



**IN THE TITLE IV DISCIPLINARY MATTER  
INVOLVING THE  
RT. REV. WILLIAM H. LOVE, RESPONDENT**

**DECISION OF THE HEARING PANEL ON  
CROSS-MOTIONS FOR SUMMARY JUDGMENT**

**NATURE OF THE CASE**

This case involves the action of the Right Reverend William H. Love (“Bishop Love”) in his issuance of a November 10, 2018 Pastoral Direction (“Direction”) to all Diocesan clergy in the Diocese of Albany: a) prohibiting them from conducting marriage rites for same-sex couples as authorized by the 79<sup>th</sup> Convention of the Episcopal Church and; b) requiring compliance with Albany Diocesan Canon 16 that prohibits such marriage rites and blessings. The Episcopal Church (“TEC”) contends the action of Bishop Love in executing such a Direction violates the Disciplinary Canons of TEC in that his action constitutes a failure to abide by promises and vows made when ordained pursuant to Canon IV.4.1(c).

The matter comes before this Hearing Panel for the Trial of a Bishop (“the Hearing Panel”) in the form of cross-motions by TEC and Bishop Love for summary judgment. Both sides have stipulated to undisputed facts and both parties have requested the Panel to reach a decision without requiring the testimony of fact witnesses.

What is not before the Hearing Panel is the discretion of any clergy to refuse to perform any rites of marriage as requested by any couple seeking such a rite. That right remains resolute. Nor does this seek to limit a bishop’s jurisdiction over the use of liturgies as outlined in the canons.

TEC asserts that Bishop Love violated promises made when he was ordained in that by issuing the Direction he violated: a) the Discipline and Worship of the Church as mandated by 2018 Resolution B012; b) the Discipline and Worship of the Church as mandated by Canon 1.18.

First, Bishop Love asserts that 2018 Resolution B012 lacks canonical import in that it was not a properly constituted revision to the Book of Common Prayer (“BCP”). Second, he asserts compliance with the Resolution would require him to violate the Doctrine and Discipline of the Church where: a) such Doctrine and Discipline prohibit same sex-marriage rites and; b) Church canons require conformity to the: i) Rubrics of the BCP; ii) Doctrine of the Church; and iii) Diocesan Canons of the Church. Third, he argues that Canon 1.18 is permissive and

not mandatory. Finally, he argues he did not violate the Worship of the Church because the form of worship that Resolution B012 sought to authorize was extra-canonical in that the resolution was not a properly constituted revision to the BCP.

### **SUMMARY OF OPINION**

This Panel unanimously concludes that TEC has met its burden of showing, by clear and convincing evidence, that Bishop Love has violated Canon IV.4.1(c) in that his November 10, 2015 Pastoral Directive violated the Discipline of the Church, as Resolution B012 was properly constituted and passed as an authorized revision to the BCP as expressly provided for in Constitution Article X (b), thus requiring that all Bishop Diocesans permit their clergy the option to utilize such rites. TEC has further met its burden of establishing that Bishop Love's Direction also violated the Discipline of the Church in that it violated Canon I.18. The canonical legitimacy of Resolution B012 rendered Canon I.18 mandatory, requiring adherence by Bishops Diocesan in permitting their Clergy the option to perform same-sex marriage rites. TEC has also met its burden of establishing that the Direction violated the Worship of the Church in that Resolution B012 added canonically-authorized same-sex marriage rites to the Worship of the Church pursuant to the BCP. Therefore, Bishop Love's argument that abiding by Resolution B012 would put him in violation of the Discipline, Doctrine and Worship of the Church fails in each assertion. Resolution B012 effectively added rites of worship to which paragraph one of "Concerning the

Service” regarding “The Celebration and Blessing of a Marriage” and “The Blessing of a Civil Marriage” (“commentary to *Concerning the Service*”) at 422 of the BCP, describing marriage “as between a man and a woman,” does not apply. Second, Resolution B012 does not create a conflict between the Discipline and Doctrine of the Church where a portion of the Catechism, BCP at 861 refers to marriage in which “the man and a woman enter into a life-long union. . .”. The Rubrics to the Catechism make plain it is merely “an outline for instruction” and is “not meant to be a complete statement of belief and practice.” BCP at 844. Nor can Bishop Love defend his actions under the Albany Canons where Resolution B012 was canonically authorized and TEC’s accession clause provides that diocesan canons must accede to TEC canons. Finally, Bishop Love’s defense that he cannot violate the Worship of the Church where Resolution B012 was extra-canonical, fails because Resolution B012 was properly constituted to render marriage rites as canonically authorized revisions to the BCP.

### **HISTORY OF THE CASE**

The Church Attorney, Mr. Paul Cooney, Esq., submitted this case to the Hearing Panel by way of a Statement of Alleged Offense dated September 27, 2019.

A Notice of Hearing Panel and the Statement of Alleged Offense pursuant to Canon IV.13.2(a) was issued by Hearing Panel convener, Bishop Nicholas Knisely, on October 4, 2019.

A response to the Statement of Alleged Offense, pursuant to Canon IV.13.2 (c) was provided to the Hearing Panel by Respondent's counsel, Fr. William E. Strickland, Jr., Esq., on October 24, 2019. Respondent denied the alleged offense.

On November 4, 2019, counsel for TEC and Respondent Love requested that the Hearing Panel allow the parties to: a) proceed directly to summary judgment to determine if General Convention Resolution B012 was binding on Bishop Love and; b) to stay mandatory disclosures and all other discovery allowed under Canon IV.13.5. The Hearing Panel convened on November 14, 2019 and denied the request to stay mandatory disclosures and adjourned the decision on the request to proceed by way of summary judgment until after the required Scheduling Conference. The decision of the Hearing Panel was set forth in a November 26, 2019 Letter from Bishop Knisely to counsel for both parties.

On December 6, 2019, the Hearing Panel, via a letter to the Church Attorney and Respondent's counsel, set the date for the parties to exchange Mandatory Disclosures and made inquiry of both parties for available dates for the Scheduling Conference.

Mandatory Disclosures were exchanged between the parties on December 20, 2019 and the Scheduling Conference was noticed for January 2, 2020.

On December 23, 2019, the parties proposed a Joint Scheduling Order to the Hearing Panel. A Scheduling Conference under Canon IV.13.5(c) was held on

January 2, 2020 and, on January 15, 2020, the Hearing Panel entered an Order setting a briefing schedule for the cross-motions for summary judgment. The Order further set the date of April 21, 2020 for oral argument on the summary judgment motions.

On March 27, 2020, the Hearing Panel adjourned the date for oral argument on the summary judgment motions that was to take place at a physical location in Albany, New York. The adjournment was due to the COVID-19 pandemic. Upon the consent of both parties, the oral argument was adjourned until June 21, 2020 and the location and format of the oral argument was changed from a one where the parties would be physically present to a remote hearing that would be live-streamed allowing the public to remotely view the proceedings.

The Hearing took place as scheduled on June 21, 2020.

Upon consent, the Hearing Panel reserved decision on the motions.

Subsequent to the oral argument, on June 26, 2020, the Panel requested additional supplemental materials from counsel for TEC, specifically, it requested the following transcripts from the 2018 General Convention: a) the floor debate during the final passage of Resolution B012; b) the floor debate in the House of Bishops during the final passage of Resolution B012 that discussed prayer book reform and; c) Bishop Love's remarks given during the floor debate in the House of Bishops on Resolution B012. At the time of the Panel's request for further materials, TEC objected to the consideration of any supplemental documents outside of those

that had been provided to the Panel in the parties' briefs asserting that it could create a factual dispute beyond the facts that had been stipulated to by the parties for summary judgment purposes and; b) that General Convention transcripts might not be the proper subject for "judicial notice" where any party's statement may not be subject to correction as is allowed for court-certified transcripts. In light of this, TEC requested the opportunity for both parties to be heard should the Hearing Panel decide to rely on any additional documents beyond those which had been submitted by the parties.

On July 2, 2020, the Hearing Panel amended its request for all three transcripts and requested just the transcript of Bishop Love's statement made during the floor debate on Resolution B012 in the House of Bishops. In rendering this decision, the Hearing Panel has not relied upon the statement Bishop Love made during the floor debate in the House of Bishops.

### **STIPULATED FACTS**

Both parties have agreed to a set of undisputed facts. Both parties argue that that these facts alone will provide a basis for the Hearing Panel to render a decision about whether Bishop Love's actions violated Canon IV.4.1(c).

#### **1. Oath of Conformity**

At the time of his ordination and consecration as bishop, Respondent subscribed and made the following Declaration of Conformity in accordance with

Article VIII of the Constitution of the Episcopal Church: “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.” Joint Stipulation of Non-Disputed Material Facts (“Joint Stipulation”) at para. 1.

## **2. The Passage and Content of Resolution B012**

In 2018, the 79<sup>th</sup> General Convention of the Episcopal Church met in Austin, Texas and on July 13, 2018, passed Resolution B012, entitled, “Authorize Trial Liturgies for Same-Sex Marriage.”

### **i. Authorization of Four (4) Liturgical Rites for Same-Sex Marriage**

The resolution sought to: (a) authorize for continued trial use two liturgies for same-sex marriage first authorized for trial use in Resolution 2015-A054 adopted by the 78<sup>th</sup> General Convention in 2015<sup>1</sup> and (b) authorize for trial use two additional liturgies for same-sex marriage. (“Trial Use Liturgies”):

Resolved [1], the House of Deputies concurring, That the 79<sup>th</sup> General Convention authorize for continued trial use, in accordance with Article X of the Constitution and Canon II.3.6, “The Witnessing and Blessing of a Marriage” and “The Celebration and Blessing of a Marriage 2” (as appended to the report of the Task Force for the Study of Marriage to the 79<sup>th</sup> General Convention); and be it further

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<sup>1</sup> The Joint Stipulation of Facts did not include the provision that the liturgies referenced in Resolve 1 of B012 were the same liturgies as authorized by General Convention Resolution B054 at the 78<sup>th</sup> General Convention. However, the Panel takes judicial notice of this fact as specifically allowed by Canon IV.13.10 (b)(4). This fact is only utilized in this Opinion for historical understanding and context.

Resolved [2], That the 79th General Convention authorize for trial use, in accordance with Article X of the Constitution and Canon II.3.6, “The Blessing of a Civil Marriage 2” and “An Order for Marriage 2” (as appended to the report of the Task Force for the Study of Marriage to the 79th General Convention), beginning the first Sunday of Advent, 2018. . .

Joint Stipulation at para. 2; Exhibit A to Common Exhibits to Joint Stipulation of Non-Disputed Facts and Motion of Church for Summary Judgment (“Joint Stipulation Exhibits”) at A-1.

**ii. Designation of Time Frame for Trial Use**

Resolves 1 and 2 of Resolution B012 also provide for the starting date for the implementation of the Trial Use Liturgies. The two Liturgies passed in 2015 were to continue from their prior start date and the two new liturgies were to start on the first Sunday of Advent. Resolve 3 provides the end date for all four of the Trial Use Liturgies as completion of the next comprehensive revision of the Book of Common Prayer:

Resolved [3], That the period of trial use for these liturgies shall extend until the completion of the next comprehensive revision of the Book of Common Prayer . . .

Joint Stipulation at para. 2; Joint Stipulation Exhibits at A-1.

**iii. The SCLM to Monitor the Trial Use as Part of Prayer Book Revision**

The Resolution also provides for an interim General Convention body, the Standing Committee on Liturgy and Music (“SCLM”) to monitor the use of the rites as part of their work on revising the BCP:

Resolved [4], That the SCLM monitor the use of these rites as part of their work of revising the Book of Common Prayer . . .

Joint Stipulation at para. 2; Joint Stipulation Exhibits at A-1.

**iv. Consideration of Recommendations to Revisions to the BCP Commentary Concerning the Service, the Marriage Prefaces and Catechism**

The SCLM, during their work on revision of the BCP, is also charged by the General Convention under Resolve 5 with considering certain material prepared by an SCLM Task Force, the Task Force for the Study of Marriage, (“TFSM”) for revision to sections of the BCP relating to marriage, specifically: a) commentary to *Concerning the Service*; b) the proper prefaces for Marriage and; c) the Catechism:

Resolved [5], That the material prepared by the TFSM with regard to paragraph one of “Concerning the Service” of Marriage, the proper prefaces for Marriage and the Catechism be referred to the SCLM for serious consideration as they engage in the process of revision of the Book of Common Prayer . . .

Joint Stipulation at para. 2; Joint Stipulation Exhibits at A-1.

**v. Providing for the Proper Publication of Rites**

General Convention, through Resolve 6, provides for the necessary publication of the Liturgical Rites by requiring that the material be “authorized for publication as part of Liturgical Resources 2 (as appended to the report of the TFSM) and that it be made electronically available in English, Spanish, French, and Haitian Creole at no cost by the First Sunday of Advent, 2018. Resolve 15 also provides for various Church leaders, including the Custodian of the Book of Common Prayer, to

finalize all such liturgies for publication as outlined in Resolve 6. Joint Stipulation at para. 2; Joint Stipulation Exhibit at A-2.

**vi. Preservation of All Canonical Rights of Clergy Relative to Marriage while Requiring Provision for Same-Sex Liturgies in Local Congregations**

Critically, in Resolve 7 and Resolve 9 of Resolution B012, in acknowledging and affirming the authority of Clergy to conduct marriage rites or to refuse to perform a marriage rite, the General Convention requires that Rectors or Clergy in charge to make provision for same-sex couples, where civil law allows, to use the liturgies in their local congregation or worshipping community:

Resolved [7], That under the canonical direction of the Rector or Member of the Clergy in charge and where permitted to do so by civil law, provision will be made for all couples desiring to use these marriage liturgies in their local congregation or worshipping community, provided that nothing in this Resolve narrows the authority of the Rector or Priest-in-Charge (Canon III.9.6(a))

. . .

Resolved [9], That the provision of 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 . . .

Joint Stipulation at para. 2; Joint Exhibits at A-1 and A-2.

**vii. Allowing Accommodations for Bishops Opposed to Same-Sex Marriage by Requiring an Opposing Bishop to Invite another Bishop to Provide the Necessary Pastoral Support for Those Seeking Local Access to Same-Sex Marriage**

Resolve 8 of the Resolution makes an accommodation for bishops theologically opposed to same-sex marriage to have another bishop provide for the pastoral needs of the same-sex couple, the congregation, and worshipping community to carry out the intent of the resolution that all couples have local access to such rites. Importantly, an accommodation is offered to diocesan bishops who oppose same sex-marriage to invite another bishop into the diocese to provide pastoral support for same-sex couples who seek to be able to utilize the rites in their local congregation or worshipping community:

Resolved [8], That in 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, and there is a desire to use such rites by same-sex couples in a congregation or worshipping community, 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 . . .

Joint Stipulation at para. 2; Joint Exhibits at A-1.

**viii. Parallel Provision for a Bishop Opposing Same-Sex Marriage to Provide for a Invited Outside Bishop to Provide Consent for Remarriage after Divorce for those Seeking Same-Sex Marriage**

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 the bishop not embracing marriage for same-sex couples, to "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)". Joint Stipulation at para. 2; Stipulated Exhibits at A-2.

**ix. Bishops Required to Engage in Comprehensive Engagement with the Liturgies while providing a Generous Pastoral Response to All as the Church continues to honor Theological Diversity**

The resolution further requires bishops to continue the work of leading the Church in comprehensive engagement with the authorized liturgical materials and to continue to provide generous pastoral response to meet the needs of members of this Church (Resolve 12). The resolution also requires the Church to "continue to honor theological diversity in regard to matters of human sexuality". (Resolve 13). Joint Stipulation at para. 2; Stipulated Exhibits at A-2.

**x. Recommendation for Allocation of Resources**

Finally, the Resolution urges the Joint Standing Committee on Program, Budget and Finance to allocate financial resources to accomplish the requirements

of the Resolution. (Resolve 14). Joint Stipulation at para. 2; Stipulated Exhibits at A-2.

**3. Excerpts from Correspondence between Albany Rector and Bishop Love**

Subsequent to the 2018 General Convention, on or about July 14, 2018, The Rev. Mary Robinson White, the Rector of St. Andrew's, Albany, expressed her intent to implement the provisions of Resolution B012 on the first Sunday of Advent in 2018 (by its terms, the effective date of Resolution B012). Joint Stipulation at para. 4, Stipulated Exhibits at C-1. The email to Bishop Love included the Rector's plan to implement the provisions of Resolution B012 beginning on the first Sunday of Advent. She further requested if Bishop Love had specific protocols that he was requiring Diocesan clergy to follow:

*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.*

Joint Stipulation at para. 4; Stipulated Exhibits at C-1.

Later that same day, Bishop Love replied, noting that the Diocese had not worked out a plan for dealing with B012 and that the Albany Canons [that prohibited same sex marriages and blessings] would remaining in effect pending such a Diocesan plan:

*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.*

Joint Stipulation at para. 4; Stipulated Exhibits at C-2.

#### **4. Bishop Love’s Pastoral Letter and Direction**

On November 20, 2018, Bishop Love issued a Pastoral Letter and Direction (“Pastoral Direction” or “Direction”) going to the heart of his decision to disregard Resolution B012. The letter, in part, acknowledges the stated intent of Resolution B012 “to mak[e] liturgies for same-sex marriages available for use in every Diocese and parish of the Episcopal Church” (Stipulated Exhibits at B-3, para. 1) and to mandate the adherence to its dictates.<sup>2</sup> (Stipulated Exhibits at B-3, para. 3). Bishop Love plainly states his intent to disregard the resolution:

I cannot in good conscience as a bishop in God’s holy Church agree to what is being asked for in B012. While I respect the authority of the General Convention as an institutional body, my ultimate loyalty as a bishop in God’s Holy Church is to God.

Joint Stipulation at para. 3; Stipulated Exhibits at B-8.

The Pastoral Direction specifically seeks to preclude all Clergy in the Diocese from performing same-sex liturgies:

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<sup>2</sup> Bishop Love’s letter concedes that the stated intent of B012 was to mandate adherence by “attempting to order” (Stipulated Exhibits at B-2, para. 2); attempting to “force” (Stipulated Exhibits at B-5, para. 1) and to “dictate[.]” (Stipulated Exhibits at B-2, last para.) compliance.

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.**

Joint Stipulation para. 2, Stipulated Exhibit at B-8 para. 4, 5.

**5. The Albany Canon prohibiting Same-Sex Marriage and Blessings**

Canon XVI of the Canons of the Episcopal Diocese of Albany expressly prohibits same-sex marriage and blessings from being performed by diocesan clergy<sup>3</sup> or from being performed in any property owned or utilized by the Diocese.<sup>4</sup>

Stipulated Facts, para. 5.

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<sup>3</sup> **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.

<sup>4</sup> **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.

## **ARGUMENT**

### **I. The Standard of Proof Upon a Summary Judgment Motion**

In a secular civil court, the applicable standard to be applied by a court in a summary judgment is whether undisputed material facts, when taken in a light most favorable to the moving party, renders a decision to dismiss or grant judgment as a matter of law. Said more simply, there is no weighing of credibility of witnesses or any of the facts asserted through documentary evidence, because the facts are not disputed. Herein, the question is: do the facts as stipulated by both parties lead to a clear result based upon the plain language of the Oath of Conformity, the language of Resolution B012, the email correspondence exchanged between Rev. White and Bishop Love, the November 20, 2018 Direction of Bishop Love and the Albany Marriage Canons, 16.2, 16.2?

In a disciplinary matter, our canons provide that the Respondent is presumed to *not* have committed the offense (Canon IV.19.16) and the Church Attorney (be it the TEC Church Attorney or a diocesan Church Attorney) must establish his or her case by “clear and convincing evidence.” (Canon IV.19.16, 19.17). TEC argues that this burden of proof does not apply in a summary judgment motion where the parties have stipulated to facts, as there is no “evidence” to weigh. Bishop Love, on the other hand, argues that there is still the burden of proof of “clear and convincing” evidence that must be met by the Church Attorney in establishing each element of

the alleged offense for which the Respondent stands accused. The Panel agrees with Bishop Love that the standard in “all matters under this this Title” is that “the burden is on the Church through the Church Attorney to establish an Offense by a Respondent” and that the burden is proof by “clear and convincing evidence.” Canon IV.19.16, 19.17.

## **II. The Elements of the Alleged Offense**

Respondent is charged with violating Canon IV.4.1(c), by failing to abide by the promises and vows made when ordained. The Statement of Alleged Offense specifically asserts that Respondent violated the Declaration he signed at his ordination as bishop in which he promised to “conform to the doctrine, discipline, and worship of the Episcopal Church.” Refining further the basis of the Charge in the Statement of Alleged Offense, TEC’s Motion of the Church for Summary Judgment and Brief in Support (“TEC’s Brief”) alleges that Respondent failed to conform to the discipline and worship of the church. *Id.* at 17-18. TEC further alleges that that Bishop Love’s Pastoral Direction violated his ordination vows by failing to conform with Resolution B012, but also, by his alleged failure to conform to Canon 1.18. Thus, to meet its burden of proof on TEC’s first theory, it must show by clear and convincing evidence that Bishop Love’s Pastoral Direction prohibiting clergy in his Diocese from performing same-sex marriages violated Resolution B012 and constituted a failure to conform to the Discipline and Worship of the Church. To

succeed on its second theory, TEC must show by clear and convincing evidence that Bishop Love’s Pastoral Direction prohibiting clergy in his diocese from performing same-sex marriages violated Canon 1.18 and constituted a failure to conform either to the Discipline or the Worship of the Church.

**III. Is the Action Alleged to be of “[M]aterial and [S]ubstantial” or of “[C]lear and [W]eighted Importance to the Ministry of the [C]hurch”?**

Another element that is required for TEC to prove its case is that the offense alleged is “material and substantial or of clear and weighty importance to the ministry of the Church.” Canon IV.3.3. While, both parties have conceded that this element has been met by the Church Attorney (TEC’s Brief at 19); Transcript of Oral Argument at 79:02-14<sup>5</sup>), the significance of Bishop Love’s action and its effect on those seeking equal access to the ministries of the Church should not remain unstated.

Depriving same sex couples of access to matrimony materially and substantially impacts their spiritual, emotional and physical well-being as people of God. The expression of love changes dramatically when it is recognized, welcomed and witnessed. The loss of a public ceremony impacts the couple, the family and friends and the community. The community, the Body of Christ, gathers together for a

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<sup>5</sup> Citations are to the transcript of oral arguments dated June 22, 2020 and are referenced by “Tr.”, followed by the page(s) and line number(s) where the citation appears.

shared experience. The language of parishes is one of family, shared enterprise, support and commitment to each other. A marked shift in who can participate and who cannot participate in the fullness of communal life leads to an identifiable shift in power, belonging and value held by the members who can participate and those who cannot. All of which leads to persistent stress and the impact of this: numbness, resentment, low self-esteem, grief, loss of agency, shame and isolation.

#### **IV. Resolution B012 as Permissive or Mandatory.**

TEC argues that Resolution B012 set up a mandatory requirement that dioceses and clergy offer same-sex marriages and that Bishop Love violated that mandate. Bishop Love argues that the Resolution B012 lacked canonical import, as it was not intended to offer proposed revisions to the BCP as required by Article X and Canon II.3.6 because: a) it did not explicitly state it was a “proposed revision to the BCP”; b) it lacked the essential components of specifying the duration of use of the permitted rites and of direction as to the publication of the rites and; c) its original drafters and other commentators, prior to its final passage, stated that it was intended to be offered as additional rites and not as revisions to the BCP.

Both parties agree that TEC Constitution, Article X provides a canonical basis for resolutions to be considered binding or mandatory when they are offered as proposed revisions to the BCP:

*The Book of Common Prayer, as now established or hereafter amended by the authority of this Church, shall be in use in all the Dioceses of*

*this Church.* No alternation thereof or additional thereto shall be made unless the same shall be first proposed in one regular meeting of the General Convention and by a resolve thereof be sent within six months to the Secretary of the Convention of every Diocese, to be made known to the Diocesan Convention at its next meeting, and be adopted by the General Convection at is next succeeding regular meeting by a majority of all Bishops, excluding retired Bishops not present, of the whole number of Bishops entitled to vote in the House of Bishops and by a vote by order in the House of Deputies in accordance with Article I, Sec. 5, except that concurrence by the orders shall require the affirmative vote in each order by a majority of the Dioceses entitled to representation in the House of Deputies.

*But notwithstanding anything herein above contained, the General Convention may at any one meeting, by a majority of the whole number of Bishops entitled to vote in the House of Bishops, and by a majority of the Clerical and Lay Deputies of all the Dioceses entitled to representation in the House of Deputies, voting by order as previously set forth in this Article:*

- (a) Amend the Table of Lessons and all Tables and Rubrics related to the Psalms.
- (b) Authorize for trial use throughout this Church, 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.*

And provided that nothing in this Article shall be construed as restricting the authority of the Bishops of this Church to take such order as may be permitted by the Rubrics of the Book of Common Prayer or by the Canons of the General Convention for the use of special forms of worship.

(Emphasis added). First, Article X, in its opening paragraph expressly mandates that amendments to the BCP “shall be in use in all Dioceses of this Church.” Second, while such amendments generally require votes at two consecutive General

Conventions, Article X(b) provides an exception to the general rule of requiring votes at two consecutive conventions, if the amendment is authorized for trial use as a proposed revision to the BCP that is authorized by the General Convention for trial use. Under this exception, to be effective, the amendment requires only one vote of the General Convention.

Canon II.3.6 provides further requirements for an amendment to the BCP that is offered for trial use as a proposed revision. It requires that the enabling resolution specify: a) the period of trial use; b) the precise text and; c) any special terms or conditions under which the uses shall be carried out including translations:

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 uses shall be carried out including translation.

As will be shown, Resolution B012 meets all of the criteria mentioned above. First, the opening two resolves make plain that it is intended to authorize four liturgies for “trial use” specifically under “Article 10” and “Canon II.3.6.”

Resolved [1], the House of Deputies concurring, *That the 79th General Convention authorize for continued trial use, in accordance with Article X of the Constitution and Canon II.3.6, “The Witnessing and Blessing of a Marriage” and “The Celebration and Blessing of a Marriage 2” (as appended to the report of the Task Force for the Study of Marriage to the 79th General Convention); and be it further*

Resolved [2], *That the 79th General Convention authorize for trial use, in accordance with Article X of the Constitution and Canon II.3.6, “The*

Blessing of a Civil Marriage 2” and “An Order for Marriage 2” (as appended to the report of the Task Force for the Study of Marriage to the 79th General Convention), beginning the first Sunday of Advent, 2018;

(emphasis added).

The intent of General Convention must be gleaned from the plain language of the resolution.<sup>6</sup> The Convention’s use of the words “authorize for trial use in accordance with Article X and II.3.6” only refers to *proposed revisions* to the BCP under Constitution Article X(b). Bishop Love’s argument that the resolution needed to include the magic words “proposed revision to the Book of Common Prayers.” lacks merit. Article X and II.3.6, when invoked, by their terms, are utilized when one is seeking a proposed revision to the BCP.

As TEC asserts in its Reply Brief at 3, over the last forty years since the adoption of the 1979 Prayer Book, General Convention has adopted a large number

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<sup>6</sup> There is a concept in secular law that is utilized by courts to aid in the construction or interpretation of legislative statutes. First, courts are obliged to give words of the statute their plain and ordinary meaning. If there is no ambiguity, the court need look no further and is charged with enforcing the statute as written. While this Panel is ecclesiastical in nature and is not bound by the rules of a secular court, given that our governance arises from legislative acts of our General Convention, secular principles provide some guidance. As the Supreme Court of the United States, in describing the principle of statutory construction, noted: “[I]n interpreting a statute a court should always turn to one cardinal canon before all others. . . . [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992). Indeed, “when the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” *Id.*

of liturgical texts for use in worship that were not approved pursuant to Article X, including the various COCU liturgies (1980s), Lesser Feast & Fasts and its successor volumes to liturgies in the Enriching our Worship Series and the liturgy for the blessing of same-sex relationships (2012). General Convention plainly recognizes the difference between liturgical forms authorized under Article X and those that are not.

Additionally, General Convention is also familiar with the practice of authorizing liturgies for trial use in conjunction with an anticipated comprehensive revision of the Prayer Book as reflected in the practice used in the Church during the last such effort that took place between 1964-1979. The Constitutional concept of authorized “trial rites” became a part of the Constitution in 1964. A succession of trial rites, including Liturgy of the Lord’s Supper (1967), Services for Trial Use (1970), Authorized Services (1973) preceded the Draft Proposed Book of Common Prayer (1976) that preceded the adoption of the 1979 Prayer Book. (TEC’s Reply Brief at 5, n. 3)

Even though this Panel need go no further, the intent of the General Convention in passing Resolution B012 is further evinced by the careful adherence to every element within the mandates of Canon II.3.6. The resolution makes provision for the time frame for the use of the liturgies: a) for the two trial liturgies whose use had begun after the 78<sup>th</sup> General Convention, the use would “continue

until the completion of the next comprehensive revision” to the BCP (Resolves 1, 3) and; b) for the two new trial liturgies, the period of use would begin on the second Sunday in Advent 2018 and continue until the completion of the next comprehensive revision to the BCP. (Resolves 2, 3). The text of the liturgies themselves were “appended to the Report of TFSM.” (Resolve 6). Finally, the third requirement of Canon II.3.6, namely, that special conditions, such as translations be provided for in the enabling resolution, was met. The General Convention articulated many conditions for its use including: directing translations (Resolves 6, 14); requiring provisions be made for local access where allowed by civil law (Resolve 7); allowing dissenting bishops to invite other bishops to provide support for local access and consent for remarriage (Resolves 8, 11); preserving the canonical rights of clergy to personally choose whether to conduct any marriage (Resolves 7, 9); recommending the study by SCLM to address specific provisions in the BCP for revision including the commentary *Concerning the Service of Marriage* and the proper prefaces for marriage and the catechism. (Resolve 5). (Joint Exhibits, Exhibit A). In its final form, Resolution B012, on its face, contained all the necessary elements to ensure its canonical validity, thus mandating it “shall be in use in every Diocese in the Church.” Art. X. Thus, Bishop Love’s metaphor that Resolution B012 was like a truck painted on the outside advertising that it was carrying oranges, when its cargo

was something entirely different, is misplaced. The B012 truck was carrying all the oranges that it was required to carry to be canonically enforceable.

Given the plain language of Resolution B012, this Panel need not go further in its analysis of whether the language of Resolution B012 is mandatory. However, for completeness, the Panel addresses Bishop Love's further claims relative to the intent of General Convention in the passage of Resolution B012. Bishop Love's next argument is that Resolution B012 was merely intended as a permissive supplement to the BCP and not intended as a proposed revision to the BCP. This rests upon his claim that B012 was a substitute resolution for Resolution 2018 A085 that was offered by the special Task Force for the Study of Marriage ("TFSM") and that, when offered by TFSM, the resolution was meant to be an addition to the BCP and not a proposed revision to the BCP. Bishop Love argues that Resolution A085 was, thereafter, amended to become the substituted Resolution B012 that contained express language that changed the use of the word "additions" to language describing the rites as "supplemental." It is this change that Bishop Love argues implies an intent to not revise the BCP. (Bp. Love's Br. at 3-8). Bishop Love also asserts that the Convention did not intend Resolution B012 to be a revision to the BCP in that comments allegedly made by several TFSM members to various public media sources prior to the final passage of B012 expressed the view that Resolution A085 was not meant to revise the BCP. (Bishop Love's Brief at 6-7, n. 2, 3, and 4).

Bishop Love's arguments on both points are unavailing. First, Bishop Love's argument about inferring General Convention's intent from language changes made to the original Resolution B012 from the version of Resolution A085 as offered by the special Task Force for the Study of Marriage *are of little import where the original version of Resolution B012 is NOT the same version of B012 that ultimately passed on the floor of Convention.* As Bishop Love admits, the original version of Resolution B012 was significantly amended prior to its passage. (Bp. Love's Br. at 7). For the same reason, comments made by TFMSM members or others prior to the passage of Resolution B012 are not relevant where these comments were made prior to the significantly amended final version of Resolution B012. Moreover, Bishop Love's final argument (Bp. Love's Br. at 4-5) that a long line of legislative history precludes the consideration of supplemental rites as being canonically authorized by Article X, lacks significance where this Panel concludes that the explicit language of Resolution B012 as passed, makes plain its intent to be a proposed revision to the BCP and not as supplemental rites masquerading as a proposed revision to the BCP.

**V. Did Bishop Love's Refusal to Abide by B012, a Resolution, Violate the Discipline of the Church?**

Bishop Love next argues that even though he acknowledges non-compliance with the intent of Resolution B012, his noncompliance does not constitute a Title IV violation within the definition of Discipline under Title IV unless the resolution was an amendment to the Constitution, the Canons, the Rubrics or Ordinal. (Bp. Love's

Br. at 8-12). Bishop Love comes to this conclusion based upon a presentation of legislative history and through an interpretation of the Court's decision in the trial of a Bishop, *Stanton v. Righter* (1996). The *Righter* decision was a disciplinary case centering on whether a bishop's ordination of a celibate, gay man constituted a violation of the bishop's ordinal vows.

Bishop Love's argument begins with a look at the General Convention Resolution proposed in 1994, B005, that sought to create a clear process to follow to avoid uncertainty in determining if a resolution was intended to be canonically binding and, thus, sought to avoid the danger of subjecting a clergy person to a potential disciplinary action based upon a vaguely written resolution. The drafters of proposed Resolution B005 sought to avoid the outcome by requiring any proposed resolution intending to create a binding responsibility to expressly state "its intent to interpret and/or apply any provision of the Constitution or Canons of the Church." Resolution 94-B005 is attached in the Supplement to the Cross-Motion of the Respondent for Summary Judgment and Brief in Support ("Supplement to Love Br.") at 058. The proposed resolution failed, but was referred to the Standing Committee on Constitution and Canons ("SCCC") for further consideration and for a report back to the 1997 (72<sup>nd</sup>) General Convention.<sup>7</sup> Thereafter, in deciding the

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<sup>7</sup> The 1997 Blue Book of the 72nd General Convention can also be located at: [https://www.episcopalarchives.org/e-archives/gc\\_reports/reports/1997/bb\\_1997-R003.pdf](https://www.episcopalarchives.org/e-archives/gc_reports/reports/1997/bb_1997-R003.pdf) (last accessed 7/30/20).

*Righter* case in 1996, the Disciplinary Court was confronted with the question that the proponents of Resolution 94-B005 sought to eliminate: whether a General Convention resolution was binding for disciplinary purposes where its language made a recommendation rather than stating a clear requirement: “we believe it is not appropriate for this Church to ordain a practicing homosexual or any person who is engaged in heterosexual relationships outside of marriage.” *Righter* case, Supplement to Bp. Love’s Br. at 078. The Court, in concluding the resolution language did “not set forth a clear constraint which allowed for canonical disciplinary action,” found the resolution was permissive, stating “[t]he Church may forbid what has been done here, but not by a recommendatory resolution.” *Id.* Thereafter, in 1997, Bishop Love correctly notes that the SCCC, in considering Resolution B005 and influenced by the *Righter* case, sought to address the concern about providing more clarity about when resolutions are binding for disciplinary action. Expressing concerns about the litmus test proposed by the drafters of B005 at the 71<sup>st</sup> Convention (1994), the Committee decided against recommending 94-B005 for passage at the 72<sup>nd</sup> Convention. One of the expressed concerns was that by the mere use of a few words, namely, stating the resolution was interpreting or applying canon law, the result would be a resolution that would be afforded the exact same status as a canonical amendment. Such a process was disconcerting to the Committee in that the resolution might not be afforded the same “seriousness” or

“proper procedure and consideration” as a canonical amendment. Likewise, the 1997, SCCC further expressed a concern that requiring “magic words” to dictate such disparate consequences in treatment would “radically” change the consideration of resolutions. (1997 Blue Book at 19-20) (Supplement to Bp. Love’s Br. at 103) Instead, the 1997 SCCC sought to accomplish at least one of the stated objectives of the proposed 94-B005 by providing guidance as to what areas of Discipline and Doctrine would run afoul of Title IV by providing definitions for Discipline and Doctrine. Bishop Love, therefore, argues that Discipline under IV.2 only covers violations of the Canons or Constitution of the Church and since Resolution B012 is not an amendment of a Canon or the Constitution, it cannot be the source of a disciplinary violation under Title IV.

Bishop Love’s argument on its face is logical. If this Panel agreed with Bishop Love’s argument that Resolution B012 was “permissive,” it might reach a different conclusion. Nonetheless, Bishop Love fails to take into consideration that the language of Article X and Canon II.3.6, when properly invoked in a resolution, gives the resolution canonical import as expressly dictated by Article X. Article X of the Constitution mandates that a proposed revision to the Book of Common Prayer be in use in all Dioceses:

The Book of Common Prayer, as now established or hereafter amended by the authority of this Church shall be in use in all the Diocese of this Church.

Article X of the Constitution. Discipline for Title IV purposes is to be found in “the Constitution, the Canons and the Rubrics and the ordinal of the Book of Common Prayer.” As such, Resolution B012’s invocation of Article X of the Constitution and Canon II.3.6, plainly gives the resolution canonical weight. Bishop Love’s refusal to follow Resolution B012 was, therefore, a violation of the Constitution and Canons of the Church.

**VI. Did Bishop Love’s Pastoral Direction Violate the Discipline and Doctrine of the Church?**

**A. Is the Language in the Commentary Concerning the Service in the BCP and the Catechism in the BCP an impediment to B012 being afforded Canonical Authority?**

Bishop Love argues that he complied with the Doctrine and Discipline of the Church where language in one of the rubrics in the BCP, the commentary *Concerning the Service* refers to marriage as “between a *man and a woman*”<sup>8</sup> and where the Catechism in the BCP makes reference to the rite of Holy Matrimony as “marriage, in which *the man and woman* enter into a life-long commitment.”<sup>9</sup> (Emphasis added). Hence, absent further revisions to the BCP, he argues, Resolution B012 cannot be deemed complete in its intent to mandate compliance. (Bp. Love’s Br. at 13-15).

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<sup>8</sup> BCP at 422.

<sup>9</sup> BCP at 861.

The commentary *Concerning the Service* in the BCP provides: “*Christian marriage is a solemn and public covenant between a man and a woman in the presence of God.*” BCP at 422. (Emphasis added). The Catechism also provides the following colloquy:

Q: What is Holy Matrimony?

A. Holy Matrimony is Christian marriage, *in which the woman and man enter into a life-long union*, make their vows before God and the Church, and receive the grace and blessing of God to help them fulfill their vows.

(BCP at 861) (Emphasis added).

Bishop Love’s argument fails in several respects. First, the provision in the commentary *Concerning the Service* only attaches to the specific rite to which the rubric applies. Here, the prefatory language in paragraph one of the BCP at 422 only applies to the Marriage rites that start at 423. It does not attach to the four liturgical rites that were authorized by Resolution B012 as revisions to the BCP. *See, e.g.*, separate rubrics for *Holy Eucharist Rite One and Rite Two* (BCP 322, 354); *Burial of the Dead, Rite One and Rite Two* (BCP 468, 490); *Celebration of a Marriage and Order of a Marriage* (BCP 422, 435) and the *Daily Offices, Rite One and Rite Two* (36, 74). This demonstrates that rubrics attach to specific rites.

Second, consistent with this structure within the BCP, the Catechism, is prefaced by its own rubric that describes the Catechism as an “outline for

instruction” that is meant to be “commentary on the creeds” and is not “meant to be a complete statement of belief and practice.” BCP at 844.

Third, Canon 1.18.1 was amended in 2015 to allow for marriage of same-sex couples:

Every member of the Clergy of this Church shall conform to the laws of the State governing the creation of the civil status of marriage, and also these canons concerning the solemnization of marriage. Members of the Clergy may solemnize a marriage using any of the liturgical forms authorized by this Church.

(Emphasis added).

As explained more fully in Point VI.D, herein, Resolution B012 made this Canon mandatory as it related to same-sex liturgies being offered in every Diocese. Hence, the Rubrics should be read to be consistent with canon law.

Finally, Canon 1.17.5 expressly provides that “[n]o one shall be denied rights, status or access to an equal place in the life, worship, governance, or employment in this Church because of race, color, ethnic origin, national origin, marital or family status (including pregnancy or child care plans), sex, *sexual orientation*, gender identity and expression, disabilities or age, except as otherwise specified by Canons.” (Emphasis added). Bishop Love’s refusal to offer access to the prescribed marriage rites as authorized by Canon 1.18 and Resolution B012 violates the intent of Canon 1.17.5. Resolution B012 should be interpreted in a way to effectuate the intent of this canonical provision. As such, the language in the commentary

*Concerning the Service* and in the Catechism should be read in a way to limit their application only those Marriage rites offered to cisgender couples.

**B. Does Compliance with Resolution B012 violate the Rubrics of the Church?**

Bishop Love next argues that compliance with Resolution B012 would force a Cleric to violate Canon IV.4.1(b)<sup>10</sup> and Canon III.9.6(a),<sup>11</sup> both of which, according to Bp. Love, require clergy to abide by the Rubrics of the Church. Bishop Love further argues that Canon IV.2's definition of Discipline also includes a clergy's obligation to abide by the Rubrics of the Church.<sup>12</sup> However, for the same reason as stated in Point VI.A, herein, this Panel concludes that Resolution B012 does not conflict with the Rubrics of the BCP.

**C. Does Compliance with B012 violate the Doctrine of the Church?**

Parallel to Bishop Love's argument that compliance with Resolution B012 would improperly force a cleric to violate the Rubrics of the Church (a separate Title IV violation), Bishop Love argues that Resolution B012 lacks canonical import when the General Convention left unchanged provisions in the BCP that do not

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<sup>10</sup> Canon IV.4.1(b) requires that all clergy "conform to the Rubrics of the Book of Common Prayer;"

<sup>11</sup> Canon III.9.6(a)(1) makes a rector's authority over worship "subject to the Rubrics of the Book of Common Prayer, the Constitution and Canons of this Church, and the pastoral direction of the Bishop."

<sup>12</sup> Canon IV.2 reads in part: "Discipline of the Church shall be found in the Constitution, the Canons and the Rubrics and the Ordinal of the Book of Common Prayer."

replace current Doctrine of the Church. Canon IV.2 defines the Doctrine of the Church as:

the basic and essential teachings of the Church and is to be found in the Canon of Holy Scripture as understood in the Apostles and Nicene Creeds and in the sacramental rites, the Ordinal and Catechism of the Book of Common Prayer.

(IV.2) Bishop Love argues that paragraph one of the preface to the commentary Concerning the Service in the BCP and the Catechism in the BCP at 861 that refers to marriage as between a “man and a woman” has not been amended and thus requires adherence as an authoritative source of Doctrine in the Church in accordance with Canon IV.2. TEC responds that Bishop Love’s argument fails in two ways. First, TEC argues the *Righter* decision effectively eliminated the Rite of Marriage from the Doctrine of the Church (TEC’s Reply Br. at 9-11).<sup>13</sup> Second, it argues that canonical changes to Canon I.18 that authorized same-sex marriage and Resolution 2015 B045 allowing for the provisional use of same-sex rites, had the effect of modernizing Doctrine to include same-sex marriage. *Id.* 11-12. TEC’s first argument fails. While the *Righter* case can always provide guidance to this

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<sup>13</sup> The Church asserts that:

. . .the *Righter* Court’s characterization of Church’s teachings on marriage as within the scope of ‘doctrinal teaching’ rather than Core Doctrine should apply in this Title IV matter. The opinion of the *Righter* Court stands as the most authoritative expression on issues of Doctrine under Title IV.

*Id.* at 18.

Panel, hearing panels are not bound by any prior decision of a former Title IV panel or Ecclesiastical Court. This is because the polity of the Church is structured so that our primary source of canon law is legislative action. Further, TEC fails to mention that the General Convention in 1997, in an effort to clarify some of the rulings in the *Righter* case, provided for a precise definition of the Doctrine of the Church. (Canon IV.2). Thus, TEC and this Panel are bound by the definition provided by IV.2. This definition of Doctrine in IV.2 would plainly include any marriage rite authorized by General Convention as a revision to the BCP. However, what the passage of Resolution B012 accomplished was not altering the commentary *Concerning the Service* in the BCP at 422 or in the Catechism at 861, but, instead, it creates multiple, separate canonical marriage rites for same-sex couples that are not restricted by the commentary *Concerning the Service*. Nor are the rites constrained by a Catechism that expressly states it is meant to be an “outline” of instruction and not a “complete statement of belief and practice.” BCP at 844. Hence, while the General Convention, in its 5<sup>th</sup> Resolve of Resolution B012, directed the Standing Committee on Liturgy and Music (“SCLM”) to consider amendments to the marriage prefaces and the Catechism in the future as part of the comprehensive revision of the BCP, the absence of such amendments by the General Convention did not invalidate the mandate of Resolution B012. This is evinced by the plain language of the Resolution itself as discussed in Section IV herein, but also, because the prefaces only attach to

the specific rites to which they refer and the Catechism is meant as an outline for instruction and not a complete recitation of “belief and practice.”

**D. Did Bishop Love violate Canon I.18, and if so, did TEC prove that his Pastoral Direction enforcing the Albany canons was prohibited by Title IV?**

Bishop Love argues that his Pastoral Direction mandating his clergy abide by the Albany Canon prohibiting same-sex marriage did not run afoul of his ordinal vows where Canon I.18 by its express terms did not mandate that bishops or priests conduct such marriages. Canon I.18 provides:

Every member of the Clergy of this Church shall conform to the laws of the State governing the creation of civil status of marriage, and also these canons concerning the solemnization of marriage. Members of the Clergy *may* solemnize a marriage using any of the liturgical forms authorized by this Church.

(Emphasis added).

Bishop Love asserts that this Canon, when read alongside Resolution 2015 B054 that made use of such rites subject to the approval of the Diocesan Bishop,<sup>14</sup> was to render compliance with Canon I.18 as permissive. Bishop Love further argues that had the drafters sought to make Resolution B012 canonically binding, they would have provided the “magic words,” denoting that the resolution was a

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<sup>14</sup> 2015-B054 provides in pertinent part: “Trial use is only to be available under the direction and with the permission of the Diocesan Bishop.” (Supplement to Bp. Love’s Br. at 117)

proposed revision to the BCP along with amending the preface to the Celebration and Blessing of a Marriage at 422 of the BCP and amending the Catechism at 861.<sup>15</sup>

Bishop Love's arguments here all rest on his previous assertion that Resolution B012 was not constituted to have canonical import. As this Panel has ruled that Resolution B012 was canonical, Bishop Love's argument fails here as well. Resolution B012 mandated that bishops and clergy provide for same-sex couples to have access to marriage rites locally within their community or congregation and specifically provided the mechanism for this to happen while providing a process for a bishop who was theologically opposed to the mandate to choose another bishop to attend to the pastoral needs of the same-sex couple. Resolution B012, thus, rendered I.18 as mandatory for bishops and clergy. Moreover, where diocesan canons and TEC canons are in conflict, the Albany canons must accede to the authority of the General Convention canons.<sup>16</sup> As such, Bishop Love, as a matter of canon law, violated Canon I.18.

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<sup>15</sup> Bishop Love also asserts that Canon IV.3.1(c) requires conformity to a cleric's diocesan canons, so that where the Albany canon is consistent with the permissive nature of Resolution B012, there can be no claim that the Diocesan canons violate B012 or Canon I.18. (Bp. Love's Br. at 20-22)

<sup>16</sup> TEC in its Brief at 14 outlines the hierarchical nature of our polity and the Accession clause that requires diocesan canons accede to the authority of the TEC canons:

Article V of the Constitution embeds this hierarchical structure into the canonical relationship between the General Convention and Diocese in

**E. Is B012 Unenforceable in that it seeks to impermissibly restrict the jurisdiction of an Episcopal Bishop?**

Respondent argues that Resolution B012 is extra-canonical in that it attempts to mandate the relinquishment of episcopal authority by the diocesan bishop in violation of Article II.3 of the Constitution and Canon III.12.3(e). Article II.3 provides that:

A Bishop shall confine the exercise of such office to the Diocese in which elected, unless requested to perform episcopal acts in another Diocese by the Ecclesiastical Authority thereof, or unless authorized by the House of Bishops, or by the President Bishop by its direction, to act temporarily in case of need within any territory not yet organized into the Diocese of this Church.

Canon III.12.3(e) provides:

No Bishop shall perform episcopal acts or officiate by preaching, ministering the Sacraments, or holding any public service in a Diocese other than that in which the Bishop is canonically resident, *without permission or a license to perform occasional public services* from the Ecclesiastical Authority of the Diocese in which the Bishop desires to officiate or perform episcopal acts.

(Emphasis added).

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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.

TEC argues that Resolution B012 does not limit the constitutional and canonical authority assigned to a diocesan bishop in that it is narrow in scope and is limited to an invited bishop providing pastoral support only and does not constitute the types of episcopal acts as envisioned by Constitution Article II.3. (TEC Reply Br. at 19-20) Moreover, TEC argues that the invitation of a bishop to perform pastoral support under B012 is more akin to a diocesan bishop's act in permitting or licensing another bishop to perform occasional services within the diocese. Canon III.12.3(e).

TEC correctly states that Resolution B012 does not impinge on a diocesan bishop's authority. The resolve implicating the utilization of another bishop only arises in the limited circumstance where a bishop is theologically opposed to the mandate of Resolution B012. The use of another bishop under these circumstances is a choice that is open to each bishop. Where the diocesan bishop elects to exercise this option, it is for an extremely limited function that is non-jurisdictional and which is the equivalent of permitting or licensing another bishop to perform a service within the diocese. The bishop so invited is there merely to provide pastoral support to the couple and, when necessary and where the Bishop Diocesan deems appropriate, to consider consent to previously married individuals seeking to be married pursuant to the same-sex marriage rites.

## **VII. Does Respondent's Pastoral Direction Violate the Worship of the Church?**

Bishop Love argues that he conformed to the Worship of the Church. He states that while the term, "Worship" is not expressly defined in Canon IV.2, its meaning can be deduced from Article X and Canon II.4. From those sources, Bishop Love's definition of Worship includes the Book of Common Prayer, proposed revisions to the BCP and "special forms of worship." (Bp. Love's Br. at 24-27).<sup>17</sup>

TEC asserts the term, "Worship" must include:

*[t]he 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.*

TEC's Br. at 17. (Emphasis added)

Thus, both parties agree that if Resolution B012 was properly constituted as a canonical proposed revision to the BCP, it constitutes the Worship of the Church. The Panel agrees that the BCP is one source of worship within the Church. It need not define all sources of Worship of the Church. As the Panel concludes that Resolution B012 was properly passed as a proposed revision to the BCP, it comes within the "Worship" of the Church and that Bishop Love's actions in defying

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<sup>17</sup> Likewise, this Panel rejects Bishop Love's invitation to this Panel to "write some Canon Law" (Hearing Tr. 51:13-16). It is *not* the job of a Hearing Panel to "write" Canon Law as that is primarily within the purview of the General Convention.

Resolution B012 constituted a violation of his vows to adhere to the Worship of the Church.

### CONCLUSION

For the foregoing reasons, Bishop's Love's actions in issuing a Pastoral Direction to his clergy that they refrain from performing same-sex marriages violated the Discipline and Worship of the Church as Bishop Love promised in his ordinal vows. His actions, therefore, constitute a breach of Canon IV.3.2(a). TEC's Motion for Summary Judgment is granted. Respondent's Cross-Motion for Summary Judgment is denied. The Panel will proceed to schedule dates for an opportunity for both parties to be heard on proposed terms for an Order pursuant to Canon IV.13.14 and IV.14.7.

*W. Nicholas Knisely*

The Hearing Panel

By: The Right Reverend W. Nicholas Knisely,  
President

The Right Reverend Herman Hollerith, IV

The Right Reverend Jennifer Brooke-Davidson

Melissa Perrin, Psy.D.

The Reverend Erik Larsen

Dated: October 2, 2020