretofore been or shall hereafter be bequeathed, devised or conveyed to any ecclesiastical corporation, bishop ... for the use of any church, congregation or religious society, or in trust for religious worship ... or for use by said church, congregation or religious society for a school ... rectory, parsonage, hall, auditorium ... the same shall be taken and held subject to the control and disposition of such officers and authorities of such church ... having controlling power according to the rules, regulations, usages or corporate requirements of such church ... which control and disposition shall be exercised in accordance with and subject to the rules, regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church ... shall belong.