



---

Diocese of South Carolina • Post Office Box 20127 • Charleston, South Carolina 29413  
Office • 126 Coming Street • Charleston, South Carolina 29403

October 2, 2012

The Very Rev. Paul Fuener  
President of the Standing Committee  
Prince George Winyah  
301 Screven Street  
PO Box 674  
Georgetown, SC 29442-0674

**INTERPRETATION OF THE CONSTITUTION AND CANONS BY THE  
ECCLESIASTICAL AUTHORITY OF THE DIOCESE**

Dear Paul:

By letter dated July 16, 2011, subsequently copied to the Diocese, the Secretary to the Executive Council of The Episcopal Church expressed certain opinions concerning provisions of the Diocese's Constitution and Canons.

By letter dated September 28, 2011, I rejected these opinions on behalf of the Diocese together with the President of the Standing Committee .

On September 20, 2012, the Standing Committee of the Diocese requested an Interpretation, pursuant to my constitutional and canonical authority as Ecclesiastical Authority of the Diocese, concerning this dispute. The request of the Standing Committee raised the following questions:

- (i) *What are the meaning and function of Article I of the Diocese's Constitution, particularly the language that the Diocese "accedes to the Constitution" of The Episcopal Church?*
- (ii) *Can the Diocese withdraw the accession referred to in Article I and/or its membership as a constituent member diocese of The Episcopal Church?*
- (iii) *What are the procedures by which the accession and membership can be withdrawn, including whether such decisions can take effect without amending Article I and what diocesan bodies or offices are authorized to make such decisions?*

- (iv) *Does the letter dated June 16, 2011 from the Secretary of the Executive Council of the Episcopal Church, subsequently copied to the Diocese, have any effect on the interpretation of the Diocese's Constitution and Canons?*

As Ecclesiastical Authority of the Diocese, I provide final and binding answers to these questions in this Interpretation pursuant to the following sources of authority: Article IX and Canon XXXVII of the Constitution and Canons of the Diocese and Articles II and IV of the Constitution of The Episcopal Church. This Interpretation will address these questions as follows: Section I will review the text of Article I of the Constitution; Section II will review the legislative history of this Article and relevant provisions in the Constitution of The Episcopal Church; Section III will consider historical precedents in which the Diocese has addressed the issues raised in these questions; and Section IV will then answer each of these questions based on this analysis.

Section I:  
The Text of Article I

The starting point for answering these questions is the plain meaning of the text of the Constitution, particularly the first sentence of Article I:

“The Church in the Diocese of South Carolina accedes to the Constitution of the Protestant Episcopal Church in the United States of America. In the event that any provision of the Constitution of the General Convention of the Protestant Episcopal Church in the United States of America is inconsistent with, or contradictory to, the Constitution and Canons of the Protestant Episcopal Diocese of South Carolina, the Constitution and Canons of this Diocese shall prevail.”

The text of the first sentence of Article I is different in important respects from the other articles in the Constitution, including the remainder of Article I. The first sentence, commonly called “the accession clause,” uses an indicative form of the verb “accede” rather than the mandatory or permissive verbs (“shall” or “may”) characteristic of legislative language. In this respect the accession clause in Article I is different from all other articles in the Constitution that use standard legislative language consisting of either the mandatory “shall” or the permissive “may,” including the second sentence of Article I itself.

This suggests that the purpose of the accession clause in Article I is different from that of the other constitutional provisions that either impose mandatory requirements on or limit the discretion of diocesan authorities. Indicative language is characteristic of contractual or constitutional recitals that do not impose requirements but merely record facts that serve as the basis for operative language imposing duties or establishing rights.

On its face, therefore, the plain meaning of the text of the accession clause in Article I does not impose any mandatory requirement that the Diocese “shall accede” to the Constitution of The Episcopal Church. It is descriptive, not prescriptive.

In contrast, the second sentence of Article I uses standard prescriptive language and imposes a mandatory standard for interpreting the Diocese’s Constitution and Canons. By its plain meaning, diocesan Constitution and Canons “prevail” over any inconsistent provision in the general Constitution. This sentence functions as a supremacy clause making diocesan law legally supreme over provisions of the Constitution of the Episcopal Church.

Section II:  
Legislative History

*I. Antecedents to Article I*

In 1789 authorized representatives of the Diocese subscribed to and adopted the first Constitution of The Episcopal Church on behalf of the Diocese. (JGC, 42, 69, 85, 101-102.) The Diocese subsequently ratified this action by its representatives at the Diocesan Convention in 1790. (DSC 1790 J (Dalcho) 478.)

The fact that the Diocese had adopted, or acceded to, the Episcopal Church Constitution was not referenced in the Diocese’s Constitution, however, until 1841, over fifty years later. Article I of the 1841 Constitution, a comprehensive revision of the Diocese’s earlier Constitution, referenced the Diocese’s accession for the first time in language similar to the current language:

“The Protestant Episcopal Church in South Carolina accedes to, recognizes and adopts the general Constitution and Canons of the Protestant Episcopal Church in the United States of America, and acknowledges their authority accordingly.” (1841 J 49.)

As is true of the Diocese’s current Constitution, the first article in the 1841 Constitution was unique in its use of indicative, descriptive language. Every other article in the 1841 Constitution used the prescriptive “shall.” Moreover, like the current Constitution but unlike its predecessors, the 1841 Constitution had no preamble containing relevant recitals.

Prior to 1841 there was no explicit reference in the Diocese’s Constitution to the action taken in 1789. The first revision to the Diocese’s Constitution after 1789 was in 1806. While it omitted any reference to accession, the 1806 Constitution did include the following recital in its preamble:

“Whereas, by General Conventions of the Pro. Epis. Churches in the U. S. A. a constitution and canons have been formed for the government and discipline of the same...” (1806 J (Dalcho) 495.)

The 1806 Constitution also included a provision that:

“No article, canon, rule or other regulation, of any general or state convention, shall be obligatory on any Epis. Church within this state, where the same shall be found to infringe on any of its chartered rights.” (1806 J (Dalcho) 497.)

The Constitution in effect prior to 1806 had been adopted by “the Protestant Episcopal Church in South Carolina” in 1786 before it acceded to the first general Constitution in 1789 at the founding of “the Protestant Episcopal Church in the United States of America.” Although the 1786 Constitution made no reference to any possible accession, at that point still three years in the future, it did contemplate the formation of “a General Ecclesiastical Government.” Indeed, the South Carolina Conventions that adopted the 1786 Constitution also reviewed the first draft of a proposed general constitution, finding some provisions acceptable but objecting to others. The South Carolina Church was fully familiar with the proposed plan for a national church, having had two representatives serve on the committee that prepared the first draft of a general constitution. (JGC 18.) It is significant, therefore, that Article IV of the 1786 Constitution included a specific reservation of power to the South Carolina Church:

“That no power be delegated to a General Ecclesiastical Government, except such, as cannot be exercised by the Clergy and Vestries, in their respective Congregations.” (1786 J (Dalcho) 467-74.)

This constitutional reservation was in effect when the original accession to the general Constitution was made in 1789.

From 1841 until 2011 Article I was not materially changed (with the exception of the hiatus during the Civil War discussed below). In 2011 Article I was changed to its current language by deleting both the reference to the general canons and the second clause of the prior provision (“acknowledges their authority accordingly”) and by adding the second sentence giving legal priority to the Diocese’s Constitution and Canons in case of conflict.

As this review of the constitutional antecedents indicates, the degree to which the Diocese has accepted the general canons of The Episcopal Church has varied over the years. The Diocese had explicit constitutional reservations of power in the early nineteenth century. The reservation of diocesan authority was most apparent in the 1786 and 1806 Constitutions and again in 1807 when the Diocese gave careful attention to whether it had adopted the general Constitution and Canons. The conclusion reached concerning the Constitution will be reviewed below, but the Diocesan Convention in 1807 refused to adopt general canons passed after 1789 because they were in part “obnoxious to several of the Churches in this state.” (1807 J (Dalcho) 501.)

In 2010 the Diocese again declined to accept canons enacted by the General Convention, in large part due to the conclusion that the new disciplinary canon violated the church’s Constitution. At

the General Convention held earlier this year the Diocese's concerns were reinforced when the General Convention passed resolutions calling for a review of the "Constitutionality of Certain Provisions of Title IV," due to "their possible conflict with the Constitution of the Episcopal Church." (2012 Resolutions C049 and C116.)

This review of the Diocese's constitutional history discloses the following facts: (i) the Diocese existed prior to the formation of The Episcopal Church; (ii) its authorized representatives participated in the establishment of the general church; (iii) pursuant to the general Constitution the Diocese delegated only such authority as it saw fit to delegate to the general church, not *vice versa*, and continued to reserve authority to itself; (iv) its adoption of the general Constitution occurred over fifty years before that fact was subsequently reflected in the Diocese's Constitution; and (v) the degree to which the Diocese has accepted general canons has varied during the years of its membership in The Episcopal Church.

## 2. Derivation of "Accede"

The direct source of the term "accede" in Article I of the Diocese's Constitution is the general Constitution of The Episcopal Church, in which that term or one of its cognates has been used since the initial draft of that Constitution in 1785 for Dioceses not then admitted to the convention. The indirect sources of the term "accede" were the first constitution of the United States, the Articles of Confederation, on which the Episcopal Church Constitution was modeled, and ultimately international law, in which "accede" has a technical meaning that was borrowed for use in these other constitutions.

In international law the term "accede" is a specialized term used to describe the act of a sovereign state becoming a party to a treaty already signed by others. *Avero Belgium Ins. v. American Airlines, Inc.*, 423 F.3d 73, 79, n. 7 (2<sup>nd</sup> Cir. 2005). A treaty is a compact among sovereign and independent states whose relationships are characterized by comity. "Acceding" was the term used in the Articles of Confederation, which established a "league of friendship" of states retaining their "sovereignty, freedom and independence." That term is not used in the United States Constitution, which later established a hierarchical central government given legal supremacy over the states. The use in the Episcopal Church Constitution of treaty language borrowed from the Articles of Confederation was not accidental. One of those serving on the committee that prepared the first draft of the Episcopal Church Constitution was a signatory to the Articles of Confederation.

In the early years of the Diocese's membership in The Episcopal Church it used a variety of terms to describe its original acceptance of the general Constitution, including "subscribed," "adopted" and "agreed to." Consistent with this practice, the 1841 Constitution of the Diocese used the expression "accedes to, recognizes and adopts" to describe this action by the Diocese. Regardless of the terminology used, however, one feature of accession is invariable in the context of The Episcopal Church: accession is to a document, initially limited to the Constitution



but later extended to include the general canons as well. In no case, however, was there accession to an organization or entity. This distinction will be discussed further below.

One final historical precedent illuminating the meaning of “accedes” in our context is the resolution of The Episcopal Church in 1969 by which it “acceded and subscribed to the Proposed Constitution of the said Anglican Consultative Council.” (1969 JGC 159-60.) Two years earlier The Episcopal Church had added to the Preamble of its Constitution the recital that it “is a constituent member of the Anglican Communion.” All agree that the Anglican Communion is a fellowship of autonomous member churches, that it lacks a central hierarchical authority with legal supremacy over its constituent members, and that accession to the constitution of the Anglican Consultative Council is not irrevocable.

*3. Important Distinctions: the Accession Clause in the Diocese’s Constitution; the Accession to which This Clause Refers; Membership in the Legal Entity Comprising The Episcopal Church;*

The immediate subject of this Interpretation is an article in the Diocese’s Constitution and in particular one clause in that article, the accession clause. In order to interpret this clause correctly and answer the questions posed by the Standing Committee it is necessary to distinguish three related but separate concepts: the constitutional clause itself; the accession to which it refers; and membership in the legal entity comprising The Episcopal Church for which accession is a prerequisite.

When properly understood, the process by which a new diocese becomes a member of the association, the legal entity comprising The Episcopal Church, is a two-step process. There is also an optional third step. The first step is for the new diocese, already a duly constituted legal entity, to accede to or adopt the general Constitution (later extended to include the Constitution and Canons). The second step is for the diocese to request and be accepted for membership in the legal entity. Under the general Constitution the first step is a prerequisite for the second, a necessary but not sufficient condition for membership. Under the current Constitution the process “originates” in “unorganized territory” by “duly” constituting a new legal entity, a “new diocese.” This new entity then makes an accession and subsequently applies for membership in The Episcopal Church by filing its Constitution and accession with agents of the church. “After consent” of the General Convention the new diocese “thereupon” becomes a member of the unincorporated association comprising The Episcopal Church. The current provision spells out in greater detail the same process described more succinctly in the first Constitution: “A Protestant Episcopal Church in any of the United States not now represented, may, at any time hereafter, be admitted, on acceding to this Constitution.” (JGC 84, 100.) Albeit succinctly, two steps were defined: accession and then admission.

For the founding dioceses, including South Carolina, these two steps occurred almost simultaneously by virtue of the fact that there was no association to join until they had created it by adopting the Constitution. But the logical distinction was still noted in the journal of the

General Convention by the language that “after subscribing” the representatives “took their seats as members of the Convention.” (JGC 97.) For dioceses joining later, however, substantial time could elapse between these two steps. For example, in 1835 the “Church of Illinois,” already duly constituted under its own bishop, was admitted to membership in August after having acceded to the general Constitution in March. (2 JGC 572; 1835 Ill. J 13.)

The optional third step is including a reference to the accession in the diocesan constitution. For South Carolina and other founding dioceses this step occurred long after the original accession was made. Even today, some dioceses have never added a reference to accession to their diocesan constitutions. There is no uniformity either in wording or practice on this point, which reflects the different legal personalities of the various dioceses.

These distinctions will be important in answering the questions that are the subject of this Interpretation. It is clear from these facts that: (i) a constitutional accession clause may not constitute an accession, but merely refer to one previously made (South Carolina, 1841); (ii) the underlying accession to which a constitutional clause refers does not itself constitute membership in the legal entity (Illinois, 1835); and therefore (iii) a constitutional accession clause does not constitute or even refer *directly* to membership in the legal entity, but only to a prerequisite to that membership.

#### *4. Relevant Provisions of the Constitution of The Episcopal Church*

As already noted, the accession clause in Article I of the Diocese’s Constitution refers to an accession to a document, the Episcopal Church Constitution. Although not constitutive of membership in the legal entity comprising The Episcopal Church, accepting the provisions in the Constitution is a prerequisite for such membership. These provisions together with general principles of association law, the law applicable to the legal entity comprising The Episcopal Church, inform the Interpretation of Article I of the Diocese’s Constitution.

The key features of the general Constitution relevant to accession are the following. First, the general Constitution establishes no central hierarchical body given legal supremacy over the constituent member dioceses. Although adopted after the United States Constitution had been ratified, the Episcopal Church Constitution omitted a supremacy clause or any other provision expressing in clear legal language that any central body had hierarchical priority over the dioceses.

Second, there is no provision prohibiting a member diocese from either withdrawing from the legal entity or rescinding its accession to the Constitution, which as we have seen are distinct steps.

Third, there is no provision requiring member dioceses to submit diocesan constitutional and canonical changes to a central body or office for prior review and approval nor is there any

procedure for review and disapproval after enactment. Proposed amendments to the general Constitution, in contrast, must be formally transmitted to the dioceses for consideration prior to their adoption by a majority of dioceses at the next General Convention. Dioceses thus have unfettered and unreviewable freedom to make changes to their Constitutions and Canons.

I will return to these principles when answering the specific question presented, but there are significant diocesan precedents concerning accession directly on point that must be reviewed before addressing these questions.

Section III:  
Precedents

Throughout its history the Diocese has associated itself with other dioceses on three occasions by adopting or acceding to the constitutions or canons of other associations. On another three occasions it has withdrawn its accession in whole or in part. These precedents show a consistent interpretation over two centuries of the meaning of the accession clause in Article I and the process by which the Diocese accedes or withdraws accession and membership in other associations.

*I. 1789: Original Accession to the Constitution of The Episcopal Church*

As noted above, authorized representatives of the Diocese subscribed to and adopted the first constitution of The Episcopal Church on behalf of the Diocese in 1789. The Diocese subsequently ratified the action of its representatives at the Diocesan Convention in 1790.

The Diocese has always understood itself to be one of the founding dioceses of the association comprising The Episcopal Church. Indeed, one of the Diocese's authorized delegates to the 1789 General Convention, later to become the first Bishop of the Diocese, chaired the committee of the whole at the 1789 General Convention that arranged the final negotiations among the various state churches that resulted in the formation of The Episcopal Church. (JGC 94.)

At the Diocesan Convention in 1807 the question was raised whether the constitution of The Episcopal Church in fact had been "adopted by the Protestant Episcopal Church in the state of South Carolina." After consulting the journals of prior conventions, the 1807 Diocesan Convention concluded that the delegates to the 1789 General Convention had been "duly elected," that they had "subscribed" the general constitution "on the behalf of" the Diocese, and that the Diocesan Convention in 1790 had unanimously commended the delegates and "agreed to" the general constitution. The 1807 Diocesan Convention then unanimously determined that the general constitution had been adopted by the Diocese. (1807 J (Dalcho) 499-501.)

As noted above, in 1807 and at all times prior to that date the Diocese's Constitution contained no provision reflecting an accession to the general Constitution. It was not until 1841 that a reference to the accession was added to the diocesan Constitution as part of a comprehensive



revision of the Constitution. It is clear from the facts already recited that this initial constitutional reference to accession was intended not to establish the Diocese's accession to the general Constitution but instead to reflect an accession that had been made over fifty years earlier.

*2. 1861-62: Withdrawal of Accession to The Episcopal Church and Accession to the Constitution of the Church in the Confederate States*

In 1861 Bishop Thomas Davis addressed the effect that the secession of the state of South Carolina from the United States had on the Diocese. In particular he considered the question "have we parted or are we not still in constitutional union with" The Episcopal Church. At the outset of the Diocesan Convention in 1861 Bishop Davis advised the Convention of his conclusion that "We are, therefore, a free and independent diocese." (1861 J 19-20.) In response to this determination by the Bishop, the Diocesan Convention passed several implementing resolutions, including the following:

Resolved, That this Convention concur entirely and earnestly with the Bishop in the views expressed in his address to this Convention.

Resolved, That a Committee of three be appointed to prepare after the adjournment of this Convention such alterations in our Constitutions and Canons, as are, or may be, required by our changes of civil and ecclesiastical relations, and to report to our next Convention.

Resolved, That forthwith and meanwhile all such parts of our present Constitution and Canons, as are inconsistent with the present position of our Church, are hereby declared to be null and void.

The basis for these resolutions as noted in their preamble was the fact already determined by the Bishop that the Diocese "resumes now its delegated rights and its separate existence, and is competent to enter into new ecclesiastical connections." (1861 J 24-26.) This fact previously announced by the Bishop was the basis for, not the product of, the Convention's resolutions.

In 1862 the Diocesan Convention passed another resolution by which it agreed to the constitution of the Church in the Confederate States and elected delegates who attended the council of the Confederate Church later that year on behalf of the Diocese. (1862 J 37.) In September 1862 the Presiding Bishop of the Confederate Church issued a "declaration" that "satisfactory evidence" had been provided that the Diocesan Conventions of South Carolina and other dioceses had adopted the constitution of the Confederate Church. (1862 JCSA 8-9.)

At the time of the withdrawal from The Episcopal Church in 1861 and the accession to the constitution of the Confederate Church in 1862 Article I of the Constitution of the Diocese was unchanged from that first adopted in 1841: "The Protestant Episcopal Church in South-Carolina accedes to, recognizes and adopts the general Constitution and Canons of [The Episcopal

Church] ....” (1861 J 59; 1862 J 66.) Pursuant to the resolution passed in 1861 requiring conforming changes to the provisions of the Constitution that already had been declared “null and void” new constitutional language was adopted in 1863 after two readings to reflect the withdrawal from The Episcopal Church in 1861 and the accession to the constitution of the Confederate Church in 1862. (See 1864 J 68.)

It is clear from these facts that the accession clause in Article I was understood at that time to restrict neither the authority of the Bishop to declare the accession to the Episcopal Church Constitution terminated nor the authority of the Diocesan Convention to accede to the constitution of the Confederate Church. Article I was understood as reflecting determinations already made by the diocesan authorities and therefore requiring subsequent conforming changes to record those decisions.

### *3. 1866: Re-accession to the Constitution of the Episcopal Church and Withdrawal of Accession to the Confederate Church*

In 1866 at the conclusion of the Civil War a resolution was passed by the Diocesan Convention to withdraw from the Confederate Church and rejoin The Episcopal Church. Significantly, a proposal was made to the Convention that “this reunion shall be considered complete so soon as the requisite alterations of the Constitution shall have been adopted and ratified constitutionally.” This proposal was rejected, however, by the Diocesan Convention, which by resolution “hereby declared” inconsistent provisions of the Constitution and Canons “to be henceforth of no force.” The Convention then directed that the Constitution “be changed” immediately “to conform to the legislation adopted at this Council.” (1866 J 40-45.)

It is clear from these facts that determinations of accession to the constitutions of other associations and withdrawals of such accession were understood at that time to be within the competence of diocesan authorities and changes to the Constitution to conform to these determinations were regarded as ministerial changes, not as amendments to the Constitution.

### *4. 2010: Withdrawal of Accession to the Canons of the Episcopal Church*

As noted above, in 2010 the Diocesan Convention passed a resolution nullifying with immediate effect certain canons of the General Convention of The Episcopal Church. At the same time, the Convention passed a first reading of an amendment to Article I removing the reference to accession to the canons of General Convention. This language in Article I was subsequently removed after a second reading at the 2011 Convention, but the nullification of general canons passed at the 2010 Convention had effect immediately upon the passage of the resolution in 2010. (2010 J pp.) Again, this precedent demonstrates that the Diocesan Convention understood that accessions were matters to be determined by the diocesan authorities and that subsequent changes to the Constitution were conforming, not authorizing, changes.

## Section IV:

### Answers to Questions Concerning the Interpretation of Article I

Based on the text of the Constitution, the legislative history and the historical precedents, I answer the questions of interpretation posed by the Standing Committee as follows:

- (i) *What are the meaning and function of Article I of the Diocese's Constitution, particularly the language that the Diocese "accedes to the Constitution" of The Episcopal Church?*

Based on the plain meaning of the text of Article I, the legislative history and the precedents, I conclude that the first sentence of Article I, the accession clause, functions as a recital. It uses indicative language, in contrast to the prescriptive or permissive legislative language found elsewhere throughout the Constitution. As a recital, the accession clause imposes no mandatory duty on the Diocese to maintain the accession. There is no prescriptive language in the accession clause mandating that the Diocese "shall accede" to the general Constitution.

The accession clause is directly derived from the first article in the 1841 Constitution, which also was the only article in that Constitution to use indicative, descriptive language. The 1841 constitutional revision removed completely the preamble found in prior constitutions, including a recital referring to the general Constitution—although not to the Diocese's accession. It is apparent from these facts that in the absence of a preamble, the recital concerning the general Constitution was placed in the first article.

In this respect Article I of the Diocese's Constitution has the same function as the recital in the preamble to the general Constitution, which recites in indicative language that The Episcopal Church "is a member of the Anglican Communion."

Second, based on the uniform interpretations by the Diocese from 1789 to the present, I conclude that the accession clause does not constitute the Diocese's accession but merely records and reflects an accession made independently of this provision. This is most obvious from the fact that an accession reference was first added to the Constitution in 1841, over fifty years after the original accession was made, but it is also consistent with all other precedents and the plain meaning of the constitutional text.

Third, the reference in the accession clause is to the accession to the general Constitution, not to membership in the legal entity comprising The Episcopal Church. Because these are distinct concepts, the accession clause makes no reference to association membership itself, in either prescriptive or descriptive language. It is not uncommon for nonprofit entities to adopt standards or rules, such as transparency or accountability standards, promulgated by organizations of which they are not a member. Although accession to the Episcopal Church Constitution and membership in the legal entity are associated concepts, they are distinct acts. Article I refers to the former; it does not address the latter. In this respect, the recital in Article I differs from that in

the preamble to the general Constitution, which explicitly references membership, not the accession to the constitution.

Fourth, the adaption of the concept of accession from international law and the Articles of Confederation confirms the basic structure of The Episcopal Church as an association of dioceses retaining their distinct legal personalities, rights and sovereignty.

Finally, the second sentence of Article I functions as a supremacy clause establishing the legal priority of the Diocese's Constitution and Canons over the general ones. Because the general Constitution contains no such supremacy clause and there is no other provision prohibiting dioceses from enacting their own, this is consistent with the general Constitution.

(ii) *Can the Diocese withdraw the accession referred to in Article I and/or its membership as a constituent member diocese of The Episcopal Church?*

From the legislative history reviewed above it is apparent that the Protestant Episcopal Church in South Carolina was a duly constituted legal entity and was independent of all other Episcopal churches prior to the adoption of any general Constitution forming the association comprising the Episcopal Church in the United States. The South Carolina Church has retained its distinct legal personality ever since. When it first acceded to the general Constitution and joined the Episcopal Church, the Diocese's Constitution explicitly limited the powers that were "delegated" to "the General Ecclesiastical Government" and reserved legal authority to the Diocese. Throughout its history the Diocese has from time to time exercised its independent and reserved authority by rejecting general canons and withdrawing its accession and membership.

The Episcopal Church was formed in 1789 pursuant to its Constitution as a "voluntary association," a form of entity now generally referred to as an unincorporated nonprofit association. The constituent members of this association are dioceses that have distinct legal personalities prior to joining. These legal entities first accede to the general Constitution and then join the association as members upon the consent of the other members through their agents.

It has long been the rule of association law that a member is free to withdraw at any time absent an agreement to the contrary. *N.L.R.B. v. Granite State Jt. Bd.*, 409 U.S. 213, 216 (1972); *Booster Lodge v. Int. Assoc. of Machinists and Aerospace Workers*, 412 U.S. 84, 88 (1973). There are no restrictions on withdrawal in the general Constitution.

In addition, freedom of association, like the free exercise of religion, is a constitutional right protected by the First Amendment. As a religious society that pre-existed The Episcopal Church, the Diocese enjoys distinct free exercise and associational rights that were not extinguished by its associating with other member dioceses to form The Episcopal Church. The leading experts on association law acting under the auspices of the American Bar Association have expressed the opinion that restrictions on member withdrawal from an association would be unenforceable on public policy and constitutional grounds. Although there are no such restrictions in the Episcopal

Church Constitution, this remains an important principle of association and constitutional law that would render moot any attempt to discern an implicit restriction on withdrawal in the provisions of the general Constitution.

The Executive Council has asserted that the requirement in the general Constitution that “new dioceses” give an “unqualified accession” means that this accession and subsequent association membership are irrevocable and that this provision is applicable to all dioceses notwithstanding its explicit limitation to new dioceses. This argument would be irrelevant even if true due to the constitutional principles just noted. But it also fails on other grounds. It is an elementary principle of contract law (and the constitution of a voluntary association is a legal contract) that all acceptances must be unqualified or unconditional in order to form a contract. The requirement of an “unqualified accession” thus adds nothing to the common principles of contract law that would be applicable in any event. It simply requires that the joining diocese attach no conditions or qualifications to its accession. But this is a question of contract formation, not duration. Under contract law, the standard rule is that unless expressly agreed otherwise, a contract without a stated duration is terminable at will or upon reasonable notice. If an unqualified acceptance made a contract irrevocable, a contract without a term of duration could never be terminated, which is contrary to the settled law. To make a contract irrevocable, parties would not specify that acceptance (accession) must be “unqualified.” They would specify that the contract is “irrevocable.” Formation and duration are distinct matters. “Unqualified” applies to the former; “irrevocable” to the latter.

In any event, this requirement is not applicable to the Diocese under any theory since it applies by its own terms only to new dioceses joining in recent years. The Diocese made its accession and joined the association long before this provision was adopted.

The understanding that an unqualified accession is not irrevocable is also consistent with the practice of The Episcopal Church itself when it made an unqualified accession to the constitution of the Anglican Consultative Council in terms strikingly similar to those used by the Diocese in making its accession to the general Constitution. The Episcopal Church has always asserted its complete legal autonomy from the Anglican Communion and its official bodies.

Therefore, I conclude based on the terms of the general constitution, the meaning of the term “accede” and settled principles of association, constitutional and contract law that both withdrawal of the accession to the Constitution and withdrawal from membership in the association are permitted.

- (iii) *What are the procedures by which the accession and membership can be withdrawn, including whether such decisions can take effect without amending Article I and what diocesan bodies or offices are authorized to make such decisions?*



Because accession to the general Constitution and membership in the association are distinct matters, I will address this question in three parts: withdrawal of the accession; withdrawal of association membership; and which diocesan authorities are competent to make such decisions.

First, it follows from the plain meaning of Article I and the fact that the accession clause is a recital that imposes no mandatory obligation on the Diocese that both accessions or withdrawals of accession by an authorized diocesan authority take legal effect either immediately or at such time and upon such conditions as the diocesan authority specifies. This interpretation is consistent with all of the historical precedents cited above. In none of the six precedents in the history of the Diocese has the accession or withdrawal of accession taken legal effect upon the completion of conforming changes to the Constitution, and an interpretation that this was required by the Constitution was explicitly rejected by the Diocesan Convention in 1866.

Second, the answer to the question concerning withdrawal from membership in the association is straightforward. Because Article I makes no mention of association membership and the general Constitution does not prohibit withdrawal from the association, it would be legally possible for the Diocese to withdraw from the association and maintain its accession to the general Constitution even if the accession clause had required the diocese to maintain its accession, which it does not. In any event, as a recital, the accession clause in Article I imposes no mandatory duties on the Diocese regarding either accession or association membership. For both of these reasons, withdrawal from association membership can take legal effect without amending Article I.

Third, it follows from the answers given above, the text of the Constitution and Canons and the historical precedents already cited that the Constitution and Canons do not specify the diocesan bodies or officers authorized to make or withdraw accessions or membership decisions in other associations.

The Constitution and Canons identify several authorities of the Diocese, including the Diocesan Convention, the Bishop as Ecclesiastical Authority of the Diocese and the Standing Committee. The Constitution and Canons explicitly reserve certain decisions to the Diocesan Convention, including the election of a Bishop, admission of new parishes or missions, election of deputies to General Convention, enactment of canons and amendments to the Constitution. However, accessions, withdrawals of accession and decisions concerning association membership are not among the matters reserved by Constitution or Canon to the Diocesan Convention.

Of the six precedents in the history of the Diocese, four accessions or withdrawals have been determined by the Diocesan Convention, one (the original accession in 1789) by delegates specifically authorized to make such a determination "on behalf of" the Diocese and the other by the Bishop who concluded in 1861 that the original accession to The Episcopal Church had been terminated. It is significant that the Diocesan Convention in 1861 did not purport to enact the

termination of the accession by resolution, but instead recognized it as the pre-existing basis for its subsequent resolutions implementing this termination.

I therefore conclude based on the texts of the Constitution and Canons and historical precedents that decisions concerning accessions, withdrawals of accession and decisions concerning association membership can be effected by any competent diocesan authority, including the Diocesan Convention, the Bishop acting as Ecclesiastical Authority of the Diocese, the Standing Committee and other delegates specifically authorized by the Diocese to act in such a matter on its behalf.

- (iv) *Does the letter dated June 16, 2011 from the Secretary of the Executive Council of the Episcopal Church, subsequently copied to the Diocese, have any effect on the interpretation of the Diocese's Constitution and Canons?*

The intended effect of this letter is far from clear. It was not addressed to the Ecclesiastical Authority of the Diocese and was only provided to the diocese weeks after it was mailed to its recipient. It stated that a subcommittee of the Executive Council "agreed" that an earlier Council resolution that did not mention the Diocese "covers the situation there" notwithstanding the fact that the earlier resolution discussed a constitutional provision that applies on its face only to the "admission of new dioceses."

In any event, the Executive Council is not a body established or authorized by the Constitution of The Episcopal Church. It does not have constitutional authority to review and approve changes to the Constitution and Canons of member dioceses. Indeed, no general body or office is given this authority by the Constitution. The Executive Council does not have constitutional authority to make final and binding interpretations of the general Constitution. Again, no general body or office is given this authority by the Constitution. The Executive Council does not have legal supremacy over member dioceses. Yet again, no general body or office is given this authority by the Constitution.

In contrast, as provided in Article IX of the Diocese's Constitution and Canon XXXVII and Articles II and IV of the general Constitution the Bishop is "the Ecclesiastical Authority" of the Diocese. The Diocese's Constitution states explicitly that the diocesan Constitution and Canons "shall prevail" in case of conflict with the Constitution of The Episcopal Church. Canon XXXVII gives the Ecclesiastical Authority of the Diocese explicit authority to make final and binding interpretation of the Diocese's Constitution and Canons. Based on these facts I conclude that neither the letter from the Secretary of the Executive Council nor any resolution by that Council has any effect on the interpretation of the Diocese's Constitution and Canons.

The Protestant Episcopal Diocese of South Carolina pre-existed the formation of the association comprising The Episcopal Church and was a founding member of that association. As noted, the Diocese has from time to time throughout its history joined other associations as a member, including The Episcopal Church, the church in the Confederate States, and the Anglican

Communion Network. As of the date of this Interpretation, the Diocese remains a member of the association comprising The Episcopal Church, but its legal existence as a separate religious society incorporated in the state of South Carolina would continue uninterrupted if it elected to terminate its membership in that association as it has when other association memberships have been terminated in the past.

As a pre-existing and separately incorporated religious society, the Diocese has First Amendment rights distinct from those of other associations of which it may be a member. Pursuant to those rights, the members of the Diocese have sole authority to determine the rules for the governance of their society. They have done so in their Constitution. They have made that Constitution prevail over any conflicting provision in the Constitution of The Episcopal Church. They have constituted the Bishop (or the Standing Committee in the absence of a bishop) as the Ecclesiastical Authority of the Diocese and given the Ecclesiastical Authority exclusive authority to interpret the Constitution and Canons of the Diocese, including the authority to determine who can meet and vote and what is or is not in order for voting at such meetings.

I make this Interpretation of the Constitution and Canons as the Ecclesiastical Authority of the Diocese pursuant to my authority under the Constitutions of the Diocese and The Episcopal Church and Canon XXXVII. I do so with the advice and counsel of the Chancellor of the Diocese. This Interpretation shall be final and binding in all respects.

Faithfully Yours,

A handwritten signature in black ink, appearing to read "Mark J. Lawrence". The signature is written in a cursive style with a cross at the beginning.

The Rt. Rev. Mark J. Lawrence  
XIV Bishop of South Carolina