VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

IN RE:	)	
	)	
MULTI-CIRCUIT EPISCOPAL CHURCH PROPERTY LITIGATION	)	**CL 2007-0248724**
	)	

FILED IN DIOCESE AND EPISCOPAL CHURCH DECLARATORY JUDGMENT ACTIONS: *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church* (No. 2007-1236); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles* (No. 2007-1238); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon* (No. 2007-1235); *The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church* (No. 2007-1237); *The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket* (No. CL 2007-5683); *The Protestant Episcopal Church in the Diocese of Virginia v. St. Margaret's Church* (No. CL 2007-5682); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word* (No. CL 2007-5684); *The Protestant Episcopal Church in the Diocese of Virginia v. Potomac Falls Church* (No. CL 2007-5362); *The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Saviour at Oatlands* (No. CL 2007-5364); *The Protestant Episcopal Church in the Diocese of Virginia v. The Church at The Falls – The Falls Church* (No. CL 2007-5250); *The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church* (No. CL 2007-5902); and *The Episcopal Church v. Truro Church et al.,* (No. 2007-1625).

BRIEF IN OPPOSITION TO DEMURRERS AND PLEAS IN BAR

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INTRODUCTION

The Diocese of Virginia (the "Diocese") and the Episcopal Church (the "Church" or "TEC") seek to preserve for their members property that has been acquired and maintained for centuries by generations of Episcopalians to further the Church's mission, under democratically adopted Constitutions and Canons that expressly preclude the current membership of any local church ("parishes" or "missions") from diverting parish property to any other purpose.

The Virginia Supreme Court, like most other state courts, has made clear that a general church may establish a proprietary right to local church property, and thus prevent the sort of diversion that defendants are trying to effect, through a specific analysis that looks to state "statutes, to the language of the deed conveying the property, to the constitution of the general church, and to the dealings between the parties." *Green v. Lewis*, 221 Va. 547, 555, 272 S.E.2d 181, 186 (1980). *See also Reid v. Gholson*, 229 Va. 179, 188-89, 327 S.E.2d 107, 113 (1985) ("[o]ne who becomes a member of [a hierarchical] church, by subscribing to its discipline and beliefs, accepts its internal rules and the decision of its tribunals. For that reason ... a decision by a governing body or internal tribunal of an hierarchical church [is] an ecclesiastical determination constitutionally immune from judicial review"). Using this approach, and consistent with other applicable neutral principles of law and constitutional requirements, Virginia courts have consistently ruled in favor of general, hierarchical churches on facts similar to those alleged in the Complaints. The defendants' demurrers therefore must be overruled.

STANDARD OF REVIEW AND STATEMENT OF FACTS

A demurrer tests the sufficiency of the allegations of a complaint. "[I]t is unnecessary for the pleader to descend into statements giving details of proof in order to withstand demurrer. And, even though a ... complaint may be imperfect, when it is drafted so that defendant cannot mistake the true nature of the claim, the trial court should overrule the demurrer." *CaterCorp,*

Inc. v. Catering Concepts, Inc., 246 Va. 22, 24, 431 S.E.2d 277, 279 (1993). The following facts must be accepted as true in ruling on the demurrers.[1]

The Episcopal Church is a hierarchical denomination. TEC Complaint, ¶ 28; Diocese Complaint, ¶ 6.[2] Its first subordinate tier consists of geographical subdivisions, known as "dioceses." TEC Complaint, ¶¶ 2, 30; Diocese Complaint, ¶ 7. The Church's second subordinate tier is composed of nearly 7,700 individual worshipping congregations, which are subordinate both to the Episcopal Church and to the diocese in which they are geographically located. TEC Complaint, ¶¶ 2, 31; Diocese Complaint, ¶ 8. Each Episcopal parish elects representatives to its diocese's governing body, its Annual Council. Each diocese, in turn, sends representatives to triennial meetings of the General Convention, the governing body of the national Church. TEC Complaint, ¶¶ 29, 32; Diocese Complaint, ¶¶ 6, 7, 9. Plaintiff Diocese is a constituent part of plaintiff Church. TEC Complaint, ¶ 2; Diocese Complaint, ¶ 1.

The General Convention and diocesan Annual Councils have adopted and from time to time amended Constitutions and other rules, known as "Canons," that are binding on all dioceses and parishes within their respective jurisdictions. TEC Complaint, ¶¶ 40, 53; Diocese

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[1] In their briefing, the defendants have ignored the facts alleged in the Church's and the Diocese's Complaints. They rely instead on materials outside the pleadings (and primarily on the allegations of their own pleadings, in their Va. Code § 57-9 cases). The only relevant facts are those alleged in the Complaints, including reasonable inferences from those allegations. *Catercorp*, 246 Va. at 24, 431 S.E.2d at 279; *West Alexandria Properties v. First Va. Mortgage*, 221 Va. 134, 136, 267 S.E.2d 149, 150 (1980).

[2] *See, e.g., Dixon v. Edwards*, 290 F.3d 699, 716 (4th Cir. 2002) (concluding after consideration of church organization that "[t]he Episcopal Church is hierarchical"); *Diocese of Sw. Va. of the Protestant Episcopal Church v. Buhrman*, 5 Va. Cir. 497, 502-03 (Clifton Forge 1977); *Baber v. Caldwell*, 207 Va. 694, 698, 152 S.E.2d 23, 26 (1967) (*dictum*).

Paragraph citations to the Diocese's Complaint are to No. 2007-1238 (*Church of the Apostles*), which is cited as an example. Paragraph numbers in other actions vary to some extent. The substance of the allegations does not.

Complaint, ¶ 10.[3] Among other things, the Church's Constitution requires dioceses to include in their Constitutions "an unqualified accession to the Constitution and Canons of this Church." Church Const., Art. V § 1. The Diocese's Constitution, Art. XVII, requires that "Every Congregation within the Diocese of Virginia, however called, shall be bound by the Constitution and the Canons adopted in pursuance hereof." Diocesan Canon 11.8 requires every vestry member to subscribe to a declaration and promise in which the member states that he or she "yield[s] a hearty assent and approbation to the doctrines, worship and discipline of The Episcopal Church" and promises to "faithfully execute the office of Vestry member." Church Canon I.17(8) mandates that any person accepting any office in the Episcopal Church, which includes the offices of parish vestry and trustee, "shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised."

The Diocese's and the Church's Constitutions and Canons have always required that local congregations' property be used for the mission of the Church. The earliest Canons of the Diocese, for example, described local parish property, both real and personal, as "belonging to the Protestant Episcopal Church." TEC Complaint, ¶ 42. Church Canon II.6(1), adopted in 1871, requires that consecrated parish property be "secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with this Church and subject to its Constitution and canons." Canons II.6(2) and I.7(3), adopted in 1868 and 1940, respectively, forbid parishes

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[3] The Episcopal Church's and the Diocese's Constitutions and Canons are exhibits to the Complaints, pursuant to the Court's Order on Motions Craving Oyer. *See* Praecipe Indexing Docs. (June 15, 2007), Exs. 1-2 (Church Constitutions and Canons in effect in December 2006, and since January 1, 2007, respectively) and 3-4 (Diocese Constitutions and Canons in effect through January 27, 2007, and thereafter, respectively). There are no relevant differences between these versions, and in this brief they are cited as "Church Const.," etc.

from encumbering or alienating real property without the consent of diocesan leaders. Further tying parish property to the Church's mission, Canon III.9(5), adopted in 1904, makes clear that it is the Episcopal rector of each parish who is at all times entitled to the use and control of parish property, subject to the Constitutions and Canons of the Church and the Diocese. Finally, restating the restrictions embodied in these earlier canons, Church Canon I.7(4) and Diocesan Canon 15.1, adopted in 1979, state that all property held by or for the benefit of any Church or Mission is held in trust for the Church and the Diocese. *See* TEC Complaint ¶¶ 47-48.

Under the Constitution and Canons of the Church and the Diocese, a parish may not unilaterally "disaffiliate." TEC Complaint, ¶¶ 57-59. Diocesan Canons specify the processes by which a parish may be formed and admitted into union with the Diocese and by which that status may be changed. All of these events require Diocesan approval and action. TEC Complaint, ¶¶ 51-52; Diocese Complaint, ¶ 18. *See* Church Canon I.13(2); Diocese Canons 9.3, 10, 15.3. Specifically, Diocesan Canons 10.1 & 10.2 set forth the requirements and the process by which a parish is formed, including "acknowledg[ing] the jurisdiction of the Bishop ... of the Diocese," maintaining a "program of identifiable Episcopal services," and "shar[ing] in the support of the Episcopate of the Diocese." Upon the failure of any parish to meet these requirements, the Diocese may "change the status of such [parish] to that of a mission." Diocesan Canon 10.6. A vestry member's "[n]eglect to perform faithfully and diligently the duties of Vestry members enumerated in the Canons" may result in that vestry member's position being deemed vacant, *see* Diocesan Canon 11.11, and Diocesan Canon 9.3 assigns control of a parish lacking a functioning vestry or vestry committee to the Diocesan Executive Board. Diocesan Canon 15.3 directs the Diocese "to take charge and custody" of any property that has ceased to be used by an Episcopal congregation.

Defendant churches were formed as parishes or missions of the Diocese and the Church,

and until recently they functioned and operated as such. TEC Complaint, ¶ 2; Diocese Complaint, ¶¶ 2, 11. Accordingly, most of the deeds to real property of the defendant churches provide specifically that the properties were conveyed to *Episcopal* congregations. *See* TEC Complaint, ¶¶ 20-26; Diocese Complaint ¶ 5; Exs. 5-12 to Praecipe Indexing Docs.[4]

As of varying dates in December 2006 and January 2007, the congregations of each of the defendant churches voted to disaffiliate from the Diocese and the Church. TEC Complaint, ¶ 62; Diocese Complaint, ¶ 22. In response, and pursuant to Diocesan Canon 15.3, the Diocese's Executive Board declared the property of the churches "abandoned" and directed that it be transferred to the Bishop of the Diocese. TEC Complaint, ¶ 62; Diocese Complaint, ¶ 28 & Ex. 3. The individual defendants nonetheless remain in possession of the churches' real and personal properties and refuse to deliver possession or transfer title to the Bishop as directed or to permit the properties' use by continuing Episcopal congregations. TEC Complaint, ¶ 67; Diocese Complaint, ¶ 29.

ARGUMENT

I. The Church and the Diocese have stated claims under Virginia law governing church property disputes.

The Constitution permits civil courts a choice as to how to approach and analyze a church property dispute such as the ones at bar: either a "principles of government" (or "hierarchical") approach or a "neutral principles" approach is constitutionally permissible. *Jones v. Wolf*, 443 U.S. 595, 602 (1979). In either case, however, the courts must take care to consider and to

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[4] The deed summaries appended as Exhibit 1 to the churches' brief are inaccurate and incomplete in many respects. To name only two pertinent examples, that exhibit does not acknowledge a November 1874 deed to trustees "for the sole use and benefit of the religious society and congregation known as the Protestant Episcopal Church," which is included in Exhibit 5 to the Praecipe Indexing Documents (St. Stephen's); or a February 2004 deed to "St. Margaret's Episcopal Church by its Trustees," in Exhibit 7 to the Praecipe Indexing Documents.

respect the polity and rules established by the church itself for the conduct of its affairs. Consistent with the Supreme Court's direction, Virginia has developed a specific "church property" analysis that looks to and relies on facts such as those alleged in the Complaints, including particularly a general church's rules and the dealings between the parties, to determine whether property held by or for a local church may be diverted to another denomination at the local church's option. To date, all such attempts by local churches of a hierarchical denomination have failed under Virginia law. The result here should be no different.

A. United States Supreme Court authority.

In *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), the Supreme Court (in disapproving the "implied trust" or "English" rule, under which property held by a local congregation of a hierarchical church was deemed to be held in trust for the larger denomination so long as the denomination adhered to the essential elements of its religious tenets) held that, in accordance with the law generally applicable to voluntary associations, the polity and locus of authority established by the particular denomination was dispositive: "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." *Id.* at 727. This approach has been referred to as "hierarchical" or "principle of government" analysis. *See, e.g., Episcopal Church Cases*, 2007 Cal. App. LEXIS 1041 at *2. Although *Watson v. Jones* was decided as a matter of federal common law, in *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), the Supreme Court made clear that the deference it had shown to a church's established governance in *Watson* was constitutionally required: the Court emphasized that religious organizations have the right "to decide for themselves, free from state interference, *matters of church government as well as those of faith and doctrine.*" *Id.* at 116

(emphasis added).

In a series of later church property dispute cases, the Court held that the "hierarchical" approach was not the only constitutionally permissible approach. In *Jones v. Wolf*, the Court approved a "neutral principles of law" alternative foreshadowed in earlier decisions. 443 U.S. at 602-03. Under this approach, courts could examine the deeds to property, governing documents of the local church, governing instruments of the general church, and applicable state statutes to determine whether property held by a local church is held, and must be used, for the mission of the denomination. *Id.* at 603. The Court continued to make clear, however, that the First Amendment requires that a hierarchical church's determinations and rules be respected. A court applying neutral principles must "completely" abstain from resolving "questions of religious doctrine, polity, and practice." *Id.* Accordingly, the Court explained that under a "neutral principles" analysis

> 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. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. *Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.... [T]he civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.*

Id. at 606 (emphasis added); *see also Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976) (reversing a ruling that had refused to heed a denomination's determination affecting the control of property, because "[t]he [First] Amendment ... commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. This principle applies with equal force to church disputes over church polity and church administration") (citation and internal quotation marks omitted).

A state, in short, may not substitute its own rules regarding intra-church organization and

relations for those adopted by the church itself.

B. Virginia authority addressing church property disputes under neutral principles of law.

Following this authority, the states have developed bodies of law and authorities that apply to church property disputes. The overwhelming weight of this authority, including all known cases from Virginia, confirms that the Church and the Diocese have stated valid claims.

First, in *Norfolk Presbytery v. Bollinger*, 214 Va. 500, 201 S.E.2d 752 (1974) (decided before *Jones v. Wolf* or *Serbian Eastern Orthodox*), a local congregation of a hierarchical church had "voted to sever its connection with The Norfolk Presbytery and The Presbyterian Church" and petitioned the circuit court under Va. Code § 57-15 to transfer the property held by its trustees to an independent body. 214 Va. at 501, 201 S.E.2d at 753-54. After the petition was granted *ex parte*, the general church moved to intervene and set aside the transfer, alleging that "[t]he local church was a duly constituted church of and subject to the jurisdiction, government and discipline of" the denomination and "that the actions of the congregation in undertaking unilaterally to withdraw, with its property, from the parent church was contrary to ecclesiastical law." *Id.* at 501, 201 S.E.2d at 753.

The Virginia Supreme Court held that those allegations were "sufficient ... to have a determination made whether [the hierarchical church] had a proprietary interest in the property ... which could be eliminated by unilateral action of the congregation." *Id.* at 507, 201 S.E.2d at 758. It further ruled that "it is proper to resolve a dispute over church property by considering the statutes of Virginia, the express language in the deeds and the provisions of the constitution of the general church," *id.* at 505, 201 S.E.2d at 756-57, and thus directed the trial court on remand to consider "the language of the deeds and the constitution of the general church ... in the

application of neutral principles of law." *Id.* at 507, 201 S.E.2d at 758.[5]

Following *Norfolk Presbytery*, the Circuit Court of the City of Clifton Forge addressed another church property dispute, this time involving the Episcopal Church, in *Diocese of Sw. Va. v. Buhrman*, 5 Va. Cir. 497 (1977). Again, as here, "a substantial number of the members of [a local Episcopal parish] formally withdrew from The Episcopal Church" as a result of "certain doctrinal" issues. *Id.* at 499. After a trial on the merits, Justice (then Judge) Stephenson held that "[i]n the case of a supercongregational or hierarchical church ... the will of a majority within the local church or parish does not decide property rights. Such a church is subject to the constituted authorities of the general church." *Id.* at 502. Because the Episcopal parish there had "been part of a hierarchical or supercongregational church organization ... it [was], and always has been, subject to the ecclesiastical authority and to the Constitutions and Canons of both the Episcopal Church and the Diocese." *Id.* at 503.

Looking to "'the deeds and the constitution of the general church,'" the court then upheld the claims of the general church. *Id.* (quoting *Norfolk Presbytery*). First, the court explained, both of the deeds at issue supported the diocese's position in that case:

> In one of the deeds the conveyance was made to the church trustees "for the erection of a church building to be used as a place of worship by the *Episcopal* Congregation of Clifton Forge Parish." The other deed contains no statement of purpose, but the conveyance was made to named "Trustees of St. Andrew's *Episcopal* Church of Clifton Forge, Virginia." It is evident that the designated *cestui que trust* in each deed was a unit or component of the Protestant Episcopal Church in the United States of America within the then existing diocese.... *Therefore, a reasonable interpretation of these deeds leads inescapably to the conclusion that the trustees*

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[5] *Norfolk Presbytery* speaks only of the "constitution of the general church"; but to read it as excluding consideration of Episcopal Church or Diocesan canon laws would be to attribute to the Court an intention to override the internal governance precepts of the church, which it manifestly did not intend to do. To the contrary, *Norfolk Presbytery* "gave that phrase" – *i.e.* "the provisions of the constitution of the general church" – "a rather broad meaning which included contractual rights of the various levels and units within a supercongregational church." *Diocese of Sw. Va. v. Buhrman*, 5 Va. Cir. 497, 504 (Clifton Forge 1977).

cannot hold title to the subject property for persons or groups who are withdrawn from and not under the authority of The Episcopal Church.

Id. at 503 (emphases added). Next, the court explained that "the contractual rights of the Diocese in the subject property are implicit in the Constitution and Canons of The Episcopal Church and in the Constitution and Canons of the Diocese[, which] ... are binding upon all units of The Episcopal Church," including the local parish. *Id.* at 505. Specifically, national Canons II.6 and I.7(3) (on which the Church and the Diocese rely, along with other canons, in this case), as well as diocesan canons similar to those presented here, "illustrate[d] the proprietary interest" of the larger Church and effectively precluded the defendants from "alienating" parish property from the Episcopal Church and its members. *Id.* at 506-08.[6]

Based on these facts, the court held that the trustees and church members who had voted to disaffiliate, "having violated the express language of the deeds and their contractual obligations to the general church, have no further right or interest in the subject property," and "neither they nor the others who have renounced The Episcopal Church have any proprietary or possessory rights in said property." *Id.* at 508.

Three years after *Burhman* was decided, the Supreme Court reached a similar decision in *Green v. Lewis*, 221 Va. 547, 272 S.E.2d 181 (1980). In that case, "a substantial majority of the membership" of a church congregation voted to "separate" the local church from the hierarchical church of which it had been a part and retain control of the local church property. *Id.* at 550, 272

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[6] The court also noted that the congregation had "expressly promised the Diocese that, upon being granted parish status, the 'Parish shall be forever held under the Ecclesiastical Authority of the Diocese of Southwestern Virginia and in conformity with the Constitution and Canons of the Diocese' and that 'all real estate consecrated as a church or chapel ... shall be secured against alienation from the Protestant Episcopal Church in the Diocese of Southwestern Virginia, unless such alienation is in conformity with its Canons.'" *Buhrman*, 5 Va. Cir. at 505. We anticipate that the evidence in this case will reflect similar commitments. As Justice Stephenson noted, however, even "[a]bsent these express promises," the contractual rights of the Church and the

(footnote continued ...)

S.E.2d at 182-83. The Court explained that "[i]n determining whether the [general church] has a proprietary interest in the [local church's] property, we look to our own statutes, to the language of the deed conveying the property, to the constitution of the general church, and to the dealings between the parties." *Id.* at 555, 272 S.E.2d at 185-86.

With respect to the deeds, the Court noted, "[t]he grantors conveyed the property to 'Trustees of the A.M.E. Church of Zion ... for the purpose of erecting an A.M.E. Church of Zion ... *not a church of some other denomination, or an independent church.*" *Id.* at 553, 272 S.E.2d at 184 (emphasis added). The course of dealings between the parties confirmed that "this is what occurred. The church was organized, the building was constructed, and it functioned as ... an integral part of the supercongregational or hierarchical structure." *Id.* [7]

Moreover, the general church's rules "require[d] that all property transfers be approved by the bishop." *Id.* at 556. The Court applied this rule to the dispute before it, noting that "it is reasonable to assume that those who constituted the original membership of [the local church] and who established the church in the manner directed by the grantors in the deed, and those members who followed thereafter, united themselves to a hierarchical church ... with the understanding and implied consent that they and their church would be governed by and would adhere to the [rules] of the general church." *Id.* at 555-56, 272 S.E.2d at 186.

Thus, the Court concluded, the larger church had "a proprietary interest in the property of [the local church] ... that ... cannot be eliminated by the unilateral action of the congregation. The Discipline of the [larger church] requires that all property transfers be approved by the

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Diocese are contained in the Church's and the Diocese's Constitutions and Canons. *See id.*

[7] The defendants' suggestion that *Green*'s holding depends upon property being held by trustees for a general church is thus mistaken. As the Court's discussion shows, the important point was that the deeds indicated the property was to be used by a local congregation affiliated with a particular denomination. The same is true here. *See also Buhrman*, 5 Va. Cir. at 503.

bishop ... and such approval has not been given." *Id.* at 556, 272 S.E.2d at 186.[8]

The Virginia courts' willingness to enforce a hierarchical church's rules is hardly surprising, as, even aside from the constitutional requirements applicable in the church context, Virginia generally treats a voluntary association's constitution, rules, and by-laws as a contract between the association and its members. *Unit Owners Ass'n v. Gillman*, 223 Va. 752, 766, 292 S.E.2d 378, 385 (1982); *Gottlieb v. Economy Stores, Inc.*, 199 Va. 848, 856, 102 S.E.2d 345, 351 (1958) ("The constitution and by-laws adopted by a voluntary association constitute a contract between the members, which, if not immoral or contrary to public policy, or the law, will be enforced by the courts") (citations omitted).[9]

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[8] The Virginia authority is in accord with the overwhelming weight of authority from other jurisdictions addressing church property disputes within the Episcopal Church as well as other hierarchical denominations. For cases involving the Episcopal Church, *see, e.g.*, *Episcopal Church Cases*, 2007 Cal. App. LEXIS 1041 at *142 (the Episcopal Church's right to enforce its interests in local parish property as set forth in its canons "is clear"); *In re Church of St. James the Less*, 888 A.2d 795 (Pa. 2005) (canons restricting local parish property for the Church's mission held enforceable under neutral principles of law); *Episcopal Diocese of Massachusetts v. Devine*, 797 N.E.2d 916, 923-25 (Mass. App. 2003) (canons established a trust in parish property in favor of the Diocese and the Church); *Daniel v. Wray*, 580 S.E.2d 711, 718 (N.C. App. 2003) (national canons "clearly established a form of governance impliedly assented to by [the parish] that precluded the seceding vestry from taking control of the [church] property"); *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville*, 684 N.Y.S.2d 76 (App. Div. 1999) (enforcing the Episcopal Church's canonical rights to parish property upon the disaffiliation of a congregation); *Rector, Wardens & Vestrymen of Trinity-St. Michael's Parish, Inc. v. Episcopal Church in the Diocese of Conn.*, 620 A.2d 1280 (Conn. 1993) (same); *Bishop & Diocese of Colorado v. Mote*, 716 P.2d 85 (Colo.) (same), *cert. denied*, 479 U.S. 826 (1986); *Protestant Episcopal Church in the Diocese of N.J. v. Graves*, 417 A.2d 19 (N.J. 1980) (same), *cert. denied*, 449 U.S. 1131 (1981); *Tea v. Protestant Episcopal Church in the Diocese of Nevada*, 610 P.2d 182 (Nev. 1980) (same).

For decisions involving other denominations, *see, e.g.*, *Shirley v. Christian Episcopal Methodist Church*, 748 So.2d 672, 677 (Miss. 1999); *Cumberland Presbytery of the Synod of the Mid-West v. Branstetter*, 824 S.W.2d 417, 421-22 (Ky. 1992); *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810, 818 (Iowa 1983); *Crumbley v. Solomon*, 254 S.E.2d 330, 332 (Ga. 1979); *Wisconsin Conference Board of Trustees of the United Methodist Church, Inc. v. Culver*, 614 N.W.2d 523, 528 (Wis. App. 2000), *affd. on other grounds*, 627 N.W.2d 469 (Wis. 2001); *Bethany Indep. Church v. Stewart*, 645 So.2d 715, 721-22 (La. App. 1994).

[9] *See also, e.g.*, *Meshel v. Ohev Shalom Talmud Torah*, 869 A.2d 343, 361 (D.C. 2005) ("It

(footnote continued ...)

C. Virginia authority further affirms that courts must defer to the Church's ecclesiastical actions and determinations.

Just as civil courts deciding church property disputes must respect and enforce a general church's polity and rules, they also must respect and defer to a hierarchical church's resolution of other ecclesiastical issues that may bear on the resolution of the dispute. *See, e.g., Jones*, 443 U.S. at 602 (under the First Amendment, "civil courts [must] defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization").

Recognizing this principle, this Court has confirmed control of local church property in individuals recognized by the general church, properly recognizing that it had no authority to determine independently which of two competing factions of a hierarchical church congregation was entitled to control of church property. *Judicial Comm'n of PCA Korean Capital Presbytery v. Kim*, 56 Va. Cir. 46, 51 (Fairfax County 2001). *See also Reid v. Gholson*, 229 Va. at 189, 327 S.E.2d at 113 ("the civil courts will treat a decision by a governing body or internal tribunal of an hierarchical church as an ecclesiastical determination constitutionally immune from judicial review"); *Buhrman*, 5 Va. Cir. at 507 ("The Executive Board [of the Diocese], by a formal resolution, has determined that the [parish] property has been abandoned within the context of church law, and it is most doubtful if that determination is subject to review by this court").[10]

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is well established that the formal bylaws of an organization are to be construed as a contractual agreement between the organization and its members") (citations omitted); *Davenport v. Society of the Cincinnati*, 754 A.2d 225, 237 (Conn. Super. Ct. 1999) ("the constitution, rules, and bylaws of an unincorporated association constitute a contract between the members and will be enforced by the courts if not contrary to public policy"); *NAACP v. Golding*, 679 A.2d 554, 561 (Md. 1996) ("A number of Maryland cases have applied contractual principles to disputes involving private organizations"); 6 Am. Jur. 2d *Associations and Clubs* § 5 (2001). A voluntary association's members are assumed "to have known and assented to the provisions of its charter and bylaws ... and cannot object to the enforcement thereof on the ground that he or she is deprived of any legal or constitutional right." *Id.* § 7.

[10] Authority from other jurisdictions affirms this position. *See, e.g., Episcopal Diocese of Mass. v. Devine*, 797 N.E.2d 916, 921-22 (Mass. App. 2003) ("Because the question of the right

(footnote continued ...)

D. The Church's and the Diocese's claims are also consistent with applicable Virginia statutes.

The General Assembly has made clear that gifts to churches or religious societies are generally to be used and administered for the church's or religious society's purposes, in accordance with its rules. Va. Code § 57-7.1 provides:

> Every conveyance or transfer of real or personal property ... which is made to or for the benefit of any church, church diocese, religious congregation or religious society ... that fails to state a specific purpose shall be used for the religious and benevolent purposes of the church, church diocese, religious congregation or religious society *as determined appropriate by the authorities which, under its rules or usages, have charge of the administration of the temporalities thereof.*

(Emphasis added.) *Cf. Green*, 221 Va. at 553, 272 S.E.2d at 184 ("in the case of a supercongregational church Code § 57-15 'requires a showing that the property conveyance is the wish of the constituted authorities of the general church'"). Similarly, Va. Code § 57-16.1 provides that church corporations may only act as "authorized and permitted by the laws, rules, or ecclesiastic polity of the Church or body."

Virginia law is thus in accord with the fundamental principle that charitable organizations generally are required to use donated property to further the purpose or mission for which they were established at the time of the donation. *See, e.g., Blocker v. State*, 718 S.W.2d 409, 415 (Tex. App. 1986) ("property transferred unconditionally to a [charitable] corporation ... is ...

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to use and possess the ... property is inextricably intertwined with the question of which individuals hold authority to act on behalf of [the church] ..., we consider the matter to be *inappropriate* for determination by application of neutral principles of law"); *Korean United Presbyterian Church of L.A. v. Presbytery of the Pac.*, 281 Cal. Rptr. 396, 407-08 (Cal. App. 1991) (which faction of a divided congregation represented the "local church" entitled to use the property was an ecclesiastical question on which the court was required to defer); *St. Mary of Egypt Orthodox Church, Inc. v. Townsend*, 532 S.E.2d 731, 736 (Ga. App. 2000) (same); *Church of God of Madison v. Noel*, 318 S.E.2d 920, 924 (W. Va. 1984) (trial court erred in hearing a suit for control of church property brought by former trustees against successors appointed by the general church because "the proper church authorities had already determined who were the proper trustees of the [local church, and] the civil courts were bound to abide by that decision").

subject to implicit charitable ... limitations defined by the donee's organizational purpose ....") (emphasis omitted); *American Ctr. for Educ., Inc. v. Cavnar*, 145 Cal. Rptr. 736, 742 (Cal. App. 1978) ("[A]ssets of charitable corporations are deemed to be impressed with a charitable trust by virtue of the declaration of corporate purposes" and may not be diverted to other uses, charitable or otherwise). *See also* 4A W. Fratcher, *Scott on Trusts* § 348.1 (4th ed. 1989).

Each of the parishes and missions here was established to further the Church's ministry and mission and has received its property – from thousands of individuals over many decades – under rules restricting that property for those purposes. The defendants are not free to disregard those restrictions and divert those charitable assets to another mission of their choosing.[11]

E. The Episcopal Church and the Diocese have stated claims under this governing authority.

As the above discussion shows, the Church and the Diocese have plainly alleged (and, pursuant to the motions craving oyer, substantiated) contractual and proprietary interests in the property held by the eleven Episcopal congregations in this litigation.

First, the properties at issue are and have been held by trustees for *Episcopal* churches and "not a church of some other denomination, or an independent church." *Green*, 221 Va. at 553, 272 S.E.2d at 184; *see Burhman*, 5 Va. Cir. at 503. The congregations are bound by numerous provisions that restrict the use and control of parish property and tie it to the larger Church's mission. *See, e.g.*, TEC Complaint ¶¶ 40-60; pp. 3-4, *supra*. Indeed, the Church and the Diocese have relied, among other provisions, on precisely the same canons that the court in *Buhrman* relied on to hold that the members of an Episcopal parish could not divert parish

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[11] Defendants rely largely on another Virginia statute, § 57-9, in their defense. For present purposes, however, the Court must accept that, as the Church and the Diocese have alleged, there has been no "division" in the Church or the Diocese that would implicate § 57-9.

property from the Episcopal Church: national Canons II.6 and I.7(3), which preclude parishes from "alienating" or encumbering real property without the consent of their diocese. *See also Green*, 221 Va. at 556, 272 S.E.2d at 186 (relying on general church's "requir[ement] that all property transfers be approved by the bishop"). Finally, the Complaints allege that all of the congregations involved here are and have operated as "subordinate units of the Episcopal Church and the Diocese." TEC Complaint ¶¶ 2 ("The parishes are subordinate units of the Episcopal Church and the Diocese ...."), 61 (parishes have participated in the Diocese's and Church's governing structures through their elected representatives).

In addition, the Church and the Diocese have alleged other ecclesiastic acts and determinations that are dispositive of this dispute. Pursuant to diocesan Canon 15.3, the Diocese has declared each congregation's property to be "abandoned" and directed the trustees to transfer such property to it. TEC Complaint ¶¶ 64-65; Diocese Complaint ¶ 28 & Ex. 3. In appropriate cases, the Church and the Diocese have recognized remaining faithful Episcopalian members of a parish as the continuing congregation of that parish. These are ecclesiastical issues on which the civil courts must defer. *Reid*, 229 Va. at 189, 327 S.E.2d at 113; *Kim*, 56 Va. Cir. at 51; *Buhrman*, 5 Va. Cir. at 507. The demurrers must be denied for this reason as well.

In short, the Church and the Diocese have alleged and substantiated the same facts under which Virginia courts, in *Green*, *Burhman* and *Kim*, consistent with neutral principles of law applicable to voluntary associations, Virginia statutes, and constitutional requirements, have upheld a general hierarchical church's contractual and proprietary interests in property. The demurrers therefore must be denied.

II. The demurrers should be overruled.

Almost entirely ignoring the authority discussed above, defendants argue that the Church and the Diocese have not stated claims under other theories or authority. As shown above, these

arguments are beside the point; in any event, they are wrong.

A. The Complaints allege a valid trust in favor of the Church, the Diocese, and local *Episcopal* congregations.

Defendants contend principally that Virginia does not recognize "trusts" for religious denominations, relying on *Norfolk Presbytery*'s statement that "express trusts for super-congregational churches are invalid" and therefore that "no implied trusts for such denominations may be upheld." 214 Va. at 507, 201 S.E.2d at 758. That statement was the logical result of an ancient common law rule that "a trust for indefinite beneficiaries ... is invalid unless expressly validated by statute" and the construction of former Va. Code § 57-7 as validating trusts only for local religious entities. *Id.* at 505, 506, 201 S.E.2d at 757. For the following reasons, *Norfolk Presbytery*'s statutory construction is no longer good law.[12]

Brooke v. Shacklett, 54 Va. (13 Gratt.) 301 (1856), first announced the rule that the then-operative predecessor statute validated only trusts "for the use of the 'religious congregations' therein mentioned, in the limited and local sense of the term," based on "the general tenor of the acts, but more especially ... the language" of parts of the statutes. *Id.* at 313. Later, the Court adhered to that construction, refusing to recognize denominational trusts, for four reasons: (1) amendments had not materially changed the first part of the statute; (2) the statute referred to trusts controlled by "local functionaries"; (3) the uses for which the statute allowed land to be held were local; and (4) the statutory limits on church property ownership were so small as to be inconsistent with an intent to allow non-local religious groups to be the beneficiaries of trusts. *Moore v. Perkins*, 169 Va. 175, 179-181, 192 S.E. 806, 808-09 (1937). *Norfolk Presbytery*'s

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[12] *Norfolk Presbytery* also noted Virginia's constitutional ban on church incorporation, *see* 214 Va. at 505, 201 S.E.2d at 757, but this too is antiquated. A federal court ruled that provision of the Virginia constitution unconstitutional. *Falwell v. Miller*, 203 F. Supp. 2d 624, 632 (W.D. Va. 2002). The General Assembly provided for the incorporation of churches in § 57-16.1,

(footnote continued ...)

treatment of trusts for hierarchical churches was limited to restating that statutory construction and citing church property ownership limits as "evidence [of] this restrictive legislative intent." 214 Va. at 506-07, 201 S.E.2d at 757-58. [13]

Every basis upon which *Norfolk Presbytery* and its predecessors relied is gone. Section § 57-7 has been repealed and replaced by § 57-7.1, which now provides, in pertinent part:

> Every conveyance or transfer of real or personal property, whether inter vivos or by will, which is made to or for the benefit of any church, church diocese, religious congregation or religious society, whether by purchase or gift, shall be valid.
>
> Any such conveyance or transfer that fails to state a specific purpose shall be used for the religious and benevolent purposes of the church, church diocese, religious congregation or religious society as determined appropriate by the authorities which, under its rules or usages, have charge of the administration of the temporalities thereof....

First, the first part of the statute is now radically different, *see* Ex. B, so the court cannot simply rely on earlier interpretations of particular words. *E.g.*, *Chesterfield County v. Stigall*, 262 Va. 697, 704 , 554 S.E.2d 49, 53 (2001) (courts must "examine a statute in its entirety, rather than by isolating particular words or phrases").

Second, § 57-7.1 does not refer to "local functionaries." *See* Ex. B. It states that property shall be used for the purposes "determined appropriate by the authorities which, under its rules or usages, have charge of the administration of the temporalities thereof," thereby recognizing the central role of church rules and deferring to the proper authorities under those rules.

Third, § 57-7.1 does not limit the uses for which property may be placed in trust for religious groups. Dedications of real estate are no longer required to be made for use "as a place

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discussed *infra*, and in 2006 voters ratified a constitutional amendment to delete the provision.

[13] *Hoskinson v. Pusey*, 73 Va. (32 Gratt.) 428 (1879), also cited in *Norfolk Presbytery*, stated that the circumstances were the same as in *Brooke v. Shacklett* and therefore that the Court would apply the same statutory interpretation. *See Hoskinson*, 73 Va. at 431. Likewise, *Maguire*

(footnote continued ...)

for public worship, or as a burial place, or a residence for a minister," nor are gifts of "books and furniture" limited to those made "for the benefit of such congregation, to be used on the said land in the ceremonies of public worship, or at the residence of their minister." *Brooke*, 54 Va. at 313. The statute now imposes no limits on use, except to defer to the church's proper authorities.

Finally, Virginia's limits on church property ownership (former Va. Code § 57-12) have been repealed. 2003 Va. Acts ch. 813. What is left is a broadly stated statute which, by its plain language, validates "*Every* conveyance ... made to or for the benefit of *any* church, *church diocese*, religious congregation or religious society ...." Va. Code § 57-7.1 (emphases added).

Despite the dramatic statutory changes and the repeal of church property ownership limits, defendants suggest that because 1993 Va. Acts ch. 370 was "declaratory of existing law," § 57-7.1 validates only trusts for local religious entities. They are wrong. By deleting all modifiers, the General Assembly confirmed that § 57-7.1 encompasses both local and hierarchical beneficiaries. The ordinary meaning of the various beneficiaries listed in § 57-7.1 is not limited to local groups.[14] The plain meaning of § 57-7.1 validates trusts for any religious entity, and the Court should interpret the statute that way. *See Woods v. Mendez*, 265 Va. 68, 75, 574 S.E.2d 263, 267 (2003) ("when the General Assembly has used words of a plain and definite import, courts cannot assign to them a construction that effectively would add words to the statute and vary the plain meaning of the language used").[15]

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v. Loyd, 193 Va. 138, 67 S.E.2d 885 (1951), simply relied on *Moore*. *Id.* at 143.

[14] *See* BLACK'S LAW DICTIONARY 1425 (8th ed. 2004) (defining "society"); *id.* at 490 (defining "diocese" as "[a] territorial unit of the church, governed by a bishop, and further divided into parishes"); "Church," Dictionary.com Unabridged 1.1 (2007), *at* http://dictionary.reference.com/browse/church (providing seventeen definitions, including both local and non-local religious groups).

[15] Thus, the phrase "declaratory of existing law" actually indicates that Virginia courts were incorrectly limiting prior statutes. *See, e.g., Horner v. Dep't of Mental Health, Mental*

(footnote continued ...)

Moreover, retaining the old interpretation would impermissibly ascribe no meaning to the changes in § 57-7.1. *See, e.g., Va.-Am. Water Co. v. Prince William County Serv. Auth.*, 246 Va. 509, 517, 436 S.E.2d 618, 623 (1993) ("we assume that the General Assembly's amendments to the law are purposeful and not unnecessary or vain").[16]

Finally, the serious constitutional questions resulting from a narrow construction also require interpreting § 57-7.1 as a broad validation of religious trusts. *See, e.g., Yamaha Motor Corp. v. Quillian*, 264 Va. 656, 665, 571 S.E.2d 122, 126-27 (2002) ("a statute will be construed in such a manner as to avoid a constitutional question wherever this is possible"); *Va. Society for Human Life v. Caldwell*, 256 Va. 151, 157 & n.3, 500 S.E.2d 814, 816-17 & n.3 (1998).

The Establishment Clauses of the First Amendment and Article I, § 16 of the Constitution of Virginia forbid laws that favor some religious groups over others. *E.g., Everson v. Board of Education*, 330 U.S. 1, 15 (1947); *McCreary County v. ACLU*, 545 U.S. 844, 860 (2005).[17] Construing Va. Code § 57-7.1 as a validation of trusts for congregations, but not for

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Retardation, & Substance Abuse Servs., 268 Va. 187, 193, 597 S.E.2d 202, 206 (2004) ("Nothing in the 2003 amendment, such as the words 'declaratory of existing law,' indicates that the General Assembly enacted the amendment as a clarification of existing law."); BLACK'S LAW DICTIONARY 1448 (8th ed. 2004) (defining "declaratory statute" as "[a] law enacted to clarify prior law by reconciling conflicting judicial decisions or by explaining the meaning of a prior statute"). By stating that § 57-7.1 was "declaratory of existing law," the General Assembly clarified that the prior statute was also a broad validation of religious trusts, including trusts for hierarchical churches, superseding *Norfolk Presbytery*'s statutory construction.

[16] As a last ditch effort to avoid the conclusion that the Complaints allege a valid trust interest, the departed congregations argue that § 57-7.1 cannot be applied to deeds that pre-date its enactment. That misconstrues the interest alleged. Section 57-7.1 did not create a trust interest in the properties at issue or even affect existing interests. As discussed *supra*, the departed congregations' affiliation with the Church and the Diocese over the years created the interests of the plaintiffs, as reflected in the Episcopal nature of the grantees in the operative deeds. *See* Ex. A. The trust Canons, among other documents, formalize and confirm those interests, and § 57-7.1 does nothing more than clarify that such interests are valid in Virginia.

[17] When Virginia courts apply Article I, § 16, they look to the federal Establishment Clause as a guide. *See, e.g., Habel v. Indus. Dev. Auth.*, 241 Va. 96, 100, 400 S.E.2d 516, 518 (1991).

hierarchical churches, would grant a benefit – the ability to receive property in trust – to some religious groups but not others and would recognize and enforce the chosen property arrangements of congregational but not hierarchical churches, improperly granting a religious preference to congregational churches. Such a construction also would prefer local religious organizations over regional or national ones, with the same constitutional infirmity.

Construing Va. Code § 57-7.1 as defendants suggest would similarly violate the Free Exercise Clauses of the First Amendment and of Article I, § 16 of the Constitution of Virginia. Section 57-7.1 addresses only trusts that benefit religious groups; it "has no meaning within the secular context; it plainly refers to 'a religious practice.'" *Falwell v. Miller*, 203 F. Supp. 2d 624, 629-30 (W.D. Va. 2002) (quoting *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533 (1993)). "In order to be valid, laws which impact religion must be generally applicable; *i.e.*, government may not 'impose special disabilities on the basis of religious views or religious status.'" *Falwell*, 203 F. Supp. 2d at 630 (quoting *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990)). Virginia law does not impose restrictions similar to those described in *Norfolk Presbytery* on non-religious charitable trusts or trusts with a definite beneficiary. No one would suggest, for example, that under Virginia law a local chapter of the Red Cross or United Way could be the beneficiary of a trust but the national organization could not.[18] *See* Va. Code § 55-541.03; Va. Code § 55-544.05 (allowing charitable trusts for any purpose "the achievement of which is beneficial to the community," including "the advancement of education or religion"); Va Code § 55-541.10. To pass muster under the Free Exercise Clause, § 57-7.1

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[18] If hierarchical churches cannot be beneficiaries of express trusts, unlike other charitable organizations, the impact on religious practice would be direct, not incidental, and hierarchical churches would be "render[ed] ... unequal to others on account of their religious *status*," disparate treatment that "trigger[s] the protections of the Free Exercise Clause." *Falwell*, 203 F. Supp. 2d at 631 & n.6.

must be interpreted consistent with these comparable provisions.[19]

B. The Complaints sufficiently allege that the Diocese and the Episcopal Church have contractual and proprietary rights in the subject properties.

Defendants next contend that the Church and the Diocese have not adequately alleged any basis for a "contractual" or "proprietary" interest in the property held by their constituent parishes because they do not allege "offer," "acceptance," or "consideration." As discussed in Section I above, applicable authority flatly refutes that contention. Those elements are demonstrated by the churches' status as constituent members of the Episcopal Church, by the terms set forth in the Constitutions and Canons, by the churches' express and implied promises to adhere to those Constitutions and Canons, and by the benefits that accrued to them by virtue of their status. *See Green*, 221 Va. at 554, 272 S.E.2d at 185 (the local church "contributed to this ... [general church] organization, and they presumably benefited from the association, spiritually and otherwise"). *See generally Bradley v. Wilson*, 138 Va. 605, 612, 123 S.E. 273, 275 (1924), and other voluntary association cases cited *supra* at p.11 & n.10.[20]

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[19] The Court therefore must "tur[n] to a strict scrutiny analysis, an exercise which usually sounds the death knell for constitutionally suspect laws." *Id.* at 631. To survive strict scrutiny, "the challenged laws must advance governmental interests of the highest order, and must be narrowly tailored." *Id.* (quoting *Lukumi*, 508 U.S. at 546). It is difficult to imagine any governmental interest, much less one "of the highest order," in denying hierarchical churches benefits available to other charitable organizations; and that chore is the defendants'.

[20] Defendants also argue that they cannot be bound by national and diocesan Canons because the Complaints do not allege that they either "signed the canons ... or expressly assented to their application ...." Defs.' Brief at 12-13. In Justice Frankfurter's memorable words, "[t]his is a horse soon curried." *Olberding v. Illinois Central R. Co.*, 346 U.S. 338, 340 (1953). Members of a voluntary association are bound by the association's rules as they are amended over time. *Bradley v. Wilson*, 138 Va. 605, 612, 123 S.E. 273, 275 (1924) (members of voluntary association must conform with rules of association so long as they are in force); *see also Amalgamated Clothing Workers of Am. v. Kiser*, 174 Va. 229, 236, 6 S.E.2d 562, 564-65 (1939) (members of voluntary association bound by constitution and laws of association). Moreover, in this case, the churches *either* were represented at General Conventions and Annual Councils when the Canons were adopted *or* joined the Diocese and the Church when the Canons were in place. Diocese Complaint ¶ 9. They also acquiesced by remaining Episcopal churches

(footnote continued ...)

The churches argue that the Statute of Frauds (Va. Code § 11-2) bars unwritten proof of "a contractual interest in real property" and that their "alleged conveyance to plaintiffs of 'an interest in real estate' [citation] falls within the statute of frauds." Defs.' Brief at 13, 14. *See also id.* at 14 n.8. Those arguments also have no merit.

First, plaintiffs rely on writings, including the Constitutions and Canons.[21] Second, plaintiffs do not allege a "conveyance" (or a contract to convey). They claim simply that the local church properties "must lawfully be used only for the mission of the Episcopal Church and the Diocese ..." as it always has been.[22] Third, the churches' argument runs afoul of the express recognition of the validity of similar contract claims in *Norfolk Presbytery*, *Green* and *Buhrman*.

Fourth, and perhaps most importantly, the Statute of Frauds simply does not apply to a "trust" or similar contractual interest in property. It has been established in Virginia for nearly a century that express trusts, implied trusts and resulting trusts may be proved by parol evidence. *See Young v. Holland*, 117 Va. 433, 434-44, 84 S.E. 637, 638-40 (1915); *accord*, *Burns v. Equitable Associates*, 220 Va. 1020, 1032-33, 265 S.E.2d 737, 744-45 (1980); *Peal v. Luther*, 199 Va. 35, 37, 97 S.E.2d 668, 669-70 (1957) ("It is well settled in this jurisdiction that an express trust in land may be established by parol").

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for decades after the Canons at issue were enacted.

[21] The secessionist churches argue that to satisfy the Statute of Frauds, a "memorandum" must contain, *inter alia*, a "'definite and certain'" description of "the land to be conveyed." Defs.' Brief at 14. In *Drake v. Livesay*, 231 Va. 117, 120, 341 S.E.2d 186, 188 (1986), references to "Emmett and Ethel Dunlow's property" and "this same property that I had told you we would sell to you" were held sufficient to satisfy the Statute of Frauds. In *Reynolds v. Dixon*, 187 Va. 101, 109, 46 S.E.2d 6, 9-10 (1948), cited in the defendants' brief, a street address was held sufficient.

[22] *Cf. Trustees of the Peninsula-Del. Annual Conf. of the United Methodist Church, Inc. v. E. Lake Methodist Episcopal Church*, 1998 Del. Ch. LEXIS 23 at *47 n.69, *aff'd*, 731 A.2d 798 (Del. 1999), *cert. denied*, 528 U.S. 1138 (2000) ("Because the implied trusts arose at the time of receipt of the properties, Defendants' claims based on the ... statute of frauds necessarily fail").

C. Plaintiffs have adequately alleged an action to recover the subject properties and actions for trespass and conversion.

Until the defendants' severance votes, the real and personal properties in question were in the possession and control of Episcopal churches, subordinate to the Episcopal Church and the Diocese, and were used in carrying out their mission. After such votes, despite notice and a demand pursuant to applicable church rules, non-Episcopal entities have been in possession of the property, have wrongfully put it to other uses, and have "exercised acts of ownership thereon or claimed title thereto or some interest therein." Va. Code § 8.01-135.

These facts support either an ejectment or equitable title action. *See Brown v. Haley*, 233 Va. 210, 216, 355 S.E.2d 563, 567 (1987) ("Ejectment is an action at law to determine title and right of possession of real property. It may be maintained by one who has an interest in and a right to recover possession of the premises ...") (citations omitted); Va. Code § 55-153 (approving a bill to quiet title by one out of possession holding equitable title). They also constitute conversion, which "'encompasses any wrongful exercise or assumption of authority ... over another's goods, depriving him of their possession; [and any] act of dominion wrongfully exerted over property in denial of the owner's right, or inconsistent with it.'" *PGI, Inc. v. Rathe Prods., Inc.*, 265 Va. 334, 344, 576 S.E.2d 438, 443 (2003).

Finally, these facts constitute a trespass – the unauthorized entry or interference with a property's owner's possessory interest or right of exclusive possession of land. *Cooper v. Horn*, 248 Va. 417, 423, 448 S.E.2d 403, 406 (1994). The Episcopal Church and the Diocese possessed the properties through subordinate Episcopal officials and entities, and since the votes, defendants have wrongfully assumed control of those entities and dispossessed them.

D. The Complaints state valid claims for a declaratory judgment.

Finally, the churches complain that a declaratory judgment action is "an Inappropriate

Vehicle For Asserting Tort-Based Causes of Action." Defs.' Brief at 20. However their claims are cast, the Church and the Diocese have plainly alleged an actual controversy between the parties that this Court can and should resolve. Diocese Complaint, ¶¶ 28-29, 31. In such cases, circuit courts "have power to make binding adjudications of right, whether or not consequential relief is ... claimed." Va. Code § 8.01-184. Further relief may be granted if it is "necessary or proper," Va. Code § 8.01-186, but it need not be sought. In these cases, it may reasonably be anticipated that a declaration of rights will be sufficient.

III. The pleas in bar should be denied.

A. The individual defendants are not immune from suit.

The Church and the Diocese have sued (1) the trustees who hold title to the disputed property, and (2) the rectors and vestry members who are currently in possession and control of that property and continuing to make decisions regarding its disposition and use. Such individuals are the proper defendants in a lawsuit involving local churches (which, until very recently, were not permitted to incorporate in Virginia). *See* Va. Code § 57-11 (trustees may sue for and be sued in relation to property held by them in trust); *Mason v. Muncaster*, 22 U.S. (9 Wheat.) 445, 468 (1824) (vestry are the "legal agents and representatives" of the parish); *Doe v. Harris*, 2001 Va. Cir. LEXIS 529 at *4-5 (Amherst County 2001) (trustees in their official capacities were proper parties).[23]

Defendants claim, however, that the individual defendants should be dismissed under Va.

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[23] Defendants have suggested that the individual defendants are not "necessary" defendants because all relief can be obtained from the "CANA congregations." Of course, a party may be a proper defendant even if he or she is not a "necessary" one. In any event, as noted above, the "congregations" are properly sued through their leaders. Although some of the churches have recently incorporated, it is far from clear that any meaningful relief will be available from the corporations. None of the corporations holds title to the disputed real property; at least some of the corporations were formed by individuals who had already left the Episcopal Church to serve

(footnote continued ...)

Code 8.01-220.1:1(A), which states:

> Directors, partners, members, managers, trustees and officers of organizations exempt from income taxation under § 501(c) or § 528 of the Internal Revenue Code who serve without compensation shall be immune from civil liability for acts taken in their capacities as officers, partners, members, managers, trustees or directors of such organizations.

Defendants' argument must be rejected.

First, the statute does not limit declaratory judgment actions against the unpaid directors, but only protects them from "liability." Defendants argue that "'civil liability" encompasses declaratory relief because Va. Sup. Ct. R. 3.1 uses the term "civil action" to encompass suits both at law and in equity. However, defendants fail to explain how a declaratory action subjects the individual defendants to *liability*, when a declaratory judgment action merely declares the existing rights of the parties. *See Liberty Mut. Ins. Co. v. Bishop*, 211 Va. 414, 419, 177 S.E.2d 519, 522 (1970) ("The declaratory judgment acts do not create or change any substantive rights, or bring into being or modify any relationships, or alter the character of controversies") (quotation marks and citation omitted). Subsection (B) of § 8.01-220.1:1, which limits the dollar amount of damages that may be obtained from compensated directors and officers, who are not protected from suit under the statute, shows that any immunity under this statute is from the obligation to pay monetary damages.[24] *See, e.g., Daniel v. Wray*, 580 S.E.2d 711 (N.C. App. 2003) (affirming trial court's grant of summary judgment in favor of Episcopal diocese but holding that charitable immunity statute barred trial court from assessing "liability" (costs of trial) against the individual vestry and trustees).

Moreover, the statute on its face provides no immunity for willful misconduct: "the

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non-Episcopal congregations; and some of the churches have never incorporated at all.

[24] Defendants suggest that the suit against the compensated directors must be dismissed because the plaintiffs have not sought monetary damages. There is no support for the suggestion

(footnote continued ...)

liability ... shall not be limited ... if the officer, partner, member, manager, trustee or director engaged in willful misconduct." Va. Code § 8.01-220.1:1(C); *Doe v. Harris*, 2001 Va. Cir. LEXIS 538 at *6 (Amherst County 2001) (two paragraphs of complaint alleging willful conduct sufficient to overcome special plea under § 8.01-220.1:1(A)). Here, the Complaints allege willful and intentional acts. *See, e.g.*, TEC Complaint ¶¶ 10-19 (vestry members continue to exercise control over property that they are not entitled to control), 20-27, 65 (trustees continue to hold title to property despite Diocese's resolutions ordering transfer to it). The precise decisions and actions that the individual defendants have taken with respect to the property are not now known. What is known, however, is that these individuals are purposefully diverting property to a new denomination, in direct violation of the canonical requirements which they were committed and swore an oath to uphold, *see* p.3, *supra*, and in the face of both the Diocese's direction to return the property to it and Virginia legal authority which directly refutes their position. To conclude, before the evidence is even in, that these individuals have not engaged in "willful misconduct" would be improper. Indeed, defendants concede that this issue cannot be decided without an evidentiary hearing. *See* Defs. Brief at 26. Thus, defendants' plea in bar must be denied.

B. Defendants' argument based on § 57-9 is premature, but defendants' corporate revocation argument must be rejected as a matter of law.

Defendants' argument that plaintiffs' interests were revoked by actions pursuant to Va. Code § 57-9 is premature because it depends on both evidence and the Court's resolution of issues scheduled for this fall. Defendants' argument that their incorporation and the operation of Va. Code § 2.2-507.1 revokes plaintiffs' interests, however, is plainly, legally incorrect.

First, the history and purpose of Va. Code § 2.2-507.1 show that it is inapplicable. It was

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that compensated directors may be sued for monetary damages but not for declaratory relief.

enacted in response to *Commonwealth ex rel. Beales v. JOCO Found.*, 263 Va. 151, 558 S.E.2d 280 (2002). Neither that case nor the statute has anything to do with churches.[25]

Second, defendants misquote the statute by omission. Va. Code § 2.2-507.1 recognizes that other documents or laws may govern the assets of a charitable corporation:

> The assets of a charitable corporation ... shall be deemed to be held in trust for the public for such purposes as are established by the governing documents of such charitable corporation, *the gift or bequest made to such charitable corporation, or other applicable law.*

(Emphasis added.) In these cases, the deeds, the Constitutions and Canons, and other, more specific statutes govern.[26] *See, e.g.*, Va. Code § 57-7.1 (any conveyance or transfer shall be used "as determined appropriate by the authorities which, under its rules or usages, have charge of the administration of the temporalities thereof").[27] Moreover, because the Constitutions and Canons are binding on all parishes, the corporation's "governing documents" include them.

Third, Va. Code § 57-16.1 – enacted in 2005, after the last amendment to § 2.2-507.1 – specifically governs corporations holding church property. Section 57-16.1 provides that such corporations may act "for any purpose *authorized and permitted by the laws, rules, or ecclesiastic polity of the church or body*, and not prohibited by the law of the Commonwealth" and "*in accordance with such law, rules, and ecclesiastic polity*, and ... the law of the Commonwealth." (Emphases added.) It is contrary to Virginia law for the defendant corporations to act on Episcopal parish property contrary to the Constitution, Canons, and polity

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[25] The statute could not have been intended to apply to incorporated churches because the decision overturning Virginia's ban on church incorporation, *Falwell v. Miller*, 203 F. Supp. 2d 624 (W.D. Va. 2002), was not entered until two weeks after the Governor approved § 2.2-507.1.

[26] Where two statutes cannot be harmonized, the more specific statute, such as those in Title 57, prevails. *E.g., Crawford v. Haddock*, 270 Va. 524, 528, 621 S.E.2d 127, 129 (2005).

[27] The plaintiffs are the appropriate authorities here. *See, e.g., Green*, 221 Va. at 553, 272 S.E.2d at 184 ("in the case of a supercongregational church Code § 57-15 'requires a showing

(footnote continued ...)

of the Church and the Diocese. Defendants' construction of § 2.2-507.1 does great violence to other statutes, including §§ 57-7.1, 57-15, and 57-16.1, not to mention neutral principles case law, and it must, under well-settled rules of statutory construction, be rejected.

Defendants' argument also misuses the corporate form by asserting that one can take property belonging in whole or in part to another and destroy the other's interest by transferring the property to a corporation whose governing documents do not recognize that interest. There is no authority for that proposition. *Cf. Dana v. 313 Freemason, A Condo. Ass'n*, 266 Va. 491, 500, 587 S.E.2d 548, 553-54 (2003) (corporation cannot be used to evade obligations).

Indeed, it would be unconstitutional to interpret or apply § 2.2-507.1 to alter existing rights and obligations or trusts established in governing deeds. *See, e.g., Finley v. Brent*, 87 Va. 103, 108, 12 S.E. 228, 230 (1890). Because this constitutional question results from the defendants' construction, the Court should construe the statute to avoid it.

To support their argument that the congregations effectively "revoked" any trust (or, presumably, similar restriction) in favor of the Church or the Diocese by voting to disaffiliate and (in some cases) incorporating under articles that do not mention the Episcopal Church or the Diocese, defendants rely heavily on two California cases, *Protestant Episcopal Church in Diocese of L.A. v. Barker*, 171 Cal. Rptr. 541 (Cal. App. 1981), and *Cal.-Nev. Annual Conf. v. St. Luke's United Methodist Church*, 17 Cal. Rptr. 3d 442 (Cal. App. 2004). These cases, however, have not been followed even in California.[28] Indeed, after the defendants had filed their brief,

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that the property conveyance is the wish of the constituted authorities of the general church'").

[28] *See Korean United Presbyterian Church of L.A. v. Presbytery of the Pacific*, 281 Cal. Rptr. 396 (Cal. App. 1991) (contradicting *Barker* in significant aspects and ruling in favor of hierarchical church); *Guardian Angel Polish Nat'l Catholic Church of L.A., Inc. v. Grotnik*, 13 Cal. Rptr. 3d 552 (Cal. App. 2004) (same); *Metropolitan Philip v. Steiger*, 98 Cal. Rptr. 2d 605 (Cal. App. 2000) (same); *Concord Christian Ctr. v. Open Bible Standard Churches*, 39 Cal. Rptr. 3d 1, 4 (Cal. App. 2005 (same).

the California Court of Appeals in *Episcopal Church Cases*, 2007 Cal. App. LEXIS 1041, issued a scholarly and strongly-worded decision rejecting the same argument. The court in *Episcopal Church Cases* questioned and criticized the reasoning of both *Barker* and *St. Luke's*. *See id.* at *88-92, 131-138. After an exhaustive review of applicable precedents, it held that respect for a hierarchical church's structure and rules is essential and that, in light of the Episcopal Church's clearly-expressed restriction of parish property for the Church's mission, "the right of the general church ... to enforce a trust on the local parish property is clear." *Id.* at *42. Defendants' efforts to rely on discredited California authorities must be rejected.

C. Christ the Redeemer Church's Plea in Bar is improperly presented.

Christ the Redeemer Church (CTRC) argues that claims against it and its rector and vestry are barred because CTRC has never been an Episcopal church. Churches' Brief at 30. That argument relies entirely on affidavits attached to the Brief, and it is improperly presented at this time. For the reasons stated in plaintiffs' Objection to the Submission of Affidavits and Other Evidence in Support of Special Pleas, filed June 28, 2007, CTRC's submission of evidence is prejudicial and improper. The Church and the Diocese have alleged and believe that CTRC is continuing to use and divert to its own purposes property that was held by or for the Episcopal mission of the same name and which is held and must be used only for the mission of the Episcopal Church. The conflicting CTRC evidence should be heard later, and at this point in the proceedings, its plea in bar therefore must be denied.

CONCLUSION

For the above reasons, the demurrers and non-evidentiary pleas in bar should be denied.

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IN THE DIOCESE OF VIRGINIA

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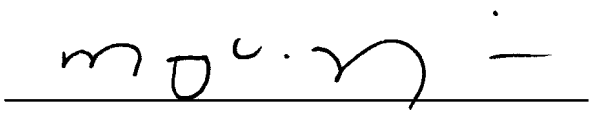

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EXHIBIT A
Compilation of Relevant Deed Language
(*see* Praecipe Indexing Docs., Exs. 5-12)

St. Stephen's Church, Heathsville

Nov. 20, 1874

....for the sole use and benefit of the religious society and congregation known as the Protestant Episcopal Church for the purpose of erecting a house for divine worship and such other houses as said congregation may need. And said church or house for divine worship when so built shall be used and enjoyed by said religious society or congregation according to the laws and canons of said church not inconsistent with the laws and constitution of Virginia.

Jan. 12, 1967

...and Howard R. Straughan, Rudolph P. Waller and _____, Trustees of Saint Stephens Parish of the Protestant Episcopal Church...

April 14, 1967

...HOWARD R. STRAUGHAN and RUDOLPH P. WALLER, Trustees of St. Stephens Parish of the Protestant Episcopal Church, Northumberland County, Virginia, for the use and benefit of St. Stephens Protestant Episcopal Church of Heathsville, Virginia, parties of the second part.

April 1, 1996

...JAMES R. HUNDLEY, LESLIE W. KILDUFF, and DONALD W. STONER, TRUSTEES OF ST. STEPHENS PARISH OF THE PROTESTANT EPISCOPAL CHURCH, P.O. Box 609, Heathsville, Virginia 22473, Grantee.

Nov. 20, 1998

...JAMES R. HUNDLEY, DONALD W. STONER and LESLIE W. KILDUFF, Church Trustees of St. Stephen's Episcopal Church, Grantees, parties of the second part, whose address is St. Stephen's Episcopal Church, P.O. Box 609, Heathsville, Virginia 22473, Grantee.

Church of Our Saviour at Oatlands

Mar. 27, 1875

....for the use and benefit of the Religious Congregation in the Diocese of Virginia, known as Protestant Episcopalian and worshipping at Oatlands Chapel at present for such uses and purposes as are in accordance with and permitted by the laws of Virginia now in force...

St. Margaret's Church

June 19, 1972

...J. DEAN MOSHER, B. EARL FLIPPO and JAMES M. YINGLING, Trustees of St. Margaret's Church, Dettingen Parish, Prince William County, Woodbridge, Virginia...

Mar. 28, 1975

...by and between St. Margaret's Episcopal Church by its Trustees, J. Dean Mosher, James M. Yingling, and Walter McIntosh...

Feb. 13, 2004

...and **ST. MARGARET'S EPISCOPAL CHURCH** by its Trustees, **GARY MOSTEK**, **CHARLES MARTIN**, AND **NANCY HEERMANS**...

St. Paul's Church, Haymarket

Jan. 18, 1900

...and T. J. Chew, A.H. Johnson and Chas. E. Jordan Trustees, to be held as a rectory for the use and benefit of St. Pauls P.E. Church, Haymarket...
...do grant unto the said parties of the second part, as trustees, to be held as a rectory for the use and benefit of St. Pauls Protestant E. Church of Haymarket...

April 21, 1904

...C.E. Jordan, T.J. Chew, and A.H. Johnson, trustees of St. Pauls Episcopal Church at Haymarket, Va., parties of the second part...

July 28, 1993

...and MACON PIERCY, WILLIAM C. LATHAM and BERNARD McDANIEL, Trustees of St. Paul's Episcopal Church of Haymarket, Virginia, Grantees...
...unto the said Macon Piercy, William C. Latham and Bernard McDaniel, Trustees for St. Paul's Episcopal Church of Haymarket, Virginia, as aforesaid...

Feb. 19, 1998

...and WILLIAM C. LATHAM, MACON C. PIERCY and BERNARD F. McDANIEL, TRUSTEES OF ST. PAUL'S EPISCOPAL CHURCH of Haymarket, Virginia (the Grantee)...

Sept. 22, 1999

...and WILLIAM C. LATHAM, MACON C. PIERCY and BERNARD F. McDANIEL, TRUSTEES OF ST. PAUL'S EPISCOPAL CHURCH of Haymarket, Virginia (the Grantee)...

Church of the Epiphany, Herndon

Aug. 25, 1987

...and HENRY A. LONG, MARJORIE BELL, and DAVID SCHREINER, TRUSTEES OF THE CHURCH OF THE EPIPHANY (Episcopal)...

Church of the Apostles

April 20, 1971

...and MALCOLM S. JONES, GEORGE R. YOUNTS and WILLIAM M. PETERSON, as Trustees for The Church of The Apostles, Fairfax County, Virginia...

Nov. 17, 1999

...and PIERPONT BUCK, HERBERT PEARCE and A. HUGO BLANKINGSHIP, JR., TRUSTEES FOR CHURCH OF THE APOSTLES (EPISCOPAL), Grantees.

May 8, 2001

...and **PIERPONT BUCK, GEORGE W. KEITT, JR.,** and **A. HUGO BLANKINGSHIP, JR., TRUSTEES OF THE CHURCH OF THE APOSTLES (EPISCOPAL)** (together the "Grantee")...

Truro Church

Dec. 3, 1874

...H. C. Fairfax, O. W. Huwitt, Joseph Cooper + Thomas Moore, Trustees for Zion Protestant Episcopal Church of the second part....

Dec. 1, 1882

...and O.W. Huwitt, James M. Love and Joseph Cooper, Trustees of Zion Protestant Episcopal Church at Fairfax Court House....

Sept. 28, 1908

...James M. Love, W.P. Moncure, and A.C.Bleight, duly appointed Trustees of the Zion Protestant Episcopal Church of Fairfax, Va...

May 19, 1952

...and CHARLES PICKETT, F. D. RICHARDSON and THOMAS P. CHAPMAN, JR., surviving Trustees of Truro Episcopal Church...

July 3, 1956

...and CHARLES PICKETT, THOMAS P. CHAPMAN, JR., JAMES KEITH, JOHN W. RUST and R. J. LILLARD, Trustees for Truro Episcopal Church...

Jan. 4, 1982

...and JAMES KEITH, E. A. PRICHARD, AND A. HUGO BLANKINGSHIP, TRUSTEES for TRURO EPISCOPAL CHURCH...

Mar. 2, 1992

...and JAMES KEITH, GORDON KLOOSTER AND E. A. PRICHARD, TRUSTEES for Truro Episcopal Church...

May 31, 2001

...and JOHN A.C. KEITH and MARY S. PETERSEN, TRUSTEES FOR TRURO EPISCOPAL CHURCH...

The Church at the Falls – The Falls Church

Mar. 19, 1746

...Between John Trammole of Truro parish in Fairfax County of the one part and the Vestry of the said parish of Truro in Fairfax County of the other part...
...unto the said Vestry of Truro parish...

Mar. 20, 1746

...Between John Trammole of Truro parish in Fairfax County of the one part and the Vestry of the said parish of Truro in Fairfax County of the other part...
...unto the said Vestry of Truro parish ...

Dec. 16, 1852

...A. C. Brent, [et als. – illegible names], Trustees of the Episcopal Church, known and designated as the "Falls Church" in Fairfax County...

Oct. 1, 1918

...and, Charles A. Stewart, Jonas T. Unverzagt and Harry A. Fellows, and their successors in office, Trustees for the Falls Church Episcopal Church...

Oct. 29, 1953

...and H.J. SPELMAN, LAWRENCE W. HARRISON, and ALBERT H. LESTER, Trustees of The Falls Church...

Feb. 27, 1956

...and H.J. SPELMAN, ALBERT H. LESTER and LAWRENCE W. HARRISON, Trustees of The Falls Church, Falls Church, Virginia...

Sept. 15, 1956

...and H.J. SPELMAN, ALBERT H. LESTER and LAWRENCE W. HARRISON, Trustees of THE FALLS CHURCH, Falls Church, Virginia...

Aug. 30, 1963

...and H.J. SPELMAN, L. W. HARRISON, and ALBERT L. LESTER, JR., Trustees of THE FALLS CHURCH (Episcopal) ...

Dec. 15, 1986

...and THE TRUSTEES OF THE FALLS CHURCH (EPISCOPAL), GRANTEE...

Oct. 31, 1996

...and THE TRUSTEES OF THE FALLS CHURCH (EPISCOPAL), Grantee.

Jan. 3, 2000

...and HARRISON D. HUTSON, WILLIAM W. GOODRICH, JR., and STEVEN L. SKANCKE, TRUSTEES, of The Falls Church (Episcopal), Grantee...

Oct. 3, 2005

...by and between The Falls Church (Episcopal), a Parish Church of the Protestant Episcopal Church in the Diocese of Virginia, party of the first part...

EXHIBIT B
Virginia Religious Trusts Statutes and Case Law References

Va. Code § 57-7, effective 1919-1993. Cases rely on language shown in double-underline.	**Selected case law references to § 57-7**	**Va. Code § 57-7.1, 1993-present** Includes 2005 amendments (new text in italics; deletions in strikethrough).
§ 57-7. What transfers for religious purposes valid Every conveyance, devise, or dedication shall be valid which, since January 1, 1777, has been made, and every conveyance shall be valid which hereafter shall be made of land <u>for the use or benefit of any religious congregation as a place for public worship, or as a burial place, or a residence for a minister, or for the use or benefit of any church diocese, church, or religious society, as a residence for a bishop or other minister or clergyman who, though not in special charge of a congregation, is yet an officer of such church diocese, church or religious society, and employed under its authority and about its business</u>; and every conveyance shall be valid which may hereafter be made, or has heretofore been made, <u>of land as a location for a parish house or house for the meeting of societies or committees of the church or others for the transaction of business connected with the church or of land as a place of residence for the sexton of a church, provided such land lies adjacent to or near by the lot or land on which is situated the church to which it is designed to be appurtenant</u>; or for use in furtherance of the affairs of any church diocese, and the land shall be held for such uses or benefit and for such purposes, and not otherwise. And no gift, grant, or bequest hereafter made to such church diocese, church or religious congregation, or the trustees thereof, shall fail or be declared void for	← Limited Uses - *Brooke v. Shacklett*, 54 Va. at 313 ("uses, which it is plain, from their very nature and the connection in which they are mentioned, must belong peculiarly to the local society") - *Moore v. Perkins*, 169 Va. at 181 ("These restrictive provisions . . . clearly indicate that the words 'church' or 'religious congregation' are used in a local sense") - *Norfolk Presbytery*, 214 Va. at 506-07	§ 57-7.1. What transfers for religious purposes valid Every conveyance or transfer of real or personal property, whether inter vivos or by will, which is made to or for the benefit of any church, church diocese, religious congregation or religious society, whether by purchase or gift, shall be valid~~,~~ ~~subject to the provisions of § 57-12~~. Any such conveyance or transfer that fails to state a specific purpose shall be used for the religious and benevolent purposes of the church, church diocese, religious congregation or religious society as determined appropriate by the authorities which, under its rules or usages, have charge of the administration of the temporalities thereof. No such conveyance or transfer shall fail or be declared void for insufficient designation of the beneficiaries in any case where the church, church diocese, religious congregation or religious society has lawful trustees in existence, is capable of securing the appointment of lawful trustees upon application as prescribed in § 57-8, *is incorporated, has created a corporation pursuant to § 57-16.1,* or has ecclesiastical officers pursuant to the provisions of § 57-16. HISTORY: 1993, c. 370; 2005, c. 772.

insufficient designation of the beneficiaries in, or the objects of, any trust annexed to such gift, grant, or bequest in any case where lawful trustees of such church diocese, church or congregation are in existence, or the church diocese, or the congregation is capable of securing the appointment of such trustees upon application as prescribed in § 57-8; but such gift, grant, or bequest shall be valid, subject to the limitation of § 57-12; provided, that whenever the objects of any such trust shall be undefined or so uncertain as not to admit of specific enforcement by the chancery courts of the Commonwealth, then such gift, grant, or bequest shall inure and pass to the trustees of the beneficiary church diocese or congregation, to be by them held, managed, and the principal or income appropriated for the religious and benevolent uses of the church diocese or congregation, as such trustees may determine, by and with the approval of the vestry, board of deacons, board of stewards, or other authorities which, under the rules or usages of such church diocese, church or congregation, have charge of the administration of the temporalities thereof. Provided that any devise of property after January 1, 1953, for the use or benefit of any religious congregation, wherein no specific use or purpose is specified shall be valid. HISTORY: Code 1919, § 38; 1954, c. 268; 1956, c. 611; 1962, c. 516.	← Limitation on Property Ownership - *Moore v. Perkins*, 169 Va. at 181 - *Norfolk Presbytery*, 214 Va. at 507 ← Local Persons/Officials Mentioned - *Moore v. Perkins*, 169 Va. at 180-81	