

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY

CALVARY EPISCOPAL CHURCH,  
PITTSBURGH, PENNSYLVANIA, a  
Pennsylvania Nonprofit Church, et al.

Plaintiffs,

v.

THE RIGHT REVEREND ROBERT  
WILLIAM DUNCAN, Bishop of The  
Episcopal Diocese of Pittsburgh, et al.,

Defendants,

and

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

Plaintiff-in-Intervention.

**NOTICE TO PLEAD**

**TO: PLAINTIFF-IN-  
INTERVENTION**

You are hereby notified to file a written  
response to the enclosed New Matter  
within twenty (20) days from service  
hereof or relief may be awarded against  
you.

/s/ Andrew K. Fletcher

Andrew K. Fletcher  
Counsel for Defendants

CIVIL DIVISION

No. GD-03-020941

**ANSWER AND NEW MATTER TO  
COMPLAINT IN INTERVENTION**

FILED ON BEHALF OF DEFENDANTS

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Pennsylvania Non-Profit Corporation; *et al.*,

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WILLIAM DUNCAN, Bishop of The Episcopal  
Diocese of Pittsburgh, The Episcopal Diocese of  
Pittsburgh, *et al.*,

Defendants.

and

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

Plaintiff-in-Intervention.

**ANSWER AND NEW MATTER TO COMPLAINT IN INTERVENTION**

Defendants, by and through their undersigned counsel, file the following Answer and New Matter to the Complaint In Intervention.

**Parties**

1. It is specifically denied that the Right Reverend John C. Buchanan has the authority to act as Trustee *Ad Litem* on behalf of The Episcopal Church (“TEC”) or is authorized to state the official position of TEC. It is specifically denied that TEC has “headquarters” in New York. After reasonable investigation, Defendants lack knowledge of the remainder of the averments, and therefore deny these allegations and demand strict proof thereof.

2. Denied. It is specifically denied that TEC is a hierarchical religious denomination or that dioceses are “subordinate entities.” TEC is a confederation of equals formed by the joining in association of existing dioceses. As noted by the official commentary on the Constitution and Canons of TEC, “[b]efore their adherence to the Constitution united the Churches in the several states into a national body, each was completely independent.” It goes on to note that the body created was “a federation of equal and independent Churches in the several states.” Because TEC was created by existing dioceses, its Constitution is controlled and limited by the power conferred on it by those dioceses. Power not specifically delegated by the dioceses and enumerated in the Constitution of TEC was, and is, retained by the dioceses. TEC’s Constitution and Canons have no provisions of hierarchical language manifesting supremacy, subordination, exclusivity, preemption or finality over its constituent dioceses. Significantly, TEC’s Constitution and Canons contain no limitation on the right or power of a diocese to amend its constitution to withdraw from the voluntary, unincorporated association. Nor do TEC’s Constitution and Canons require that any amendment to a diocese’s constitution or canons be submitted to TEC for approval.

Dioceses are not subordinate units of TEC; they are constituent members of a voluntary association that meet in a convention known as the “General Convention.” The General Convention is not designated as the highest branch of TEC, nor as having hierarchical authority over a diocese. There is no requirement in TEC’s Constitution or Canons that diocesan legislative enactments be consistent with those of the General Convention or receive any prior approval from any source outside the diocese. Dioceses are constitutionally and canonically free to nullify any legislative enactment by the General Convention with which they disagree.

The General Convention had nothing whatsoever to do with the creation of the founding dioceses; it was the founding dioceses that created the General Convention in 1789. This pattern continues. Dioceses self-organize by adopting a constitution and canons, and thereafter are admitted into “union” with the General Convention. Specifically:

- State churches were independent legal entities prior to their organization of TEC.
- New dioceses are duly constituted entities with distinct legal existence prior to admission to TEC.
- Dioceses retain their distinct legal existence as defined by their constitutions, and the laws of their respective states, when they join TEC.
- The constituent members of General Convention are the dioceses; it is the dioceses that are “represented” and vote as equals.
- The most important matters decided at General Convention – amendments to the Constitution and Book of Common Prayer – are referred to diocesan conventions for consideration prior to action by General Convention, and the final vote is taken at General Convention with voting by dioceses. TEC Constitution at Article XII (requiring that any constitutional amendment be “proposed” at one General Convention and that the proposal then be “sent to the Secretary of the Convention of every Diocese, to be made known to the Diocesan Convention at its next meeting,” and then the amendment must be “adopted” at a second General Convention by “the whole number of Bishops entitled to vote in the House of

Bishops” and an “affirmative vote in each order by a majority of the Dioceses entitled to representation in the House of Deputies.”).

TEC’s Constitution has no internal procedure to resolve a constitutional dispute with a diocese. Nor does TEC’s Constitution provide for the establishment of a church court to resolve such a dispute. The General Convention also lacks the authority to establish a court to resolve a constitutional dispute with a diocese. The General Convention is authorized to establish a national court only for one purpose: for the review of the determination of any Court of Review on questions doctrine, faith, or worship. (Const., Art. IX.) No such national court has been established by the General Convention.

It is further denied that TEC currently has 111 geographically-defined dioceses or 7,700 worshipping congregations. By way of further answer, several dioceses, including the Diocese of Pittsburgh, the Diocese of San Joaquin, the Diocese of Quincy and the Diocese of Forth Worth have withdrawn from TEC, and no new dioceses have been properly formed to replace them in accordance with the procedures set forth in the TEC Constitution and Canons. A number of individual parishes have also withdrawn from TEC. Upon information and belief, the numbers referred to in this Paragraph include the dioceses and parishes that have withdrawn from TEC and are therefore inaccurate and denied.

3. It is specifically denied that the Diocese is “one of [TEC’s] subordinate units.” Defendants incorporate Paragraph 2 of this Answer as if set forth fully herein. The geographic boundaries of the Diocese are also specifically denied. The remainder of this Paragraph is admitted.

4. It is admitted only that Plaintiff Calvary Episcopal Church (“Calvary”) is a non-profit corporation located in Pittsburgh, Pennsylvania. As a result of the vote at the Diocesan Convention in October 2008, the Diocese withdrew from TEC.

5. Admitted.

6. Admitted.

7. Admitted.

8. It is specifically denied that Robert W. Duncan (“Bishop Duncan”) was formerly Bishop of the Diocese. To the contrary, Bishop Duncan is the current Bishop of the Diocese. By way of further answer, the purported “deposition” of Bishop Duncan was illegal and invalid. Moreover, the purported “deposition” was not accomplished in accordance with the Canons of TEC and was not undertaken for an ecclesiastical purpose. To the contrary, the “deposition” was accomplished pursuant to a fraudulent interpretation of the canons for the purpose of strengthening “TEC’s” position in an anticipated property dispute.

9. Admitted.

10. Admitted.

11. Admitted.

#### **Structure of the Episcopal Church**

12. Defendants incorporate by reference their Answer to Paragraph 2 as if fully set forth herein.

13. It is admitted only that TEC has 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 dioceses which comprise the General Convention. It is specifically denied that the dioceses are subordinate units. By way of further answer, Defendants incorporate Paragraph 2 of this Answer as if set forth fully herein. It is further denied that the General Convention is the "highest level" of TEC. It is further denied that the amendments that the General Convention purports to enact are "binding upon all units and members of the Church." This statement constitutes a legal conclusion which is specifically denied.

14. It is admitted only that the Presiding Bishop has limited duties as set forth in the Constitution and Canons of TEC, which are written documents which speak for themselves. By way of further answer, TEC does not have an executive department, and the Office of Presiding Bishop is primarily a ceremonial office. The Presiding Bishop does not have a see and does not exercise ordinary power, but only the limited authority delegated by the Constitution and duly enacted Canons of TEC. The remaining allegations of this Paragraph are denied.

15. It is admitted only that the Executive Council is an elected body of bishops, priests, and lay persons that has only the limited authority granted by the Constitution and Canons of TEC, which written documents which speak for themselves. Any interpretation of said documents is specifically denied. TEC does not have an executive department.

16. It is specifically denied that the diocese is the "next level" of "organization and governance" in TEC. By way of further answer, Defendants incorporate Paragraph 2 of this Answer as if set forth fully herein. It is further denied that diocesan constitutions and canons may only supplement and may not conflict with TEC's Constitution or Canons. It is also specifically denied that a diocese "may be formed only by action of the General Convention, and only with an unqualified accession to [TEC's] Constitution and canons." To the contrary, as

stated above, a diocese is formed by diocesan convention and is an existing legal entity before coming into union with TEC. Dioceses self-organize by adopting a constitution and canons, and thereafter are admitted into “union” with the General Convention. Moreover, upon information and belief, the requirement that a new diocese’s constitution must contain an “unqualified” accession clause has only been in the TEC Constitution since 1982, well after the Diocese entered into “union” with the General Convention.

17. Admitted.

18. Denied. It is specifically denied that parishes are the “third level of governance” in TEC. By way of further answer, Defendants incorporate Paragraph 2 of this Answer as if set forth fully herein.

19. Admitted.

20. It is specifically denied that TEC has a hierarchical structure. By way of further answer, Defendants incorporate Paragraph 2 of this Answer as if set forth fully herein.

21. It is admitted only that Canon I.17(8) is correctly reproduced in this Paragraph.

22. Denied. By way of further answer, Defendants incorporate Paragraph 2 of this Answer as if set forth fully herein. Neither the TEC Constitution nor Canons prohibit withdrawal of a diocese (and its property) from TEC. There is no requirement in the Constitution or Canons of TEC that any change in the constitution or canons of a diocese be approved by TEC. The so-called Dennis Canon, by its explicit terms, does not apply to diocesan property.

**Anglican Communion**

23. It is specifically denied that the Anglican Communion is comprised of 38 churches known as provinces. By way of further answer, upon information and belief, the Anglican Communion is comprised of 44 member churches including 34 provinces, 4 United Churches and 6 other churches. It is also denied that TEC is currently considered by all other members of the Anglican Communion as a member Province in good standing; 22 Provinces have declared themselves either no longer in communion with TEC, or in impaired communion with TEC.

24. Admitted in part, denied in part. The geographic description of the Anglican Province of the Southern Cone is specifically denied. The remaining allegations of this Paragraph are admitted.

25. Denied.

**Dioceses of The Episcopal Church**

26. Denied. By way of further answer, Defendants incorporate Paragraphs 2 and 16 of this answer as if set forth fully herein.

27. Denied. The Constitution, Canons and the Book of Common Prayer are written documents, the contents of which speak for themselves. Any interpretation of said documents is specifically denied. By way of further answer, Defendants incorporate Paragraphs 2, 13 and 16 of this Answer as if set forth fully herein.

28. The Constitution and Canons of TEC are written documents, the contents of which speak for themselves. Any interpretation of said documents is specifically denied.

29. Admitted in part, denied in part. It is admitted only that the Diocese is not a missionary diocese. The remaining allegations are specifically denied. By way of further answer, Defendants incorporate Paragraphs 2, 13, 16 and 22 of this Answer as if set forth fully herein.

**Ordination and Discipline of Bishop by The Episcopal Church**

30. The Constitution and The Book of Common Prayer are written documents, the contents of which speak for themselves. Any interpretation of said documents is specifically denied.

31. The Constitution is a written document, the contents of which speaks for itself. Any interpretation of said document is specifically denied.

32. The Constitution and Canons are written documents, the contents of which speak for themselves. Any interpretation of said documents is specifically denied.

33. The Canons are a written document, the contents of which speaks for itself. Any interpretation of said document is specifically denied.

34. The Canons are a written document, the contents of which speaks for itself. Any interpretation of said document is specifically denied.

**History of the Episcopal Diocese of Pittsburgh**

35. Admitted in part. The Constitution and Canons are written documents, the contents of which speak for themselves. Any interpretation of said documents is specifically denied.

36. Admitted.

37. Admitted in part, denied in part. It is specifically denied that Article I of the Constitution of the Diocese has always contained language in which the Diocese accedes to TEC. The Constitution of the Diocese currently contains no such provision. By way of further answer, Defendants incorporate Paragraph 2 as if set forth fully herein. Moreover, the Constitution and Canons of the Diocese are written documents, the contents of which speak for themselves. Any interpretation of said documents is specifically denied.

38. It is specifically denied that the Diocese has ever participated as a subordinate unit in TEC. By way of further answer, Defendants incorporate Paragraph 2 as if set forth fully herein. The Constitution, Canons and The Book of Common Prayer are written documents, the contents of which speak for themselves. Any interpretation of said documents is specifically denied. The remaining allegations in this Paragraph are admitted.

39. Admitted in part, denied in part. The Declaration of Conformity, Constitution, Canons and The Book of Common Prayer are written documents, the contents of which speak for themselves. Any interpretation of said documents is specifically denied. The remaining allegations in this Paragraph are admitted. By way of further answer, Bishop Duncan was ordained as Bishop of the Diocese of Pittsburgh in 1996, not 1997, as alleged by Plaintiff.

40. Denied. The Diocese is no longer a member of TEC. The Constitution and Canons of TEC have no application to the clergy and lay members of the Standing Committee and the Board of Trustees of the Diocese.

#### **Recent Developments in the Diocese**

41. Admitted in part, denied in part. It is denied that the resolution was passed "at the urging of defendant Bishop Duncan and other individual defendants described in

Paragraph 45.” It is admitted only that the resolution was supported by Bishop Duncan, some members of the Standing Committee of the Diocese, and some members of the Board of Trustees. By way of further answer, the resolution was passed at the November 2007 Annual Convention of the Diocese by of a majority of each Order (Clergy 109-24; Lay Deputies 118-58) pursuant to the Constitution of the Diocese. The resolution is a written document, the contents of which speak for itself; any interpretation of said document is specifically denied. It is further denied that the resolution “intended” to amend the Diocese’s Constitution as described. It is admitted that amendments to the Diocese’s Constitution must be passed by two successive Annual Conventions.

42. Denied as stated. The purported “deposition” was illegal and invalid. Defendants incorporate Paragraphs 8, 43 of this Answer as if set forth fully herein.

43. Denied. The purported “deposition” was illegal and invalid. Defendants incorporate Paragraph 8 of this Answer as if set forth fully herein. The House of Bishops did not “consent” to the “deposition” with the majority required by the Canons of TEC. Bishop Duncan voluntarily allowed the Standing Committee to become the Ecclesiastical Authority. By way of further answer, the Constitution and Canons of TEC and the Diocese are written documents, the contents of which speak for themselves. Any interpretation of said documents is specifically denied.

44. Admitted in part, denied in part. It is denied that the resolution was passed “at the urging of the individual defendants described in Paragraph 45.” It is admitted only that the resolution was supported by some members of the Standing Committee of the Diocese and some members of the Board of Trustees. By way of further answer, the resolution was passed at the October 2008 Annual Convention of the Diocese by a majority vote of each Order (Clergy

121-34; Lay Deputies 119-69) pursuant to the Constitution of the Diocese. The resolution is a written document, the contents of which speak for itself; any interpretation of said document is specifically denied. It is denied that the resolution “intended” to amend the Diocese’s Constitution as described. It is further denied that the “Convention purported to adopt a new canon declaring its membership in the Anglican Province of the Southern Cone.” To the contrary, the constitutional amendment and canon were properly adopted in accordance with the Constitution and Canons of the Diocese. By way of further answer, Defendants incorporate Paragraph 2 of this Answer as if set forth fully herein.

45. Denied. Those voting for withdrawal did not violate any provision of the Constitution or Canons of TEC. After the vote, the Constitution and Canons of TEC had no application to them or to the Diocese. By way of further answer, Defendants incorporate Paragraphs 1, 2 and 14 of this Answer as if set forth fully herein.

46. Denied. It is specifically denied that the Diocese had a special meeting of its Convention in December 2008. To the contrary, no notice was given of this purported meeting to the members of the Diocese as required by the Constitution and Canons of the Diocese. By way of further answer, no valid action was taken at this alleged convention and those acting at this alleged convention had no authority to so act.

47. Denied. It is specifically denied that the “Standing Committee” referred to in this Paragraph was the Standing Committee of the Diocese or had any authority to act on behalf of the Diocese.

48. Denied. All that occurred is that the Presiding Bishop sent a letter stating her opinion as to what had occurred. By way of further answer, Defendants incorporate Paragraphs 1, 2 and 14 of this Answer as if set forth fully herein.

49. Denied. By way of further answer, Bishop Duncan is the Bishop of the Diocese. The Diocese continued to exercise the same authority it had prior to the vote.

### **The Current Dispute**

50. Admitted.

51. Admitted.

52. Admitted.

53. Admitted.

54. Admitted in part, denied in part. It is denied that the October 10, 2008 letter was written by “the Chancellor of the Diocese[.]” To the contrary, the letter was written by Andrew Roman, who purports to be the Chancellor for an entity claiming to be the Diocese of Pittsburgh (the “New Diocese”). However, this New Diocese has not been organized or admitted into union with TEC in accordance with the Constitution and Canons of TEC.

55. The Request to Special Master is a written document, the contents of which speaks for itself. Any interpretation of said document is specifically denied.

56. The filings submitted by Defendants are written documents, the contents of which speak for themselves. Any interpretation of said documents is specifically denied.

57. Denied. Defendants incorporate Paragraphs 1, 2, 14 and 22 of this Answer as if set forth fully herein.

58. Admitted.

59. Denied. Defendants incorporate by reference Paragraphs 1 and 2 of this Answer as if fully set forth herein.

WHEREFORE, Defendants pray that the relief requested by TEC be denied.

**New Matter**

60. Defendants incorporate Paragraphs 1-59 of this Answer as if set forth fully herein.

**Lack of Authority of Plaintiff-In-Intervention**

61. Bishop Buchanan (and his counsel) have no authority to assert claims on behalf of TEC or present TEC's "official" position with regard to the issues in this litigation. Bishop Buchanan has not properly been appointed as Trustee *Ad Litem* of TEC.

62. The Presiding Bishop of TEC has no authority to state the position of TEC with respect to the issues in this litigation.

63. The Executive Council of TEC has no authority to state the position of TEC with respect to the issues in this litigation.

64. Plaintiffs have previously successfully argued that they were "members" and "representatives" of TEC and were adequately representing TEC's interest regarding the issues in the instant litigation. In fact, Plaintiffs successfully opposed adding TEC as a party to this litigation on these grounds. *See* Plaintiffs' Reply in Opposition to Defendants' Motion to

Dismiss or Strike Petition, ¶ 20; Order of Court dated May 8, 2007. As such, TEC is bound by the admissions and positions previously taken by Plaintiffs as its representatives.

**The Diocese's Withdrawal From TEC Was Valid**

65. Before the Diocese withdrew from TEC, the Diocese's Constitution and Canons did not require its members or officers to remain members of TEC.

66. Neither the Diocese's Constitution and Canons, nor those of TEC, required TEC's consent, approval or review of amendments to the Diocese's Constitution and Canons.

67. Neither the Diocese's Constitution and Canons, nor those of TEC, prohibited the Diocese from withdrawing from TEC.

68. Neither the Diocese's Constitution and Canons, nor those of TEC, required the Diocese to always accede to the Constitution and Canons of TEC.

69. The amendments to the Diocese's Constitution and Canons which effected the withdrawal of the Diocese from TEC were duly enacted by majority vote of each Order in accordance with the Constitution of the Diocese.

70. The Stipulation and Order does not prohibit Diocesan withdrawal, and the Diocese's withdrawal did not violate the Stipulation and Order.

71. TEC was not (and is not) a party to the Stipulation and Order and its claims are not included or preserved in the Stipulation and Order (and could not have been included or preserved in the Stipulation and Order).

72. The Stipulation and Order does not impose any duty upon Defendants with respect to TEC.

(a) The Stipulation and Order does not refer to or implicate any property interest of TEC in any property.

(b) The Stipulation and Order does not impose any duty upon the Diocese (or on other Defendants) to remain within TEC.

Dated: May 19, 2009

Respectfully submitted,

/s/ Andrew K Fletcher  
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Counsel for Defendants

VERIFICATION

I do hereby verify under penalty of perjury that I have read the foregoing Answer and New Matter to Complaint-in-Intervention and that the facts contained in said pleading are true to the best of my knowledge or information and belief. I acknowledge that the statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification of authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

+ [Signature]

DATED: 5/19/2009

