

**IN THE MATTER OF
THE EPISCOPAL CHURCH v. THE RT. REV. WILLIAM H. LOVE**

**MOTION OF THE CHURCH FOR SUMMARY
JUDGMENT
AND
BRIEF IN SUPPORT**

Motion of the Church for Summary Judgment

The Episcopal Church (Church) respectfully moves the Hearing Panel, for the reasons provided below in the supporting Brief, for summary judgment on its claim that the Rt. Rev. William H. Love (Respondent) has failed, intentionally or otherwise, to abide by the promises made at his Ordination as a bishop.

As explained in the supporting Brief, the Church contends that there are no genuine disputed issues as to any material fact and that it is entitled, as a matter of law pursuant to the Constitution and Canons of the General Convention, to summary judgment on its claim that the Respondent has failed to abide by the promises made at his Ordination as a bishop in violation of the standard of conduct established in Canon IV.4.1(c).

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Brief in Support of Motion for Summary Judgment

I. INTRODUCTION AND OVERVIEW

In secular legal practice, a motion for summary judgment provides an efficient procedure for the adjudication of matters where, as here, there are no material facts in dispute. The Episcopal Church (Church) and the Rt. Rev. William H. Love (Respondent), through their respective counsel, have agreed that a motion for summary judgment submitted by the Church is an appropriate path toward the resolution of this matter. The Scheduling Order issued on behalf of the Hearing Panel provides for the submission of this Motion by the Church, with a response to this Motion to be filed in approximately thirty days by the Respondent and a sur-reply to that response to be filed subsequently by the Church.

The non-disputed material facts pertinent to this matter have been established in a Joint Stipulation of Non-Disputed Material Facts dated February 12, 2020 (Joint Stipulation) agreed to by counsel for the Respondent and the Church Attorney. These facts, considered in the light of the applicable provisions of the Constitution and Canons of the General Convention (collectively, the “Constitution and Canons” or, individually, the “Constitution” or the “Canons”) and the acts of the General Convention of The Episcopal Church (General Convention) warrant that the Hearing Panel enter an Order granting summary judgment and finding that the Respondent has failed to “abide by the promises and vows made when ordained” (Canon IV.4.1(c)).

At the heart of this Title IV proceeding is Resolution 2018-B012 (Resolution B012), entitled “Authorize Trial Liturgies for Same-Sex Marriage” (Exhibit A), adopted on July 13, 2018 by the 79th General Convention at its meeting in Austin, Texas. Resolution B012 (i) authorizes for continued trial use two liturgies for same-sex marriage first authorized for trial use in Resolution 2015-A054¹ adopted by the 78th General Convention in 2015 and (ii) authorizes for trial use two additional liturgies for same-sex marriage. These four liturgies collectively are referred to throughout this Brief as the “Authorized Marriage Rites.” The period of trial use for

¹For convenient reference, copies of Resolution 2015-A054, other Acts of General Convention, and pertinent excerpts from provisions of the Constitution and Canons referred to in this Brief, are included in the accompanying Supplement to this Brief.

the first two liturgies began on the First Sunday of Advent in 2015; the period of trial use of the latter two liturgies began on the First Sunday of Advent in 2018. Resolution B012 provides that the period of trial use for the four Authorized Marriage Rites extends until the completion of the next comprehensive revision of the Book of Common Prayer.

Resolution B012 is enabling legislation for the trial use of the Authorized Marriage Rites under Canon II.3.6. As contemplated by and in accordance with Canon II.3.6, Resolution B012 includes various special terms or conditions concerning the use of the Authorized Marriage Rites. These special terms or conditions mandate that the Authorized Marriage Rites be available in all dioceses of the Church.

As recognized by the 79th General Convention in its adoption of Resolution 2018-A227, entitled “Create a Task Force on Communion Across Difference,” the people of God in The Episcopal Church are not of one mind in their theological views concerning marriage. Although, in the words of Resolution 2018-A227, “the clear decision of General Convention [is] that Christian marriage is a covenant between two people, of the same sex or of the opposite sex,” the “minority who hold to this Church’s historic teaching on marriage” have an indispensable place in the life of the Church. In recognition of this reality, the special terms or conditions in Resolution B012 include procedures that apply in dioceses where the bishop exercising ecclesiastical authority “holds a theological position that does not embrace marriage for same-sex couples.” As we demonstrate below, however, these terms or conditions do not permit, or much less authorize, the actions taken by the Respondent in response to Resolution B012.

The text of the Respondent’s “Pastoral Letter and Pastoral Directive” that the Respondent issued on November 10, 2018 (Pastoral Letter) (Exhibit B), establishes that the Respondent holds a theological position that does not embrace marriage for same-sex couples. Through the issuance of the pastoral direction (Pastoral Direction) included within his Pastoral Letter, the Respondent, among other things, categorically prohibits the use of the Authorized Marriage Rites in the Diocese of Albany and forbids clergy in the Diocese of Albany from having any involvement whatsoever with same-sex marriages. This Title IV proceeding ensued.

Canon IV.3.3 provides that for any conduct to be the subject of a proceeding under Title IV, that conduct must be “material and substantial” or of “clear and weighty importance to the ministry of the Church.” Among other consequences of the Respondent’s actions concerning

Resolution B012, one material and substantial consequence of the Respondent's Pastoral Direction is that same-sex couples in the Diocese of Albany are deprived of the "convenient and reasonable local congregational access" to the sacramental rite of marriage that Resolution B012 was adopted to ensure.

II. STATEMENT OF FACTS

The following facts are material to the Hearing Panel's consideration of this Motion for Summary Judgment. As provided in the Joint Stipulation, none of the following facts is in dispute by either the Church or the Respondent.

A. Declaration of Conformity

At the time of his ordination and consecration as a bishop, the Respondent subscribed and made the following declaration in accordance with Article VIII of the Constitution: "I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of The Episcopal Church."

B. Resolution 2018-B012

- As noted above, Resolution B012 was adopted in 2018 by the 79th General Convention. In addition to authorizing the Authorized Marriage Rites for trial use in the Church, Resolution B012 also provides that "all couples have convenient and reasonable local congregational access to these rites." Toward this end, Resolve 7 of Resolution B012 provides that Rectors or the Member of the Clergy in charge of congregations make provision "for all couples desiring to use [the Authorized Marriage Rites] in their local congregation or worshipping community."
- Resolution B012 acknowledges and addresses the reality that members of the Church are not all of one mind on the issue of same-sex marriage. Resolution B012 includes two provisions pertaining to dioceses "where the bishop exercising ecclesiastical authority (or, where applicable, ecclesiastical supervision) holds a theological position that does not embrace marriage for same-sex couples." (Resolve 8 and Resolve 11):
 - Where couples in a congregation or worshipping community under the authority of such a bishop desire to use the Authorized Marriage Rites,

Resolve 8 of Resolution B012 provides that “the bishop exercising ecclesiastical authority (or ecclesiastical supervision) shall invite, as necessary, another bishop of this Church to provide pastoral support to the couple, the Member of the Clergy involved and the congregation or worshipping community in order to fulfill the intention of this resolution that all couples have convenient and reasonable local congregational access to these rites.”

- Where one of the persons desiring to use the Authorized Marriage Rites requires a bishop’s consent for remarriage after divorce as required by Canon I.19.3(c), Resolve 11 of Resolution B012 requires that bishops not embracing marriage for same-sex couples “shall...invite another bishop of this Church to oversee the consent process and to receive any report of such Marriages, as provided in Canon I.19.3(c).”
- These provisions in Resolves 8 and 11 are referred to throughout this Brief as the “Pastoral Support Provisions.”

C. Albany Marriage Canons

At all times pertinent to this proceeding, specifically including the period beginning on the First Sunday in Advent of 2015 through the present, the Canons of the Diocese of Albany have included Diocese of Albany Canon 16.1, Celebration or Blessing of Marriages by Clergy, and Diocese of Albany Canon 16.2, Marriages on Church Property, consisting of the following text (Albany Marriage Canons):

CANON XVI – MARRIAGE

16.1 – Celebration or Blessing of Marriages by Clergy

Members of the Clergy Resident in or Licensed to Serve in this Diocese shall neither officiate at, nor facilitate, nor participate in, any service, whether public or private, for the Celebration or Blessing of a Marriage or any other union except between one man and one woman. Unions other than those of one man and one woman in Holy Matrimony, even if they be recognized in other jurisdictions, shall be neither recognized nor blessed in this Diocese.

16.2 – Marriages on Church Property

Properties owned, controlled, managed, or operated by this Diocese, or any Parish of the Diocese, or any legal entity established by the Diocese or a parish of the Diocese, shall not be the site for any service, public or private, for the Celebration or Blessing of a Marriage or any other union except those between one man and one woman.

D. Affirmation of Continued Applicability of Albany Marriage Canons

Following the General Convention's adoption of Resolution B012 on July 13, 2018, the following email exchange took place between The Rev. Mary Robinson White, then serving as the rector of St. Andrew's Episcopal Church, Albany and the Respondent (Exhibit C):

- On July 14, 2018, the Rector of St. Andrew's, Albany expressed the intention to implement the provisions of Resolution B012 on the first Sunday of Advent in 2018 (by its terms, the effective date of Resolution B012). In pertinent part, this email to the Respondent included the following text: "Welcome back from General Convention! I am writing to let you know that I plan on implementing the provisions of B012 beginning the first Sunday of Advent...I understand that requests for remarriage of same-sex couples will go to Bishop DeDe [Bishop DeDe Duncan-Probe, Diocese of Central New York, who provides episcopal oversight to St. Andrew's, by agreement]. Please let me know if there are other protocols that I should follow."
- In response, later that same day, the Respondent replied with the following message: "Thank you for your email sharing your intentions. Please note that the manner in which B012 is dealt with in the Diocese of Albany is still to be worked out. In the meantime, the marriage canons of the Diocese of Albany still apply to all parishes."

E. Respondent's Pastoral Direction

On November 10, 2018, the Respondent issued the Pastoral Letter concerning Resolution B012. The Pastoral Letter included the following Pastoral Direction to all clergy canonically resident, resident or licensed in the Episcopal Diocese of Albany (Albany Clergy):

Therefore, for all the reasons mentioned in the above Pastoral Letter, in my capacity as Bishop Diocesan -- pastor, teacher and overseer of the Clergy of the Diocese, and pursuant to Canons III.9.6 and IV.7 of the Constitution and Canons

of The Episcopal Church, I hereby issue the following Pastoral Direction to all the clergy canonically resident, resident or licensed in the Episcopal Diocese of Albany:

Until further notice, the trial rites authorized by Resolution B012 of the 79th General Convention of the Episcopal Church shall not be used anywhere in the Diocese of Albany by diocesan clergy (canonically resident or licensed), and Diocesan Canon 16 shall be fully complied with by all diocesan clergy and parishes.

III. ARGUMENT

A. The Provisions of Resolution B012 are Mandatory in all Dioceses of the Church

Resolution B012 is mandatory, binding authority in all dioceses of the Church where local secular law permits same-sex marriage. The mandatory character of Resolution B012 is supported by (i) its character and substantive content, (ii) textual analysis of its wording, and (iii) its historical context.

1. Resolution B012 constitutes enabling legislation authorized under Canon II.3.6 and has canonically-authorized, binding effect in all dioceses of The Episcopal Church

Pursuant to Article X of the Constitution and Canon II.3.6, the General Convention may authorize liturgies for trial use throughout The Episcopal Church. Resolution B012 was duly adopted in accordance with those authorities and functions as enabling legislation for the authorization of same-sex marriage liturgies for trial use throughout The Episcopal Church.

Article X of the Constitution provides that the General Convention has authority to:

Authorize for trial use *throughout this Church*, [emphasis supplied] as an alternative at any time or times to the established Book of Common Prayer or to any section or Office thereof, a proposed revision of the whole Book or of any portion thereof, duly undertaken by the General Convention.

Canon II.3.6 implements the authority granted by the Constitution as follows:

(a) Whenever the General Convention, pursuant to Article X of the Constitution, shall authorize for trial use a proposed revision of the Book of Common Prayer, or of a portion or portions thereof, the enabling Resolution shall specify the period of such trial use, the precise text thereof, and *any special terms or conditions under which such trial use shall be carried out* including translation. [emphasis supplied]

Article X explicitly provides that the authorization of trial use of liturgies by the General Convention is to apply “throughout the Church.” The structure of Resolution B012 closely follows the text of Canon II.3.6: As contemplated and authorized by Canon II.3.6, Resolves 1 and 2 of Resolution B012 describe the precise text of the liturgies being authorized; Resolve 3 specifies the period of trial use; and Resolves 4 through 15 set forth various special conditions determined as necessary and desirable by the General Convention. Among those special terms or conditions of particular significance to this proceeding are Resolves 7, 8, and 11.

- Resolve 7 specifies that, under the canonical direction of the Rector or Member of the Clergy in charge, provision is to be made for all couples desiring to use these marriage liturgies in their local congregation or worshipping community.
- The Pastoral Support Provisions of Resolve 8 and Resolve 11 describe special procedures concerning the use of the Authorized Marriage Rites in dioceses of the Church where the bishop exercising ecclesiastical authority holds a theological position that does not embrace marriage for same-sex couples.

Canon II.3.6 expressly anticipates and authorizes General Convention to include “special terms or conditions under which such trial use *shall* be carried out...” [emphasis supplied] The text of Canon II.3.6 neither specifies nor limits either the nature or type of such special terms or conditions. Of particular significance to this Title IV proceeding, Canon II.3.6’s use of the auxiliary verb “shall,” a locution generally used to express mandatory requirements², supports the conclusion that enabling resolutions, like Resolution B012, that are adopted pursuant to this Canon are to have mandatory effect.

Accordingly, as enabling legislation anticipated and authorized in the Constitution and Canons, the provisions Resolution B012, including the special terms or conditions under which that trial use is to be carried out, are to be available and used “throughout” (i.e., in all dioceses) of The Episcopal Church. In the specific context of Resolution B012, the binding enabling provisions include, but are not limited to, (i) the mandate in Resolve 7 for clergy in charge of congregations to make provision “for *all couples* desiring to use these marriage liturgies in their

² Webster’s Third New International Dictionary (1993) provides, in pertinent part, the following entry for “shall”—“used in laws, regulations, or directives to express what is mandatory.” Black’s Law Dictionary (4th ed., 1976) provides, in pertinent part, the following entry for “shall” – “As used in statutes, contracts or the like, this word is generally imperative or mandatory.”

local congregation or worshipping community” [emphasis supplied] and (ii) the Pastoral Support Provisions in Resolve 8 and Resolve 11.

2. A textual analysis of Resolution B012 evidences the intent of the General Convention that Resolution B012 have mandatory effect

As noted above, the auxiliary verb “shall” customarily is used to express mandatory requirements in legislation such as the Constitution, Canons, and resolutions adopted by the General Convention. Resolve 8 and Resolve 11 of Resolution B012 uses the word “shall” in expressing required actions to be taken by bishops who hold a theological position that does not embrace same-sex marriage:

- Resolve 8 provides that where there is an expressed desire to use the Authorized Marriage Rites, bishops having a theological objection to same-sex marriage “*shall invite*” [emphasis supplied] another bishop of this Church to provide pastoral support to the couple desiring to use one of the Authorized Marriage Rites, the Member of the Clergy involved and the congregation or worshipping community.
- To similar effect, Resolve 11, concerning situations of remarriage after divorce, provides that bishops who hold a theological position not embracing marriage of same-sex couples “*shall*” [emphasis supplied] invite another bishop of this Church to oversee the consent process required by Canon I.19.

The mandatory effect of Resolution B012 also is communicated by the plain meaning and character of the verb phrases used throughout the resolution. The verbs in key provisions in Resolution B012 are those of directing implementation—unqualified, direct, and transitive verbs that require specific, concrete action. In addition to the verb phrases in the Pastoral Support Provisions discussed above, Resolve 7 of Resolution B012 similarly uses action-oriented phraseology in directing that under the canonical direction of the Rector or Member of the Clergy in charge “provision” is to “be made for all couples desiring to use these marriage liturgies in their local congregation or worshipping community...”

The directive verb phrases used throughout Resolution B012 stand in contrast to more aspirational verbs included in many other acts of General Convention, such as the verbs to “urge,” “encourage” and similar hortatory expressions commonly found in many resolutions of General Convention and other assemblies to express a position but not to require action. The

unconditional, active verbs in Resolution B012 are words of direction and mandated action, not ambiguous aspiration or suggested options.

Taken together, each of these aspects of textual analysis of the language of Resolution B012 supports construing this legislation as having mandatory force.

3. The historical context and the content of Resolution B012 demonstrate that General Convention intended that the provisions for providing access to the Authorized Marriage Rites be mandatory

Until the amendment of Canon I.18 by the General Convention in 2015, marriage in The Episcopal Church was canonically limited to the union of a man and a woman. By adopting Resolution 2015-A036, the General Convention in 2015 revised the then-current version of Canon I.18 to remove that limitation and make it canonically permissible for same-sex couples to celebrate the sacramental rite of marriage in The Episcopal Church.

The General Convention in 2015 adopted two other resolutions bearing on same-sex marriage.

- Resolution 2015-A054 authorized for trial use rites for the marriage of same-sex couples. While the marriage rites authorized by Resolution 2015-A054 were made available for use throughout the entire Church, Resolution 2015-A054 did not mandate their availability in every diocese of the Church. On the contrary, Resolve 2 and Resolve 3 of Resolution 2015-A054 provided that the use of the authorized rites for same-sex marriages was “only to be available under the direction and with the permission of the Diocesan Bishop.”
- Resolution 2015-A037 authorized an expanded Task Force on the Study of Marriage and charged the Task Force, among other things, to “study and monitor...the impact of same-sex marriage and rites of blessing on our Church...and any other matters related to marriage by action of or referral by this Convention” and to “report and make recommendations to the 79th General Convention...”

As directed by Resolution 2015-A037, the Task Force on the Study of Marriage (Task Force), on April 3, 2018, submitted its required report to the 2018 General Convention. The Task Force’s 2018 report included a survey concerning the use of the same-sex marriage rites authorized by Resolution 2015-A054. These results indicated that the authorized same-sex marriage rites were in use very broadly throughout the domestic dioceses of The Episcopal

Church in which same-sex marriage is legally permissible under local civil law. The survey found that the same-sex marriage rites had been authorized for use by diocesan bishops in 93 of the 101 domestic dioceses of The Episcopal Church.

Following the release of the Report of the Task Force and before the 79th General Convention convened, several members of the House of Bishops, in response to the report of the Task Force, announced the development of the original version of Resolution B012. The submission of the proposed resolution was announced in a press release on June 28, 2018 that identified the following objectives of the proposed resolution:

[Resolution B012] is, in its entirety, an attempt to move the church forward in an atmosphere of mutual respect, reconciliation and the love of Jesus Christ.

The resolution seeks to ensure that all of God’s people have access to all the marriage liturgies of the church, regardless of diocese, while respecting the pastoral direction and conscience of the local bishop.³

To accomplish these two expressed goals—access to the Authorized Marriage Rites in all dioceses, coupled with pastoral respect for bishops holding a theological position that does not embrace same-sex marriage—the provisions of Resolution B012 as ultimately adopted are dramatically different than the provisions of Resolution 2015-A054, the enabling legislation adopted by General Convention in 2015 that authorized trial use of the first two authorized liturgical rites for same-sex marriage. As it emerged from the legislative processes and amendments during the 79th General Convention, Resolution B012 contained two unique elements that were not included in the 2015 resolution first authorizing trial use of rites for same-sex marriages:

- The goal of providing Church-wide access to the Authorized Marriage Rites by same-sex couples, is accomplished in Resolve 7 of Resolution B012. Resolve 7 makes the Authorized Marriage Rites directly available to congregational clergy “under the canonical direction of the Rector or Member of the Clergy in charge and where permitted to do so by civil law” Resolve 7 continues by mandating that “provision will be made for all couples desiring to use these marriage liturgies in their local congregation or worshipping community.” Resolution B012 discontinued the requirement of Resolution

³“Marriage for the Whole Church, Resolution B012, Proposed for General Convention” Press Release, Episcopal Diocese of Long Island, June 28, 2018.

2015-054 that the use of authorized rites for same same-sex marriage requires the permission of diocesan bishops.

- Toward the goal of respecting the pastoral direction and conscience of bishops whose theology does not embrace same-sex marriage, Resolution B012 includes the Pastoral Support Provisions that require such bishops to invite another bishop to provide pastoral support in the use of the Authorized Marriage Rites when desired by a same-sex couple.

The very inclusion of the Pastoral Support Provisions in Resolution B012 is a logically compelling indicator of the General Convention’s intent that Resolution B012 be mandatory: If the General Convention had intended that compliance with the provisions Resolution B012 was to be optional or subject to the permission of diocesan bishops, there would have been no need to include the Pastoral Support Provisions.

Similarly, by force of the same historical context and logic, if General Convention had intended compliance with the provisions of Resolution B012 to be optional, there would have been no need to include Resolve 9. Resolve 9 of Resolution B012 provides that “Canon I.18.7 applies by extension to these liturgies, namely, ‘It shall be within the discretion of any Member of the Clergy of this Church to decline to solemnize or bless any marriage.’”

B. The Respondent’s Issuance of the Pastoral Direction Violated the Requirements of Resolution B012

The Respondent’s Pastoral Direction⁴ has two principal elements. First, it explicitly and categorically prohibits the Albany Clergy to use of the Authorized Marriage Rites in any location within the Diocese of Albany.

⁴ By their nature, pastoral directions issued under Canon IV.7 are extraordinary actions since a member of the clergy that violates a duly-issued Pastoral Direction has, by that fact alone, committed an Offense under Title IV. The potential sanctions for Title IV Offenses include, among other things, deposition from ordained ministry in The Episcopal Church. Respondent’s Pastoral Direction is extraordinary in at least two additional respects: (i) The text of Canon IV.7, which establishes the canonical requirements for issuance of a pastoral direction under Title IV, uniformly uses language strongly suggesting that pastoral directions must be issued to specific, named clergy (*e.g.*, Canon IV.7.1 begins: “At any time the Bishop Diocesan may issue a Pastoral Direction to *a* Member of the Clergy...”[emphasis supplied]). In contrast, the Pastoral Direction issued by the Respondent is not addressed to “a Member of the Clergy” but to a broad category of unnamed clergy. (ii) In addition, Canon IV.7.2(e) requires that pastoral directions not be “...in any way contrary to the Constitution and Canons of the General Convention or the Diocese.” As developed below, Respondent’s Pastoral Direction promulgates a required standard concerning marriage that directly conflicts with Canon I.18. For these reasons the Pastoral Direction may not comply with the requirements of Canon IV.7.

Second, it requires the Albany Clergy to fully comply with the Albany Marriage Canons. The Albany Marriage Canons include several elements, including (i) clergy resident in or licensed to serve in the Diocese of Albany may not officiate at, nor facilitate, nor participate in, any service, whether public or private, for the Celebration or Blessing of a Marriage or any other union except between one man and one woman; (ii) unions other than those of one man and one woman in Holy Matrimony, even if they be recognized in other jurisdictions, shall be neither recognized nor blessed in the Diocese of Albany; and (iii) properties owned, controlled, managed, or operated by the Diocese of Albany, or any Parish of the Diocese, or any legal entity established by the Diocese or a parish of the Diocese, shall not be the site for any service, public or private, for the Celebration or Blessing of a Marriage or any other union except those between one man and one woman.

Respondent's Pastoral Direction, by its very terms, prohibits Albany Clergy from complying with the mandates of and purposes advanced by Resolution B012. Resolve 7 of Resolution B012 requires that Rectors or Members of the Clergy in charge of a congregation make provision "for all couples desiring to use these marriage liturgies in their local congregation or worshipping community." By directing the Albany Clergy that the Authorized Marriage Rites "not be used anywhere in the Diocese of Albany," the Pastoral Direction is in direct conflict with Resolve 7 of Resolution B012.

The Pastoral Support Provisions in Resolve 8 of Resolution B012 mandate that where "there is a desire to use [the Authorized Rites] by same-sex couples in a congregation or worshipping community" a bishop whose theology does not embrace same-sex marriage "shall invite, as necessary, another bishop of this Church to provide pastoral support to the couple, the Member of the Clergy involved and the congregation or worshipping community." Under general legal principles, an anticipatory breach or anticipatory repudiation occurs when a person demonstrates the intention not to perform or fulfill an obligation. By prohibiting any involvement of Albany Clergy in same-sex marriage ceremonies and by prohibiting the use of any parish or diocesan property to be used as the location for same-sex marriages, the Pastoral Directive is a categorical and anticipatory repudiation of Resolution B012 that makes it pointless for congregation members or Albany Clergy or same-sex couples to express a desire for the use of the Authorized Marriage Rites that would trigger the obligation of the Respondent to invite another bishop of The Episcopal Church to provide the pastoral support required by Resolution

B012. Accordingly, by unequivocally repudiating Resolution B012 and requiring that the Albany Clergy not comply with its provisions, the Respondent has committed an anticipatory breach of Resolve 8. Similarly, the Respondent also has committed an anticipatory breach of Resolve 11 of Resolution B012⁵.

C. The Respondent's Continued Enforcement of the Albany Marriage Canons Contravenes Canon I.18

As explained above, in its adoption of Resolution 2015-A036, the General Convention revised Canon I.18 to remove the previous canonical requirement that limited marriages in The Episcopal Church to those of a man and a woman. Despite this action by General Convention in 2015, the canons of the Diocese of Albany have continued to include the Albany Marriage Canons that prohibit clergy resident in or licensed to serve in the Diocese of Albany from having any involvement in marital unions other than between one man and one woman.

Following the effectiveness of the 2015 amendment to Canon I.18, the Respondent has continued to enforce the Albany Marriage Canons in the Diocese of Albany. For example, on July 14, 2018, the Rev. Mary Robinson White, then the rector of St. Andrew's, Albany sent an email to Respondent concerning the implementation of the provisions of Resolution B012 in the Diocese of Albany (see Exhibit C). The Respondent's email response on the same day noted that the manner in which Resolution B012 would be dealt with in the Diocese of Albany was still being worked out and then went on to assert that in "the meantime, the marriage canons of the Diocese of Albany still apply to all parishes."

In his Pastoral Direction on November 10, 2018, the Respondent requires that Albany Clergy continue to comply with the Albany Marriage Canons. The Albany Marriage Canons, however, directly conflict with Canon I.18. By requiring compliance with the Albany Canons, the Respondent has effectively sought to repeal, within the Diocese of Albany, the General Convention's 2015 revision of Canon I.18. Yet nothing contained in Canon I.18 makes its provisions subject to the approval of bishops, and nothing in the Canons authorizes bishops to effectively repeal provisions the Canons of the General Convention within in the diocese they serve. By continuing to enforce the Albany Marriage Canons, the Respondent is materially contravening Canon I.18.

⁵ Resolve 11 provides that, in the case that a same-sex marriage involves remarriage after divorce, a bishop having a theological position not embracing same-sex marriage "shall" invite another bishop to oversee the required consent process under Canon I.19.

D. The Albany Marriage Canons may not Take Precedence Over the Conflicting Provisions of Canon I.18

The amendment of Canon I.18 that expanded the canonical provisions concerning marriage to include same-sex marriage became effective on November 29, 2015, the First Sunday of Advent of 2015. Since that time, the Canons of the General Convention no longer have limited the applicability of the sacramental rite of marriage to unions of a man and a woman. As explained above, since that time, the canons of the Diocese of Albany have continued to include the Albany Marriage Canons that, among other things, provide that Albany Clergy may not officiate or participate in any service for the celebration of marriage or union other than between one man and one woman. This aspect of the Albany Canons categorically prohibits marriages within the Diocese of Albany that are canonically permitted by Canon I.18 and therefore is in direct conflict with Canon I.18.

It is axiomatic in The Episcopal Church that provisions of diocesan canons that conflict with provisions of the Canons of the General Convention may not take precedence over the Canons of the General Convention. Accordingly, the conflicting provisions of the Albany Marriage Canons may not take precedence over Canon I.18. The mere fact of the continued inclusion of the Albany Marriage Canons as part of the published Canons of the Diocese of Albany cannot and does not permit conflicting provisions of diocesan canons to take precedence over the Canons of the General Convention.

The overall structure and system of authority in The Episcopal Church are distinctively hierarchical. The General Convention comprises representatives from each Diocese that is in union with the General Convention (Constitution, Article I). The General Convention has plenary authority concerning the mission, ministry and business affairs of The Episcopal Church, including but not limited to matters concerning the process and substantive requirements that must be satisfied for a diocese to be in union with The Episcopal Church (*See* Constitution, Article V), ultimate authority concerning establishment and amendment of the Book of Common Prayer and other forms of worship and music (*See* Constitution, Article X; Canon II.3, Canon II.4 and Canon II.5), the requirements concerning ordination and the life and work of bishops, priests and deacons (*See* Constitution Article II; numerous canons included in Title III of the Canons) and fiduciary duties and business practices of the Church, and its dioceses, missions, and parishes (*See* Canon I.7).

Article V of the Constitution embeds this hierarchical structure into the canonical relationship between the General Convention and Diocese in union with the General Convention. Specifically, Article V.1 of the Constitution requires that the constitution of each diocese in union with the General Convention include an “unqualified accession to the Constitution and Canons of this Church.” The words used in diocesan constitutions to effectuate this accession to the authority of the Constitution and Canons of the General Convention varies from diocese to diocese. Article V of the Constitution of the Diocese of Albany incorporates the required accession to the Constitution and Canons by requiring that the Canons of the Diocese of Albany be consistent with the Constitution and Canons.

To the extent the Albany Marriage Canons conflict with Canon I.18, as a matter of the fundamental polity of the Church and the provision of Article V.1 of the Constitution, the Albany Marriage Canons must yield to Canon I.18 and may not take precedence over Canon I.18. Upon the effectiveness of Resolution 2015-A036 on the First Sunday of Advent in 2015, the conflicting provisions of the Albany Marriage Canons became ineffective and unenforceable. Nor may conflicting provisions of the Albany Marriage Canons be a valid basis for defending any alleged Offense relating to Canon I.18 or Resolution B012.

E. The Actions of the Respondent Concerning Resolution B012 and Canon I.18 Violate Canon IV.4.1(c)

1. Failure to Conform to the Worship of The Episcopal Church

By repudiating the application of Resolution B012 in the Diocese of Albany and by issuing a Pastoral Direction forbidding Albany Clergy from using any of the Authorized Marriage Rites, the Respondent effectively has foreclosed access by same-sex couples to liturgies for the sacramental rite of marriage in The Episcopal Church. The significance of Respondent’s acts is underscored by the reality that these liturgies have been broadly accepted and currently are in use in 100 of the 101 domestic dioceses in The Episcopal Church.

The canonical authorization of same-sex marriage and General Convention’s promulgation of the Authorized Marriage Rites pursuant to canonically-based authorizing legislation, together with the availability of these rites in all other domestic dioceses of the Church, establish that the Authorized Marriage Rites constitute a significant element of the Worship of The Episcopal Church. Denying access to these rites, therefore, conflicts with current standards and common practices of Worship in this Church. Accordingly, the Respondent has

materially failed to abide by his promise to conform to the Worship of The Episcopal Church as he promised to do when he was ordained.

2. Failure to Conform to the Discipline of The Episcopal Church

For the purposes of Title IV proceedings, Canon IV.2, concerning Terminology Used in Title IV, provides that “Discipline of the Church shall be found in the Constitution, the Canons and the Rubrics and the Ordinal of the Book of Common Prayer.”

By virtue of the definition of Discipline of the Church, compliance with the provisions of Canon I.18 is embraced within the scope of Discipline of the Church in this Title IV proceeding. As established in the discussion earlier in this Brief, Respondent’s insistence (in the Pastoral Direction and otherwise) on the continued enforcement of the Albany Marriage Canons applies a directly-conflicting standard of eligibility for solemnization of marriage from that established in Canon I.18. Respondent’s insistence on the continued enforcement of the Albany Marriage Canons, therefore, constitutes a failure to conform to the Discipline of the Church.

Resolution B012 is enabling legislation anticipated and authorized by Canon II.3.6. For this reason, Respondent’s repudiation of Resolution B012 constitutes a failure to comply with Canon II.3.6. By virtue of the definition of Discipline of the Church in Canon IV.2, compliance with the obligations of Resolution B012 is embraced within the scope of Discipline of the Church in this Title IV proceeding. Respondent’s repudiation of Resolution B012, therefore, constitutes a failure to conform to the Discipline of the Church.

By failing to conform to the Discipline of the Church in these two respects, the Respondent materially has failed to abide by his promise to conform to the Discipline of The Episcopal Church as he promised to do when he was ordained.

3. These Violations by the Respondent are both “Material and Substantial” and “Of Clear and Weighty Importance to the Ministry of the Church”

The foregoing Title IV Offenses are both “material and substantial” and are “of clear and weighty importance to the ministry of the Church.”

The fundamental issue underlying this proceeding—the entitlement of same-sex couples in the Diocese of Albany to have access to the Authorized Marriage Rites—is material and substantial to those same-sex couples, their families, friends, and loved ones. To deprive same-sex couples in the Diocese of Albany of the same opportunity that opposite-sex couples have to

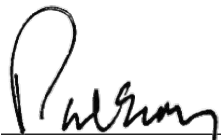
celebrate their marriage in their home congregation is discriminatory, hurtful and demeaning. This is precisely the disparate treatment that compliance with the provisions of Resolution B012 would bring to an end.

Resolving the issues involved in this proceeding also is of clear and weighty importance to the ministry of The Episcopal Church. The adoption of Resolution B012 was no act of impulse. Resolution B012 stands on a foundation of previous legislation on the subject of same-sex marriage adopted by the General Convention over many years, including actions very specifically focused on same-sex marriage in 2009, 2012 and 2015. The Authorized Marriage Rites at this time are in use in 100 of 101 domestic dioceses in The Episcopal Church. This fact evidences the great breadth of the reception within The Episcopal Church of the theology underlying the position established by General Convention concerning same-sex marriage. That the Authorized Marriage Rites are unavailable to same-sex couples in the Diocese of Albany not only inflicts spiritual and pastoral pain upon same-sex couples desiring to celebrate their marriage in their local congregation in the Diocese of Albany but also fails to respect the system of hierarchical authority in The Episcopal Church.

IV. CONCLUSION

For the reasons set forth in this Brief in Support, the Hearing Panel should enter an Order that the Respondent has failed to abide by the promises made at his ordination, in violation of Canon IV.4.1(c).

Respectfully submitted,



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List of Exhibits

<u>Exhibit</u>	<u>Description</u>
A	Resolution B012 (adopted by the 79 th General Convention in 2018)
B	Pastoral Letter and Pastoral Directive issued by the Respondent on November 10, 2018
C	Email correspondence affirming the continued applicability of the Albany Marriage Canons, dated July 14, 2018