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August 31, 2007

VIA HAND-DELIVERY

Fairfax County Circuit Court
ATTENTION: Robin Brooks
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

RE: *Multi-Circuit Episcopal Church Property Litigation*, (Circuit Court of Fairfax County, CL-2007-0248724);

In re: Church at the Falls, The Falls Church; (Circuit Court of Fairfax County; CL 2007-5249);

In re: Truro Church; (Circuit Court of Fairfax County; CL 2006-15792);

In re: Church of the Epiphany; (Circuit Court of Fairfax County; CL 2007-556);

In re: Church of Our Savior at Oatlands; (Circuit Court of Fairfax County; CL 2007-5363);

In re: St. Paul's Church, Haymarket; (Circuit Court of Fairfax County; CL 2007-5686);

In re: St. Margaret's Church; (Circuit Court of Fairfax County; CL 2007-5685);

In re: St. Stephen's Church; (Circuit Court of Fairfax County; CL 2007-5903);

In re: Church of the Apostles; (Circuit Court of Fairfax County; CL 2006-15793);

The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church (Circuit Court of Fairfax County; CL 2007-1236);

The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles (Circuit Court of Fairfax County; CL 2007-1238);

The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon (Circuit Court of Fairfax County; CL 2007-1235);

The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church (Circuit Court of Fairfax County; CL 2007-1237);

The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket (Circuit Court of Prince William County Case No. CL 73466)(Circuit Court of Fairfax County; CL 2007-5683);

The Protestant Episcopal Church in the Diocese of Virginia v. St. Margaret's Church (Circuit Court of Prince William Case No. CL 73465)(Circuit Court of Fairfax County; CL 2007-5682);

The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word (Circuit Court of Prince William County Case No. CL 73464)(Circuit Court of Fairfax County; CL 2007-5684);

The Protestant Episcopal Church in the Dioceses of Virginia v. Potomac Falls Church (Circuit Court of Loudoun County Case No. 44149)(Circuit Court of Fairfax County; CL 2007-5362);

The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Saviour at Oatlands (Circuit Court of Loudoun County Case. No. 44148)(Circuit Court of Fairfax County; CL 2007-5364);

The Protestant Episcopal Church in the Diocese of Virginia v. The Church at The Falls – The Falls Church (Circuit Court of Arlington County Case No. 07-125)(Circuit Court of Fairfax County; CL 2007-5250);

The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church (Circuit Court of Northumberland County Case No. CL 07-16)(Circuit Court of Fairfax County; CL 2007-5902); and

The Episcopal Church v. Truro Church et al. (Circuit Court of Fairfax County; CL 2007-1625).

Dear Ms. Brooks:

I am enclosing for filing in the above-styled case an original CANA Congregations' Reply Memorandum of Law on Scope of Hearing on Congregational Determinations Pursuant to Virginia Code § 57-9 and twenty (20) copies of a one-page covers sheet to be placed in the file for the above-styled cases.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

SANDS ANDERSON MARKS & MILLER, PC

George O. Peterson

cc: Seana C. Cranston, Law Clerk to the Honorable Randy I. Bellows (via hand-delivery)
Bradfute W. Davenport, Jr., Esquire
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VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In re:	)	
Multi-Circuit Episcopal Church	)	**Civil Case Numbers:**
Litigation	)	CL 2007-248724,
	)	CL 2006-15793,
	)	CL 2006-15792,
	)	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' REPLY MEMORANDUM OF LAW ON SCOPE OF HEARING ON CONGREGATIONAL DETERMINATIONS PURSUANT TO VA. CODE § 57-9

COME NOW 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, St. Paul's Church, and Potomac Falls Church (hereinafter collectively, the "CANA Congregations") and each of their Trustees[1] who are named defendants (hereinafter collectively, "Related Individuals") and, pursuant to the order of this

[1] The Trustees of The Falls Church are separately represented and have filed a Special Plea.

Court, file this joint responsive memorandum of law explaining the scope of the hearing (to be held on November 19, 2007) on the CANA Congregations' determinations pursuant to Virginia Code § 57-9. (CL 2007-5249; CL 2006-15792; CL 2007-556; CL 2007-5363; CL 2007-5686; CL 2007-5685; CL 2007-5903; CL 2006-15793; CL 2007-1236; CL 2007-1238; CL 2007-1235; CL 2007-1237; CL 2007-5683; CL 2007-5682; CL 2007-5684; CL 2007-5362; CL 2007-5364; CL 2007-5250; CL 2007-5902; and CL 2007-5903).

INTRODUCTION

The Court requested that the parties file briefs delineating the scope of the November hearing. TEC and the Diocese ("Intervenors") filed a brief that focuses primarily on the merits of their legal position. Moreover, the Intervenors included in their brief an extensive discussion of constitutional issues that they earlier had agreed should be left for a later stage of the case. Notwithstanding their surprise over the Intervenors' change of position, the CANA Congregations hereby reply to the legal arguments advanced in the Intervenors' brief.

Nothing in the Intervenors' memorandum casts any doubt on the CANA Congregations' interpretation of Va. Code § 57-9. The Intervenors do not seriously grapple with the text of the statute, which refers to "divisions" having "occurred" and contains no reference to formal denominational "approval" or "recognition." Their discussion of the history surrounding the statute's adoption is selective, and ignores both many 19th century divisions that were not "agreed to" by any hierarchy and the historical context generally—which reflected a concern for the property rights of local churches in the face of assertions of denominational control. Nor do the Intervenors discuss *Reid v. Gholson*, 229 Va. 179, 192 (1985), which indicates that § 57-9 applies where the parties "separate from the body of their church" and thus "rend it into groups."

Lacking any convincing theory as to the meaning of the statute, the Diocese and TEC are ultimately left to argue that applying the neutral principle of majority rule to this church property dispute would be unconstitutional. But *Jones v. Wolf*, 443 U.S. 595 (1979), squarely held that a State may "adopt[] a presumptive rule of majority representation" for resolving church property disputes—*even in cases involving hierarchical denominations*—so long as the State also provides a "method of overcoming the majoritarian presumption" through legal arrangements made before a dispute over ownership erupts. *Id.* at 607-08.

In Virginia, a hierarchical church may "overcome the majoritarian presumption"—*i.e.*, avoid application of § 57-9 in future property disputes—by, for example, requiring affiliated congregations to "modify the deeds" to place title in the bishop's name. *Jones*, 443 U.S. at 606. This approach is expressly permitted by Va. Code § 57-16 and Diocesan Canon 15.4, and the Diocese in fact holds title to property used by worshipping congregations in this manner. More importantly, *Jones* expressly held that "the burden involved in taking such steps [is] minimal"—and thus constitutionally permissible. *Id.* In the end, therefore, there is no support for the Intervenors' claim that their reading of § 57-9 is constitutionally compelled.

ARGUMENT

I. The Meaning of "Division" in Virginia Code § 57-9

1. The Intervenors' principal theme is that dioceses "can be divided or reunited only by action of the General Convention." Mem. 5. "The important point," they say, "is that at no time has the Church's General Convention voted to divide either itself or any one of its dioceses as a result of the theological debate in which its membership is engaged." Mem. 13.

As explained in our opening brief (at 7-11), this reading finds no support in the text, grammar, or structure of § 57-9. The statute contains no mention of approval by higher ecclesiastical authorities. Indeed, in contrast to other provisions of Title 57, the statute contains no reference to church leadership at all. TEC and the Diocese do not suggest otherwise.

The reading of § 57-9 offered by the Intervenors also would render the statute a dead letter. When a denomination subdivides a diocese for administrative or geographical reasons (as in the "divisions" cited in the Intervenors' interrogatory answers), there is no *need* for legislation or civil court involvement to resolve issues of property ownership, let alone for *votes* by congrega-

tions that are "conclusive" as to title. In such circumstances, the congregations remain affiliated with the same general church and questions of ownership do not arise.

Tellingly, no congregation was permitted to vote on which "branch" it would thereafter join in the TEC-approved "divisions" that the Intervenors hold out as examples of what is contemplated by § 57-9; rather, diocesan affiliations were determined by geography—as required by church canons. If the Intervenors' reading were correct, then, the statute would *never* apply to TEC because there would *never* be any congregational votes.

2. TEC and the Diocese acknowledge (as they must) the relevance of "the history surrounding the promulgation and codification of § 57-9." Mem. 17. Focusing exclusively on the Methodist Episcopal Church ("MEC") split in the 1840s and *Brooke v. Shacklett*, 54 Va. 301 (1856), they assert that "a legally cognizable 'division' in a hierarchical church must be accomplished pursuant to that church's own authority and rules." Mem. 15.

But even assuming that the MEC split in the 1840s involved a denominationally approved plan of separation—a point of some dispute[2]—that in no way means that *the statute* at issue was intended to be so limited. Nothing in the language of § 57-9 states that the division in the church or religious society has to be embodied in a formal plan of separation. Moreover, the statute does not limit voting rights to churches that enjoy voting rights under a plan of separation. Contrary to the MEC plan, which evidently allowed only churches in border areas the right to elect which branch to join,[3] § 57-9 gives *all* congregations the right to choose the branch with which they will affiliate. That § 57-9 grants broader voting rights than those set forth in the

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[2] *See, e.g.*, Charles Elliot, *History of the Great Secession from the Methodist Episcopal Church, South* 10 (1874); *Smith v. Swormstedt*, 57 U.S. 288, 301 (1853) ("The defendants admit the erection of the church south into a distinct ecclesiastical organization; but deny, that this was done agreeably to the plan of separation" and say it "was an unauthorized separation").

[3] The Virginia Supreme Court discussed this limitation in *Brooke,* 54 Va. at 326-27.

MMEC plan of separation eviscerates the notion that the General Assembly intended to require hierarchical approval for any congregation to proceed under the statute.

The Intervenors' argument also seems to assume that § 57-9, which was passed more than 20 years after the split in the MEC, was intended to apply only to that denomination. Nothing in the statute supports such a construction, and such a construction would ignore the historical background. As explained in our opening brief (at 9), controversies related to abolition caused several major denominations to divide before, during, and immediately after the Civil War. More importantly, most of them broke up *without* any "plan of separation"—the different branches simply went their separate ways. *See Central Univ. of Ky. v. Walters' Exrs.*, 90 S.W. 1066, 1066 (Ky. 1906) ("[a] schism in the Presbyterian Church of the United States of America resulted in about 1865 in the withdrawal of a considerable number of its members, who subsequently organized themselves into a separate body"; "[a]fter the division," "the Presbyterian Church of the United States" was "called the 'Southern Presbyterian Church'"). The Intervenors are thus attempting to engraft a limitation onto § 57-9 that has no statutory or historical support.

3. Perhaps to deflect attention from the illogic of their own reading of § 57-9, TEC and the Diocese attempt to cast the CANA Congregations' reading in a similar light. They claim that under the CANA Congregations' view, § 57-9 would apply "whenever there is a disagreement among the members of an Episcopal congregation, the Diocese, the national Church, or perhaps even the worldwide 'Anglican Communion.'" Mem. 2. The short answer is that the CANA Congregations have said no such thing. While a "disagreement" may ultimately *lead* to a "division," only the latter satisfies the statute.

But when, as here, a disagreement escalates to the point that groups of congregations are disaffiliating from a diocese or denomination and those involved (and the media) routinely refer

to the resulting "division," it would make little sense to deny reality on the ground that the denomination had not passed a formal resolution acknowledging the division. Demanding such formality would be particularly inappropriate where (as here) officials of the denomination acknowledged the division in written statements and adopted a "Protocol for Departing Congregations" to address it. Such admissions cannot be dismissed as mere "colloquial talk" (Mem. 10). For example, the Diocese's Reconciliation Commission acknowledged not only "profound differences" in the Diocese, but also the "severe division" and the need for "provision for an amicable divorce." Moreover, the premise of the Protocol was the need to address "the division that may cause some to 'walk apart,'" and there would have been little point in outlining a procedure for congregations to vote on disaffiliation if all that existed was a friendly "disagreement" over the color of the carpet. The Diocese's analogy to a divorce, if tragic, is apt: Just as one party cannot avoid a divorce by denying the existence of irreconcilable differences, so too a denomination may not avoid a "division" by saying it adopted no formal resolution to that effect.

As it turns out, the Diocese here *has* acknowledged the division among its parishes in a formal resolution. At its 210th Annual Council in 2005, the Diocese adopted Resolution R-22a, entitled "A Diocesan Response to the Windsor Report." (Attached as Exh. 1.) The resolution recognized the Windsor Report and the report of the Diocese's Reconciliation Commission and acknowledged "the present divisions" in the Diocese and TEC resulting from "actions of the 74th General Convention that breached the proper constraints of our bonds of affection with other parts of the Anglican Communion." Indeed, citing "this diocese's share of responsibility" for those actions, the resolution sought to address the division by issuing a "formal request[] that the 75th General Convention of the Episcopal Church effect a moratorium on the election of and consent to the consecration of any candidate to the episcopate who is living in a same-gender un-

ion." The 75th General Convention's failure to do so led to the disaffiliation of a substantial portion of the Diocese's membership and large numbers of congregations elsewhere in TEC.

4. The Intervenors' arguments (at 14-18) based on their "tools of statutory construction" and the overall "statutory scheme" are no more convincing. Citing the difference between Subparts A and B of § 57-9, which distinguishes between super-congregational and congregational churches, they claim that applying Subpart A to them "would obliterate the distinction between congregational and hierarchical churches and transform Virginia's statutory scheme into one where a congregation's vote overrides all other considerations, regardless of the church's nature, rules, and ecclesiastical government." Mem. 17-18. Under the CANA Congregations' reading of § 57-9, they say, "the hierarchy has no ability to enforce any of its decisions and the very concept of a hierarchy is illusory." Mem. 18. The reality is otherwise.

First, the Intervenors' argument assumes that there is no means for a hierarchical church to avoid application of § 57-9. To the contrary, a hierarchical church may, among other things, take the simple step of directing congregations to transfer title to the bishop under § 57-16. That the Diocese in fact holds title in this manner under its Canon 15.4 confirms that such a requirement in no way interferes with its purported hierarchical character.[4]

Second, the Intervenors' argument ignores the fact that § 57-9 provides for presumptive majority rule in only a limited area: control of church property, and even then only in cases of a

[4] The CANA Congregations do not dispute that TEC has certain hierarchical attributes. On the other hand, ecclesiastical authority within TEC is diffused among several different entities and persons, there is a strong emphasis on democratic lay leadership, and individual parishes enjoy autonomy of a type associated with congregational churches, such as the right to select their own rectors. Because the CANA Congregations were not "entirely independent" of any other church or religious society, they do not fall within Subpart B of § 57-9. That the CANA Congregations fit more properly within Subpart A of the statute does not mean, however, that TEC is a strictly hierarchical church along the lines of, say, Catholic, Orthodox, or Mormon churches.

"division." Hierarchical churches remain entitled to deference on religious doctrine, ordination of leaders, and administration of sacraments, to name just a few areas. The suggestion that the CANA Congregations' reading of § 57-9 deprives a hierarchy of its "ability to enforce any of its decisions" and renders "the very concept" of a hierarchy "illusory" is hyperbole. *See Bouldin v. Alexander*, 82 U.S. 132, 137 (1872) (issues of "the legal ownership of the property," in contrast to issues of discipline, "respect[] temporalities, and temporalities alone").

Finally, the Intervenors' argument ignores the fact that the General Assembly, in enacting the division statute and recodifying it several times over the last 140 years, sought to provide for the application of majority rule to resolve church property issues arising in both congregational *and* super-congregational churches. Under the Intervenors' reading, it would effectively apply only to the former.

5. Citing *Norfolk Presbytery*, TEC and the Diocese next contend that, notwithstanding § 57-9, Va. Code § 57-15 requires denominational approval of any vote to disaffiliate. As they see it, "[t]he only way to harmonize § 57-9(A) and § 57-15 is to require a formal division by the highest authority of a hierarchical church, which would serve as an approval of any property transfer, thereby satisfying the dictates of both statutes." Mem. 18. This argument lacks merit.

Nothing in the language of § 57-9 indicates that it is subordinate to § 57-15, and reading *Norfolk Presbytery* to suggest that it is would render § 57-9 superfluous, in violation of the canons of statutory interpretation. *Norfolk Presbytery* did not involve any claim under § 57-9, and contains no analysis of that statute (let alone a square holding as to its meaning). Indeed, the briefs from the case confirm that the denomination acknowledged that "§ 57-9 is not involved in this case." Appellee's Mem., Va. No. 8241, at 14. That is not surprising, as the congregation there did not disaffiliate with a group of similarly situated congregations. Nor did the congrega-

tion join another "branch"; it became "independent and autonomous." 214 Va. at 501. The same is true of *Green v. Lewis*, 221 Va. 547, 549 (1980), where the congregation became "independent" and "free from any affiliation." *See* Mem. of Appellee, Va. No. 781388 (not citing § 57-9).[5]

Nor is it true that the only way to reconcile § 57-9 with § 57-15 is to hold that the latter requires denominational approval of a "division" under § 57-9. Section § 57-15's requirement of denominational approval still applies in cases such as *Norfolk Presbytery* and *Green*, where one or more congregations break away from a supercongregational church for varied reasons, or without joining any branch. Section 57-9, by contrast, applies when a *group* of congregations breaks off from the church or society for the *same* reasons, joining a branch of the previously undivided church. As explained in our opening brief (at 7-11) that is the ordinary meaning of a "division" within a church, and that is how the term was viewed historically. *See also Reid*, 229 Va. at 192 (indicating that a "division" under § 57-9 involves a situation where the disaffiliating parties "desire to separate from the body of their church, and to rend it into groups").

Indeed, it is the reading advanced by TEC and the Diocese that deprives § 57-9 of any meaningful effect: If the statute were limited to situations where the hierarchy permitted a division, the statute would be entirely unnecessary because there would be no dispute over ownership—and thus no need for a "conclusive" rule as to ownership, or for any procedure *other than* § 57-15. Over 140 years, despite numerous amendments of the Virginia Code as it relates to religious organizations, the General Assembly has consistently adhered to the division statute.

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[5] The other Virginia cases that have discussed § 57-9 have involved congregational churches entitled to invoke what is now Subpart B of the statute. *See Baber* v. *Caldwell*, 152 S.E.2d 23, 24 (Va. 1967) (involving an "autonomous" church that was "entirely independent of any other church or general society within the meaning of Code § 57-9," rather than a church invoking "[t]he first sentence of the section [now Subpart A], which "relates to churches, such as Episcopal and Presbyterian churches, that are subject to control by super-congregational bodies"); *Cheshire v. Giles*, 132 S.E.2d 479, 481 (1926) (same).

Any suggestion that it applies only to consensual divisions would effectively render the statute a dead letter, in contravention of the General Assembly's clear intentions.

II. The Meaning of "Branch" in Virginia Code 57-9

The Intervenors' final statutory point is that the CANA Congregations have not joined a "branch" within the meaning of § 57-9. Mem. 22-24. They first say that "there has been no division here, and therefore there are not branches of the Church between which the congregations might permissibly choose." Mem. 22. This argument suggests that where there *is* a "division," "branches" of the church necessarily result. It does not follow, however, that the branches must remain under the same hierarchy. Just as the text and history of § 57-9 make it implausible to read "division" as limited to administrative redistricting by the hierarchy, so too it is implausible to read "branch" as an entity that remains subject to that hierarchy.

The Intervenors suggest that the CANA Congregation's reading of § 57-9—under which a "branch" is simply an "offshoot, lateral extension, or division of an institution," *Black's Law Dictionary* 199 (8th ed. 2004)—"is neither good logic nor good law" because "one church and its component part . . . do[] not become a 'branch' of a second, separate church simply because some dissenting members of the second church decide to join it." The term "branch," however, is not modified by "affiliated." Moreover, as explained in our opening brief (and the evidence at trial will show), the historical record makes clear that the term "branch" was commonly understood in 1867 to refer to entities with a common origin but no current affiliation.

Indeed, even the Intervenors' authorities belie the view that a "branch" must remain *in* the former church. As the Virginia Supreme Court noted in *Brooke*, the new branch created by the Methodist Episcopal split was "a distinct ecclesiastical connection, separate from the jurisdiction of the general conference of the Methodist Episcopal Church." 54 Va. 301 (1856), 1856

WL 3495, at *2 (Va. May 23, 1856); *see Smith v. Swormstedt*, 57 U.S. 288, 305 (1853) ("two separate and distinct organizations have taken the place of the one previously existing").[6] In sum, the Intervenors' reading of "branch" is foreclosed not only by the text and history of § 57-9, but also by precedent and common sense.[7]

III. The Constitutionality of Virginia Code § 57-9

Notwithstanding their earlier insistence that the constitutional defenses raised in their answers were distinct and should be dealt with at a later stage of this litigation, the Intervenors now inexplicably devote several pages of their brief to the argument that § 57-9 would be unconstitutional if interpreted by its plain terms and in light of its history.[8] Specifically, they claim that

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[6] The Intervenors' brief does not dispute the CANA-ADV Congregations' affiliation (via the Church of Nigeria) with the Anglican Communion, which has also experienced a "division." They simply argue that the Anglican Communion is not a "church or religious society" within the meaning of § 57-9. If the Court finds that the Anglican Communion is a "church or religious society" however, the Congregations have joined a branch that is within the Communion, thus satisfying even the Intervenors' reading of the statute.

[7] The Intervenors do not contest that TEC and the Diocese are each a "church or religious society" within the meaning of § 57-9. They deny that the Anglican Communion qualifies as such, however, on the basis that its 38 Provinces are "autonomous."

Contrary to the Intervenors' assertion (at 12), it is not undisputed that the 38 Provinces in the Anglican Communion are purely "autonomous." *See* Mem, Exh. 3, Response No. 25 (denying that aspect of the Intervenors' Request No. 25). The Provinces have considerable latitude in how they govern themselves, but if they wish to remain "in communion with" the See of Canterbury and the other Provinces they must heed the Communion's moral and doctrinal pronouncements and—as the Preamble to TEC's Constitution states—"uphold[] and propagate[e] the historic Faith and Order as set forth in the Book of Common Prayer." Indeed, it is TEC's failure to do so that has led to the present division. *See* Reports ¶¶ 8-9, 14-47.

More importantly, however, the Intervenors provide no definition or analysis of the terms "church" or "religious society," and nothing they say undermines the argument in our opening brief (at 16-18) that the Anglican Communion is an "organization of religious believers" (i.e., a church) or a religious social group with developed, organized patterns of relationships" (i.e., a religious society). The fact that the Anglican Communion does not have "canons" or directly admit local congregations into membership does not mean it is not a church.

[8] During the May 21 hearing, the Court questioned counsel at length about the order in which legal and factual issues arising from the § 57-9 reports and plaintiffs' complaints should be ad-

reading § 57-9 as the CANA Congregations read it would violate both the First Amendment and the Contracts Clause. Putting aside the fact that they are raising constitutional issues they earlier said should be deferred, their claims do not compel a different interpretation of § 57-9.

A. Section 57-9 is consistent with the First Amendment.

Any analysis of the validity of § 57-9 under the Religion Clauses must begin with *Jones v. Wolf*, 443 U.S. 595 (1979)—the most recent word from the U.S. Supreme Court on matters of church property, and a decision that TEC and the Diocese cite only in passing. Mem. 20, 21. *Jones* arose when the majority of a Presbyterian church voted to withdraw from one denomination (the Presbyterian Church in the United States (PCUS)) and to affiliate with another (the Presbyterian Church in America (PCA)). The internal authorities within PCUS ruled that the minority was "the true congregation," but the Georgia Supreme Court declined to recognize this decision. 443 U.S. at 607. Instead, it ruled that under "neutral principles of law," the majority faction represented the local congregation to whom the property was deeded. *Id.* at 600-01.

The PCUS obtained review in the U.S. Supreme Court, arguing (as TEC and the Diocese argue here (Mem. 21-22)) that it would violate the First Amendment for a State to provide that majority rule governed even a limited aspect of a hierarchical church's affairs (church property). Describing the issue as "whether civil courts . . . may resolve [a church property] dispute on the basis of 'neutral principles of law,' or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church," the Court rejected the denomination's argument:

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dressed. Counsel for TEC stated that the applicability of § 57-9 was a discrete issue that could and should be addressed prior to any consideration of TEC's and the Diocese's constitutional defenses. *See* 5/21/07 Tr. at 62:1-21. Based in part on this representation, the Court decided that the November hearing, and the briefing on the scope of the hearing, should address only the applicability of § 57-9 and not TEC's and the Diocese's constitutional challenges. *Id.* at 63:9-14; 69:16-21; 71:5-12; 77:1-7. The Court reflected this decision in its May 31 order. *See* Order at 4.

> If in fact Georgia has adopted a presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means, we think this would be consistent with both the neutral-principles analysis and the First Amendment. Majority rule is generally employed in the governance of religious societies. Furthermore, the majority faction generally can be identified without resolving any question of religious doctrine or polity. . . . Most importantly, any rule of majority representation can always be overcome, under the neutral-principles approach, either by providing, in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way, or by providing that the church property is held in trust for the general church and those who remain loyal to it. *Indeed, the State may adopt any method of overcoming the majoritarian presumption, so long as the use of that method does not impair free-exercise rights or entangle the civil courts in matters of religious controversy.*

Id. at 597, 607-08 (emphasis added; footnote & citation omitted). The Court went on to hold that, assuming the Georgia Supreme Court had in fact adopted a presumptive rule of majority representation, it should on remand simply "specify how, under Georgia law, that presumption may be overcome." *Id.* at 608 n.5.[9]

There can be no question after *Jones* that a State may "adopt[] a presumptive rule of majority representation" to resolve church property disputes—even in cases involving hierarchical churches—so long as it provides a "method of overcoming the majoritarian presumption." *Id.* at

[9] As the quoted passage from *Jones* makes clear, a State has broad discretion in determining the means by which a hierarchical denomination may overcome the presumption that property ownership will follow the congregation's majority. A State may, but need not, recognize provisions in a church's constitution as creating a property interest. Even if a State chose to recognize the assertion of a property interest in the church's constitution, however, that would not mean that it was required to recognize such an assertion in church canons—particularly where the church has both a constitution and canons. Here, it merits emphasis that the means for amending the canons at issue is far less onerous than the means for amending the constitutions at issue. Whereas the canons may be amended in a single General Convention or Annual Diocesan Council, constitutional amendments require two readings at consecutive sessions of those bodies. *Compare* TEC Const. Art. XII and Diocese Const. Art. XIX (constitutional amendment procedures) *with* TEC Canons, Title V, Canon 1, § 1 and Diocesan Canon 30 (canonical amendment procedures). Thus, if TEC or the Diocese were to propose a new *constitutional* provision concerning property ownership, member congregations would have an intervening 3-year period (in the case of TEC) or 1-year period (in the case of the Diocese) to determine whether to disaffiliate before the new rule could be voted on and take effect.

607-08. And that is exactly what Virginia has done here: In the limited circumstance when a "church or religious society" experiences a "division," the property at issue follows the congregation's majority. But § 57-9 is available only to congregations "whose property is held by trustees," and a hierarchical church may avoid its application simply by adopting other forms of ownership, as many such churches do. For example, Va. Code § 57-16 expressly recognizes that a hierarchical church's "duly elected or appointed bishop . . . shall have power to acquire by deed, devise, gift, purchase or otherwise, any real or personal property." This method of ownership is also expressly permitted by Diocesan Canon 15.4, and is in fact used by the Diocese for various mission congregations (*i.e.*, start-up churches) and other church properties.

Thus, to avoid the neutral means of determining property ownership provided in § 57-9, a hierarchical church need only ask member congregations to "modify the deeds" at issue "before the dispute erupts"—what *Jones* describes as a "minimal" step to "ensure . . . that the faction loyal to the hierarchical church will retain the church property." *Id.* at 606. Having failed to take this minimal step here, the Intervenors may not insist *the Constitution* requires recognition of their claim to the CANA Congregations' property. *Id.* To the contrary, *Jones* makes clear that Virginia may adopt a presumption in favor of ownership by the congregation, who typically provide the donations that enable churches to function, and whose trustees hold title.

The Intervenors cite a snippet from *Jones* to the effect that courts must "'completely' abstain from resolving 'questions of . . . polity and practice." Mem. 21 (citing *Jones*, 443 U.S. at 603). But they ignore the rest of the Court's opinion. To be sure, "the First Amendment prohibits its civil courts from resolving church property disputes on the basis of religious doctrine or practice," and "the Amendment requires that civil courts defer to the resolution of issues of *religious doctrine or polity* by the highest court of a hierarchical church organization." *Id.* at 601 (empha-

sis added). But "[s]ubject to these limitations, . . . the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Id.* at 602 (citation omitted).

The Court in *Jones* thus distinguished between matters of "religious doctrine or polity" and "church property issues," holding that the latter may be resolved by *any* method the State chooses, as long as it avoids resolution of doctrinal issues. And as the Virginia Supreme Court explained in *Reid v. Gholson*: "the right to reasonable notice, the right to attend and advocate one's views, and the right to an honest count of the votes . . . are neutral principles of law, applicable not only to religious bodies, but to public and private lay organizations and to civil governments as well. Courts must apply them every day, and can do so without any danger of entering a 'religious thicket.'" 229 Va. 179, 189-90 (1985). So too here.[10]

Finally, the Court in *Jones* specifically rejected the position advanced by the Intervenors here that compulsory deference to church authorities is "necessary in order to protect the free exercise rights 'of those who have formed the association and submitted to its authority.'" 443 U.S. at 605-06 (citation omitted). *Cf.* TEC Mem. 21 ("interpreting § 57-9(A) to supersede the

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[10] *Jones* makes clear that a hierarchy may not simply invoke the magic words "governance" or "polity" to insulate itself from having church property issues resolved by neutral principles such as majority rule. Rather, the court need only "take special care to scrutinize [religious documents, such as a church constitution] in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust." *Id.* at 604. The Court found that "the promise of nonentanglement and neutrality inherent in the neutral-principles approach more than compensates for what will be occasional problems in application" and that "[t]hese problems . . . should be gradually eliminated as recognition is given to the obligation of States, religious organizations, and individuals [to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." *Id.* at 603-04 (citations and quotations omitted).

hierarchical structure and rules established by a religious denomination itself would violate the First Amendment"). As the Court explained:

> The neutral-principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property.

Id. at 606. The Court thus emphasized that as long as congregations and denominations have an opportunity to order their relations in response to the law, the fact that they must alter documents or adopt different forms of ownership does not unduly burden their religion. "We cannot agree," the Court concluded, "that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved." *Id.* at 605.

Even TEC's official reporters have recognized the impact of *Jones*. The *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America Otherwise Known as The Episcopal Church* (1981), whose authors (E. White and J. Dykman), are designated by TEC, say the following about *Jones*

> *Jones v. Wolf* decided . . . that States, consistent with the First and Fourteenth Amendments, could resolve disputes over the ownership of church property by adopting a 'neutral principles of law' approach and are not required to adopt a rule of compulsory deference to religious authority in resolving such disputes where no issues of doctrinal controversy is involved.
>
> This approach gives great weight to the actions of controlling majorities, and would appear to permit a majority faction in a parish to amend its parish charter to delete all references to the Episcopal Church, and thereafter to affiliate the parish—and its property—with a new ecclesiastical group.

Vol. I, at 301.

The pre-*Jones* decisions that the Intervenors *do* discuss are not to the contrary. Both *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), and *Serbian East Orthodox Diocese v.*

Milivojevich, 426 U.S. 696 (1976), involved the question whether a hierarchical church is entitled to deference on issues involving its choice of ecclesiastical *leaders*. *Kedroff*, for example, involved a New York law that purported to strip oversight of a Russian Orthodox cathedral from a prelate appointed by the Russian Orthodox Patriarch in Moscow. Explaining that the question was "the power of the Supreme Church Authority of the Russian Orthodox Church to appoint the ruling hierarch of the archdiocese of North America," the Court held that "[t]his controversy . . . is strictly a matter of ecclesiastical government" to be decided by "the church judicatories to which the matter has been carried." 344 U.S. at 113, 115; *see also id.* at 113 (describing the case as involving "questions of discipline, or of faith, or ecclesiastical rule"). The Court held that the law violated the First Amendment because it "regulates church administration, the operation of the churches, [and] the appointment of clergy, by requiring conformity to church statutes." *Id.* at 107. In sum, *Kedroff* is not principally about who owned the church property (a question that may be decided by neutral principles), but about the state's inability to choose the ecclesiastical leader of the congregation that occupies such property (a question of ecclesiology). This basic distinction may explain why the Court's opinion in *Jones* does not so much as cite *Kedroff*.[11]

Similarly, *Milivojevich* arose when authorities in the Serbian Eastern Orthodox Church "defrocked" the Bishop of their American-Canadian Diocese because he no longer possessed the

[11] In a footnote (Mem. 20 n.10), the Intervenors make the remarkable assertion that "*Kedroff* made clear that the rule announced in *Watson* [*v. Jones*, 80 U.S. (13 Wall.) 679 (1871),] was compelled by the First Amendment." But the Court in *Kedroff* did not say this, and the decision involved distinct issues related to control of church leadership rather than property ownership. Indeed, if the assertion of the Intervenors were correct, the Court in *Jones v. Wolf* presumably would have felt itself bound to follow or distinguish *Watson*, but it did not even cite that decision. Thus, as the Virginia Supreme Court recognized in *Norfolk Presbytery v. Bollinger*, 214 Va. 500, 504 (1974), Virginia is "not bound by the rule of *Watson*" or the notion of "implied consent to [hierarchical church] government" embodied in that case. *See also Jones*, 443 U.S. at 602 (a State may adopt "any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters").

"fitness to serve as Bishop." 426 U.S. at 698, 702. The Bishop refused to recognize his removal and filed suit seeking "to have himself declared the true Diocesan Bishop." *Id.* at 707. The Illinois courts held that the Bishop's removal was "arbitrary," but the Supreme Court reversed. Although the Court did not shy away from examining church polity as necessary to ascertain where authority over discipline of ecclesiastical leadership lay, it condemned the lower court's finding that defrocking the Bishop was arbitrary. The Court held that questions involving "the conformity of the members of the church to the standard of morals required of them" is "strictly and purely ecclesiastical in its character"—and thus beyond civil courts' jurisdiction. *Id.* at 714.

Kedroff and *Milivojevich* thus involve deference to hierarchical decisions concerning who is the rightful ecclesiastical *leader* of member congregations or dioceses, as opposed to decisions about property ownership. The same can be said of the other decisions cited by the Intervenors. *See* Mem. 19; *Cha v. Korean Presbyterian Church of Washington*, 262 Va. 604, 611, 613 (2001) (dismissing a pastor's suit against a church and its elders for wrongful termination, defamation, and tortuous interference with contract on the grounds that "right to choose ministers" is a key component of free exercise and "[e]cclesiastical decisions regarding the appointment and removal of pastors are generally beyond the jurisdiction of secular courts"); *Bowie v. Murphy*, 271 Va. 127, 135 (2006) (permitting a deacon's defamation claim against a pastor and church members to go forward on the grounds that it involved only allegations regarding whether the defendants committed an assault and did not "mix with 'ecclesiastical decisions regarding the appointment and removal' of church officials").

That TEC and the Diocese devote so many pages to an argument that the natural reading of § 57-9 violates the First Amendment suggests a lack of conviction in their alternative reading of § 57-9. And the fact that they present this argument without discussing the U.S. Supreme

Court's controlling decision in *Jones* is equally telling. In the end, their view reflects a failure to come to grips with the fact that hierarchical denominations do not receive automatic deference when it comes to issues of property ownership. To be sure, the courts will defer to internal hierarchical decisions on inherently ecclesiastical issues (*e.g.*, determining who speaks for a church), as *Milivojevich* and *Kedroff* confirm. But *Jones* makes clear that the First Amendment in no way bars application of Va. Code § 57-9(A) to denominations such as TEC and the Diocese, which—if they had the authority they purport to have—could have avoided this dispute by taking the minimal step of directing their member congregations to transfer title to the bishop.

B. Section 57-9, As Applied Here, Is Consistent with the Contracts Clause of the U.S. and Virginia Constitutions.

In one paragraph, the Intervenors also assert that the CANA Congregations' reading of § 57-9 "would divest the Episcopal Church and the Diocese of their proprietary and contractual rights in local church property, in violation of the Contracts Clause of the federal and Virginia Constitutions." Mem. 22. This issue, they note, "is inextricably entwined with the merits of the Church's and the Diocese's declaratory judgment actions." *Id.* Nonetheless, they urge that § 57-9 may not be read to "cut off" their alleged contractual rights. *Id.* This argument is baseless.

The Intervenors have identified their canons as the primary source of their alleged proprietary and contractual rights in the CANA Congregations' property. Yet TEC's own reporters have rejected through the years the notion that the canons confer such rights. *See* E. White, *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of American Adopted in General Conventions* 1789-1922 at i, 542, 785 (1924) (Canon 50, prohibiting the alienation of consecrated church property without the permission of the bishop, "is only of moral value, and has no legal effect", and Canon 25, requiring religious communities to include in their constitutions a provision stating that their property is held in trust

for TEC "could only have moral weight [and]. . . [h]owever expressed in a Canon it would have no legal force"); I E. White & J. Dykman, *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America* at 265, 266 (1954) ("The power of the General Convention over the disposition of real property is questionable, governed as it is by the law of the state in which it is situated"); E. White & J. Dykman, I *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America Otherwise Known as The Episcopal Church* at 297 (1981) ("State laws control the conveying and encumbering of real estate, and each case which arises must be decided according to the law of the situs of the property").

Even assuming, *arguendo*, that the canons on which TEC and the Diocese rely could establish a contractual interest in the CANA Congregations' property *absent* § 57-9, notwithstanding the prevailing view to the contrary, they had no such rights *prior* to the adoption of the statute, in 1867. The Contracts Clause protects only *preexisting*, vested rights—rights that were secured by contract as of the date of the challenged legislative enactment. *Weaver v. Graham*, 450 U.S. 24, 29-30 (1981) ("Evaluating whether a right has vested is important for claims under the Contracts or Due Process Clauses, which solely protect pre-existing entitlements"); *Finley v. Brent*, 87 Va. 103, 108 (1890) (invalidating application of § 57-9 to an 1860 deed). By the Intervenors' own allegations, however, the earliest canon on which they rely for assertion of a property interest (TEC Canon II.6) was adopted "in part in 1868 and in part in 1871" (TEC Compl. ¶ 42), and the other canons were adopted between 1904 and 1979 (TEC Compl. ¶¶ 44-47). Thus,

those canons uniformly post-date adoption of the statute and cannot support a claim under the Contracts Clause.[12]

The Intervenors fare no better under the deeds at issue, all but two of which postdate the adoption of § 57-9. *See* CANA Cong's Mem. in Support of Demurrers, Exh. 1. Of the remaining two deeds, one is the original 1746 Falls Church deed, which conveyed property to the vestry for the congregation of The Falls Church (then directly under the Church of England) for "such use as the said vestry shall think proper." *Id.* This deed makes no mention of TEC or the Diocese—which did not exist. Thus, the deed cannot support their claim of a contractual interest.

The other pre-1867 deed is also a Falls Church deed, dated 1852, conveying certain land contiguous to The Falls Church to the "Trustees of the Episcopal Church, known and designated as the 'Falls Church' in Fairfax County, of the County of Fairfax in the State of Virginia . . . and their successors." *Id.* Although this deed uses the term "Episcopal Church" to identify the "Falls Church"—clarifying that the deed was conveying property to the Church, not to the city of "Falls Church" named after the Church—it stands in marked contrast to the deed in *Finley*, which expressly restricted the conveyance of property "for the sole and exclusive use and benefit of religious congregations of regular orthodox Methodist Protestants which may thereafter assemble there to worship" and "for no other use or purpose whatever." 87 Va. at 104. Thus, the pre-1867 deeds at issue provide no basis for any assertion of "vested rights" in TEC or the Diocese.

[12] The only canons that predate the statute are "Former [Diocese] Canon I.7" and "Former [Diocese] Canon I.10," which, according to TEC, were adopted in 1793. TEC Compl. ¶ 42. But even assuming that these canons vested legally cognizable property rights in the denomination as opposed to the local church (a point we dispute), they are "former" canons, repealed long ago.

WHEREFORE, the defendant CANA Congregations and the Related Individuals, by counsel, respectfully request that this Honorable Court conduct the hearing on the applicability of Va. Code § 57-9 in a manner consistent with the points outlined above, and grant such additional relief as the case may require and the Court deems just.

Dated: August 31, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August, 2007 a copy of the foregoing CANA Congregations' Reply Memorandum of Law on Scope of Hearing on Congregational Determinations Pursuant to Virginia Code § 57-9, was sent by electronic mail and first-class mail, postage prepaid, to:

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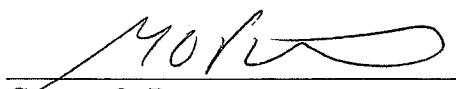

George O. Peterson

who, because of their sexual orientation, endure marginalization and rejection *in the church and in the world;* and be it further

The motion to amend was seconded and the President called for discussion. There was none. The matter proceeded to a vote, the motion carried and the amendment was adopted. Discussion returned to the main motion to adopt R-22 as amended. The Rev. Ed Morgan offered an amendment to the first resolve as follows:

Resolved, that the 210th Annual Council of the Diocese of Virginia expresses regret *for this diocese's share of responsibility for actions of the 74th General Convention that breached the proper constraints of our bonds of affection with other parts of the Anglican Communion* ~~that the proper constraints of the bonds of affection were breached through the actions of the 74th General Convention and for the consequences which followed~~; and be it further

The motion was seconded and the President called for discussion. There was none. A motion to terminate debate was made and seconded. The motion proceeded to a vote, carried and debate was terminated. The President reread the proposed amendment. The matter proceeded to a vote, the motion carried and the amendment was adopted. Discussion returned to the main motion as amended. The question was called. There was a request for clarification on the meaning of the adopted amendment. The President reread the adopted amendment and asked whether Council was ready to terminate debate. Council voted to terminate debate. The main motion to adopt resolution R-22 as amended proceeded to a vote, carried and R-22 was adopted as follows:

R-22a A Diocesan Response to the Windsor Report

As adopted by the 210th Annual Council

Whereas, We in the Diocese of Virginia are members of the Anglican Communion, are united in Christ and are called to live out our witness in our workplaces, churches and communities; and

Whereas, We desire to serve as a model of civility to the Anglican Communion for resolution of the present divisions by working together and honoring conscience through a process that is respectful and peaceful; and

Whereas, We respect the Windsor Report of the Lambeth Commission on Communion, which has recommended to the Episcopal Church concrete ways to strengthen the Anglican Communion; and

Whereas, The 210th Annual Council recognizes that the Windsor Report admonishes the Episcopal Church for failing, in its recent actions regarding the approval of the election of the Bishop of New Hampshire and the adoption of Resolution C051 pertaining to the blessing of same gender unions, to give adequate consideration to

the impact that these decisions had on bonds of affection with other parts of the Anglican Communion; and

Whereas, The 210th Annual Council recognizes that the Windsor Report admonishes those bishops throughout the Anglican Communion who have intervened in dioceses and provinces other than their own; and

Whereas, The Lambeth Conference of 1998 commends us to listen to the experience of homosexual persons and to assure them that they are loved by God and that all baptized, believing and faithful persons, regardless of sexual orientation, are full members of the Body of Christ; and

Whereas, Bishop Lee has served as a model of civility and generosity and has called us to embrace the concept of mutual submission, which - according to the New Testament - means that we voluntarily refrain from actions that hurt our brothers and sisters or create stumbling blocks for others in the life of faith; now therefore be it

Resolved, that the 210th Annual Council of the Diocese of Virginia expresses regret for this diocese's share of responsibility for actions of the 74th General Convention that breached the proper constraints of our bonds of affection with other parts of the Anglican Communion; and be it further

Resolved, That the 210th Annual Council of the Diocese of Virginia formally requests that the 75th General Convention of the Episcopal Church effect a moratorium on the election of and consent to the consecration of any candidate to the episcopate who is living in same-gender union, until some new consensus in the Anglican Communion emerges; and be it further

Resolved, That all Anglicans have a moral responsibility to acknowledge and respond with compassion and understanding to the pain and suffering of those who, because of their sexual orientation, endure marginalization and rejection in the church and in the world; and be it further

Resolved, That the 210th Annual Council calls upon the member churches of the Anglican Communion to maintain faith with the traditions and polity of the Anglican Communion and the Episcopal Church while the implications of an Anglican Covenant are being studied; and be it further

Resolved, That the congregations and regions of the Diocese of Virginia be urged to use the Report of the Diocese of Virginia's Commission on Reconciliation as a vehicle to further theological conversation; and be it further

Resolved, That this resolution represents the desire of the Diocese of Virginia to remain together and a part of the Anglican Communion.

Mr. Ohmer then introduced and moved adoption of the Courtesy resolutions as a

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In re:	)	
Multi-Circuit Episcopal Church	)	**Civil Case Numbers:**
Litigation	)	CL 2007-248724,
	)	CL 2006-15793,
	)	CL 2006-15792,
	)	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' MEMORANDUM OF LAW ON SCOPE OF HEARING ON CONGREGATIONAL DETERMINATIONS PURSUANT TO VA. CODE § 57-9

This acts as a one-page cover sheet reference pleading to the complete CANA Congregations' Reply Memorandum of Law on Scope of Hearing on Congregational Determinations Pursuant to Virginia Code § 57-9, which was filed in CL 2007-248724 (the omnibus case file), filed on August 8, 2007. The CANA Congregations' Reply Memorandum of Law on Scope of Hearing on Congregational Determinations Pursuant to Virginia Code § 57-9 and this corresponding one-page reference pleading applies to the Omnibus case number: CL 2007 – 248724 and the following cases:

1. *In re: Church at the Falls, The Falls Church*; (Circuit Court of Fairfax County; CL 2007-5249);

2. *In re: Truro Church*; (Circuit Court of Fairfax County; CL 2006-15792);

3. *In re: Church of the Epiphany*; (Circuit Court of Fairfax County; CL 2007-556);

4. *In re: Church of Our Savior at Oatlands*; (Circuit Court of Fairfax County; CL 2007-5363);

5. *In re: St. Paul's Church, Haymarket*; (Circuit Court of Fairfax County; CL 2007-5686);

6. *In re: St. Margaret's Church*; (Circuit Court of Fairfax County; CL 2007-5685);

7. *In re: St. Stephen's Church*; (Circuit Court of Fairfax County; CL 2007-5903);

8. *In re: Church of the Apostles*; (Circuit Court of Fairfax County; CL 2006-15793)

9. *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church* (Circuit Court of Fairfax County; CL 2007-1236);

10. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles* (Circuit Court of Fairfax County; CL 2007-1238);

11. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon* (Circuit Court of Fairfax County; CL 2007-1235);

12. *The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church* (Circuit Court of Fairfax County; CL 2007-1237);

13. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket* (Circuit Court of Prince William County Case No. CL 73466)(Circuit Court of Fairfax County; CL 2007-5683);

14. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Margaret's Church* (Circuit Court of Prince William Case No. CL 73465)(Circuit Court of Fairfax County; CL 2007-5682);

15. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word* (Circuit Court of Prince William County Case No. CL 73464)(Circuit Court of Fairfax County; CL 2007-5684);

16. *The Protestant Episcopal Church in the Dioceses of Virginia v. Potomac Falls Church* (Circuit Court of Loudoun County Case No. 44149)(Circuit Court of Fairfax County; CL 2007-5362);

17. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Saviour at Oatlands* (Circuit Court of Loudoun County Case. No. 44148)(Circuit Court of Fairfax County; CL 2007-5364);

18. *The Protestant Episcopal Church in the Diocese of Virginia v. The Church at The Falls – The Falls Church* (Circuit Court of Arlington County Case No. 07-125)(Circuit Court of Fairfax County; CL 2007-5250);

19. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church* (Circuit Court of Northumberland County Case No. CL 07-16)(Circuit Court of Fairfax County; CL 2007-5902); and

20. *The Episcopal Church v. Truro Church et al.* (Circuit Court of Fairfax County; CL 2007-1625).

For the complete CANA Congregations' Reply Memorandum of Law on Scope of Hearing on Congregational Determinations Pursuant to Virginia Code § 57-9, please see the omnibus case file, CL 2007 – 248724.

Dated: August 31, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August, 2007 a copy of the foregoing one-page Cover Sheet for the CANA Congregations' Reply Memorandum of Law on Scope of Hearing on Congregational Determinations Pursuant to Virginia Code § 57-9, was sent by electronic mail and first-class mail, postage prepaid, to:

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