IN THE PROVICIAL TRIBUNAL
OF THE ANGLICAN CHURCH OF NORTH AMERICA

Bishop Stewart Ruch, III	)	
	)	
Petitioners,	)	
	)	
v.	)	PT-2023-1
	)	
Archbishop Foley Beach, et al.	)	
Respondents.	)	

PETITIONER'S RESPONSE TO THE RESPONDANT ARCHBISHOP FOLEY BEACH'S MOTION TO RECONSIDER

The Rt. Rev. Stewart Ruch, III, Bishop of the Diocese of the Upper Midwest, by his counsel Charles L. Philbrick, Chancellor of the Diocese of the Upper Midwest, responds to the Motion To Reconsider and To Vacate filed by Respondent Archbishop Foley Beach.[1]

INTRODUCTION

Petitioner agrees that case number PT-2023-1 has *Marbury v. Madison* qualities that mirror that infamous case. For instance, both involve the court of first and last resort hammering out its own jurisdictional boundaries and fashioning appropriate remedies. Like *Marbury v. Madison*, the Tribunal's resolutions of these issues were thorough, sound, and as such, they need to stand.

[1] The Motion To Reconsider and To Vacate ("Motion") is brought by the Respondent Archbishop only. Motion at 15. Every page of the Motion references the misnomer that it is also brought by the "Presenting Bishops" and the "Provincial Officers." The "Presenting Bishops" are parties, but they did not sign the Motion, nor did an attorney sign the motion on their behalf. The "Provincial Officers" are not parties. The Tribunal has already admonished the "Provincial Officers" for their improvident appearances in these proceedings. Decision & Order at 6, fn 6. Yet, the "Provincial Officers," Bps. Ray Sutton and John Guernsey, literally address the Tribunal repeatedly in the Motion. Motion at 1, 2, 3, 6 fn 2, 7, 9, 10 fn 4, 14. They are not parties. They have no standing to appear or right to address the Tribunal. The Tribunal previously admonished them for doing so. Therefore, we ask that their appearances and their statements to the Tribunal be stricken and they be held in contempt.

The first material issue the Tribunal tackled was: Does the Tribunal enjoy original jurisdiction over matters in a dispute that arises out of the Constitution and Canons? Obviously, the Tribunal does enjoy original jurisdiction as plainly spelled out in Canon IV.5.4.1. The Archbishop's arguments to the contrary were and continue to be frivolous. To offer committee members' self-serving statements about what a canon really means, under the guise of "legislative history," is more than frivolous. Likewise, the proposed amendment to Canon IV.5.4.1, confirms that absent the proposed exception, the Tribunal enjoys original jurisdiction over these proceedings. Importantly, this Tribunal continues to enjoy constitutionally mandated original jurisdiction over all disputes that arise out of the Constitution or Canons until such time, if ever, as Canon IV.5.4.1 is amended.

A second issue presented was: Can the Archbishop seat a Board of Inquiry to evaluate a presentment that was signed but not "sworn to" as called for under Cannon IV.4.1? Obviously, he cannot. Again, not complex. The Archbishop's solution? Have Bps. Hunter, Gillin and Ross call a "mulligan" and say "my intention was to swear to the charges" and "I hereby confirm my swearing to this Presentment." Motion Ex. 1. Unfortunately, the effort to cure the Canonical defect has fallen short.

The June 20, 2023 statement was supposed to cure the defect of the presentment and render this case moot. Unfortunately, it does not meet Canon IV.4.1's requirement that an accuser "sign and swear to" charges. Decision & Order at 17.

So what to do? As discussed during the recent status conference, a sensible next step was for Bps. Hunter, Gillin and Ross to appear in the case, oppose the pending motion for summary judgment on the grounds that the purported presentment is now sworn to, and then request dismissal based on mootness. But they have not. In lieu of that, the Archbishop is now attempting

to erase this whole proceeding as if it never happened. As explained in this Response, reconsideration and vacation of the Tribunal's orders are unwarranted and unjust.

Petitioner has a better solution. During the meetings in Dallas on June 20 and 21, 2023, Petitioner and the Archbishop had their own discussions about proceeding to a Board of Inquiry. Petitioner is willing to do so, but has concerns as to whether proceeding before a Board of Inquiry would be fair given the possibility that the Archbishop, his attorneys and his staff have already communicated with a Board of Inquiry in violation of the Tribunal's February 4, 2023 Stay Order.

Accordingly, Petitioner proposes that the Tribunal take the Motion under advisement and schedule an evidentiary hearing to determine whether the Archbishop has complied with the Stay Order. If he has, then Petitioner will voluntarily dismiss his Amended Petition without prejudice and submit to a Board of Inquiry that will simultaneously hear Petitioner's Canon IV.4.2 Request for Investigation.

ARGUMENT

I. Reconsideration Is Not Warranted.

To start, motions for reconsideration are disfavored. *Northwest Acceptance Corp. v. Lynnwood Equip., Inc.*, 841 F.2d 918, 925–26 (9th Cir.1988).[2] Also, the limited purpose of reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir.1999). A proper motion for reconsideration must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to

[2] Citation to specific federal case authorities and rules is for persuasive purposes. The legal principles concerning reconsideration are universal.

correct a clear error of law or fact or to prevent manifest injustice. See Fed.R.Civ.P. 59(a); *Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir.2010).

The Archbishop has failed to demonstrate any of the aforementioned grounds to warrant reconsideration of the Tribunal's February 4, 2023 Stay Order or its June 6, 2023 Decision & Order. Therefore, the Tribunal should deny the Motion in its entirety.

A. The Tribunal's Decisions Are Sound.

The Archbishop cannot point to any manifest error of law or fact in need of correcting. In both decisions, the Tribunal correctly determined that Canon IV.5.4.1 confers upon it original subject matter jurisdiction to hear matters in dispute that arise out of the Constitution and Canons. There was no dispute that the issues presented in Bp. Ruch's Amended Petition raised questions of the Archbishop's authority that arose out of the Constitution and Canons.

Likewise, the Tribunal properly exercised its authority to fashion an appropriate remedy to preserve the status quo and prevent the Archbishop from exceeding his authority. See the February 4, 2023 Stay Order. The decisions are sound. They remain sound. Nothing has changed that would suggest otherwise.

B. There Is Nothing To Reconsider.

To warrant reconsideration, the Archbishop must present either a change in the law or new facts not previously available. He presents neither. Instead he looks to: (1) the "clarifying" amendment of Canon IV.5.4.1.(2)(a); (2) "legislative history" as to the meaning of Canon IV.5.4.1; and (3) a newly signed statement from Bps. Hunter, Gillin and Ross that they intended to "swear to" the charges in the purported presentment when they originally signed it. Motion at 3, 4 and 5. None of these grounds warrant reconsideration or vacation of the Tribunal's orders, or even dismissal of this case.

1. The "Clarifying Amendment" Changes Nothing.

The Archbishop looks to a proposed change to Canon IV.5.4.1 as a grounds for reconsideration. Motion at 4. It changes nothing. Unless and until ratified by the Provincial Assembly in 2024, the proposed amendment has no effect. Until then, this Tribunal's original jurisdiction remains unchanged and mandatory. *See* Canon IV.5.4.1("The Provincial Tribunal *shall* serve:…"(Emphasis added)). Thus, the proposed amendment to Canon IV.5.4.1 is neither a change in law, nor a new fact that warrants any reconsideration. Instead of a ground to reconsider or vacate, the proposed exception to the scope of the Tribunal's original jurisdiction validates the Tribunal's determination of the scope of its original jurisdiction.

2. Present-day, Personal Opinions As To The Meaning of Legislation Are Not "Legislative History."

Throughout Archbishop's Motion are repeated references to "legislative history" that, according the Motion, edthe Tribunal was in dire need of, but lacked when ruling as it did on June 6, 2023. *See* Motion at 3 "…such important issues as legislative history was necessarily limited to…." These arguments would garner immediate Fed.R.Civ.P. 11 sanction if offered in a federal court because they so obviously flout recognized law as to what constitutes "legislative history."

To start, there was no need to consult "legislative history" to resolve the issues presented by the Archbishop's Motions to Dismiss, Vacate and Disqualify. The Constitutional and Canonical provisions at issue are plain and their application to the facts as plead are perfectly clear. Decision & Order at 12-14. In such a circumstance, a court or tribunal need not and shall not consult anything but the text. *Caminetti v. United States*, 242 U.S. 470, 485, (1917); *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–43, (1984) ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.").

Even if there was some uncertainty as to the meaning or application of the Constitution or Canons at issue, which there was not, the Tribunal rightly limited its consideration of legislative history to objective, contemporaneous, documentary evidence of the drafting process. *See* Appendix A to the Decision & Order.[3] A court or tribunal never considers personal statements from legislators, particularly statements uttered "*after* the bill in question has become law." *Barber v. Thomas*, 560 U.S. 474, 486 (2010)(emphasis in original) "To the extent that legislative history may be considered, it is the official committee reports that provide the authoritative expression of legislative intent, not the stray comments by individual legislators' on the floors of the House and Senate." *In re Walton*, 866 F.2d 981, 983 (8th Cir.1989)(internal quotations and citations omitted).

Here, the Archbishop does not offer any objective evidence of the drafting of the canon at issue. He does not even offer the personal statements made at the time of enactment of those who participated in the drafting process. Instead, the Archbishop offers, under the guise of "legislative history," current-day, inadmissible, self-serving opinions of various members of the "Title IV subcommittee," who, accounting to Archbishop, are the "most involved" and "most familiar" with the intent of Canon IV.5.4. Motion at 5. That is not legislative history. Noone's opinion as to what a statue means is admissible for any purpose. *United States v. Stephens*, 237 F.3d 1031, 1033 (9th Cir. 2001)(Opinion testimony inadmissible because the proper interpretation of a statute is a question of law for the Court to resolve.) The fact that the actual statements are not even offered makes the argument untenable. Motion at 3.

3. The "Presenting" Bishops' June 20, 2023 Statement Has No Bearing On Reconsideration or Vacation.

[3] "What is a legislative history? Legislative history is the official paper trail of the legislative process used in tracking the legislative perspectives, intentions, considerations and background events leading up to the enactment of a law." https://libraryguides.missouri.edu/c.php?g=28632&p=175352

The signing Bps. Hunter, Gillin and Ross have signed a single piece of paper, which the Archbishop claims: (1) proves that Bps. Hunter, Gillin and Ross "in fact signed the original Presentment;" (2) proves that Bps. Hunter, Gillin and Ross thought they swore to the charges when they signed in December 22 and 23, 2023; and (3) proves that "they continue to swear to the charges." Motion at 5.

The first point is true. No one disputes that on December 22, 2023, Bps. Gillin and Ross, and on December 23, 2023, Bp. Hunter, signed the purported presentment. Bps. Hunter, Gillin and Ross further explained the circumstances for and reasons why they signed the charges in a contemporaneous document, the self-styled Addendum. This Tribunal rightly considered the contents of both the purported presentment and the Addendum when it tentatively concluded that the requirements of Canon IV.4.1. had not been met, so that the Archbishop did not have authority under Canon IV to seat a Board of Inquiry. See Stay Order at 2 and Decision & Order at 18.

The second point is false, but also irrelevant. Bps. Hunter, Gillin and Ross' newfound assertion – "[w]hen I 'docu-signed' the Presentment, my intention was to swear to the charges of the Presentment" – contradicts the plain wording of both the purported presentment (see p. 9) and their Addendum. Motion Ex. 1; Decision & Order at 17. Nevertheless, whether Bps. Hunter, Gillin and Ross retain any credibility now that they have changed their minds, again, has no bearing on whether reconsideration is justified or vacation warranted.

The third point is disappointing because the June 20, 2023 statement does not meet the requirements of Canon IV.4.1 as articulated by the Tribunal. Canon IV.4.1 requires the signers of a presentment to sign and swear to the changes "in front of a witness (*i.e*. a notary public) who is legally authorized to administer oaths. The signer must swear that the statements contained in the sworn document are true and correct." Decision & Order at 17-18. This has not happened. Bps.

Hunter, Gillin and Ross have not stated under oath that the charges in the purported presentment are true and correct. Their signatures on the June 20, 2023 statement were not "witnessed" by a notary public. Under the laws of Pennsylvania and Texas, unless Bp. Duncan is a notary public, he is not qualified to administer oaths or witness signings under oath. 42 Pa.C.S. §327(a); 57 Pa.C.S. §301, *et seq*.; Tex. Gov't Code §600.002. As a consequence, the purported presentment is no more "sworn to" today than it was in December of 2022.

An important sub-topic to the June 20, 2023 statement is the status of the Addendum. The Archbishop claims, without evidence, citation or authority, that Bps. Hunter, Gillin and Ross "also withdrew the one-page document titled 'Addendum: Signing Statement…that had been appended to the Presentment." Motion at 6. Not so.

The June 20, 2023 statement says nothing about taking back their statements in the Addendum. According to the Archbishop, the after-the-fact expression of an intent in December of 2022 to swear to the changes nullifies the statements in the Addendum. Motion at 12. But the opposite is true.

If we accept Bps. Hunter, Gillin and Ross's June 20, 2023 statement as true, then their insistence on qualifying their charges on December 24 and 26, 2022, makes their confession of disbelief all the more compelling. The Archbishop wants to erase the fact of the Addendum because it contains admissions that defeat the integrity of the presentment as well as the process that birthed the presentment. But the Addendum does not go away. It remains admissible statements against interest by parties to this proceeding and any subsequent proceeding before a Board of Inquiry.

In a similar vein, the Archbishop contends that the June 20 statement "refutes the undocumented hearsay contention of Petitioners about an oral communication by one of the three Presenting Bishops." Motion at 12. It does not.

The Archbishop is referring to the following allegation in the Amended Petition:

> On January 12, 2023, Bishop Kenneth Ross informed Bishop Ruch that he is one of Bishop Ruch's accusers. Bishop Ross further informed Bishop Ruch that Bishop Ross did not necessarily believe that Bishop Ruch was guilty of any crime warranting discipline, but that he was encouraged by unnamed provincial leaders to sign the presentment in order to "keep the process going." (Emphasis added)

Amended Petition ¶ 3. These statements by Bp. Ross are not inadmissible hearsay. They are admissions against interest by a party opponent. F.R.E. 804(b)(3). Bp. Ross' January 12, 2023 statements are also "documented," as they track precisely with Bp. Ross' statements against interest in his Addendum.

In sum, the June 20, 2023 statement has no bearing on whether the Tribunal should reconsider or vacate its previous rulings. Unfortunately, it also fails to achieve its intended purpose of curing the defective presentment.

II. The Motion To Vacate Should Be Denied.

The Archbishop devotes the majority of his Motion (pages 6-15) to arguments that the Tribunal should vacate its Stay Order and its Decision & Order. These many pages of argument are largely redundant of the arguments as to reconsideration and are summed up in the following conclusionary statement: "Because the precedential value of the PT Decision and PT Stay Order has been overruled and/or clarified by the 'legislative' and 'executive' branches of the Province, those orders should not be left available for citation in future cases." Motion at 14. Everything about this statement is untrue.

First, neither the legislative nor the executive branches of the Province, nor the College of Bishops, have authority to overrule the Tribunal, or even clarify, or "sen[d] a clear 'signal'" to the Tribunal as to what the Constitution or Canons mean. Motion at 7. Rather, it is the exclusive role of the Provincial Tribunal "to determine matters in dispute arising from the Constitution and Canons of the Province." Const. Art. XI.1. Accordingly, the Tribunal is the last word on the meaning of any particular Canon. Certainly, the legislative branch can amend the Constitution and Canons, but that has not happened and may not happen.

Second, even if the proposed amendment is ultimately enacted, the Tribunal's decisions remain important authorities as to its power to fashion appropriate remedies and the scope of its original jurisdiction. The proposed amendment to Canon IV.5.4.1 does not eliminate this Tribunal's original jurisdiction to hear maters in dispute arising out of the Constitutions and Canons. Rather, it attempts to create a limited "exception" as to "Title IV." Motion, Ex. 2. Thus, this Tribunal's decisions in this matter serve as sound articulations of its authority, which the Ecclesiastical Courts can and should look to for guidance in the future. Thus, the motion to vacate should be denied.

III. A Viable and Just Way Forward.

Given that neither Bps. Hunter, Gillin and Ross, nor the Archbishop have presented a pleading that would allow this Tribuanal to dismiss the matter as moot, Petitioner is the only party able and willing to dismiss this proceeding. In light of his communications with the Archbishop on June 20, 2023 in Dallas, Petitioner is willing and able to proceed to a Board of Inquiry notwithstanding the continued invalidity of the purported presentment. However, there remains a material question that needs to be answered before the Tribuanal entertains the Motion and Petitioner voluntarily dismisses this proceeding. That is: Has the Archbishop complied with the

Tribunal's Stay Order? If yes, then Petitioner will voluntarily dismiss his Amended Petition without prejudice. If not, then the Tribunal and Petitioner have a bigger problem to solve.

All the Petitioner wants is a fair canonical process, which includes going before a Board of Inquiry that meets the requirements of the Canons and has not been influenced by the Archbishop. Unfortunately, there is circumstantial evidence that the Archbishop has not complied with the Tribunal's Stay Order.

To start, the Archbishop has emphatically stated in every filing that he disputes that this Tribunal has jurisdiction over the subject matter. Motion at 1, fn 1. Why? Subject matter jurisdiction cannot be waived. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 515 (2006). Petitioner contends that the Archbishop protests too much, and seeks to vacate the Stay Order, because he has not complied with the Stay Order.

Also, Petitioner repeatedly asked Chancellor Scott Ward and Bp. Kevin Allen for confirmation that they and the Archbishop have complied with the Stay Order. See Petitioner Response To Motion To Dismiss, Vacate and Disqualify, Exs. 1 and 2. No one has responded to Petitioner's requests for confirmation that the Archbishop or the "Provincial Officers" have complied with this Tribunal's Stay Order. Their refusal to answer the question is a tacit admission that they have violated this Tribunal's Stay Order.

Finally, Petitioner has already established that the Archbishop did not fully comply with the Tribunal's Stay Order. Petitioner Response To Motion To Dismiss, Vacate and Disqualify Ex. 1. Archbishop Beach appointed Bp. Kevin Allen to oversee the selection of a Board of Inquiry concerning a purported presentment against Bishop Ruch. *Id*. In March of 2023, Bp. Kevin Allen confirmed that (1) he was actively taking steps to seat a board of inquiry and (2) he did not know of and had not received the Stay Order. *Id*. These facts warrant further investigation as to the

Archbishop's compliance with the Stay Order before either the Tribunal or the Petitioner can proceed further.

Accordingly, a fair and effective way forward is as follows: the Tribunal takes the pending Motion under advisement and schedules an evidentiary hearing to determine whether the Archbishop has violated the Stay Order or otherwise inappropriately influenced the Board of Inquiry. If the Archbishop, Chancellor Scott Ward, Bp. Kevin Allen and the other "Provincial Officers" have honored the February 4, 2023 Stay Order, as one would expect they have, then the Petitioner will voluntarily dismiss his Amended Petition without prejudice[4] and the parties will proceed to the Board of Inquiry as per their agreements.

CONCLUSION

For the forgoing reasons, Petitioner Bishop Stewart Ruch prays for an order from this Tribunal entering and continuing the Motion to Reconsider, Vacate and Dismiss and setting this matter for an evidentiary hearing as to the Archbishop's compliance with this Tribuanal's February 4, 2023 Stay Order and to grant such other relief as the Tribunal deems just and proper.

Dated: July 28, 2023

Respectfully submitted,

+ Stewart R. Ruch III

Charles L. Philbrick

The Rt. Rev. Stewart Ruch, III
Bishop, Diocese of the Upper Midwest

Charles L. Philbrick
Chancellor, Diocese of the Upper Midwest

[4] A voluntary dismissal must be without prejudice in order to preserve for appeal Petitioner's objection that the purported presentment is invalid as claimed in Counts I and II of the Amended Petition.

PROOF OF SERVICE

I swear under penalty of perjury that I served a true and correct copy of the forgoing Response To the Motion To Reconsider, Vacate and Dismiss by electronic mail on this July 28, 2023 upon:

The Most Rev. Foley Beach
foley.beach@anglicanchurch.net

The Rt. Rev. Kenneth Ross
ken@rockymountainanglican.org

The Rt. Rev. Todd Hunter
toddhunter@c4so.org

The Rt. Rev. Raymond Gillin
CGillin4@gmail.com

The Rt. Rev. Julian Dobbs
bishop.dobbs@adlw.org

Scott J. Ward
SJW@GG-Law.com

By: /s/ Charles L. Philbrick