TITLE IV REVISIONS

Dear Bishops Bill, Bruce, Jim, John, and Mark,

We write as long term friends and advisors to place before you a matter we believe to be of grave concern. In our view, recent changes in our canons that soon come into effect are unconstitutional. What is more, they give the Presiding Bishop disciplinary powers over Diocesan Bishops that convert the office into that of a Metropolitan and give that office powers that without question will be abused. In this note we will state our concerns about the revised Title IV in greater detail and urge that you take certain steps to prevent the harm these revisions may hold in store for your dioceses. These revisions take effect in twenty months on July 1, 2011, and will profoundly change the relationship between the Presiding Bishop and other bishops of the church. We believe it is important to begin to address this issue collectively now because it may be too late to do so in 2011.

In a nutshell, the new Title IV gives the Presiding Bishop the same disciplinary authority over other bishops, including diocesan bishops, as the diocesan bishops have over their clergy. Simultaneously, the new Title IV gives greater flexibility to the diocesan bishop—and hence the Presiding Bishop in respect of other bishops—than the current Title IV canons. The cumulative effect of these revisions is to give the Presiding Bishop broad powers to issue pastoral direction and restrict the ministry of other bishops (inhibit) “at any time” without prior approval of any other body (but subject to subsequent review by the disciplinary board for bishops). Without any constitutional change or even proper discussion, these canonical revisions will give the Presiding Bishop metropolitical powers for the first time.

We have discussed this problem with several people who either were on the Canons Committee at General Convention or attended most of the hearings of that committee, and it is clear that this issue was never properly debated nor were its implications even recognized by the committee members. To the contrary, one committee member told us debate was discouraged on these points. We do not know, of course, the extent to which this issue may have been discussed in the House of Bishops, but we have been advised that it was not discussed in the House of Deputies.

The extent of the problem is easy to comprehend once one looks at the structure of the new Title IV. The early canons of the new title, especially canons 5 through 15, spell out new disciplinary procedures for a “Member of the Clergy.” Primary responsibility for such discipline, especially in the matters of pastoral direction and inhibition, lies with the “Bishop Diocesan.” No mention is made in these canons of discipline of bishops. Then in one seemingly technical section, new Canon 17.2(c) provides that “In all matters in which the Member of the Clergy who is subject to proceedings is a Bishop... Bishop Diocesan shall mean the Presiding Bishop.” This applies explicitly to Canons 5 through 16, and therefore includes the key provisions of Canon 7, explained below. Thus, the Presiding Bishop is given in a very precise and technical way authority over other bishops identical to that which they themselves have over their canonically-resident clergy.

The matter of greatest concern is new Canon 7. Note its implications when “Presiding Bishop” is substituted for “Bishop Diocesan” and the Member of the Clergy is a bishop:

**CANON 7: Of Pastoral Direction, Restricted Ministry and Administrative Leave**

**Sec. 1** At any time the Bishop Diocesan may issue a Pastoral Direction to a Member of the Clergy, canonically resident, actually resident, or licensed in the Diocese.

**Sec. 2** A Pastoral Direction must **(a)** be made in writing; **(b)** set forth clearly the reasons for the Pastoral Direction; **(c)** set forth clearly what is required of the Member of the Clergy; **(d)** be issued in the Bishop Diocesan's capacity as the pastor, teacher and overseer of the Member of the Clergy; **(e)** be neither capricious nor arbitrary in nature nor in any way contrary to the Constitution and Canons of the General Convention or the Diocese; and **(f)** be directed to some matter which concerns the Doctrine, Discipline or Worship of the Church or the manner of life and behavior of the Member of the Clergy concerned; and **(g)** be promptly served upon the Member of the Clergy.

**Sec. 3** If at any time the Bishop Diocesan determines that a Member of the Clergy may have committed any Offense, or that the good order, welfare or safety of the Church or any person or Community may be threatened by that member of the Clergy, the Bishop Diocesan may, without prior notice or hearing, **(a)** place restrictions upon the exercise of the ministry of such Member of the Clergy or **(b)** place such Member of the Clergy on Administrative Leave.

The question must be asked whether it was the intention of the revision to make the Presiding Bishop “the pastor, teacher and overseer” of other bishops and to give that office such sweeping powers over other bishops. Legal arguments could be advanced that this cannot apply to the discipline of bishops since the Presiding Bishop is not their “overseer.” But Canon 7 was not excluded from the scope of the Presiding Bishop’s authority, and with the recent history of abuses of existing canons, the expansive language of the new canons likely will be used aggressively by the Presiding Bishop whatever the original intention of the revision may have been.

What is the appropriate response to these revisions? Two possibilities, not mutually inconsistent, present themselves. First, concerned bishops could work through the House of Bishops in an effort to get an official “interpretation” that the Presiding Bishop cannot use the provisions of Canon 7 without prior approval of the diocesan Standing Committee, which is required under the current Title IV procedure (Canon IV.1.6) for diocesan bishops and is arguably required by Articles II.3 (prohibiting a bishop from acting in another diocese without the consent of its Ecclesiastical Authority) and Article IV (making the Standing Committee the Ecclesiastical Authority in the diocese in the absence of the bishop) of the TEC Constitution. Second, concerned dioceses could enact a diocesan canon recognizing that the Title IV provisions with respect to bishops are unconstitutional and providing that no discipline or declaration concerning abandonment or renunciation of the bishop will be recognized in the diocese without the consent of the Standing Committee. This in effect would use the overreaching of the Title IV revision to protect the diocese from the current abuses of the abandonment and renunciation canons in addition to the possible future use of the new canons.

The second option clearly would not gain any traction with TEC leadership and would be seen as canonical rebellion itself amounting to renunciation of TEC discipline. The point of this option, however, is not to persuade the wider church, but to gain control over diocesan canon law so that the diocese could legally (under its own canons) refuse to recognize the removal of its bishop. It is often said of a given diocese that it would not allow the Presiding Bishop to remove its bishop. Undoubtedly that would be the preference of a majority in the diocese, but acting on that preference must be legal under diocesan canons in order to be implemented.

One final point: it would be beneficial in any event to add a provision to diocesan canons stating that all disputes concerning the interpretation of the diocesan constitution and canons are to be resolved by the Ecclesiastical Authority of the diocese and that such interpretations are final and binding. This would signal to the civil courts that they are to follow the interpretation of the diocesan Ecclesiastical Authority, rather than any interpretation of the Presiding Bishop, Executive Council, etc. This might not carry the day in civil litigation, but it would clearly articulate a legal issue that the courts would have to consider. It is certainly better than having a diocesan canon that defers to the authority of a central body or general canon.

As you can see, we have written about matters of great import. In our view, failure to address the recent actions of General Convention at diocesan levels will produce changes in the polity of our church that are open to serious abuse. We write, as always, as your friends and supporters and as always stand ready to be of any help you might think useful.

Yours in Christ,

Chris Seitz

Philip Turner

Ephraim Radner

Mark McCall

October 29, 2009

For your convenience, the Title IV revisions can be read here:

<http://gc2009.org/ViewLegislation/view_leg_detail.aspx?id=890&type=Final>

The relevant part of Canon 17 provides as follows:

**CANON 17: Of Proceedings for Bishops**

**Sec. 1** Except as otherwise provided in this Canon, the provisions of this Title shall apply to all matters in which a Member of the Clergy who is subject to proceedings is a Bishop.

**Sec. 2** In all matters in which the Member of the Clergy who is subject to proceedings is a Bishop, the following terms used in Canons IV.5 through IV.16 and Canons IV.18 and IV.19 shall have the following respective meanings:

**...**

**(c)** Bishop Diocesan shall mean the Presiding Bishop, unless the Member of the Clergy who is subject to proceedings is the Presiding Bishop, in which case Bishop shall mean the Bishop authorized by Canon *IV* 19.24.