

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

**IN RE MULTI-CIRCUIT CHURCH
PROPERTY LITIGATION**

Civil Case Numbers:

CL 2007 – 248724,
CL 2006 – 15793,
CL 2006 – 15682,
CL 2007 – 556,
CL 2007 – 1625,
CL 2007 – 1235,
CL 2007 – 1236,
CL 2007 – 1237,
CL 2007 – 1238,
CL 2007 – 5249,
CL 2007 – 5250,
CL 2007 – 5363,
CL 2007 – 5364,
CL 2007 – 5362,
CL 2007 – 5686,
CL 2007 – 5685,
CL 2007 – 5683,
CL 2007 – 5682,
CL 2007 – 5684,
CL 2007 – 5902, and
CL 2007 – 5903.

**CANA CONGREGATIONS' ANSWER, GROUNDS OF DEFENSE AND
COUNTERCLAIM TO THE COMPLAINT FILED BY THE EPISCOPAL CHURCH**

COMES NOW the Defendants The Falls Church, Truro Church, Church of Our Saviour at Oatlands, Church of the Apostles, Church of the Epiphany, Church of the Word, St. Margaret's Church, Christ the Redeemer Church, St. Stephen's Church, Potomac Falls Church and St. Paul's Church (hereafter collectively the "CANA Congregations"), and their Related

Trustees,¹ and file this Answer, Grounds of Defense and Counterclaim to the Complaint filed by The Episcopal Church (“TEC”) and state as follows:

I. ANSWER

The CANA Congregations respond to the numbered paragraphs of the Complaint and state that unless expressly admitted, each and every allegation contained in the Complaint is denied.

1. The CANA Congregations admit the allegation in the first sentence and deny the allegation in the second sentence of ¶ 1 of the Complaint.

2. The CANA Congregations admit that The Falls Church, Truro Church, Church of Our Saviour at Oatlands, Church of the Apostles, Church of the Epiphany, St. Margaret’s Church, Christ the Redeemer Church, St. Stephen’s Church and St. Paul’s Church incorporated as non-stock religious corporations between February 2006 and January 2007 as permitted by Virginia law and that Church of the Word and Potomac Falls Church are unincorporated associations. The CANA Congregations further admit that TEC claims an interest in their properties, but deny that TEC has any right to such properties and further deny the remaining allegations in ¶ 2 of the Complaint.

3. The CANA Congregations admit the allegations in ¶ 3 of the Complaint.

4. The CANA Congregations admit the allegations in ¶ 4 of the Complaint.

¹ The Trustees of The Falls Church are represented separately. The Related Trustees to the CANA Congregations are named parties in title only. The Related Trustees take no position with respect to the allegations contained within the Complaint and await the Court’s determination on the issues in the consolidated matters. As such, the Related Trustees stand ready to follow this Court’s direction subject to any appeal rights of any party hereto. If called upon to Answer, however, the Related Trustees adopt the Answers set forth by the CANA Congregations.

5. The CANA Congregations admit the allegations in ¶ 5 of the Complaint.
6. The CANA Congregations admit the allegations in ¶ 6 of the Complaint.
7. The CANA Congregations admit the allegations in ¶ 7 of the Complaint.
8. Paragraph 8 of the Complaint contains a legal conclusion to which no response is necessary.

9. The CANA Congregations admit that the Rt. Rev. Martyn Minns served as the rector of Truro Church, that the former individual defendants identified in ¶ 9 of the Complaint served on the Vestry of Truro Church, and that the Vestry of Truro Church has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of Truro Church. The CANA Congregations deny the remaining allegations in ¶ 9 of the Complaint.

10. The CANA Congregations admit that Rev. David R. Harper served as the rector of Church of the Apostles, that the former individual defendants identified in ¶ 10 of the Complaint served on the Vestry of Church of the Apostles, and that the Vestry of Church of the Apostles has at all times pertinent to this action exercised, and continues to exercise control over the real and personal property of Church of the Apostles. The CANA Congregations deny the remaining allegations in ¶ 10 of the Complaint.

11. The CANA Congregations admit that the Rev. Robin Rauh served as the rector of Church of the Epiphany, that the former individual defendants identified in ¶ 11 of the Complaint served on the Vestry of Church of the Epiphany, and that the Vestry of Church of the Epiphany has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of Church of the Epiphany. The CANA Congregations deny the

remaining allegations in ¶ 11 of the Complaint.

12. The CANA Congregations admit that the Rev. Mark Sholander has served as the Rector of Christ the Redeemer Church, a Virginia nonstock corporation, since January 2007, that the former individual defendants identified in ¶ 12 of the Complaint served on the Vestry of Christ the Redeemer Church, and that the Vestry of Christ the Redeemer Church has at all times pertinent to this action exercised, and continues to exercise, control over all property of Christ the Redeemer Church. The CANA Congregations deny the remaining allegations in ¶ 12 of the Complaint.

13. The CANA Congregations admit that the Rev. Dr. John W. Yates II served as the rector of The Falls Church, that the former individual defendants identified in ¶ 13 of the Complaint served on the Vestry of The Falls Church, and that the Vestry of The Falls Church has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of The Falls Church. The CANA Congregations deny the remaining allegations in ¶ 13 of the Complaint.

14. The CANA Congregations admit that the Rev. Neal Brown served as the rector of St. Margaret's Church, that the former individual defendants identified in ¶ 14 of the Complaint served on the Vestry of St. Margaret's Church, and that the Vestry of St. Margaret's Church has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of St. Margaret's Church. The CANA Congregations deny the remaining allegations in ¶ 14 of the Complaint.

15. The CANA Congregations admit that the Rev. David N. Jones served as the rector of St. Paul's Church, that the former individual defendants identified in ¶ 15 of the Complaint

served on the Vestry of St. Paul's Church, and that the Vestry of St. Paul's Church has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of St. Paul's Church. The CANA Congregations deny the remaining allegations in ¶ 15 of the Complaint.

16. The CANA Congregations admit that Rev. Robin T. Adams served as the rector of Church of the Word, that the former individual defendants identified in ¶ 16 of the Complaint served on the Vestry of Church of the Word, and that the Vestry of Church of the Word has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of Church of the Word. The CANA Congregations deny the remaining allegations in ¶ 16 of the Complaint.

17. The CANA Congregations admit that since 1977, the Rev. Elijah Brockenbrough White, III has served as the rector of the Church of Our Savior at Oatlands, that Daniel L. Bell, II, and other former individual defendants not identified in ¶ 17 of TEC's Complaint are members of the Vestry of the Church of Our Savior at Oatlands, and that the Vestry of the Church of Our Savior at Oatlands has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of Church of Our Savior at Oatlands, on behalf of said Congregation. The CANA Congregations deny the remaining allegations in ¶ 17 of the Complaint.

18. The CANA Congregations admit that the Rev. Jack Grubbs served as the Vicar of Potomac Falls Church, and that the leadership of Potomac Falls Church, under the authority of the Vestry of The Falls Church, have at all times pertinent to this action exercised, and continue to exercise, control over all property of Potomac Falls Church. The CANA Congregations deny

the remaining allegations in ¶ 18 of the Complaint.

19. The CANA Congregations admit that the Rev. Jeffrey O. Cerar served as the rector of St. Stephen's Church, that the former individual defendants identified in ¶ 19 of the Complaint served on the Vestry of St. Stephen's Church, and that the Vestry of St. Stephen's Church has at all times pertinent to this action exercised, and continues to exercise, control over the real and personal property of St. Stephen's Church. The CANA Congregations deny the remaining allegations in ¶ 19 of the Complaint.

20. The CANA Congregations admit the Trustees of Truro Church hold title to real property for the benefit of Truro Church and further admit that the deeds produced pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

21. The CANA Congregations admit the Trustees of Church of the Apostles hold title to real property for the benefit of Church of the Apostles and further admit that the deeds produced pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

22. The CANA Congregations admit the Trustees of Church of the Epiphany hold title to real property for the benefit of Church the Epiphany and further admit that the deeds produced pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

23. The CANA Congregations admit the Trustees of The Falls Church hold title to real property for the benefit of The Falls Church and further admit that the deeds produced pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the

deeds to property at issue in this action.

24. The CANA Congregations admit the Trustees of St. Margaret's Church hold title to real property for the benefit of St. Margaret's Church and further admit that the deeds produced pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

25. The CANA Congregations admit the Trustees of St. Paul's Church hold title to real property for the benefit of St. Paul's Church and further admit that the deeds produced pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

26. The CANA Congregations admit that the individual defendants, not originally identified by the Plaintiff in paragraph 17 of the Complaint, are the current Trustees of certain real property of the Church of Our Savior at Oatlands, these Trustees having been appointed by Court Order to hold title to that real property on behalf of the Church of Our Saviour at Oatlands, consistent with the original 1875 deed of conveyance for that property which granted it to the use and benefit of said local Congregation. All other allegation of said paragraph 26 are denied.

27. The CANA Congregations admit the Trustees of St. Stephen's Church hold-title to real property for the benefit of St. Stephen's Church and further admit that the deeds produced pursuant to the CANA Congregations' Motion Craving Oyer are true and correct copies of the deeds to property at issue in this action.

28. The CANA Congregations deny that TEC is an autonomous hierarchical religious denomination and admit that TEC has some hierarchical attributes. The CANA Congregations further admit that TEC purports to have a loose three-tiered form of "government" as reflected in

its Constitution and Canons, but deny that such is binding on the CANA Congregations or the members of the CANA Congregations.

29. The CANA Congregations admit that TEC purports to be governed in part by a bicameral legislative body called its "General Convention" and that the Presiding Bishop is elected by the General Convention, and has the responsibilities as provided by the TEC Constitution and Canons, but denies that the General Convention is the highest level of TEC governance.

30. The CANA Congregations lack sufficient information to admit that TEC is currently affiliated with 111 incorporated or unincorporated dioceses located in the United States and other countries. Upon information and belief, a number of the dioceses are not in full communion with TEC. The CANA Congregations admit that each diocese purports to have a governing body which, among other things, operates under the authority, and carries out the mission, of the broader Anglican Communion. The CANA Congregations further admit that many TEC dioceses are governed by purportedly representative legislatures that in turn elect the ecclesiastical authority, which typically includes the diocesan and other bishops, and a committee of clergy and laity that acts as a council of advice to the diocesan bishop.

31. The CANA Congregations do not have sufficient information to admit or deny how many congregations or parishes continue to be affiliated with TEC, but upon information and belief, believe that congregations and Dioceses continue to sever, or plan to sever, ties with TEC, providing further evidence of the significance of the division in TEC. The CANA Congregations are without sufficient information and belief to admit or deny the remaining allegations in paragraph 31, which are for accordingly, for the moment, denied.

32. The CANA Congregations deny that TEC is an autonomous hierarchical religious denomination and admit that TEC has some hierarchical attributes and that TEC allows a representative participation as alleged in ¶ 32 of the Complaint.

33. The CANA Congregations admit that under the 2006 version of the sections cited, there are spot references to division of an existing diocese, but no specific enabling of authority or establishment of procedure for any authorization of a division by the TEC's General Convention. The Defendants deny the presence or absence of such an action by the TEC (or Diocese) has any bearing on the determination of whether a "division" has occurred under Virginia Code § 57-9, and denies such an action has any relevance as to whether the CANA Congregations have the right to sever their ties with TEC and the Diocese. The CANA Congregations admit The Protestant Episcopal Church in the Diocese of Virginia ("Diocese") was previously divided, but lack sufficient information to admit or deny that it was done pursuant to the authorization of the General Convention.

34. The CANA Congregations deny the allegations set forth in paragraph 34, which upon the 2006 version of sections cited, relate to "missionary dioceses" and not "dioceses" as alleged.

35. The CANA Congregations deny the allegations contained in ¶ 35 of the Complaint. As evidenced by the CANA Congregations' petitions pursuant to Virginia Code § 57-9, TEC's and the Diocese of Virginia's actions have caused a division within the Diocese, the national Episcopal Church, and the Anglican Communion.

36. The CANA Congregations admit that TEC is a constituent member of the Anglican Communion and, as such, is subject to the doctrinal authority of the Anglican

Communion; that the Anglican Communion consists of 38 provinces which trace their roots to the Church of England; and that TEC is in broken or impaired communion with 25 of the 38 provinces of the Anglican Communion due to the division caused in the Anglican Communion, by the TEC and Diocese.

37. The CANA Congregations admit that they joined the Convocation of Anglicans in North America and that CANA is in communion with the Anglican Communion through the Church of Nigeria. The CANA Congregations further admit that by withdrawing from TEC and joining CANA, they have restored themselves to full communion with all other provinces of the Anglican Communion.

38. The CANA Congregations admit that a number of churches and clergy in Virginia that were formerly affiliated with the Diocese and with TEC have voted to recognize the division in the Anglican Communion, in TEC, and in the Diocese, to disaffiliate from TEC and the Diocese, and to affiliate with the Church of Uganda, which is a member of the Anglican Communion.

39. The CANA Congregations admit that in the past there have been theological differences among the members of the Anglican Communion but deny that they were of the same intensity as the present differences and or that constituent members of the Anglican Communion are independent.

40. The CANA Congregations admit that TEC's General Convention and the Diocese have, from time to time, purported to adopt and amend Constitutions and Canons, but state further that not all of such actions have been taken with the regularity and in compliance with the rules and procedures governing such actions, and some are invalid. The CANA

Congregations are without knowledge or information sufficient to form a belief with respect to other dioceses, and therefore deny the allegations set forth in this paragraph as to those dioceses. The CANA Congregations deny that they are bound by the Constitution and Canons of either TEC or the Diocese of Virginia.

41. The CANA Congregations admit that TEC and the Diocese's canons purport to govern both temporal and spiritual matters and contain a number of provisions that specifically relate to the use and control of parish property, but deny that any canons relating to parish property create any legally enforceable property, trust or contract rights in any property of the CANA Congregations on the part of TEC or the Diocese.

42. The CANA Congregations do not have sufficient information to admit or deny the allegation with respect to former Diocesan Canons I.7 and I.10, adopted in 1793, as TEC has not attached the Canons to its Complaint, but note that these Canons were revoked in the early 1800s. Moreover, the excerpted portions of the former Canons only purported prior to their revocation to control property actually owned by TEC and as such have no application to the CANA Congregations' property.

43. The CANA Congregations do not have sufficient information to admit or deny the allegation with respect to Canon II.6 of the TEC Canons, but deny that any canons relating to parish property create any legally enforceable property, trust or contract rights in any property of the CANA Congregations on the part of TEC or the Diocese. The CANA Congregations further note that the excerpted portion of the Canon, if accurate, only purports to secure consecrated property, which even assuming arguendo said Canon were enforceable, would only apply to a portion of the properties owned by the CANA Congregations. The CANA Congregation also

note that TEC admitted officially, continuously and repeatedly that its property canons are merely aspirational, as state law controls ownership and control of the property of individual congregations.

44. The CANA Congregations do not have sufficient information to admit or deny the allegation with respect to Canon I.7.3, as TEC has not attached the Canon to its Complaint, but deny that any canons relating to parish property create any legally enforceable property, trust or contract rights in any property of the CANA Congregations on the part of TEC or the Diocese. CANA Congregations further note that TEC admitted officially, continuously and repeatedly that its property canons are merely aspirational, as state law controls ownership and control of the property of individual congregations. CANA Congregations also note that the Canon quoted in this paragraph does not seek to bar the CANA Congregations from conclusively deciding the title to their properties pursuant to Virginia Code § 57-9 or in the exercise of their independent right to withdraw from TEC and the Diocese.

45. The CANA Congregations admit that Diocesan Canons 15.1 and 15.2 state what they purport to state, but deny that any canons relating to parish property create any legally enforceable property, trust or contract rights in any property of the CANA Congregations on the part of TEC or the Diocese. The CANA Congregations further note that TEC admitted officially, continuously and repeatedly that its property canons are merely aspirational, as state law controls ownership and control of the property of individual congregations. The CANA Congregations deny that the Canons quoted in this paragraph control or have any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9, establish any property interest in the CANA Congregations' properties, or restrict or limit in any way the exercise of

their independent right to withdraw from TEC and the Diocese.

46. The CANA Congregations admit that TEC Canon III.9(5)(a)(1-2) states what it purports to state and relates only to the sacerdotal functions of a rector, but deny that it controls or has any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9 or that it established any property interest in the CANA Congregations' properties.

47. The CANA Congregations admit that TEC Canons I.7.(4) and I.7(5) state what they purport to state, but deny that they were properly passed or that they control or have any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9, that they established any property interest in the CANA Congregations' properties, or that they are enforceable in this civil action.

48. The CANA Congregations admit that Diocesan Canon 15.1 states what it purports to state, but deny that it controls or has any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9, that it established any property interest in the CANA Congregations' properties, or that is enforceable in this civil action.

49. The CANA Congregations deny the allegations contained in ¶ 49 of the Complaint.

50. The CANA Congregations admit that Diocesan Canon 15.3 states what it purports to state, but deny that it controls or has any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9, that it established any property interest in the CANA Congregations' properties, or that is enforceable in this civil action.

51. The CANA Congregations admit that TEC Canon I.13.2(a) states what it purports to state, but deny that it controls or has any effect on the petition the CANA Congregations filed

pursuant to Virginia Code § 57-9, that it established any property interest in the CANA Congregations' properties, or that is enforceable in this civil action.

52. The CANA Congregations admit that Diocesan Canon 10 states what it purports to state, but deny that it controls or has any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9, that it established any property interest in the CANA Congregations' properties, or that is enforceable in this civil action.

53. The CANA Congregations admit the preamble to the Diocesan Constitution and Article XVII state what they purport to state, but deny the remaining allegations contained in ¶ 53 of the Complaint.

54. The CANA Congregations admit that TEC Canon I.17(8) states what it purports to state, but deny that it controls or has any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9, that it established any property interest in the CANA Congregations' properties, or is enforceable in this civil action.

55. The CANA Congregations admit that Diocesan Canon 11.8 states what it purports to state, but deny that it controls or has any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9, that it established any property interest in the CANA Congregations' properties, or is enforceable in this civil action.

56. The CANA Congregations admit that Diocesan Canon 11.11 states what it purports to state, but deny that it controls or has any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9, that it established any property interest in the CANA Congregations' properties, or is enforceable in this civil action.

57. The CANA Congregations deny the allegations contained in this paragraph.

58. The CANA Congregations deny the allegations contained in this paragraph.

59. The CANA Congregations admit that Diocesan Canon 10.6 states what it purports to state, but deny that it controls or has any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9, that it established any property interest in the CANA Congregations' properties, or is enforceable in this civil action.

60. The CANA Congregations admit that Diocesan Canon 9.3 states what it purports to state, but deny that it controls or has any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9, that it established any property interest in the CANA Congregations' properties, or is enforceable in this civil action.

61. The CANA Congregations deny the allegations contained in this paragraph.

62. The CANA Congregations admit that an overwhelming majority of each of their congregations (other than defendant Christ the Redeemer Church) voted to withdraw from TEC and the Diocese and to affiliate with CANA and that they did so in reliance on the Protocol adopted by the Special Committee appointed by Diocese Bishop Peter James Lee. The CANA Congregations further admit that the congregation of defendant Christ the Redeemer Church, which has never been affiliated with TEC or the Diocese, unanimously also voted to affiliate with CANA.

63. The CANA Congregations admit the allegations contained in this paragraph and further specifically incorporate by reference the petitions they filed pursuant to Virginia Code § 57-9 as further response to the Complaint.

64. The CANA Congregations deny that the Diocese, the Standing Committee of the Diocese, or the Diocesan Bishop took any action with regard to the Rev. Mark Sholander or any

other clergy of defendant Christ the Redeemer Church. The CANA Congregations admit the other allegations in this paragraph, but aver that the Diocese lacked ecclesiastical jurisdiction over the CANA Congregations and their clergy, and breached the Protocol by taking the actions alleged in this paragraph, and further deny that such actions have any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9, restrict or limit in any way the exercise of independent right of the CANA Congregations to withdraw from TEC and the Diocese, or are otherwise enforceable in this civil action.

65. Without attachment to the Complaint of the resolutions referenced, the Defendants can neither admit or deny the precise content of what action by resolution the Executive Committee of the Diocese purported to take on January 18, 2007. The CANA Congregations do state that all of the properties of the CANA Congregations have continued in religious use and have not been “abandoned”, that the Diocese lacked ecclesiastical jurisdiction over the CANA Congregations and their clergy to pass any such “resolutions”, and breached the Diocese’s own Protocol for Departure by taking the actions alleged in this paragraph. CANA Congregations further deny that the Executive Committee’s actions have any effect on the petition the CANA Congregations filed pursuant to Virginia Code § 57-9, restrict or limit in any way the exercise of independent right of the CANA Congregations to withdraw from TEC and the Diocese, or are otherwise enforceable in this civil action.

66. The CANA Congregations do not have sufficient information to admit or deny the allegations in this case, but if called upon to answer would deny the same.

67. The CANA Congregations admit that they own, possess and control all of their real and personal property and are using said property for the benefit of their congregations, but

deny the remaining allegations in this paragraph.

68. The CANA Congregations deny the allegations in this paragraph.

69. The CANA Congregations deny the allegations as phrased, but aver that if the Court approves the various petitions filed pursuant to Virginia Code § 57-9 then title to real and personal property will be conclusively vested in the CANA Congregations.

70. The CANA Congregations admit that TEC has asserted an interest in the CANA Congregations' properties, but deny that TEC has any such property interest.

71. The CANA Congregations deny the allegations contained in this paragraph.

WHEREFORE, the defendant CANA Congregations, by counsel, respectfully request that this Honorable Court enter judgment in their favor on the Complaint, award them their costs in defending the Complaint, and grant such additional relief as the case may require and the Court deems just.

II. GROUNDS OF DEFENSE

The CANA Congregations, and for their Grounds of Defense, states as follows:

1. TEC's claim is barred by equitable estoppel and/or estoppel en pais.
2. TEC's claim is barred by waiver and/or estoppel, and unjust enrichment.
3. TEC's claim is barred by unclean hands.
4. TEC's claim is barred by laches.
5. TEC's claim is barred by unconscionability.
6. TEC's requested relief, to the extent based upon an asserted contractual rights, constitutes an unenforceable penalty clause in violation of Virginia public policy.
7. The CANA Congregations intend to rely upon any further defense learned during

the course of discovery or the trial of this matter.

8. TEC has failed to state a sufficient claim upon which any of the relief it requests can be afforded to it.

9. TEC has failed to allege the “ministry and mission” to which TEC requests the Court Order the subject real property to be applied.

10. TEC has failed to state a legal basis, in contract, trust or other law upon which the Court can properly award to TEC an Order requiring the CANA Congregations’ property only be used “in accordance with the Constitutions and canons of TEC and the Diocese”.

Likewise, the TEC has alleged no basis sufficient in law for the award of an injunction as a further form of the same prayer.

11. TEC’s claim for transfer by Order of the subject property from the use of the local Congregations to the use of a national religious organization with which the CANA Congregations are no longer in theological communion, is barred by the rights of the CANA Congregations and their members to worship freely and not be forced to support a particular religious entity, under the provisions of the First Amendment of the United States Constitution, and the Virginia Bill of Rights guaranteeing to its citizens the free exercise and non-establishment of religion (Virginia Constitution, Article I, Section 16 and 17).

12. TEC’s claims and action are barred by Virginia Code Section 57-9 which provides that the Court’s determination under the Petitions filed thereunder by nine of the CANA congregations is “conclusive” as to the CANA Congregations’ right to ownership, possession and use of the real and personal property at issue.

III. COUNTERCLAIM FOR DECLARATORY RELIEF AND UNJUST ENRICHMENT, AND CONSTRUCTIVE TRUST

The CANA Congregations, and for their Counterclaim for Declaratory Relief and Unjust Enrichment, state as follows:

1. The CANA Congregations consist of ten (10) individual congregations that were formerly affiliated with the TEC and the Diocese and one congregation, defendant Christ the Redeemer Church, that has never been affiliated with TEC or the Diocese.

2. Nine (9) of the eleven (11) CANA Congregations own real property which is held for each congregations' benefit through trustees.

3. In all instances, the CANA Congregations own personal property which is likewise held for each congregations' benefit through trustees (or, in the case of defendant Christ the Redeemer Church, a Virginia nonstock corporation, held directly by the church).

4. The deeds to the real property are titled and held for the sole benefit of each of the CANA Congregations.

5. Each of the CANA Congregations' real properties were either purchased with funds at the congregational level, and not from TEC or the Diocese, or were donated to the individual CANA Congregations for the benefit of the local congregations and not from or for the benefit of either TEC or the Diocese.

6. Upon information and belief, the intent of each of the grantors of the deeds for each of the CANA Congregations was to benefit the individual congregations and not for the benefit of TEC or the Diocese.

7. Likewise, personal property owned by the various CANA Congregations was either purchased or acquired with the individual congregations' own funds or donated for the

benefit of each of the CANA Congregations with the intent of benefiting only the individual congregations and not TEC or the Diocese.

8. At all times relevant to this counterclaim, including but not limited to prior to any disassociation with TEC and the Diocese, the CANA Congregations have been generally self-contained and relatively autonomous congregations which were responsible for their own source of funding.

9. Unlike a true hierarchical church, TEC and the Diocese did not receive any mandatory funding from the CANA Congregations. For instance, the Diocese relies upon voluntary contributions from individual congregations and has no means of enforcing donations.

10. At the same time that TEC and the Diocese have, and had, no means of compelling funding from affiliated congregations, TEC and the Diocese do not, and have not, provided any direct financial support for the CANA Congregations either in terms of the operating and maintenance expenses for the CANA Congregations' properties.

11. In each instance, the membership of the individual congregations have provided the vast majority of funding or gifting for the CANA Congregations in terms of acquisition of real and personal property, maintenance of such property, and any improvements to real property. Such funding or gifting by the membership was with the donative intent of benefiting the local CANA Congregations and not TEC and the Diocese.

COUNT I
(DECLARATORY JUDGMENT)

12. The allegations of paragraphs 1 – 11 of this Counterclaim are incorporated herein by reference.

13. TEC and the Diocese have stated in their Complaint an adverse interest in the real

and personal properties of the CANA Congregations. As such there is a justiciable controversy between the parties.

14. The CANA Congregations are by title, possession and control and all other legal indication the true and lawful owners of their respective properties, and that TEC has no cognizable legal claim upon the same. Accordingly, if not already so declared by the results of the separate Section 57-9 proceedings, those properties should properly be declared in the sole and exclusive ownership of the respective congregations, free and clear of any claim of right or interest by TEC.

COUNT II
(UNJUST ENRICHMENT)

15. The allegations of paragraphs 1-14 of this Counterclaim are incorporated herein by reference.

16. If the Court were to determine that TEC and the Diocese have superior rights to the CANA Congregations' real and personal property then TEC and the Diocese would be unjustly enriched at the expense of the CANA Congregations and TEC and Diocese would receive a benefit that the members of the CANA Congregations and donors never intended to confer.

COUNT III
(CONSTRUCTIVE TRUST)

17. The allegations of paragraphs 1-16 of the Counterclaim are incorporated herein by reference.

18. If the Court were to determine that TEC and the Diocese have superior rights to the CANA Congregations' real and personal property, then TEC and the Diocese would be

unjustly and unfairly enriched at the expense of the CANA Congregations and TEC and Diocese would be receive a benefit that the members of the CANA Congregations never intended to confer.

19. The CANA Congregations would therefore be entitled to have a constructive trust of the CANA Congregations' real and personal property impressed upon TEC and the Diocese in favor of the CANA Congregations.

WHEREFORE, the CANA Congregations pray that this Honorable Court enter judgment in their favor and:

1. Declare that the real and personal property owned by the CANA Congregations is, and should be, vested exclusively in the CANA Congregations; or

2. In the alternative, and only if the Court find that TEC and/or the Diocese have a superior right to the CANA Congregations' real and personal property that the Court:

a. Enter judgment in the amount that TEC and Diocese has been unjustly enriched which is the fair market value of the real and personal property owned by the CANA Congregations; and

b. Impose a constructive trust over the CANA Congregations' real and personal property for the benefit of the CANA Congregations; and

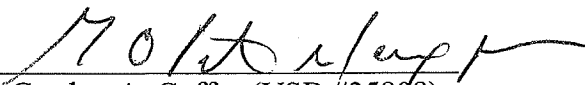
3. For such additional relief as this Court deems just and necessary.

Dated: September 17, 2007

Respectfully submitted,

WINSTON & STRAWN

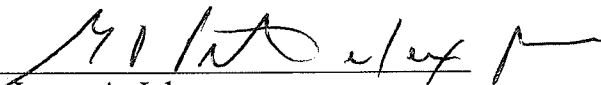
By:


Gordon A. Coffee (VSB #25808)

Gene C. Schaerr
Steffen N. Johnson
Andrew C. Nichols (VSB #66679)
1700 K Street, N.W.
Washington, DC 20006-3817
(202) 282-5000 (telephone)
(202) 282-5100 (facsimile)
*Counsel for Truro Church and its Related Trustees, The
Falls Church, Church of the Apostles, and Church of the
Epiphany*


SEMMES, BOWEN & SEMMES, P.C.

By: _____


James A. Johnson
Paul N. Farquharson
Scott H. Phillips

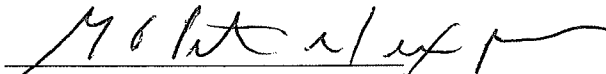
250 W. Pratt Street
Baltimore, Maryland 21201
(410) 539-5040 (telephone)
(410) 539-5223 (facsimile)
Counsel for The Falls Church

SEMMES, BOWEN & SEMMES, P.C.

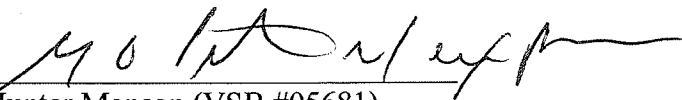
By: 
Sarah W. Price (VSB #68555)

Suite 200
1577 Spring Hill Road
Vienna, Virginia 22182
Baltimore, Maryland 21201
(703) 760-9473 (telephone)
(703) 356-6989 (facsimile)
Counsel for The Falls Church

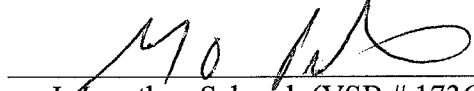
GAMMON & GRANGE, P.C.

By: 
Scott J. Ward (VSB #37758)
Timothy R. Obitts (VSB #42370)
Robert W. Malone (VSB #65697)

8280 Greensboro Drive, Seventh Floor
McLean, VA 22102
703-761-5000 (telephone)
703-761-5023 (facsimile)
*Counsel for Christ the Redeemer Church, Potomac Falls
Church, and The Falls Church*

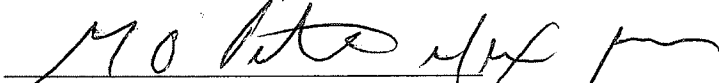

R. Hunter Manson (VSB #05681)
P. O. Box 539
876 Main Street
Reedville, VA 22539
804-453-5600 (telephone)
804-453-7055 (facsimile)
Counsel for St. Stephen's Church

SANDS ANDERSON MARKS & MILLER

By: 
J. Jonathan Schraub (VSB # 17366)
George O. Peterson (VSB # 44435)

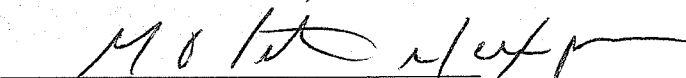
1497 Chain Bridge Road, Suite 202
McLean, VA 22101
703-893-3600 (telephone)
703-893-8484 (facsimile)
Counsel for Truro Church and its Related Trustees

WALSH, COLLUCCI, LUBELEY,
EMERICK & WALSH, PC

By: 
E. Andrew Burcher (VSB # 41310)


4310 Prince William Parkway, S-300
Prince William, VA 22192
703-680-4664 x 159 (telephone)
703-680-2161 (facsimile)
*Counsel for Church of the Word, St. Margaret's Church,
St. Paul's Church and their Related Trustees*

MARY A. McREYNOLDS, P.C.

By: 
Mary A. McReynolds (admitted pro hac vice)

1050 Connecticut Avenue, N.W.
Tenth Floor
Washington, D.C. 20036
(202) 426-1770 (telephone)
(202) 772-2358 (facsimile)
*Counsel for Church of the Apostles, Church of the
Epiphany, Herndon, St. Margaret's Church, St. Paul's
Church, Haymarket, and St. Stephen's Church, and their
Related Trustees*

CARR & CARR

By: 
James E. Carr (VSB #14567)

44135 Woodbridge Parkway

Suite 260

Leesburg, VA 20176

703-777-9150 (telephone)

703-726-0125 (facsimile)

*Counsel for Church of Our Saviour at Oatlands and its
Related Trustees*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September, 2007 a copy of the foregoing CANA Congregations' Answer, Grounds of Defense and Counterclaim to the Complaint filed by The Episcopal Church, was sent by electronic mail and first-class mail, postage prepaid, to:

Bradfute W. Davenport, Jr., Esquire
George A. Somerville, Esquire
Joshua D. Heslinga, Esquire
TROUTMAN SANDERS, LLP
P.O. Box 1122
Richmond, VA 23218


Heather H. Anderson, Esquire
Adam M. Chud, Esquire
Soyong Cho, Esquire
GOODWIN PROCTER, LLP
901 New York Ave., N.W.
Washington, D.C. 20001

Mary C. Zinsner, Esquire
TROUTMAN SANDERS, LLP
1660 International Drive, Suite 600
McLean, VA 22102

Edward H. Grove, III, Esquire
BRAULT PALMER GROVE
WHITE & STEINHILBER, LLP
10533 Main Street
Fairfax, VA 22030

With a courtesy copy by electronic mail and hand-delivered to:

Seana C. Cranston
Law Clerk to the Honorable Randy I. Bellows
4110 Chain Bridge Road
Fifth Floor Judges' Chambers
Fairfax, VA 22030



George O. Peterson