

STATEMENT OF DR. ROBERT BRUCE MULLIN
ON BEHALF OF THE EPISCOPAL CHURCH AND
THE EPISCOPAL DIOCESE OF OHIO

I, Robert Bruce Mullin, declare as follows:

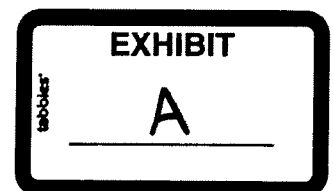
1. I am a historian and teacher at the General Theological Seminary in New York City, one of the accredited seminaries of the Episcopal Church. I serve as the Professor of Modern Anglican Studies and the Society for the Promotion of Religion and Learning Professor of History and World Mission. I have held these positions since 1998.

2. I received my bachelor's degree in history from the College of William and Mary and my Ph.D. in the History of Christianity from Yale University in 1983. I also received Master's degrees in religion from Yale Divinity School and from the Berkeley Divinity School at Yale, another accredited seminary of the Episcopal Church.

3. Since 1984 I have been teaching, researching, and publishing in the area of religion in America, with a special focus on the Episcopal Church. Prior to obtaining my current positions, I taught in these fields at institutions including North Carolina State University, Duke Divinity School, the University of North Carolina, Wesleyan University, and Yale University.

4. In connection with litigation involving certain former members of the Episcopal Church who have claimed the right to control and use Episcopal parish property for the mission of another church, I have been asked by the Presiding Bishop of the Episcopal Church to render expert opinions in the following general areas within my professional expertise: The current and historical organization and structure of the Episcopal Church and how property is and has been held in the Church.

5. My conclusions are based on over thirty years of study and publication in the fields of American history, American religious history, the history of the Episcopal Church, and



the history of the Anglican Communion. In addition to the general knowledge that I have gained in that work, in preparation for this statement I have extensively surveyed the Journals of the General Conventions of the Episcopal Church; the diocesan journals of many dioceses of the Episcopal Church; the Constitution and canons of the Episcopal Church; the standard commentaries on the Constitution and canons of the Episcopal Church; the Constitutions and canons of many of the dioceses of the Episcopal Church; various Episcopal journals that cast light on the understanding of the Episcopal Church's relationship to property; relevant contemporary historical sources that shed light on the question of churches and property law; contemporary literature on various questions concerning the history of the Episcopal Church; the standard Episcopal Church histories; modern monographs on the history of the Episcopal Church; comparative studies of other denominational families in order to identify Episcopal distinctiveness; and journalistic accounts that shed light on the Nineteenth- and Twentieth-Century history of the Episcopal Church. I have also incorporated the understanding of the international Anglican Communion that I have acquired through almost 20 years of participation in ecumenical dialogue. Finally, I have incorporated the insights I have gained from having directed a number of doctoral dissertations in the field of Episcopal/Anglican studies.

I. The Hierarchical and Autonomous Structure of the Episcopal Church

A. The Episcopal Church Has From Its Inception Been Hierarchical in Structure and Governance.

6. I understand that a "hierarchical" church has been defined by courts, in essence, as a religious denomination that is organized as a united body of constituent regional and/or local affiliates with a common convocation or ecclesiastical head, and in which the regional bodies and individual worshipping congregations are subject to the rules, regulations, and authority of that common convocation or ecclesiastical head. This definition also comports with my understanding, as an expert in church history and polity, of what constitutes a "hierarchical"

church in the United States. Under this definition, the Episcopal Church has throughout its existence been, without question, a “hierarchical” church.

7. The Episcopal Church has its roots in the extension of the Church of England into the colonies of the New World. Permanently planted in the colonies in 1607, the Church of England was present in all of the original colonies during the Colonial period.

8. The Church of England was, and is, a three-tiered hierarchical church, governed at present by a national synod and comprising regional, geographically-defined “dioceses” containing local congregations usually called “parishes.” Each diocese was, and is, under the jurisdiction of a bishop who visits and oversees the parishes and other congregations of the diocese. Congregations in the New World colonies were under the jurisdiction of the Bishop of London who appointed a “Commissary” to serve as the Bishop’s representative to the colonial congregations.

9. The American Revolution created a crisis for the Church of England congregations in this country. Political independence meant that American worshipping congregations could no longer be part of the Church of England, because, *inter alia*, the leaders and members of these congregations could no longer take an oath of loyalty to the English Crown as the Church of England’s rules required. But the American Anglicans fervently wanted to retain their Anglican identity, traditions, and mode of worship, as well as their church buildings and other properties, in the new country. A new general church had to be formed, therefore, to succeed to the old.

10. In 1784, Anglicans from several of the colonies gathered for the purpose of “the revival” of their church “which had existed before the Revolution”; and in 1785, clergy and laity from the former congregations of the Church of England in seven new states met in what was styled the first “Convention of the Protestant Episcopal Church.”¹ After several more meetings,

¹ Journals of the General Conventions of the Protestant Episcopal Church in the United States of America from the Year 1784 to the Year 1814, Inclusive, Preface and 1-16 (1817). The Journals of the General Convention of the Church have been published individually as well

in 1789 clergy and laity from the former colonial congregations met again, this time with three newly-ordained bishops, and adopted a Constitution and bylaws, called “canons,” for an entity that they called “the General Convention of the Protestant Episcopal Church in the United States of America.”²

11. The Constitution and canons of the newly-formed Episcopal Church set out a structure that mirrored that of the Church of England. As its predecessor, the new Episcopal Church was a three-tiered hierarchical church, governed by a national parliamentary body and comprised of regional bodies containing local parishes.³ The American church was distinctive, however, in allowing lay participation in church governance and having both lay and clerical representatives elect bishops.

12. The same basic three-tiered structure exists today. At the broadest tier is the international body, the Episcopal Church. Traditionally this was seen as a national body, but with the expansion of the Episcopal Church in the latter half of the twentieth century into other countries this is now more accurately described as an international body. Next are regional, geographically-defined dioceses, which belong to, are subordinate to, and are under the jurisdiction of the Episcopal Church. Finally, there are local worshipping congregations, generally called parishes or “missions,” which belong to, are subordinate to, and are under the jurisdiction of the Episcopal Church and the individual dioceses in which the parishes or missions are located.

13. At the international or “general” church level, the Episcopal Church is governed by a bicameral legislative body called its “General Convention,” which is made up of a House of Bishops, composed of most of the Church’s active and resigned bishops, and a House of Deputies, composed of clergy and lay representatives elected from each of the Church’s

as in collected reprints. From this point forward they will be cited as “JGC” unless otherwise noted.

² See *id.*

³ See *id.* at 75-76 (Articles 1-3 of 1789 Constitution, describing General Convention), 77 (setting out Deputies by state and parish).

dioceses. *See* Const. Art. I, Sec. 2, 4. Legislation must be approved by both houses. *See* Const. Art. I, Sec. 1.

14. The General Convention meets at least once every three years to establish the policies, rules, and programs of the Church. It has adopted and from time to time amends the Church's governing documents, its Constitution and canons. These documents are binding on every tier of the Church.

15. All dioceses and their clergy acknowledge the applicability to them of the Constitution and canons of the general Church and their binding nature. All clergy at their ordination subscribe to a "declaration" that they "do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church," *see* Const. Art. VIII; and all dioceses, as a condition of their formation as entities in "union" with the General Convention, promise "an unqualified accession to the Constitution and canons of this Church," *see* Const. Art. V(1); Constitution of the Episcopal Diocese of Ohio ("Ohio Const.") Art. I ("[t]he Diocese of Ohio is a constituent part of The Protestant Episcopal Church in the United States of America and accedes to the Constitution and Canons thereof.").

16. While there are a number of provisions in the Church's rules protecting the rights of minority voices, the General Convention possesses unlimited legislative authority and is the highest authority for questions of the Doctrine, Discipline, and Worship of the Episcopal Church. This was commonly recognized throughout the Nineteenth Century,⁴ and expressed more recently by the General Convention in 1964 which passed legislation providing in part:

"The Protestant Episcopal Church accepts as its authority the Holy Scriptures, the Nicene and Apostle's Creeds and speaks through the Book of Common Prayer and the Constitution and Canons of the Church. The Protestant Episcopal Church speaks also through the Resolutions, Statements and actions of the General Convention. In these ways the Church speaks at the highest level of responsibility for the Church to the Church and to the world."⁵

⁴ *Cf. Journal of the Proceedings of the Ninety-Fifth Convention of the Protestant Episcopal Church in the Diocese of Pennsylvania...* (Philadelphia, 1879).

⁵ JGC 1964, 312-313.

17. The “Chief Pastor and Primate” of the Church is its Presiding Bishop. The Presiding Bishop is charged with, among other duties, responsibility for leadership in initiating and developing policy and strategy in the Church and speaking for the Church as to the policies, strategies, and programs authorized by the General Convention. *See* Const. Art. I, Sec. 3; Canon I.2.4 (2006).

18. Between meetings of the General Convention, an elected Executive Council of bishops, priests, and laypersons manages the fiscal and programmatic affairs of the Church under the direction of the Church’s Presiding Bishop as Chair. *See* Canon I.4.1, .3.

19. At the next level, the Church is comprised of regional, geographically-defined bodies called dioceses; currently the Church is made up of 111 dioceses in the United States and 14 other countries. *See* Episcopal Church Annual at 6-7 (2008). A diocese of the Episcopal Church may be formed only by consent of the General Convention, and only with a provision in its Constitution reflecting an unqualified accession to the Episcopal Church’s Constitution and canons. *See* Const. Art. V, Sec. 1; Canon I.10.4.

20. The governing body of each diocese is generally called its “Convention” or sometimes its “Council” or “Synod” and is comprised of the Bishop of the diocese, other bishops and clergy, and lay members elected by the Episcopal parishes and other congregations in that diocese.

21. Each diocese’s Convention has adopted its own Constitution and canons that supplement, and must not be inconsistent with, the Episcopal Church’s Constitution and canons. *See* Const. Art. V, Sec. 1; Canon I.10.4. The Constitution and canons of each diocese are binding on the diocese and the parishes and other worshipping congregations in that diocese. Thus, the various dioceses have historically required of all parishes accession to the rules of the general Church and of the diocese. *See, e.g.,* Diocese of Ohio Canon II.1.1 (“Parishes are recognized as constituent parts of the Diocese of Ohio, and are encouraged to make provision in their by-laws for acknowledging their accession to the doctrine, discipline and worship of the Episcopal Church and to the canons of General Convention and of the Diocese of Ohio.”); *see*

also Diocese of Colorado Const. Art. I; Diocese of Colorado Canon 14.1; Diocese of Long Island Canon VII.3(1); Diocese of South Carolina Const. Art. I; Diocese of Washington Canon 13(2); Diocese of Missouri Const. Art.I.1; IV.2; Canons IV.4, 6; Diocese of Los Angeles Const. Art. II.2, III.3, Canons III.3.01(f), III.3.04; Diocese of San Diego Const. Art. II.1.

22. Each diocese has a diocesan bishop, a priest who is elected by the diocesan Convention and ordained as a bishop with the consent of the leadership of a majority of the other dioceses. *See* Const. Art. II, Sec. 1, 2; Canon III.11.1, .3, .4. The diocesan bishop serves as the “ecclesiastical authority” and “chief executive officer” in charge of both ecclesiastical and temporal affairs within that diocese. *See* Const. Art. II, Sec. 3, 5; Canon III.12.3. The diocesan bishop is advised by, and as to certain matters shares authority with, a “Standing Committee,” a body of clergy and laity elected by the diocesan Convention. *See* Const. Art. IV; Canon I.12.1.

23. At the third level of governance, the 111 dioceses together contain the Church’s nearly 7,700 worshipping congregations. *See* Episcopal Church Annual at 15 (2008). Most of these congregations are called parishes; others, usually newly-forming congregations that do not meet all of the requirements for parish status, are generally called missions. *See, e.g.,* Episcopal Church Annual at 125-436 (listing parishes and missions). Other worshipping congregations include cathedrals, chaplaincies at educational institutions, and other institutions. *See, e.g.,* Episcopal Church Annual at 45-70.

24. An Episcopal parish has a governing body called a “vestry,” which is comprised of the rector of the parish (unless that position is vacant) and lay persons elected by the voting membership of the parish. *See* Canon I.14.1-3. Members of the vestry serve as officers of the parish. *See* Canon I.14.1, .2.

25. The rector of a parish in the Episcopal Church is an ordained priest who is elected by the vestry in consultation with the bishop of that diocese and is in charge of the spiritual and temporal affairs of the parish. *See* Canons I.6.1; I.17.4; III.9.3(a), 5.

B. The Episcopal Church is an Autonomous Member of the Anglican Communion.

26. As set forth in the Preamble to its Constitution, the Episcopal Church is “a constituent member of the Anglican Communion.” The “Anglican Communion” is a name generally used to describe a fellowship among a group of churches “in communion with the See of Canterbury”⁶ and dedicated to “interdependence and continuity.”⁷ Each individual member church, or “Province,” within the group is self-governing and autonomous: Each of the individual churches has its own prime bishop (in the United States, the Presiding Bishop), governing bodies, Constitution, canons, and Prayer Book. While the Episcopal Church is a hierarchical church, the Anglican Communion is not.

27. The churches of the Anglican Communion have their roots in the Church of England and were generally established in their respective countries or regions by English immigrants or missionaries adhering to the Church of England’s doctrine and worship. They generally share the same basic religious beliefs and strive to adhere to the “essentials” of the doctrine, discipline, and worship reflected in the Church of England’s Book of Common Prayer, which was first published in 1549 and revised in 1662 and subsequently.

28. The term “Anglican Communion” dates back only to the mid-Nineteenth Century, long after many of the churches that currently comprise the Anglican Communion were formed, and the first corporate meeting of the bishops of those churches did not occur until 1867.⁸

29. Since 1867, the bishops of the churches in the Communion have met every ten years (with two breaks occasioned by the two world wars) at gatherings known as “Lambeth Conferences.” Among other things, the Lambeth Conferences discuss issues related to Anglican doctrine and discipline and issue advisory “resolutions” with respect to those issues. Because the member churches of the Anglican Communion are not themselves “governed” by the Lambeth

⁶ Preface to the Constitution of the Episcopal Church.

⁷ Anglican Congress 1963, quoted in The Lambeth Commission on Communion: The Windsor Report (London, 2004), 21

⁸ Colin Podmore, Aspects of Anglican Identity. London: Church House Publishing, 2005, pp. 36-38.

Conference or by the Archbishop of Canterbury, the Lambeth resolutions are binding on a particular member church only if and when they are endorsed by that church's own governing body.⁹

C. Episcopal Parishes Historically Have Existed Only as Creatures of the Church and Its Dioceses.

30. The Episcopal Church has adopted and followed the English distinction between a “congregation” and a “parish.” A congregation is a group of individuals, and hence it can be organized by individuals; a “parish” in the Episcopal Church is often a geographical entity, but in any event it is a corporate body with rights of representation in its diocese and can be established only by a diocese. In the Episcopal Church, a parish is created and is defined by its connection to a diocese; it can neither become such by the unilateral action of a congregation, nor cease to be such by the unilateral actions of its congregation.

31. As noted scholar Murray Hoffman observed in his classic Nineteenth Century treatise on Episcopal Church law, a church or congregation is understood as being an Episcopal parish only when it becomes a part of a diocesan convention, and this union depends upon the willingness of the convention. “[W]hile the Church could not prevent any body of individuals from associating” with each other, he wrote, “it could refuse admission into union to such an association, unless it submitted to the canonical regulations of the Church.”¹⁰

32. The canons of the Episcopal Church and the several dioceses generally demonstrate that throughout the history of the Episcopal Church it has been understood that a parish is formed only by action of a diocese – it does not exist before that action. See, e.g., Episcopal Church Canon I.13.2(b) (describing “formation” and “establishment” of parishes); Diocese of Ohio Canon II.5.1 (describing new parishes as being “formed”); Diocese of Georgia Canon I (1842) (“organizing” and “form[ing]” parishes); Diocese of Connecticut Canon 1.2.1

⁹ See Wright, J.R., “Anglicanism” (English language version prepared for translation).

¹⁰ Murray Hoffman, A Treatise on the Law of the Protestant Episcopal Church in the United States (New York 1850) 241.

(1878) (parish is “constituted”); Diocese of Virginia Canon 10.2 (discussing a “group of people seeking [parish] status”); Diocese of Central New York Canon V.1(a) (describing “groups of Episcopalians” who “shall be a parish”).

33. From its inception, the Episcopal Church has given each diocese the authority to determine the criteria by which a congregation might apply to become a parish. This principle was formalized in 1859 by then-Canon 5 which stated:

“[II.1] The ascertainment and defining of the boundaries of existing Parishes or parochial Cures, as well as the establishment of a new Church or Congregation, and the forming of a new Parish within the limits of any other Parish, is left to the action of the several Diocesan Conventions, for the Dioceses respectively. [II.2] Until a Canon or other or other regulation of a Diocesan Convention shall have been adopted, the formation of new Parishes, or establishment of new Churches or Congregations within the limits of other Parishes, shall be vested in the Bishop of the Diocese acting by and with the advice and consent of the Standing Committee thereof.”¹¹

This principle has continued and is at present found in Canon I.13.2(b):

“Until a Canon or other regulation of a Diocesan Convention shall have been adopted, the formation of new Parishes, or the establishment of new Parishes of Congregations within the limits of existing Parishes, shall be vested in the Bishop of the Diocese, acting by and with the advice and consent of the Standing Committee thereof, and, in the case of there being no Bishop, of the Ecclesiastical Authority.” (Emphasis added.)

34. Dioceses generally have had specific criteria, outlined in their canons, by which they will consider a petition for parish status, and it is only when a congregation has met these qualifications that a diocesan convention will vote to receive it into convention. Thus, the canons of the Diocese of Ohio require a congregation seeking parish status to sign an “Agreement of Association,” stating

“We, the undersigned do associate ourselves for the purpose of maintaining the worship of God and preaching the Gospel, according to the doctrine, discipline and worship of The Episcopal Church, under the name of the Parish of . . . Church, in the town of . . . and County of . . . , State of Ohio, and do hereby promise conformity to the Constitution and Canons of the Episcopal Church and the Diocese of Ohio. We do further represent that said Parish shall hold all of its

¹¹ JGC 1860, 168.

property as a trustee for the Episcopal Church in the Diocese of Ohio, and that the foregoing covenants shall be given effect in the Articles of Incorporation to be adopted for the said Parish.”

Diocese of Ohio Canon II.5.2. The congregation must also incorporate under Ohio law and the Articles of Incorporation “shall contain the name, and also the promissory and purpose clauses, as set forth in the Agreement of Association.” Diocese of Ohio Canon II.5.3. Finally, the congregation seeking parish status must submit to the Bishop “[a] certified copy of the [foregoing] Articles of Incorporation, and of minutes of the meeting for organizing the Parish . . . together with notice that the Parish will apply for admission into union with the Convention” as well as “such evidence of financial independence, both as to history and as to future prospect as shall be deemed sufficient by [the] Ecclesiastical Authority to warrant endorsement of said application to the Diocesan Convention.” Diocese of Ohio Canon II.5.4.

35. Canonical provisions in the several dioceses also confirm the generally-accepted principle that parishes may not unilaterally “disaffiliate” from the Church. Instead, a parish, once created by a diocese in order to expand the Church’s mission, ceases to exist as such only if it is dissolved by the diocese or if it is reduced to “mission” status – again by the diocese.

36. In each case, a parish’s dissolution or reversion to mission status requires that title to parish property be transferred to the Diocese.

37. The Constitution of the Diocese of Ohio contemplates, for example, that “[t]he connection of any Parish with the Diocese may be dissolved by canonical process,” and its canons provide that “[n]o parish shall be declared to be extinct except upon affirmative vote of two-thirds of the members of any Convention of the Diocese.” Ohio Const. Art. IX. Sec. 1; Diocese of Ohio Canon II.7.1. “Upon the affirmative vote of the Convention . . . such Parish shall become and be extinct, and title to all property thereof shall at once vest in the Trustees of the Diocese.” Diocese of Ohio Canon II.7.3.

38. From its beginning, the Episcopal Church has emphasized the necessity of parishes to be affiliated with the diocese of which they were geographically a part. This was in keeping with long-standing Anglican (and indeed Roman Catholic and Orthodox) practice. The

implicit expectation was made explicit in 1795, after a parish in Rhode Island requested permission to become affiliated with another diocese. Canon 8 of the newly-formed Episcopal Church was then adopted, requiring conformity with historic practice:

“Whereas a question may arise, whether a congregation within the diocese of any bishop, or within any State in which there is not any bishop settled, may unite themselves with the Church in any other diocese or State, it is hereby determined and declared that all such unions shall be considered irregular and void; and that every congregation of the Church shall be considered as belonging to the body of the Church of the diocese, or of the State, within the limits of which they dwell or within which there is seated a Church to which they belong....”¹²

39. The General Convention experimented with a modified suspension of this principle in 1817 because of peculiarities involving the westward expansion of the Church and the fact that some congregations in missionary dioceses were in fact closer to pre-existing dioceses than they were to the center of their own dioceses. In 1820, however, the Convention restored the canon. Nineteenth-Century commentators on canon law spoke of this brief experiment as having been unfortunate. As the leading Nineteenth-Century commentator on Episcopal Church law noted,

“the destruction of all unity would ensue, if particular congregations in a diocese could select any neighboring Bishop to minister to them, whose service they most favored. The canon has gone further, and wisely provided against such a union, even when there is no Bishop. The present inconvenience might be considerable, but the future evils would be as great as in the other instance.”¹³

Thus, current Canon I.13.1 provides:

“Every Congregation of the Church shall belong to the Church in the Diocese in which its place of worship is situated.”

D. Dioceses and Parishes Are Bound By, And Historically Have Adhered To, The Church’s Constitution and Canons As They Are Amended Over Time.

40. Dioceses, parishes, and other congregations of the Episcopal Church, as well as their clergy and lay members, are all bound by decisions made by the General Convention. As

¹² JGC (1795) reprinted in A Half Century of the Legislation of the American Church: The Journals of the General Conventions of the Protestant Episcopal Church, in the United States, 1785-1835, 2 vols. (Claremont, N.H., 1874) 1: 210.

¹³ Hoffman, Treatise, *supra*, 278.

the Church's Constitution and canons are amended, the new and revised provisions apply to – and historically have been followed by – all parts of the Church. Numerous examples of such adherence to amended provisions exist; following are several:

(a) Since the Church's inception, its Constitution has given the General Convention alone the authority to alter and amend the Book of Common Prayer, the basic instrument used for worship in the Church and understanding the Church's doctrine.¹⁴ As amended from time to time, the Book of Common Prayer remains the official prayer book of the Church and, with certain specific exceptions, it is to be used by all Episcopal congregations in corporate worship. When amendments have occurred there has been a recognition that these changes were obligatory. Thus in 1893, in response to the new Prayer Book of 1892, the Bishop of Ohio proclaimed to the Convention of the Diocese:

“The Revised Book is now the lawful book; any other book is unlawful in our Churches. The old book must be removed from our Altars and Prayer-desks, and the Wardens at each Church are under canonical obligation to purchase the new revision for the use of their Clergy. The people also should realize this, and as rapidly as possible furnish themselves with the correct edition. I must call the attention of this Convention to this requirement, and with no uncertain direction give counsel to this effect.”¹⁵

(b) Episcopal Church Canon 5 of 1853, “Of the Mode of Securing an Accurate View of the State of the Church,” although found earlier, increased dramatically the number of items required to be reported by local congregations to their bishops or Conventions. As amended, it read:

“As a full and accurate view of the state of the Church, from time to time, is highly useful and necessary, it is hereby ordered that every Minister of this Church, or, if the Parish is vacant, the Wardens shall present, or cause to be delivered, on or before the first day of every annual Convention, to the Bishop of the Diocese,

¹⁴ See JGC 1789, Const. Art. 8; Canon X; 2006 Const. Art. X; Canon II.3.

¹⁵ Journal of the Seventy-Sixth Annual Convention of the Protestant Episcopal Church in the Diocese of Ohio (Cleveland, 1893), 37-38.

or, where there is no Bishop, to the President of the Convention, a statement of the number of Baptisms, Confirmations, Marriages and Funerals, and of the number of Communicants in his parish or Church, also the state and condition of the Sunday Schools in his parish, also of the amount of the communion alms, the contributions for missions, diocesan, domestic, and foreign, for parochial schools, for church purposes in general, and of all other matters that might throw light on the state of the same.”¹⁶

These requirements were universally incorporated in the diocesan reports of the several dioceses and became the standard form for parochial reports as now reflected in Canon I.6.

(c) Canon I.7, “Of Business Methods in Church Affairs,” initially passed in 1916, required (and requires today) all parishes to comply with its provisions governing the management of money and other property, and in so doing to modify their earlier practices. Here, too, the record confirms that dioceses and parishes adapted their practices to conform to the new canon.

(d) Canon I.8, “Of the Church Pension Fund,” initially passed in 1916, authorized the Pension Fund for the first time to “levy upon and to collect [clergy pension premiums] from all Parishes,” and contributions thereby became obligatory. Here, too, one sees consistent compliance on the diocesan and parochial levels. In the Diocese of Ohio, for example, the Bishop announced a plan in which membership in Convention would be contingent upon parishes paying their assessment:

“In a single word I am confident that the diocese of Ohio, as a diocese, and out of its Convention Funds, pay the premium of every clergyman in it. This would amount to about \$6000 or \$7000 per annum. I am constrained to think it should be put upon our Convention Fund because this will assure that the regular payment assessed pro rata according to the salaries received, in every parish or mission in our jurisdiction....A parish failing to meet its Convention tax loses its seat in the Convention, and that is

¹⁶ JGC 1853, Canon 5.

a humiliation that I have never known a parish to be willing to submit to.”¹⁷

(e) Canon III.9, “Of the Life and Work of Priests,” which has evolved through frequent amendment since the earliest years of the Church, contains many provisions relating to deployment and transfer of clergy, parish administration, visitations by the Bishop, temporary service of clergy, and retirement that have nevertheless remained binding in each of their new forms on all parish clergy and laity. In 1904, key changes were made in this canon (then called “Of Candidates for Holy Orders”). One involved the role of the bishop in the calling of a rector. The Bishop of Massachusetts explained to his clergy:

“I call your attention to three changes in the Canons. ‘No election of a Rector shall be had until the name of the clergyman whom it is proposed to elect has been made known to the Bishop, if there be one, and sufficient time, not exceeding thirty days, has been given him to communicate with the Vestry thereon.’ This does not touch on the power of a Parish to elect any clergyman as their Rector, but it guards against hasty actions, and enables the Vestry to have such information about the candidate as the Bishop may be able to give them.”¹⁸

II. The Historic Treatment of Property by the Episcopal Church

A. The Episcopal Church Has Continued the Anglican Tradition of Reverence for Property in Its Exercise of Authority Over Its Parishes In Temporal Matters.

41. One of the attributes that characterized Anglicanism and set it apart from the other Protestant churches of the Sixteenth Century was a reverence for the physicality of religion. This stood in marked contrast with other voices in Sixteenth-Century England (usually called Puritanism) that greatly shaped much of American Protestantism. Whereas Puritans saw the church and its practices as fundamentally spiritual, and feared that the physical parts of church life could all too easily lead to idolatry, Anglicans maintained the importance of the

¹⁷ Journal of the One Hundredth Annual Convention of the Protestant Episcopal Church in the Diocese of Ohio (Akron, 1917), 35-36.

¹⁸ Journal of the One Hundred-Twentieth Annual Meeting of the Convention of the Diocese of Massachusetts... (Boston, 1905), 85.

physical. It is for this reason that Puritans tended to call their houses of worship “Meeting Houses,” since they claimed that the church was a spiritual reality separate from the building. Anglicans never made such a division.

42. These concerns were codified in the Church of England’s canons of 1604 which dictated first what instruments of worship must be provided, that is, the correct books, “a decent Communion Table,” and “a Font of stone in every Church and Chapell where Baptisme is to be ministered.”¹⁹ In addition, the canons went to great lengths concerning the keeping of the church building in good repair and all church lands properly managed. For example, Canon LXXXV stated:

“The Churchwardens or questmen shall take care and provide that the Churches be well and sufficiently repaired, and so from time to time kept and maintained, that the Windowes be well glazed, and that the Floores be kept pauer, plaine, and euen, and all things such in orderly and decent sort, without dust, and that any thing that may be either noisesom or unseemly, as best becometh the house of God, as is prescribed in an Homily to that effect. The like care they shall take, that that the Churchyards be well and sufficiently repaired, fenced, and maintained, with Walles, Railes, or Pales, as haue been in each place accustomed, at their charges unto whom by Lawe the same appertaineth.”

In addition, vestries were required by Canon LXXXVI to report their actions in maintaining the fabric – or the physical things – of the church periodically to the bishop (usually through the Archdeacon of the diocese or other intermediaries):

“Every Deane, Deane and Chapter, Archdeacon, and others which have authoritie to hold Ecclesiastical Visitations by Composition, Law or Prescription, shall survey the Churches of his or their Jurisdiction, once every three yeeres in his owne person, or cause the same to be done within the said three yeeres, certifie the high Commissioners for causes Ecclesiasticall, every yeere of such defects in any the said Churches, as he or they doe finde to remaine unrepaired, and the names and surnames of the parties faultie therein.”²⁰

43. The Book of Common Prayer has always been explicit in how worship is to be done and where. The Book of Common Prayer (1662) commanded how the communion table

¹⁹ Church of England Canons LXXX-LXXXIV (1604).

²⁰ Church of England Canon LXXXVI (1604).

was to be prepared (“The Table at the Communion-time having a fair white linen cloth upon it, shall stand in the Body of the Church, or in the Chancel where Morning and Evening Prayer are appointed to be said”), how the offertory was to be conducted (“Whilst these Sentences are being read, the Deacons, Churchwardens, or other fit persons appointed for that purpose, shall receive the Alms for the Poor, and other devotions of the people, by a decent basin to be provided by the Parish for that purpose”), and with what care the consecrated elements were to be treated (“When all have communicated, the Minister shall return to the Lord’s Table and reverently place upon it what remaineth of the consecrated Elements, covering the same with a fair linene cloth.”).²¹

44. Oversight by the larger church of parishes’ temporalities and resources has been a distinctive part of Anglicanism from the very beginning. Bishops in the Church of England were expected to visit the parishes within their jurisdictions, and such “episcopal visitations” were an important aspect of each diocesan bishop’s role. As the Oxford Dictionary of the Christian Church explains, episcopal visitations in the Church of England were – and are – “designed for the periodic inspection of those temporal and spiritual affairs of a diocese under the bishop’s control.”²² In such a visit, the bishop would routinely inquire about both the spiritual health of the parish and the physical state of the buildings and grounds.

45. In the newly-organized Episcopal Church, episcopal visitations continued to involve temporal as well as liturgical functions. In 1789, the General Convention passed Canon III, “Of Episcopal Visitation,” requiring each bishop to visit the parishes in his diocese “for the purposes of examining the state of his church, inspecting the behavior of the clergy, and administering the apostolic right of confirmation.”²³ The same Convention passed Canon XI,

²¹ All of these quotations are from the Eucharistic office of the Prayer Book of the Church of England (1662).

²² The Oxford Dictionary of the Christian Church (Second Edition) (Oxford: Oxford University Press), 1445.

²³ JGC 1789, Canon III. Beginning in 1856 it was stipulated that every bishop must visit each parish at least once in three years. See JGC 1856, Canon III.18(4)(a).

“Of the duty of Ministers, in regard to Episcopal Visitation,” requiring priests to “give information to the Bishop of the state of the congregation.”²⁴

46. It was always understood that the “state of the congregation” included the condition of its property. As early as 1807, the Bishop of Connecticut announced to his Convention:

“It is the duty of the Church Warden’s to take care of the buildings which belong to [the church], such as the Parsonage, the Glebe House, if there be one, together with the out-houses, and also the Church, with its appurtenances, so far as they have or can obtain the means necessary, to keep it in good and decent condition. If there be a Church Yard, that also should be an object of their attention, that nothing improper be done in it, nor any encroachments made upon it.”²⁵

47. Nineteenth-Century commentators always noted that these visitations involved inquiries into the physical as well as spiritual state of the parish. Hoffman, in his commentary on the canons, explains that one role of episcopal visitations was to see that the “fabric and ornaments of the church were preserved and increased.”²⁶ Likewise, the Nineteenth-Century reference volume, The Church Cyclopedia, elucidates the historical authority of the bishop to examine all aspects of the strength and resources of local parishes, affirming that this “is a right that inheres in the office of the bishop.”²⁷

48. Explicit requirements for episcopal visitation exist today. Canon III.12.3 requires each diocesan bishop to “visit the Congregations within the Diocese at least once in three years,” and Canon III.9(5)(b)(5) sets out the duties of a parish upon the visitation of the bishop:

“At every visitation [by the bishop] it shall be the duty of the Rector and the Wardens, Vestry or other officers, to exhibit to the Bishop the Parish Register and to give information as to the state of the congregation, *spiritual and temporal*, in such categories as the Bishop shall have previously requested in writing.” (Emphasis added.)

²⁴ JGC 1789, Canon IX.

²⁵ Journals of the Annual Conventions of the Diocese of Connecticut from 1792-1820 (New Haven, 1842), 45.

²⁶ Hoffman, Treatise, *supra*, 302-303.

²⁷ “Visitation, Episcopal,” The Church Cyclopedia...Designed Especially for the Use of the Laity of the Protestant Episcopal Church in the United States of America (Philadelphia, 1884), 779-80.

49. The Anglican concern for the sanctity of Church property and its protection for the mission of the Church can be seen in the Episcopal Church's adoption in 1799 of the "Form of Consecration of a Church or Chapel." That rite, or "liturgy," formally sets apart a church building for the sacred work of worship. It had its origins in the early Seventeenth Century, and had been prepared by Convocation (*i.e.*, the governing body of the Church of England) in 1712, but had always been an unofficial service and never an official part of the Book of Common Prayer. It was in the American Book of Common Prayer that it first found official status, and the liturgy for this service has been included in the Book of Common Prayer since 1799.²⁸ In the course of this service, the early versions of the Prayer Book directed: "The Bishop, sitting in his chair, shall have the instruments of Donation and Endowment, if there be any, presented to him," indicating that the property was being dedicated to the interests of the Church, and was being set apart from "all unhallowed, worldly and common use." The "instruments of donation" that parishes used in the early Nineteenth Century stated, for example, that such property was being appropriated and devoted to the worship and service of God, according to the ministry and doctrine of the Episcopal Church and by a congregation in communion with the Church. In addition, such instruments affirmed that the parish was giving up any right to dispose of the building or allow its use in any way inconsistent with their terms.

50. These general principles over time came to be expressed in the canon law of the Church as situations arose that required that such principles be made explicit. While adoption in the Book of Common Prayer of the service "Of The Consecration of a Church" and the accompanying Instruments of Donation had reflected the larger Church's interest in consecrated property, it was not until 1868 that such interest was given explicit protection in the Church's canons.

51. Canon II.6 provides that no parish may encumber, alienate, or destroy any consecrated real property without the consent of the leadership of the diocese, and further

²⁸ See Massey Hamilton Shepherd, The Oxford American Prayer Book Commentary (New York: Oxford University Press, 1950), 563-8.

provides that consecrated property must be “secured for ownership and use” by a parish or other congregation “affiliated with the Episcopal Church and subject to its Constitution and Canons.”

The current version of this canon states:

“Sec. 1 No Church or Chapel shall be consecrated until the Bishop shall have been sufficiently satisfied that the building and the ground on which it is erected are secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with this Church and subject to its Constitution and Canons.

“Sec. 2. It shall not be lawful for any Vestry, Trustees, or other body authorized by law of any State or Territory to hold property for any Diocese, Parish or Congregation, to encumber or alienate any dedicated and consecrated Church or Chapel, or any Church or Chapel which has been used solely for Divine Service, belonging to the Parish or Congregation which they represent, without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese.

“Sec. 3. No dedicated and consecrated Church or Chapel shall be removed, taken down, or otherwise disposed of for any worldly or common use, without the previous consent of the Standing Committee of the Diocese.

“Sec. 4. Any dedicated and consecrated Church or Chapel shall be subject to the trust declared with respect to real and personal property held by any Parish, Mission, or Congregation as set forth in Canon I.7(4).”

52. The first version of this canon was passed by the General Convention in 1868. Canon 21 (now Canon II.6) was adopted to address what contemporaries called “a growing evil.”²⁹ During the boom and bust years of the Civil War many parishes built extravagantly in a speculative way, hoping to increase their size, only later finding it necessary to sell their church buildings to pay their debt. The sight of a church building at a sheriff’s auction was considered to be a scandal for the entire church, and this canon addressed the problem. It stemmed from the Church’s view that consecrated property must be treated reverently and in conformity with the claims made in the Service of Consecration. Indeed, one of the participants in the debate on the canon’s adoption explicitly acknowledged, “It seems to me that passing a canon like this is simply doing what has been done in the Consecration Service of the Church.”³⁰

53. Section 1 was further refined in 1871, with the addition of the following clause:

²⁹ JGC 1868 at 345.

³⁰ The Churchman, November 21, 1868, p. 379.

“And also that such building and ground are secured, by the terms of the device, or deed, or subscription by which they are given, from the danger of alienation from those who profess and practice the doctrine, discipline, and worship of the Protestant Episcopal Church, except in the cases for in [sections] II and III of this Canon. Provided that this shall not preclude the alienation of lots for burial in vaults or otherwise, nor apply to land owned by the Church corporation and not necessary for religious use.”³¹

This addition came in the context of an incident involving a parish in Chicago. In the early 1870s, the majority of the membership of a number of congregations left the Episcopal Church in protest over theological teachings and liturgical practices. In all, between 90 and 100 congregations voted to separate themselves from the Episcopal Church during this period. There was an overwhelming recognition that when they separated these congregations were required to relinquish control of the parish property. Even the spokespersons for the newly formed “Reformed Episcopal Church” admitted that their action “necessitated the abandonment of all property.”³²

54. As far as can be determined, only two congregations challenged this principle. The first was Christ Church, Chicago, which purported to sever its relationship with the Diocese of Illinois in 1871 and yet did not relinquish control of the parish property. This action, the bishop asserted, made the priest liable to deposition and the vestry subject to maladministration of the property of which it was trustee.³³ In the Diocesan Convention of 1872, the Chancellor of the Diocese reported that legal proceedings had been undertaken to prevent maladministration and to reserve the resources of the parish for their legitimate and godly use.³⁴ During the course of the trial, numerous expert witnesses (both from the United States and England) testified to the

³¹ JGC 1871, 228 ff. The final sentence was removed by General Convention in 1904.

³² Benjamin Aycrigg, Memoirs From the Reformed Episcopal Church and the Protestant Episcopal Church...Extracted from the Public Press, Analyzed and Compared with Previous History, Approved by Bishop Cummins and the Council (New York, 1880), 53.

³³ Journal of the Thirty-Fifth Annual Convention of the Diocese of Illinois... Twentieth Annual Address of Henry J. Whitehouse, Bishop of Illinois, Read in the Cathedral...at the Thirty-Fourth Annual Convention of the Diocese of Illinois (Chicago, 1871), 38.

³⁴ *Ibid.* 1872 at 20-21.

long-held Anglican practice of congregations holding property in trust for the larger Church.³⁵ The Supreme Court of Illinois, however, ultimately refused to enforce the Diocese's trust interest in the parish property.³⁶

55. The other congregation to challenge the Church's claim to parish property during this period was Emmanuel Church in Louisville, Kentucky. That congregation attempted to separate from the Diocese of Kentucky in 1876 and take the parish's property with it. The courts in this case ruled in favor of the Episcopal Church, and in 1879 the Journal of the Diocese of Kentucky reported that the local church building was to be sold and that the proceeds were to be applied to the erection of a new church "under the jurisdiction of the Protestant Episcopal Church."³⁷

56. An initial reaction to these congregations' novel claim (and similar claims then being made in other religious denominations) was the reworking of the canon, to assure that property could not be alienated from those who "profess and practice the doctrine, discipline and worship of the Protestant Episcopal Church in the United States of America."³⁸ Here the concern was not so much in using consecrated structures in non-sacral ways (as was the purpose of the original canon), as in using them as worship places for congregations other than those affiliated with the Episcopal Church, as the congregation of Christ Church, Chicago, was attempting to do. Thus, the rewritten canon again made explicit a practice that had always been the expectation. As the Church Journal noted:

"On the last day of the session the House of Deputies adopted the resolution reported by the Committee on Canons designed to prevent the alienation of Church property to parties no longer in accord with the doctrine, discipline, and

³⁵ See The Chicago Tribune, June 15, 1873, p. 9.

³⁶ Journal of the Forty-First Annual Convention of the Diocese of Illinois (Chicago, 1878), 61.

³⁷ Journal of the Proceedings of the Protestant Episcopal Church in the Diocese of Kentucky (Louisville, 1879), 27.

³⁸ Debates of the House of Deputies of the General Convention of the Protestant Episcopal Church in the United States of America, Held in Baltimore, MD., October, A.D. 1871 (Hartford, 1871), 254.

worship of the Church in the United States.... The House of Bishops concurred in a measure that had been converted into one of pressing importance by the extraordinary conduct of the vestry and congregation of Christ Church, Chicago.”³⁹

57. A related concern that arose in the late 1870s was a growing sense that developments in business culture were beginning to negatively impact church life, and some began to assert that vestries were beginning to behave like corporate boards and treat clergy like employees. Earlier in the Century, dioceses had been smaller in population, enabling bishops to more easily exercise their authority morally and informally, but as dioceses grew in size some bishops came to feel that their influence was diminished.

58. Hence, the General Convention created a joint committee to study the matter, which in 1880 issued its “Report of the Joint Committee on the Functions of Rectors, Wardens and Vestrymen.” The report recognized that incorporated parishes were legal corporations, but that

“a corporation created for the express purpose of enabling the Church to fulfill her holy mission cannot put itself beyond or above the Church’s law without violating the very essential principle that brought it into being. The will of the Church must necessarily, be the rule of its conduct, and it is bound to exercise its power according to that will.”⁴⁰

59. The 1904 General Convention responded to such concerns by passing then-Canon 15 (now Canon III.9.5(a)(2)), “Of Ministers and Their Duties,” which clarified the rights of the rector to the use of church property. The canon provided that it is the rector of the parish who determines the use of the parish buildings and furnishings in aid of his or her ministry:

“For the purposes of the office and for the full and free discharge of all functions and duties pertaining thereto, the Rector shall, at all times, be entitled to the use and control of the Church and Parish buildings with the appurtenances and furnishings thereto.”⁴¹

³⁹ Church Journal, November 8, 1871, p. 357 (emphasis added).

⁴⁰ JGC 1881, 463. *See also*, Morgan Dix and James Parker, The Function of Rectors, and Wardens, and Vestrymen (New York, 1880).

⁴¹ *See* JGC 1904.

Further, as then-Canon 15 (now Canon III.9.5(a)(1)) made clear, the rector's carrying out of his or her ministry – including the use of church property therefor – was (and is) at all times to be “subject to the Rubrics of the Book of Common Prayer, the Constitution and Canons of this Church, and the pastoral direction of the Bishop.”⁴² This act gave canonical authority to an existing practice that was already contained in the “Office of Institution” in the Book of Common Prayer, in which a parish rector was installed in office and the Senior Warden presented the rector with the keys to the church as a sign of his authority and control.⁴³

60. During the period after the Civil War, there was some concern that the culture of Gilded Age capitalism was affecting church business practices. As the Bishop of Massachusetts wrote, parishes were paying operating funds “out of funds bequeathed for other purposes by some trustful man or woman now in Paradise, or to use for salaries money gotten from living Christian men and women for extinction of debts or for other uses.”⁴⁴ Money was unaccounted for, buildings were often uninsured, and funds contributed for one purpose were being spent on other purposes.⁴⁵

61. To address these concerns, in 1916 the General Convention passed then-Canon 50 (now Canon I.7), entitled “On Business Methods in Church Affairs,” which sought to regularize, *inter alia*, haphazard business practices among congregations.⁴⁶ The canon sought to govern the management of personal property and treatment of trusts, and provide for the insurance of property by requiring that each diocese establish a finance committee to assure “that adequate insurance is maintained upon all church property.”⁴⁷ In 1919, an additional provision was

⁴² See *id.* The quoted language is identical in the current canon.

⁴³ See Book of Common Prayer, “An Office of Institution of Ministers Into Parishes or Churches” (1892).

⁴⁴ Journal of the Eighty-Seventh Annual Meeting of the Convention of the Protestant Episcopal Church in the Diocese of Massachusetts... (Boston, 1877), 24.

⁴⁵ See, e.g., “The Vestry Question” Living Church, July 23, 1881, which cataloged a long list of abuses.

⁴⁶ See JGC 1916, 284-286.

⁴⁷ See JGC 1919, Canon 50.

passed, and Canon 50 (now Canon 1.7) further required each diocese to establish a Finance Committee to ensure adequate fiscal oversight of the diocese and all parishes and other congregations within the diocese, thus increasing the monitoring authority of the diocese over vestries.⁴⁸

62. New concerns arose during the Great Depression, when parishes were induced to sell or borrow money against their real property without adequate guidance from their dioceses. As was the case in the Nineteenth Century, the Church feared that such borrowing could lead to foreclosure and threaten the use of the church property for posterity. In 1940, the General Convention passed Canon I.7, which prohibits encumbrance or other alienation of all other (*i.e.*, non-consecrated) parish real property without the consent of the Bishop and Standing Committee of the Diocese:

“Sec. 3: No Vestry, Trustee, or other Body, authorized by Civil or Canon law to hold, manage, or administer real property for any Parish, Mission, Congregation, or Institution, shall encumber or alienate the same or any part thereof without the written consent of the Bishop and Standing Committee of the Diocese of which the Parish, Mission, Congregation, or Institution is a part, except under such regulations as may be prescribed by Canon of the Diocese.”⁴⁹

63. Still other canons make this principle even more explicit. Canons I.7(4) and (5), enacted by the General Convention in 1979, confirm that all parishes hold their real and personal property “in trust for this Church and the Diocese”:

“Sec. 4. 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.

“Sec. 5. The several Dioceses may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, but no such action shall be necessary for the existence and validity of the trust.”

⁴⁸ See JGC 1919, 324.

⁴⁹ JGC 1940 at 201,271-73; JGC 1943 at 162-63, 365-367. This canon was slightly reworded in 1943.

64. Section 4 of Canon II.6, reflecting the Church's and dioceses' trust interest in consecrated property, was passed at the same time.

65. The preamble of the resolution proposing these additions to Canon I.7 set out clearly the General Convention's understanding regarding the Church's and dioceses' relationship with their parishes, particularly in the context of property. It stated:

"Whereas, the Episcopal Church is an hierarchical church, in which local parish churches are a part of, and are subject to, the Constitution and Canons of the Episcopal Church and of the Diocese in which they are geographically present; and

*"Whereas, the Episcopal Church recognizes that local parishes have broad autonomy in the use of their property, so long as they act within the confines of the Constitution and Canons of the Episcopal Church and of the Diocese in which they are geographically present . . ."*⁵⁰

Many authoritative sources, including the original sponsor of the amendment, confirm that these provisions were adopted in 1979 because a majority of the General Convention agreed with the suggestion that it would be prudent to follow the direction of the Supreme Court laid out a few months earlier in Jones v. Wolf, 443 U.S. 595 (1979), to affirm and make clear in its canons the Church's and dioceses' trust interest in parish property, in order to ensure that the Church's traditional policy with respect to the use and control of parish property would be enforced by the civil courts.

66. The principle elaborated in this canon was not new, but was rather the canonical reiteration of a long-standing principle. Indeed, over a hundred years before the passage of this canon, the Convention of the Diocese of Pennsylvania declared:

"[W]e hold it to be the fundamental rule of law governing the Episcopal Church...that while individual members may separate from our Church and decline any further communion with us, according to the dictates of their own consciences, no Congregation...can undertake to depart in form of worship, discipline, or essential Articles of Faith, as established by the General Convention of the Protestant Episcopal Church in the United States...without imperiling not only their Church membership and organization as part of the Episcopal Church, but also the rights of property in the Church edifices and other possessions which

⁵⁰ JGC 1979 at B-60.

have been conferred upon them by members of our communion *which they hold in trust, to use the same for purposes of worship adopted by the General Convention of the Protestant Episcopal Church in the United States*, with the proviso aforesaid, and which it would be a clear misappropriation to use for any other purpose.”⁵¹

67. In each of these canons, the principle of the importance of the maintaining and preserving of property has been foundational. These specific provisions were adopted over the years in response to particular historical concerns and/or events. These canons, however, merely implement (or, in the case of Canons I.7(4) and II.6(4), confirm) this Church’s historic care and interest in preserving and ensuring the proper use of property held by individual Episcopal parishes, and its general authority to ensure that parish property is protected and properly used to further the Church’s mission.

B. From Its Beginning, the Episcopal Church Has Been Committed to Preserving Local Property For the Mission of the Larger Church.

68. As discussed above, in the early days of the new United States, American Anglicans were eager to emphasize their continuity with the Church of England. In addition to affection for the Mother Church, and in keeping with the Anglican tradition of reverence for church property, Americans in the new Episcopal Church felt connected to the church buildings in which they had been worshipping during colonial times, and hoped that stressing the new Church’s connectedness to the Church of England would strengthen their claims to church property in post-colonial America.

69. In the colonial era, congregations had become parishes of the Church of England and came to hold property as a result of that relationship. In colonies where the Church of England was established, church property was seen as public in nature, while in other colonies the property was under the authority of the Society for the Propagation of the Gospel (the missionary society for the Church of England), or individual religious societies. Those congregations recognized that their claim to property depended upon their status as parishes of

⁵¹ Journal of the Proceedings of the Ninety-Fifth Convention of the Protestant Episcopal Church in the Diocese of Pennsylvania... (Philadelphia, 1879), 292-3 (emphasis added).

the larger Church. The political dissolution of the Church of England in the New World threatened the property claims of those colonial Anglican congregations: If the Church of England no longer existed in the United States, what entity held the property of that church's former parishes? Particularly in places where the Church had been established by law, some argued that with disestablishment the old Church of England was no more, and the property ought to revert back to the state. In response to this, colonial parishioners sought to organize a church that would be the legitimate successor in interest to all property that had been held by the Church of England parishes in this country. From the beginning of the American experience, therefore, it was recognized that a loyal congregation's continuing entitlement to property depended upon its affiliation with a larger church as a successor to the Church of England in America and was not inherent in the local congregation's make-up and practice.

70. The Preface to the first Book of Common Prayer of the Episcopal Church contained (and still contains) the statement that "this Church is far from intending to depart from the Church of England in any essential point of doctrine, discipline or worship." The desire to emphasize continuity with the Church of England in order to secure property rights was reflected again in 1814 in the following Declaration by the House of Bishops:

"It having been credibly stated to the House of Bishops that *on questions in reference to property devised before the revolution to congregations belonging to 'the Church of England,'* and to uses connected with that name, some doubts have been entertained in regard to the identity of the body to which the two names have been applied, *the House thinks it expedient to make the declaration...that "The Protestant Episcopal Church in the United States of America" is the same body heretofore known in these States by the name of 'The Church of England';* the change of name, although not of religious principle in doctrine, or in worship, or in discipline, being induced by a characteristic of the Church of England, supposing the independence of the Christian Churches, under the different sovereignties, to which respectively, their allegiance in civil concerns belongs. But when the severance alluded to took place, and ever since, this Church conceives of herself, as professing and acting on the principles of the Church of England, as evident from the organization of our Conventions, and from their

subsequent proceedings, as recorded in the Journals; to which, accordingly, this Convention refers for satisfaction in the premises.”⁵²

Similarly, in 1783, certain Episcopal clergy in Maryland issued a “Declaration of Certain Fundamental Rights and Liberties,” which spoke of the rights and claims of the Episcopal “Church” (rather than the Episcopal “Churches”): “We consider it as an undoubted right of the same Protestant Episcopal Church...to complete and preserve herself as an entire church agreeably to her *ancient usages and possessions*.”⁵³

71. Other efforts were made in the early years of the Episcopal Church to ensure that property held by Church of England parishes would remain committed to the mission of the new Episcopal Church. In 1816, the rector of St. Peter’s Church, Baltimore, Maryland, became involved in a theological dispute with the bishop of the diocese that led to the rector’s “deposition” (removal from his role as an ordained minister).⁵⁴ The vestry took the side of the rector over the bishop and attempted to continue to support him financially. Both the bishop and the Diocesan Convention, however, reaffirmed the principle that vestries serve the larger Church, including in matters involving personal property, and the Convention endorsed the following explicit statement:

“The committee would here take the liberty to say a few words about the powers and duties of vestrymen. By the constitution and laws of Maryland, all the churches and property in this state, which before the Revolution belonged to the Church of England, and since that period to the Protestant Episcopal Church of Maryland, have been vested in the vestries of the several parishes, *in trust for the purposes to which they were originally destined, and can be applied to no other use or purpose whatsoever*. No person can be a member of a vestry who is not a member and attached to the church. *Vestrymen are bound by every obligation of duty to preserve this property*.... To apply the funds to any other purposes, to introduce into their places of worship any other than a minister who is recognized by the church of Maryland, ..., would be a breach of those obligations into which by accepting the appointment, they had voluntarily entered. The duties of

⁵² Journals of the General Conventions of the Protestant Episcopal Church in the United States of America, 1785-1835 (Claremont, NH, 1874), 1: 431 (emphasis added).

⁵³ Quoted in Hawks, Contributions, 294-295 (emphasis added).

⁵⁴ For an account of this dispute see Diana H. Butler, Standing Against the Whirlwind: Evangelical Episcopalians in Nineteenth-Century America (New York: Oxford University Press, 1994), 12-15.

vestrymen are plainly pointed out in the constitution and canons of the church and in the laws of the state. With these duties they ought to acquaint themselves, and unless they can resolve to discharge them honestly, and faithfully, they should not hesitate to reject the appointment.”⁵⁵

The result of this confrontation was thus an affirmation of the role of the vestry as stewards of the resources of the parish for the larger Church.

72. The Protestant Episcopal Church in the United States of America was thus intended to encompass those parishes that were the continuation of the Church of England in post-revolutionary America. It was understood that individual congregations, having become parishes of the new Episcopal Church, could keep their property because of this prior connectionalism to the Church of England.⁵⁶ No other churches or groups were formed during this period to rival the Episcopal Church’s claim to sole successorship to the Church of England in this country.

C. The Episcopal Church Confers Benefits on Its Parishes.

73. Much of the Church’s mission and programmatic work is performed at the level of the local congregation, subject to the Church’s and the diocese’s Constitutions and canons and the direction of the diocesan bishop. Work of a broader scope typically is performed by the diocese and by the international Church.

74. As with any other religious denomination operating in this country, the Episcopal Church’s work, managed or performed at all of its levels of governance, is normally funded by contributions from individual members. Contributions generally are received initially by the Church’s parishes and missions, which then remit some of these revenues to their dioceses to support mission and other programs and administration that are managed at the diocesan level. Some dioceses, through their canons, mandate these contributions from each parish; in other

⁵⁵ See Journal of a Convention of the Protestant Episcopal Church of Maryland (Annapolis, 1816), 12 (emphasis added).

⁵⁶ See Francis L. Hawks, Contributions to the Ecclesiastical History of the United States: Volume II, Maryland (New York: John S. Taylor, 1839), 292-293; Frederick V. Mills, Sr., Bishops by Ballot: An Eighteenth Century Ecclesiastical Revolution (New York: Oxford University Press, 1978), 190-192.

dioceses, the contributions are voluntary. The various dioceses, in turn, contribute a portion of their revenues to support the proceedings of the General Convention, the canonical responsibilities of the Presiding Bishop, and the national and international mission and other programs that are managed at the level of the general Church. The general Church establishes suggested benchmarks for such contributions, but contributions are voluntary. Canon I.4(6). Contributions to the Church Pension Fund, however, which administers and provides pensions for ordained Episcopal clergy, are mandatory. *See* Canon I.8(3).

75. As a constituent part of the Church and the diocese, a parish obtains numerous benefits. On the spiritual level, it receives the oversight of a bishop, who offers guidance and direction, particularly when there is disagreement in the local community. It also has the protection of canon law, which enunciates appropriate actions by clergy and provides direction in governance to clergy and laity alike. A few of the many tangible examples of the benefits conferred on parishes through their relationships to the Church and the diocese are the ability to have members baptized, married, and buried pursuant to recognized Church rites, and access to Episcopal clergy for the receiving of the sacraments, leadership in regular worship, Christian education, pastoral care, and emergency relief.

76. Parishes also have access to church-wide institutions. Parish clergy participate in the Church Pension Fund, which was created by the Episcopal Church and is considered to be the finest of any religious community in America. Although individual congregations contribute to it, it was made possible only by a great national campaign in the second decade of the Twentieth Century that raised over five million dollars.⁵⁷

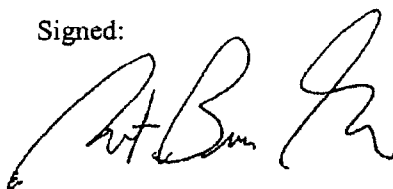
77. Another benefit that the Church gives its parishes is its educational system. Through this system, parishes have access to clergy trained in the doctrine, teachings, and practices of the Episcopal Church, who have been carefully examined—intellectually, morally, and spiritually—by a carefully-designed network of discernment. Parishes also have access to

⁵⁷ Harold C. Martin, Outlasting Marble and Brass: The History of the Church Pension Fund (New York, 1986), 81 ff.

the Church Deployment Office, which helps match clergy to parishes, as well as access to fire, liability, and other group insurance. Another resource available to parishes is the Episcopal Church Building Fund. Originally created to raise funds for missionary churches, it now distributes money to local parishes and other Church institutions affected by events such as fire or natural disaster. Congregations that are not part of the Episcopal Church cannot provide these benefits to their members or participate in these programs.

78. As members of the Episcopal Church, parishes are also members of individual dioceses, which themselves provide grants and loans to individual congregations, and these as well are only available to congregations connected to the Church.

Signed:

A handwritten signature in black ink, appearing to read 'R. B. Mullin', written in a cursive style.

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