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August 17, 2007

VIA HAND DELIVERY

Fairfax County Circuit Court
Attention: Robin Brooks
4110 Chain Bridge Road
Fairfax, Virginia 22030

Re: *In Re: Multi-Circuit Episcopal Church Property Litigation* (CL-2007-0248724)

Dear Ms. Brooks:

Please find enclosed for filing in the omnibus file an original and one copy of Memorandum Regarding the Scope of the § 57-9 Hearing and the Application of Va. Code § 57-9 to These Cases. Also enclosed are 23 copies of the cover sheet to be filed in the following files:

1. *In Re: Truro Church* (Circuit Court of Fairfax County Case No. 2006-15792);
2. *In Re: Church of the Apostles* (Circuit Court of Fairfax County Case No. 2006-15793);
3. *In Re: Church of the Epiphany, Herndon* (Circuit Court of Fairfax County Case No. 2007-556);
4. *In Re: St. Paul's Church, Haymarket* (Circuit Court of Fairfax County Case No. CL 2007-5686);
5. *In Re: St. Margaret's Church* (Circuit Court of Fairfax County Case No. CL 2007-5685);
6. *In Re: Church of Our Saviour at Oatlands* (Circuit Court of Fairfax County Case No. CL 2007-5363);

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7. *In Re: The Church at The Falls – The Falls Church* (Circuit Court of Fairfax County Case No. CL 2007-5249);
8. *In Re: St. Stephen's Church* (Circuit Court of Fairfax County Case No. CL 2007-5903);
9. *In Re: Church of the Word*, (Prince William No. CL76197 - this case has not yet been transferred from the Circuit Court of Prince William County);
10. *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church* (Circuit Court of Fairfax County Case No. 2007-1236);
11. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles* (Circuit Court of Fairfax County Case No. 2007-1238);
12. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon* (Circuit Court of Fairfax County Case No. 2007-1235);
13. *The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church* (Circuit Court of Fairfax County Case No. 2007-1237);
14. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket* (Circuit Court of Fairfax County Case No. CL 2007-5683);
15. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Margaret's Church* (Circuit Court of Fairfax County Case No. CL 2007-5682);
16. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word* (Circuit Court of Fairfax County Case No. CL 2007-5684);
17. *The Protestant Episcopal Church in the Diocese of Virginia v. Potomac Falls Church* (Circuit Court of Fairfax County Case No. CL 2007-5362);
18. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Saviour at Oatlands* (Circuit Court of Fairfax County Case No. CL 2007-5364);
19. *The Protestant Episcopal Church in the Diocese of Virginia v. The Church at The Falls – The Falls Church* (Circuit Court of Fairfax County Case No. CL 2007-5250);

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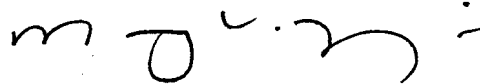
20. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church* (Circuit Court of Fairfax County Case No. CL 2007-5902); and
21. *The Episcopal Church v. Truro Church et al.*, (Circuit Court of Fairfax County Case No. 2007-1625).

Please file stamp the extra copies and return them with the courier.

A courtesy copy of the memorandum has been sent by email and hand delivery to Ms. Maia Miller, Law Clerk to Judge Bellows. The binder of authorities will follow by separate cover letter to Ms. Miller.

Should you have any questions, please call me.

Very truly yours,



Mary Catherine Zinsner

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VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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

FILED IN: *The Protestant Episcopal Church in the Diocese of Virginia* [hereafter “*The Diocese*”] v. *Truro Church* (No. 2007-1236); *The Diocese v. Church of the Apostles* (No. 2007-1238); *The Diocese v. Church of the Epiphany, Herndon* (No. 2007-1235); *The Diocese v. Christ the Redeemer Church* (No. 2007-1237); *The Diocese v. St. Paul’s Church, Haymarket* (No. CL 2007-5683); *The Diocese v. St. Margaret’s Church* (No. CL 2007-5682); *The Diocese v. Church of the Word* (No. CL 2007-5684); *The Diocese v. Potomac Falls Church* (No. CL 2007-5362); *The Diocese v. Church of Our Saviour at Oatlands* (No. CL 2007-5364); *The Diocese v. The Church at The Falls – The Falls Church* (No. CL 2007-5250); *The Diocese v. St. Stephen’s Church* (No. CL 2007-5902); *The Episcopal Church v. Truro Church et al.*, (No. 2007-1625); *Church of the Apostles v. The Episcopal Church, et al.*, No. CL 2006-15793; *Truro Church v. The Episcopal Church, et al.*, No. CL 2006-15792; *Church of the Epiphany v. The Diocese, et al.*, No. CL 2007-556; *In Re: The Church at the Falls - The Falls Church*, No. CL 2007-5249; *In Re: The Church of our Saviour at Oatlands*, No. CL 2007-5363; *In Re: St. Paul’s Church, Haymarket*, No. CL 2007-5686; *In Re: St. Margaret’s Church*, No. CL 2007-5685; *In Re: St. Stephen’s Church*, No. CL 2007-5903; *In Re: Church of the Word*, Prince William No. CL76197.

MEMORANDUM REGARDING
THE SCOPE OF THE § 57-9 HEARING AND
THE APPLICATION OF VA. CODE § 57-9 TO THESE CASES

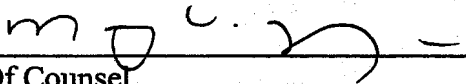
This acts as a one-page cover sheet reference pleading to the complete memorandum regarding the scope of the § 57-9 hearing and the application of Va. Code § 57-9 to these cases filed on behalf of The Episcopal Church and the Diocese, which was filed in CL 2007-248724 (the omnibus case file), filed on August 17, 2007. The Episcopal Church’s and the Diocese’s memorandum and this corresponding one-page reference pleading applies to the following cases:

Omnibus case number: CL 2007 – 248724; The Protestant Episcopal Church in the Diocese of Virginia [hereafter “*The Diocese*”] v. *Truro Church* (No. 2007-1236); *The Diocese v. Church of the Apostles* (No. 2007-1238); *The Diocese v. Church of the Epiphany, Herndon* (No. 2007-1235); *The Diocese v. Christ the Redeemer Church* (No. 2007-1237); *The Diocese v. St. Paul’s Church, Haymarket* (No. CL 2007-5683); *The Diocese v. St. Margaret’s Church* (No. CL 2007-5682); *The Diocese v. Church of the Word* (No. CL 2007-5684); *The Diocese v. Potomac Falls Church* (No. CL 2007-5362); *The Diocese v. Church of Our Saviour at*

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For the complete memorandum regarding the scope of the § 57-9 hearing and the application of Va. Code § 57-9 to these cases filed on behalf of The Episcopal Church and the Diocese, please see the omnibus case file, CL 2007 – 248724.

THE PROTESTANT EPISCOPAL CHURCH
IN THE DIOCESE OF VIRGINIA

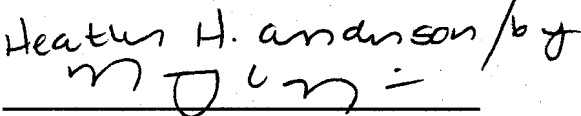
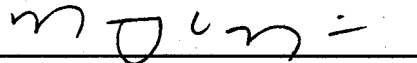
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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

IN RE:

)
)
) **CL 2007-0248724**
) **MULTI-CIRCUIT EPISCOPAL**
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The Protestant Episcopal Church in the Diocese of Virginia (the Diocese) and the Episcopal Church (the "Church" or "TEC"), by counsel, respectfully submit the following joint memorandum addressing the scope of the hearing scheduled to commence on November 19, 2007, and the merits of the legal issues to be addressed at that hearing.

INTRODUCTION

Va. Code § 57-9 "recognizes a distinction between an autonomous congregation and one which is part of a super-congregational or hierarchical denomination in providing for the determination of property rights upon a division of a church or congregation." *Norfolk Presbytery v. Bollinger*, 214 Va. 500, 502-03, 201 S.E.2d 752, 755 (1974). Upon a division of an autonomous congregation (a "congregational church"), "the right, title, and control of all property held in trust for such congregation" may be decided by the votes of a majority of the members of such congregation. § 57-9(B). Section 57-9(A), on the other hand, addresses "super-congregational or hierarchical" denominations; it applies when there is "a division ... *in a church or religious society, to which any ... congregation ... is attached.*" *Id.* (emphases added). "In the case of a super-congregational church ... Code § 57-15 requires a showing that the property conveyance is the wish of the constituted authorities of the general church." *Norfolk Presbytery*, 214 Va. at 503, 201 S.E.2d at 755. *See also, e.g., Diocese of Southwestern Virginia v. Buhrman*, 5 Va. Cir. 497, 502 (Clifton Forge Cir. Ct. 1977), *pet. refused*, Rec. No. 780347 (Va. June 15, 1978).

The Episcopal Church is a hierarchical church. *E.g., Buhrman*, 5 Va. Cir. 497; *Dixon v. Edwards*, 290 F.3d 699, 716 & n.23 (4th Cir. 2002). Hierarchical "churches, such as Episcopal and Presbyterian churches, ... are subject to control by super-congregational bodies." *Baber v. Caldwell*, 207 Va. 694, 698, 152 S.E.2d 23, 26 (1967). "In 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.” *Buhrman*, 5 Va. Cir. at 502, citing *Norfolk Presbytery*. The Episcopal Church (and the Diocese) has “establish[ed] [its] own rules for discipline and internal government,” *Reid v. Gholson*, 229 Va. 179, 188, 327 S.E.2d 107, 113 (1985), which are memorialized in its Constitution and Canons. Anyone who “becomes a member of [the Episcopal Church], by subscribing to its discipline and beliefs, accepts its internal rules and the decisions of its tribunals.” *Id.* at 188-89, 327 S.E.2d at 113. *See also Brooke v. Shacklett*, 54 Va. 301, 320 (1856): “To constitute a member of any church, two points at least are essential ... a profession of its faith and a submission to its government.” (Citation omitted.) In the Episcopal Church, parishes are subordinate component parts of the Church itself and may not unilaterally “disaffiliate.” Moreover, the Church’s rules make clear that all parish property is held for the mission of the Episcopal Church and the Diocese in which the parish is located, and it may not be diverted to other purposes through a majority vote of a local congregation’s current membership.

The petitioner congregations contend that Va. Code § 57-9 supersedes this structure and these rules. They contend that whenever there is a disagreement among the members of an Episcopal congregation, the Diocese, the national Church, or perhaps even the worldwide “Anglican Communion,” regarding issues of theology or religious practice, § 57-9 authorizes a court to override the hierarchical structure of the Church and declare that a “division” has occurred, that any group joined by dissenting members who leave the Church is a “branch” of the Church and the Diocese, and that property that has always been held and used for the mission of the Episcopal Church and the Diocese – as mandated by their Constitutions and Canons, and consistent with contractual relationships expressed and embodied in those documents, the deeds

to real property held by the congregations, and the course of dealing among the parties – may be removed from the Church and the Diocese by a majority vote of a local congregation.

As discussed more fully in Sections III and IV of this memorandum, § 57-9(A) cannot be interpreted or applied as petitioners would like. The statute applies when a hierarchical “church or religious society,” such as the Diocese or the Episcopal Church, declares or decrees a “division” of itself into two or more “branches.” In that context, it allows each congregation to follow either or any of the branches of the divided church. It does not apply when a congregation’s members unilaterally *secede from* a “church or religious society” which has *not* divided into branches and decide to affiliate with one or more other, pre-existing denominations, which is the case here.

To a large extent, as discussed below, the application of § 57-9 presents a question of law. The November hearing, however, will permit the parties to submit the expert and fact evidence necessary to determine whether § 57-9 may properly be applied in the circumstances of these cases. Section I of this memorandum lays out the facts relevant to this issue. Section II describes the principal issues that we believe will be the subject of the November 19, 2007, hearing. Sections III and IV then discuss the legal issues relevant to the proper interpretation of the statute and demonstrate that consistent with traditional tools of statutory interpretation, prior precedent, and constitutional requirements, § 57-9(A) does not apply to these cases.

I. FACTS

A. The Structure of the Episcopal Church and the Diocese

“The Episcopal Church is hierarchical,” *Dixon v. Edwards*, 290 F.3d at 716,¹ with three

¹ No court has ever held to the contrary. Cases in agreement include *Parish of the Advent v. Protestant Episcopal Diocese of Massachusetts v. Episcopal Church*, 688 N.E.2d 923, 931

(footnote continued ...)

levels of governance. The lowest level of the hierarchy is the individual parish or mission church, which is governed by a vestry (parish) or vestry committee (mission). A parish vestry is a group of lay persons elected by the congregation (including two “wardens,” who are selected by the vestry from among their members). *See* Diocesan Canon 11. A parish’s head priest, or “rector,” is elected by the vestry, with the advice and consent of the Bishop of the Diocese (*see* Diocesan Canon 12, Section 1), and presides at all meetings of the vestry. A mission’s vestry committee may be either elected or appointed by the Bishop (Diocesan Canon 11, Section 14). Its head priest, or “vicar,” is nominated by the Bishop, elected by the vestry committee, and serves at the pleasure of the Bishop (Diocesan Canon 12, Section 1). Duties of rectors and vicars, including the duty to submit annual reports to their diocesan bishops, are specified by the Constitutions and Canons of the Episcopal Church and the Diocese. *See* Episcopal Church Canon III.9.5; Diocesan Canons 2.4, 2.5, 8.5(c), 11, 16.

(footnote continued:)

(Mass. 1997) (“We conclude that the Protestant Episcopal Church is hierarchical”); *Protestant Episcopal Church v. Graves*, 417 A.2d 19, 24 (N.J. 1980) (“Here it has been established that the Protestant Episcopal Church is a completely integrated hierarchical body”); *Rector, Wardens & Vestrymen of Trinity-St. Michael’s Parish, Inc. v. Episcopal Church in the Diocese of Conn.*, 620 A.2d 1280, 1285 (Conn. 1993) (“The uncontroverted evidence at trial demonstrated that the polity of the Protestant Episcopal Church of the United States of America (PECUSA) is hierarchical”); *Episcopal Diocese of Massachusetts v. DeVine*, 797 N.E.2d 916, 923 (Mass. App. 2003) (“Based on our review of the record we conclude ... that the Episcopal Church is hierarchical”); *Daniel v. Wray*, 580 S.E.2d 711, 718 (N.C. App. 2003); *Bennison v. Sharp*, 329 N.W.2d 466, 472 (Mich. App. 1982) (“the undisputed facts show the Protestant Episcopal Church to be hierarchical with regard to property, as well as spiritual matters”); *Tea v. Protestant Episcopal Church*, 610 P.2d 182, 183 (Nev. 1980) (affirming district court’s determination “from the regulations of the Episcopal church polity that the church is hierarchical in structure”); *In re Church of St. James the Less*, 2003 Phila. Ct. Com. Pl. LEXIS 91, *aff’d*, 833 A.2d 319 (Pa. Commwth. Ct. 2003), *aff’d in pertinent part*, 888 A.2d 795 (2005) (“The Episcopal Church system is in all respects hierarchical. The Church functions under a national Constitution that grants broad authority over the affairs of individual parishes to the General Convention and to the bishops of the dioceses. Each parish is consequently directly accountable to the General Convention and to its diocesan bishop”) (footnotes omitted).

Each parish is a constituent part of a “diocese,” the intermediate level of governance. The Diocese of Virginia is governed by its Annual Council and on a day-to-day basis by its Bishop, the chief executive officer of the Diocese. *See* Diocesan Constitution Art. I. The Annual Council includes the Bishop, any assisting Bishops, and all other ministers canonically resident in the Diocese; one or more lay delegates from each local church, chosen by its Vestry; and certain other lay members, *ex officio*, who serve either by virtue of their positions in the Diocese or by election as youth delegates. Diocesan Constitution Art. III § 1; *see also* Diocesan Constitution Art. V. Diocesan governance also is shared, between Annual Councils, with a “Standing Committee” (Diocesan Constitution Art. XV; Diocesan Canon 21) and an “Executive Board” (Diocesan Canon 7).

All of the dioceses together make up the Episcopal Church, which is governed by its “General Convention.” Episcopal Church Constitution Art. I.1. The General Convention comprises a “House of Bishops,” consisting of most of the Church’s active and retired bishops (Episcopal Church Constitution Art. I.2), and a “House of Deputies,” consisting of clergy and lay representatives elected by each of the diocesan Councils or Conventions (Episcopal Church Constitution Art. I.4). It meets at least once every three years. Episcopal Church Constitution Art. I.7. The “Chief Pastor and Primate” of the Episcopal Church is its Presiding Bishop, who is elected by the House of Bishops, subject to confirmation by the House of Deputies. Episcopal Church Constitution Art. I.3; Episcopal Church Canon I.2.4(a).

Dioceses form and can be divided or reunited only by action of the General Convention. Episcopal Church Constitution Art. V. In turn, local parishes and missions are formed and become a part of the Church by action of their diocese. *See* Episcopal Church Canon I.13.2; Diocesan Canon 10. Local churches in the Diocese must “acknowledge the jurisdiction of the

Bishop or Ecclesiastical Authority of the Diocese of Virginia.” Diocesan Canon 10, Section 1.

The Episcopal Church, through its General Convention, and the Diocese, through its Annual Council, have adopted and from time to time have amended Constitutions and other rules, known as “Canons.” “These constitutional and Canonical provisions are binding upon all units of The Episcopal Church.” *Buhrman*, 5 Va. Cir. at 505.² The Constitution and Canons are the law of the Church, to which the petitioner congregations acceded through their formation and admission as Episcopal parishes or missions, by their adherence to and participation in the activities of the Episcopal Church and the Diocese, and by the oaths subscribed by their rectors or vicars (priests) and the members of their vestries or vestry committees (governing bodies). As components of the Episcopal Church, local parishes and missions are “part of a hierarchical or supercongregational church organization”; and as such they are, “and always ha[ve] been, subject to the ecclesiastical authority and to the Constitutions and Canons of both The Episcopal Church and the Diocese.” *Id.* at 502-03.

The Episcopal Church is a member of the Anglican Communion. The Anglican Communion, however, is not part of the Episcopal Church’s hierarchical structure and is not itself a hierarchical or super-congregational church. It is a loosely knit fellowship of some 38 *autonomous* regional churches³ around the world, known as “Provinces,” which trace their

² See Episcopal Church Constitution Art. V.1 (the Constitution of any new diocese must “includ[e] an unqualified accession to the Constitution and Canons of this Church”); Diocesan Constitution Preamble (“the Diocese of Virginia acknowledges the authority and power of the General Convention of the Protestant Episcopal Church in the United States of America, as set forth in the Constitution and Canons adopted thereby”); Diocesan Constitution Art. XVII (“Every Congregation within the Diocese of Virginia, however called, shall be bound by the Constitution and the Canons adopted in pursuance hereof”).

³ See, e.g., The Lambeth Commission on Communion, *The Windsor Report* (2004) (Exhibit 5 to congregations’ § 57-9 Petitions) at pages 14-15 (¶ 16), 19 (¶ 29(3)), 22 (¶ 40), 23 (¶ 42), 34-38 (¶¶ 72-86), and 47 (¶ 115); *A Statement by the Primates of the Anglican Communion meeting in*

(footnote continued ...)

respective roots to the Church of England, are recognized by the Archbishop of Canterbury (the Primate of the Church of England) as being “in communion” with him,⁴ and participate in various “instruments of communion”: the “Lambeth Conferences,” the “Anglican Consultative Council,” and the “Primates’ Meetings.”⁵ The Anglican Communion has no Constitution and Canons or similar governing documents, no legislative body, no primate, and no ecclesiastical or juridical authority over its member Provinces. Nor does it form local congregations or admit them to membership. The members of the Anglican Communion are the 38 autonomous Provinces.

B. Locus of authority to effect a “division” within the Episcopal Church

Under the Constitution and Canons of the Church and the Diocese, a parish may not unilaterally “disaffiliate” from the Church or its diocese. Episcopal Church Canon I.13.2 leaves the “ascertainment and defining of the boundaries of existing Parishes ... as well as the establishment of a new Parish or Congregation ... to the action of the several Diocesan Conventions.” Accordingly, Diocesan Canon 10.6 sets forth the requirements for recognition and acceptance as a parish in the Diocese of Virginia, including such things as “acknowledg[ing]

(footnote continued:)

Lambeth Palace (16 October 2003) (Exhibit 3 to congregations’ § 57-9 Petitions); *The Anglican Communion Primates’ Meeting Communiqué* (February 2005) (Exhibit 6 to congregations’ § 57-9 Petitions), ¶¶ 8, 10, 14. Relevant excerpts are attached as Exhibit 1 to this memorandum.

⁴ The Archbishop of Canterbury traditionally is regarded as “first among equals” among the Primates of the Anglican Communion.

⁵ The Lambeth Conference is a meeting of the bishops of the Provinces of the Anglican Communion, held at the invitation of the Archbishop of Canterbury (usually every ten years, since 1868), for discussion and enactment of non-binding resolutions. The Anglican Consultative Council was organized in 1968 and includes both lay and clerical representatives of the different Provinces in the Anglican Communion. It also provides a forum for discussion and non-binding expressions of policy. The Primates’ Meeting is a regular meeting of the Primates or heads of the Communion’s Provinces that the 1978 Lambeth Conference asked the Archbishop of Canterbury to initiate.

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.”

Once formed, parishes must be operated pursuant to and consistent with the Church’s and the Diocese’s Constitutions and Canons. Clergy, as a condition of ordination, must execute a written declaration in which they “solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.” Episcopal Church Constitution Art. VIII. 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.” Episcopal Church Canon I.17.8 mandates that any person accepting any office in the Church “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.”

Upon the failure of any parish to meet the requirements set forth in Diocesan Canon 10.6, the Diocese may “change the status of such [parish] to that of a mission.” *Id.* 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. Finally, 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.

That an Episcopal parish may not unilaterally disaffiliate from the Church is further demonstrated by the numerous canonical provisions which establish that local church properties

are held for the general Church. Episcopal Church Canons I.7.3 and II.6.2 prohibit local churches from encumbering or alienating property without the consent of the Diocesan Bishop and Standing Committee, while Episcopal Church Canon II.6.1 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.”⁶ Episcopal Church 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, Episcopal Church Canon I.7.4 and Diocesan Canon 15.1 state that all real and personal property held by or for the benefit of any local Episcopal Church is held in trust for the Church and the Diocese.

The Episcopal Church’s Canons similarly govern the creation, division or release of any of its dioceses. Pursuant to the Church’s Constitution (Art. V), and Canon I.10, the Church’s General Convention may authorize the formal division of a diocese into two or more dioceses. Similarly, by action of the General Convention under Canon I.11.3(f), a diocese may be released from the jurisdiction of the Episcopal Church to become a part of another entity. Such divisions, however, require action of the General Convention; they cannot be effected either by a diocese or a parish (or group of parishes) acting alone.

The notion that a parish of the Episcopal Church may, by majority vote of its leadership or membership, remove the parish itself from the body of the Church, cause the Church to

⁶ In *Buhrman*, Judge Stephenson held that “Constitutional and canonical provisions such as” those and other similar canons of the Episcopal Diocese in that case “are what gives The Episcopal Church its hierarchical character, and this supercongregational characteristic is the reason that the Diocese has a proprietary interest in the subject property.” 5 Va. Cir. at 506.

“divide,” and retain the parish’s property and infrastructure for their own use in association with some other group is inconsistent and cannot coexist with the above-described rules.

C. The Current Dispute

In recent years, issues related to human sexuality and the role of homosexual persons have been hotly debated, both within the Episcopal Church itself and within and among other Provinces of the Anglican Communion. As a result, several of the primates of other Provinces have declared themselves to be “out of Communion” or in “impaired Communion” with the Episcopal Church; there has been much colloquial talk of dissent and “division” within the Episcopal Church and/or the Anglican Communion; and in a small fraction of the Church’s approximately 7,600 parishes and missions around the country – including, of course, the 11 congregations involved in these cases – a majority of the congregation’s members have left the Episcopal Church. The members and congregations who have left the Church have chosen different alternatives. Some have formed local community churches, independent of any larger religious denomination; some have joined pre-existing, American-based denominations; others, including the 11 congregations involved in these cases, have affiliated with other Provinces of the Anglican Communion, including the Churches of Nigeria, Uganda, Kenya or Rwanda.

II. Scope of the November Hearing

As noted previously, § 57-9(A) “relates to churches, such as Episcopal and Presbyterian churches, that are subject to control by super-congregational bodies.” *Baber v. Caldwell*, 207 Va. 694, 698, 152 S.E.2d 23, 26-27 (1967).⁷ It provides:

If a division has heretofore occurred or shall hereafter occur in a church or religious society, to which any such congregation whose property is held by trustees is attached, the members of such congregation over 18 years of age may,

⁷ *Baber* refers to “[t]he first sentence of this section” (§ 57-9), which is now part of § 57-9(A).

by a majority vote of a majority of the whole number, determine to which branch of the church or society such congregation shall thereafter belong.

Many of the facts and issues relevant to the application of this statute appear to be uncontested. Specifically, the parties appear to agree that:

(1) The Diocese and the Episcopal Church are each a hierarchical “church or religious society,” within the meaning of § 57-9(A). *See* Exhibit 2, petitioner congregations’ responses to Church’s and Diocese’s Interrogatories No. 3-5.b.

(2) Prior to their congregational votes to separate from the Church, each of the petitioner congregations was “attached” to the Diocese and the Episcopal Church, within the meaning of § 57-9(A). *See* Exhibit 3, petitioner congregations’ responses to Church’s and Diocese’s First Requests for Admissions Nos. 4, 5.

(3) The organization and structure of the Church and the Diocese is as described in Section I.A, *supra*. *See* Reports of Congregational Determination Pursuant to Va. Code § 57-9 at ¶¶ 5-9 (discussing organization and governance of the Episcopal Church and the Diocese);⁸ Exhibit 3, petitioner congregations’ responses to Church’s and Diocese’s First Requests for Admissions Nos. 3-8, 11; Exhibit 2, petitioner congregations’ Responses to Church’s and Diocese’s First Interrogatories Nos. 5.a & b.

(4) A majority of the membership of the congregations here have left the Episcopal Church as a result of theological and ecclesiastical disagreements. *See* Reports of Congregational Determination Pursuant to Va. Code § 57-9.

(5) The General Convention of the Episcopal Church has not formally divided the Church

⁸ Paragraph citations to Reports of Congregational Determination in this memorandum are to the Report filed in case no. CL 2006-15793 (Church of the Apostles), which is cited as an example. Paragraph numbers in other actions may vary to some extent. The substance does not.

or the Diocese. *See* Exhibit 3, petitioner congregations' responses to Church's and Diocese's First Requests for Admissions No. 15.

(6) The Anglican Communion is an organization of some 38 autonomous regional churches or "Provinces," organized essentially as described in Section I.A, *supra*. *See* Reports of Congregational Determination at ¶¶ 5-9 (discussing organization and nature of the Anglican Communion); Exhibit 3, petitioner congregations' responses to Church's and Diocese's First Requests for Admissions Nos. 25-27.

(7) The petitioner congregations have joined the Church of Nigeria, through its mission known as the Convocation of Anglicans in North America ("CANA"); *see* Reports of Congregational Determination at ¶ 3 ("Ten of these 14 Virginia congregations have affiliated with the Church of Nigeria ... by joining [CANA] ... a missionary initiative of the Church of Nigeria").

Although the Church and the Diocese may, if necessary, present additional evidence on issues such as the polity of the Church, the organization and status of the Anglican Communion, or the status of CANA, we expect that the principal focus of the evidentiary hearing on November 19 will concern the nature of the ecclesiastical divisions to which the statute applies and the nature of the alleged "division" and "branch" in these cases. The merits and details of the theological and ecclesiastical issues facing the Episcopal Church, on the other hand, are improper subjects of judicial inquiry, irrelevant to the legal issues before the Court, and should not be a subject of the November hearing. *See, e.g., Reid v. Gholson*, 229 Va. at 189, 327 S.E.2d at 113; *Green v. Lewis*, 221 Va. 547, 552, 272 S.E.2d 181, 184 (1980); *Norfolk Presbytery*, 214 Va. at 503, 201 S.E.2d at 755 ("there is no constitutional prohibition against the resolution of church property disputes by civil courts, provided that the decision does not depend on inquiry

into questions of faith or doctrine”).⁹ The important point 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.

We expect that the principal disputed issues to be decided at or in connection with the November 19, 2007, hearing will be: (1) Is the Anglican Communion a “church or religious society” for purposes of § 57-9(A); (2) does the disaffiliation of a majority of the members of one or more congregations of a hierarchical church constitute a “division” for purposes of § 57-9(A); and (3) have the petitioner congregations joined a “branch” of the Episcopal Church or the Diocese within the meaning of § 57-9? The answer to the first of these questions must be “no,” as the facts described above and in the Reports of Congregational Determinations make clear. *See also* Exhibit 3 at 3, petitioner congregations’ responses to Church’s and Diocese’s First Requests for Admissions Nos. 4, 5. The answers to questions 2 and 3 also must be “no,” for the reasons discussed below.

⁹ *Accord, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich* 426 U.S. 696, 709-10 (1976) (the First Amendment “commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine”); *id.* at 713 (“religious controversies are not the proper subject of civil court inquiry, and ... a civil court must accept the ecclesiastical decisions of church tribunals as it finds them”); *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring); *Episcopal Church Cases*, 2007 Cal. App. LEXIS 1041 at *8 (“Readers will look in vain in this opinion for any indication of what religious controversy may have prompted the disaffiliation. We may easily reach the merits of the case ... without ever needing to mention the reason for the defendants’ disaffiliation. That controversy is irrelevant to this action”).

The doctrinal issues giving rise to these disputes are discussed at length in exhibits to the various § 57-9 Petitions and Reports. Such exhibits may be admissible for other purposes, but they are irrelevant and should not be admitted in evidence with respect to the theological and ecclesiastical issues that have led to this judicial controversy.

III. A “division” within the meaning of § 57-9(A) must comply with a hierarchical church’s structure and rules.

The applicable case law, tools of statutory construction, and constitutional considerations all confirm that for a “division” to occur in a church or religious society within the meaning of § 57-9(A), there must be a formal structural division, accomplished pursuant to and in compliance with the constitution, rules, and highest authority of the hierarchical denomination.

1. Historical Context. Virginia Code § 57-9 was adopted against a historical backdrop of a prominent division in a hierarchical church that had led to significant litigation in Virginia and other states. In 1844, the Methodist Episcopal Church’s General Convention adopted a formal “plan of division” that split the church into two branches – the Methodist Episcopal Church and the Methodist Episcopal Church South. *See, e.g., Smith v. Swormstedt*, 57 U.S. 288, 298-99, 301 (1854). As one court commented at the time,

[t]he separation of the Methodist Episcopal Church into two Methodist Episcopal Churches ... has been the subject of much discussion, in which the whole community, more or less, felt an interest, and was an event that connected itself with, and formed a part of, the history of the country, of which no well-informed man could be ignorant; and from its notoriety, courts would take judicial notice of it without proof.

Humphrey v. Burnside, 67 Ky. 215, 225-26 (1868). This formal division, while conciliatory at the national level, led to numerous lawsuits in which congregations sought to change their affiliation or establish their rights in property, which continued for over two decades. *See, e.g., Brooke v. Shacklett*, 54 Va. 301 (1856); *Hoskinson v. Pusey*, 73 Va. 428 (1879); *Humphrey*, 67 Ky. 215; *Gibson v. Armstrong*, 46 Ky. 481 (1847).

In 1867 the General Assembly enacted a procedure for confirming property rights in the event of such divisions, which was the predecessor of § 57-9. 1867 Va. Acts, Ch. 210 (pages 649-50). That statute provided that “whereas divisions have occurred in some churches or religious societies to which such religious congregations have been attached, and such divisions

may hereafter occur, it shall in any such case be lawful for the communicants ... by a vote of a majority of the whole number ... to determine to which branch of the church or society such congregation shall thereafter belong”; and such votes were “conclusive as to the title to and control of any property held in trust for such congregation.” The original statute, much like § 57-9, also included a separate provision for divisions in “churches or religious societies which are entirely independent in their organization of any other church or any general society.”

2. The Case Law. Cases decided both before and after the adoption of § 57-9 confirm that a legally cognizable “division” in a hierarchical church must be accomplished pursuant to that church’s own authority and rules. In *Brooke v. Shacklett*, 54 Va. 301, for example, the Virginia Supreme Court first concluded that the “division” in the Methodist Episcopal Church had been “lawful” – that is, permitted under that church’s existing structure – before going on to examine the congregation’s claims. The Court explained: “If at any time before the division of the church a controversy had arisen among the members of the society of [the local congregation] ... the dispute must have been determined by enquiring, not which of the two parties constituted a majority or represented the wishes of the majority, of the members of the [congregation], but which of the two preachers had been appointed and assigned to the society in accordance with the laws of the church.” *Id.* at 321. See also *Hoskinson v. Pusey*, 73 Va. 428, 437-38 (1879) (recognizing that a local Methodist Episcopal Church’s ability to attach itself to the Methodist Episcopal Church South must be predicated on the Methodist Church’s plan of division authorized by the highest authority of that Church in 1844, not on an independent determination by the local church).

On this point, the Virginia Court in *Brooke v. Shacklett* relied heavily on precedents from the U.S. Supreme Court and the Court of Appeals of Kentucky. In *Smith v. Swormstedt*, 57 U.S.

288, the Supreme Court reasoned that the highest authority of a hierarchical church possesses the inherent authority to divide the church consistent with the church's structure and rules. *Id.* at 307 (“The same authority which founded that church in 1784 has divided it, and established two separate and independent organizations occupying the place of the old one”). Recognizing that the General Conference of the Methodist Church, the highest authority of that church, had consented to a plan of division in 1844, the Supreme Court concluded that such a division was valid and binding.

The Kentucky Court of Appeals similarly recognized that a “division” of a hierarchical church requires a formal division of that church by its highest authority. *Gibson v. Armstrong*, 46 Ky. 481, 523-24 (1847) (affirming property claims of local church members only because the hierarchical “Church, through its competent agents, has authorized the separate organization This being so, the [new church organization] stands not as a seceding or schismatic body, breaking off violently or illegally from the original Church ... but as a lawful ecclesiastical body, erected by the authority of the entire Church”); *Clay v. Crawford*, 183 S.W.2d 797, 800 (Ky. 1944) (“the local church is irrevocably bound to the parent body except as its law may permit division or severance”); *see also McKinney v. Griggs*, 68 Ky. 401 (1869) (members of a church “who dissolved their connection with the society of which they were members, and the entire ecclesiastical body of which it was a part, and united with another and distinct religious organization,” were not entitled to a property interest). As the Kentucky Court of Appeals later observed, “[a] contrary rule would encourage partisan strifes in congregations and in general church organisms, for the purpose of unjustly getting possession of church property, and would endanger the peace and effective social force of all church unions – a position which the State and its law ought not to occupy.” *Wallace v. Hughes*, 115 S.W. 684, 694 (Ky. 1909).

3. The Statutory Scheme. “Under settled rules of statutory construction, legislative enactments ‘should be interpreted, if possible, in a manner which gives meaning to every word.’” *Roberts v. Board of Supervisors*, 249 Va. 2, 7, 453 S.E.2d 258, 261 (1995) (citation omitted). It also is a “settled principle of statutory construction that every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary.” *Sansom v. Board of Supervisors*, 257 Va. 589, 595, 514 S.E.2d 345, 349 (1999). Like the history surrounding the promulgation and codification of § 57-9 and the contemporaneous case law, an examination of Virginia’s overall statutory scheme governing church property confirms that a division under § 57-9 only occurs if the highest authority of the hierarchical denomination, pursuant to its Constitution and Canons, undertakes a formal division of the Church.

As discussed *supra* at 1, § 57-9 has two distinct subsections with different purposes. Subsection A addresses divisions within hierarchical churches, while subsection B addresses divisions within congregational or independent churches. For independent churches, in subsection B the General Assembly addressed divisions at the congregational level – the only level of the church. In subsection A, on the other hand, the General Assembly addressed divisions in a hierarchical “church or religious society” to which congregations are “attached.”

The distinction between congregational and hierarchical organizations is thus a key organizing principle in Virginia’s church property statutes. *See, e.g., Reid v. Gholson*, 229 Va. at 188-89, 327 S.E.2d at 112-13; *Norfolk Presbytery*, 214 Va. at 502-03, 201 S.E.2d at 755. To hold that individual churches can create a “division” and a “branch” sufficient for application of § 57-9(A), by voting to split from the hierarchical church to which they were attached and affiliate with some other denomination, however, 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. If any part of a hierarchical church is merely "voluntarily attached" to it (see Exhibit 3, petitioner congregations' responses to Church's and Diocese's First Requests for Admissions Nos. 4, 6-8), then the hierarchy has no ability to enforce any of its decisions and the very concept of a hierarchy is illusory. The hierarchy also is part of the contractual relationship between and among the Episcopal Church, the Diocese, and their local congregations; and acceptance of petitioners' argument therefore would result in an illusory contract as well.

Application of § 57-9(A) to these cases also would conflict with a closely related statutory provision: § 57-15. Section 57-15 provides that "[u]pon evidence being produced ... that it is the wish of the congregation, or church or religious denomination or society, or branch or division thereof, or the constituted authorities thereof having jurisdiction in the premises, *or of the governing body of any church diocese*" to sell, exchange, encumber, or take other specified actions regarding property, "the court shall make such order as may be proper." "In the case of a super-congregational church ... § 57-15 requires a showing that the property conveyance is the wish of the constituted authorities of the general church." *Norfolk Presbytery*, 214 Va. at 503, 201 S.E.2d at 755. The only way to harmonize § 57-9(A) and § 57-15 is to interpret § 57-9(A) 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 and purpose of both statutes.

4. Constitutional Requirements. Finally, it is axiomatic that "all actions of the General Assembly are presumed to be constitutional," and therefore a statute should be construed in a manner so as to avoid a "constitutional infirmity" so long as such an interpretation is reasonable. *E.g., Virginia Soc'y for Human Life, Inc. v. Caldwell*, 256 Va. 151, 156-57 & n.3, 500 S.E.2d 814, 816-17 & n.3 (1998). Acceptance of petitioners' construction of § 57-9(A) would raise

serious constitutional questions in at least two respects:

First, that construction would interfere with the First Amendment right of hierarchical churches to conduct their internal governance according to their own doctrinal precepts. In *Bowie v. Murphy*, 271 Va. 127, 133, 624 S.E.2d 74, 78 (2006), for example, the Virginia Supreme Court explained: “First Amendment jurisprudence is clear, and we have stated, that civil courts are not a constitutionally permissible forum for a review of ecclesiastical disputes.” (Internal quotation marks omitted.) While conceding that “what is or is not an ‘ecclesiastical dispute’ is often debatable,” it is clear that “issues of church governance and matters of faith and doctrine are unquestionably outside the jurisdiction of the civil courts.” *Id.* See also *Cha v. Korean Presbyterian Church of Washington*, 262 Va. 604, 610-11, 553 S.E.2d 511, 514 (2001) (“Even though there are limited exceptions to this constitutional principle, it is well established that a civil court may neither interfere in matters of church government nor in matters of faith and doctrine”); *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. To do otherwise would precipitate the civil court into the ‘religious thicket’ of reviewing questions of faith and doctrine even when the issue is merely one of internal governance, because in such churches the resolution of internal government disputes depends upon matters of faith and doctrine”) (citing *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724 (1976)).

In this respect, the Virginia Supreme Court has followed the same Constitutional dictates laid out by the Supreme Court of the United States. In *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), for example, the New York legislature had passed a statute providing for the incorporation and administration of Russian Orthodox churches and further providing that these

churches “should for the future be governed by the ecclesiastical body and hierarchy of the American metropolitan district” of that church, not by the Soviet-based hierarchy. *Id.* at 97-99. A dispute subsequently arose between the Moscow-based and the North American church leadership over the control of St. Nicholas’ Cathedral in New York. The Supreme Court held the statute unconstitutional, because “[i]t prohibits in this country the free exercise of religion.” *Id.* at 107. The Court explained that a hierarchical church has a First Amendment right to govern and organize itself as it sees fit and that any interference with that right by a state is thus unconstitutional, and it emphasized that there is a “freedom for religious organizations, an independence from secular control or manipulation – *in short, power 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).¹⁰

The Court reaffirmed these views in *Milivojevich*, 426 U.S. 696, and in *Jones v. Wolf*, 443 U.S. 595 (1979). In *Milivojevich*, the Supreme Court reversed a state court ruling in a church property dispute that had refused to accept a hierarchical church’s determination regarding the meaning and effect of its own rules and authority. The Court held that a

¹⁰ In *Kedroff*, the Court reaffirmed *Watson v. Jones* 80 U.S. (13 Wall.) 679 (1871), where a dissenting majority of a local church congregation broke with the national church’s pronouncements on the issue of slavery. The national church replaced the pastor and trustees with members loyal to it, and the Supreme Court enforced the national church’s decision, explaining:

The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.

Id. at 728-29. The Court in *Kedroff* made clear that the rule announced in *Watson* was compelled by the First Amendment. 344 U.S. at 115.

hierarchical church has a First Amendment right to interpret its rules regarding its own structure, explaining that “civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law.” 426 U.S. at 713 (italics added). In *Jones*, even as it was approving the use of the neutral principles approach, the Court stressed that courts must “completely” abstain from resolving “questions of religious ... polit[y] and practice.” 443 U.S. at 603. See also *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 370 (1970) (Brennan, J., concurring) (“A third possible approach is the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine. Such statutes must be carefully drawn to leave control of ecclesiastical polity, as well as doctrine, to church governing bodies”).¹¹

As these and many other precedents establish, interpreting § 57-9(A) to supersede the hierarchical structure and rules established by a religious denomination itself would violate the First Amendment. A holding that a Virginia congregation may withdraw from a hierarchical church organization and take both the real and personal property of that church, by majority vote, similarly would substitute the state’s rules regarding the formation and maintenance of religious congregations for the church’s own rules and would effectively impose a congregational form of

¹¹ It should surprise no one that internal governance is a doctrinal issue. “The very word ‘Episcopalism’ intends upon a principle of hierarchy. By definition, ‘Episcopalism’ means ‘the theory that in church government supreme authority resides in a body of bishops and not in any one individual.’” *In re Church of St. James the Less*, 2003 Phila. Ct. Com. Pl. LEXIS 91, *aff’d*, 833 A.2d 319 (Pa. Commwth. Ct. 2003), *aff’d in pertinent part*, 888 A.2d 795 (2005) (footnote omitted). The Roman Catholic Church is a prominent example of this phenomenon, with its emphasis on apostolic succession (from St. Peter through successive Popes) and hierarchical responsibility (including Popes, Cardinals, Archbishops, Bishops, and parish priests). Looking in the opposite direction, congregational autonomy similarly is a genuine article of faith for congregational denominations (such as Baptists).

governance on all denominations in Virginia. This the Constitution plainly forbids. Thus, the only proper and constitutionally permissible interpretation of “division” within the meaning of § 57-9(A) is a formal division of a “church” or “religious society,” as permitted and authorized by the constitution, rules, and highest governing body of the church or religious society at issue.

Second, petitioners’ construction of § 57-9(A) also would divest the Episcopal Church and the Diocese of their proprietary and contractual rights in local church property, in violation of the Contracts Clauses of the federal and Virginia Constitutions. *See, e.g., Finley v. Brent*, 87 Va. 103, 108, 12 S.E. 228, 230 (1890). This is an issue, of course, which is inextricably entwined with the merits of the Church’s and the Diocese’s declaratory judgment actions, and, pursuant to the Court’s Scheduling Order, it is not the subject of the November 19 hearing. For present purposes, the point is that § 57-9 cannot be interpreted to cut off the Church’s and the Diocese’s ability to establish and enforce these rights. If the deeds, the Episcopal Church’s and the Diocese’s Constitution and Canons, and the course of dealing between the parties establishes that the Church and the Diocese have contractual and proprietary rights to the property held by these local parishes, § 57-9 may not constitutionally be interpreted to eviscerate them. *Id.*

IV. CANA is not a “Branch” of the Episcopal Church within the meaning of § 57-9(A).

As discussed above, § 57-9(A) addresses divisions “in a church or religious society,” and upon satisfaction of the requirements of the statute, it permits the members of the congregation to “determine to which branch of the church or society such congregation shall thereafter belong.” As a practical matter, the statute makes clear that before a congregation selects to which “branch” it will belong, there must first be a division of the “church or religious society.” As discussed above, there has been no division here, and therefore there are no “branches” of the Church between which the congregations might permissibly choose.

Moreover, petitioners' claim in this respect makes no sense. The petitioners contend in their responses to discovery that "CANA ... was created in response to a division within the Episcopal church and the Diocese and thus is a 'branch' of those entities within the meaning of Va. Code § 57-9."¹² That contention is neither good logic nor good law. The petitioners have voted to "sever [their] denominational ties with The Episcopal Church and the Diocese" and have joined the Church of Nigeria. *See, e.g.*, Reports of Congregational Determination Pursuant to Va. Code § 57-9 at ¶3. Logic dictates that one church and its component part – here, the Church of Nigeria and its mission, CANA – does not become a "branch" of a second, separate church simply because some dissenting members of the second church decide to join it. If any entity that is created or joined by some of a church's former members thereby becomes a "branch" of that church, then the term has no significance at all. A "branch," within the meaning of § 57-9(A), must be either a part of the church or religious society or a new organization resulting from a formal division approved by the proper authorities of the church or society. *See, e.g.*, Merriam-Webster's Collegiate Dict. 138 (10th ed. 1995), "branch" definition 3 ("a part of a complex body: as ... c (1): a division of an organization (2): a separate but dependent part of a central organization").

CANA describes itself as "an Anglican missionary effort in the US sponsored by the Church of Nigeria (Anglican Communion)."¹³ Petitioners aver that they have affiliated with the Church of

¹² Exhibit 3, petitioner congregations' responses to Church's and Diocese's First Requests for Admissions No. 22.

¹³ Exhibit 4

(http://www.canaconvocation.org/index.php?option=com_content&task=view&id=16&Itemid=32, visited June 4, 2007); *see also* Exhibit 5 at 2 (<http://www.canaconvocation.org/about/faq.php>, Dec. 14, 2006).

Nigeria, through CANA;¹⁴ they admit that CANA was not created or established by the Episcopal Church or the Diocese;¹⁵ they state that CANA “is not subject to the authority of the Episcopal Church or the Diocese,”¹⁶ and they admit that the Church of Nigeria, of which CANA is a part, “is not a part or a branch of the Episcopal Church or the Diocese.”¹⁷ We agree. They cannot simultaneously contend, however, that CANA nevertheless is a “branch” of the Episcopal Church or the Diocese.

CONCLUSION

Based on the foregoing, there has been no “division” of the Episcopal Church or the Diocese, within the meaning of § 57-9(A), and consequently no “branches” of these religious societies that the petitioner congregations might choose to join. The statute therefore cannot apply in these consolidated cases.

¹⁴ Reports of Congregational Determination Pursuant to Va. Code § 57-9 at ¶ 3.

¹⁵ Exhibit 3, petitioner congregations’ responses to Church’s and Diocese’s First Requests for Admissions Nos. 17-20.

¹⁶ Exhibit 3, petitioner congregations’ responses to Church’s and Diocese’s First Requests for Admissions No. 22.

¹⁷ Exhibit 3, petitioner congregations’ responses to Church’s and Diocese’s First Requests for Admissions No. 22.

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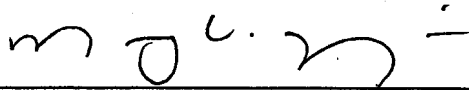


Exhibit 1: Excerpts from cited documents

The Lambeth Commission on Communion: The Windsor Report (2004) (Exhibit 5 to congregations' § 57-9 Petitions):

Pages 14-15, ¶ 16:

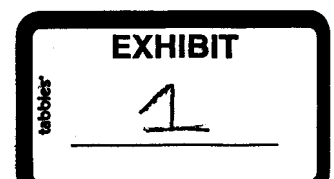
The 1978 Lambeth Conference addressed a situation where Hong Kong, Canada, the United States and New Zealand had all ordained women to the priesthood and eight other provinces had accepted the ordination of women in principle. In response, the Conference passed Resolution 21: *Women in the Priesthood*, which in part stated, "The Conference also recognises... (3a) the autonomy of each of its member Churches, acknowledging the legal right of each Church to make its own decision about the appropriateness of admitting women to Holy Orders". The Resolution also noted that such provincial action "has consequences of the utmost significance for the Anglican Communion as a whole", and that "The Conference affirms its commitment to the preservation of unity within and between all member Churches of the Anglican Communion". This resolution passed with 316 for, 37 against, and 17 abstentions.

Page 19, ¶ 29(3):

Some Archbishops from elsewhere in the Communion have, both by taking initiatives, and by responding to invitations from clergy purporting to place themselves under their jurisdictions, entered parts of the Episcopal Church (USA) and the Anglican Church of Canada and exercised episcopal functions without the consent of the relevant diocesan bishop. This goes not only against traditional and often-repeated Anglican practice (as reaffirmed most recently by, for example, resolutions at Lambeth 1988 and 1998), but also against some of the longest-standing regulations of the early undivided church (Canon 8 of Nicaea). These actions are not purely reactions to recent events, though that has been their main character. In some cases they build on earlier attempts at unilateral action against bishops whose theology and/or practice was perceived to be out of line with traditional Anglican and Christian teaching, or even to set up would-be "orthodox" structures or "mission churches" for their own sake, e.g. the Anglican Mission in America (AMiA). [Footnote omitted.]

Page 22, ¶ 40:

All this points up a more general feature which ought to characterise life within the Communion: a relationship of trust. Mutual trust generates, and is in turn reinforced by, mutual responsibility. Ideally, the Communion puts its



trust in each province to exercise its autonomy appropriately within our mutual fellowship.... [Footnote omitted.]

Page 23, ¶ 42:

All of this can be summed up in a word which, though often misunderstood, denotes an elusive sixth element which might hold the key: authority. The Anglican Communion does not have a Pope, nor any system which corresponds to the authority structure and canonical organisation of the Roman Catholic Church....

Pages 34-38, ¶¶ 72-86 (footnotes omitted; emphases in original):

Autonomy

72. This diversity is enshrined in the *autonomy* of the individual provinces. This is fundamental to Anglican polity. But 'autonomy' is a much-misunderstood concept and, not least because it is often referred to in current disputes, it is important to examine it in more detail.
73. Although there is a sense in which the Church of England's break with Rome in the sixteenth century was an assertion of that Church's 'autonomy', in more recent times the concept of 'provincial autonomy' in Anglican thinking was developed in its early twentieth century context to signify 'independence from the control of the British Crown'. The established Church of England of the Reformation was, and remains, subject to the royal supremacy, and many overseas Anglican churches at one time or other had been similarly subject; speaking of their 'autonomy' came to refer to their disengagement from that supremacy.
74. A further development in meaning then occurred: as provinces received or devised their own constitutions, autonomy (itself acquired or derived, not inherent) came to be interpreted more in terms of "the right of each church to self-determination", expressed in the possession of extensive powers over the determination of local issues. Thus, some provincial constitutions formally grant to their principal synods extensive jurisdiction over a wide range of matters including faith, order and discipline. At different times, this right to self-determination has been expressed by Anglicans variously as: autonomy (of province or diocese), independence as a limited freedom, and, recently, within a more nuanced context of interdependence and subsidiarity. These autonomous structures create a context in which the unity of the Communion, described above, can be expressed in diverse ways. This inevitably raises the key question of how much diversity is to be allowed or encouraged, on what matters, and under what conditions.

75. The word 'autonomy' represents within Anglican discourse a far more limited form of independent government than is popularly understood by many today. Literally, 'autonomous' means 'having one's own laws' (*auto* - self, *nomos* - law), and the autonomy of a body or institution means "[t]he right of self-government, of making its own laws and administering *its own affairs*". In the secular world it is well settled that 'autonomic' laws are those created by a body or persons within the community on which has been conferred subordinate and restricted legislative power. Autonomy, therefore, is not the same thing as sovereignty or independence; it more closely resembles the orthodox polity of 'autocephaly', which denotes autonomy in communion.
76. A body is thus, in this sense, 'autonomous' *only in relation to others*: autonomy exists in a relation with a wider community or system of which the autonomous entity forms part. The word 'autonomous' in this sense actually implies not an isolated individualism, but the idea of being free to determine one's own life within a wider obligation to others. The key idea is autonomy-in-communion, that is, freedom held within interdependence. The autonomy of each Anglican province therefore implies that the church lives in relation to, and exercises its autonomy most fully in the context of, the global Communion. This idea of autonomy-in-relation is clearly implicit in the laws of some churches: for instance, South East Asia describes itself as "a fully autonomous part of the Anglican Communion".
77. As the right to self-government, autonomy is a form of limited authority. Ordinarily, an autonomous body (unlike a sovereign body) is capable only of making decisions for itself in relation to its own affairs at its own level. Autonomy, then, is linked to subsidiarity (see paragraphs 38-39, 83, 94-95).
78. Understood in this way, each autonomous church has the unfettered right to order and regulate its own local affairs, through its own system of government and law. Each such church is free from direct control by any decision of any ecclesiastical body external to itself in relation to its exclusively internal affairs (unless that external decision is authorised under, or incorporated in, its own law).
79. However, some affairs treated within and by a church may have a dual character: they may be of internal (domestic) and external (common) concern. Autonomy includes the right of a church to make decisions in those of its affairs which also touch the wider external community of which it forms part, which are also the affairs of others, provided those internal decisions are fully compatible with the interests, standards, unity and good order of the wider community of which the autonomous body

forms part. If they are not so compatible, whilst there may be no question about their legal validity, they will impose strains not only upon that church's wider relationship with other churches, but on that church's inner self-understanding as part of "the One, Holy, Catholic and Apostolic Church" in relation to some of its own members.

80. In our view, therefore, 'autonomy' thus denotes not unlimited freedom but what we might call freedom-in-relation, so it is subject to limits generated by the commitments of communion. Consequently, the very nature of autonomy itself obliges each church to have regard to the common good of the global Anglican community and the Church universal.
81. These ideas are shared by other Christian traditions. At the present time, we sense that these ideas are also well understood in terms of the autonomy of an individual diocese in relation to the province of which it forms part, and perhaps also an individual parish in relation to the diocese of which it forms part, since they have been given strong institutional expression. They seem much less well understood when it comes to the autonomy of a province in relation to the global Communion.
82. Since autonomy is closely related to interdependence and freedom-in-relation, there are legitimate limits (both substantive and procedural) on the exercise of this autonomy, demanded by the relationships and commitments of communion and the acknowledgement of common identity. Communion is, in fact, the fundamental limit to autonomy. In essential matters of common concern to the worldwide fellowship of churches (affairs, that is, which touch both the particular church and the wider community of which it forms part), we believe that each church in the exercise of its autonomy should:
 - ◆ consider, promote and respect the common good of the Anglican Communion and its constituent churches (as discerned in communion through the Instruments of Unity)
 - ◆ maintain its communion with fellow churches, and avoid jeopardising it, by bringing potentially contentious initiatives, prior to implementation, to the rest of the communion in dialogue, consultation, discernment and agreement in communion with the fellowship of churches (through the Instruments of Unity), and
 - ◆ be able to depart, where appropriate and acceptable, on the basis of its own corporate conscience and with the blessing of the

communion, from the standards of the community of which is an autonomous part, provided such departure is neither critical to the maintenance of communion nor likely to harm the common good of the Anglican Communion and of the Church universal (again, as determined by the Instruments of Unity).

83. 'Autonomy' in this sense is thus closely linked to subsidiarity, discussed above. This is clear in *The Virginia Report* which was presented to the Lambeth Conference 1998. It argued that "a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level." (4:8). "However," the Report continues, "when decisions are taken by Provinces on matters which touch the life of the whole Communion without consultation, they may give rise to tension as other Provinces or other Christian traditions reject what has been decided" (4:13). In this same section on subsidiarity *The Virginia Report* makes reference to the Report of the Eames Commission (III, 43-44), noting that where such decisions are concerned, there is need for consultation with appropriate agents of Anglican interdependence prior to action.
84. Autonomy and Communion therefore belong together, as many Christian traditions have stressed and as, indeed, emerges from our ecumenical dialogues. They are thoroughly compatible, interdependent and directed to the same goal, namely the mission of the Church. Each draws from the other in creative tension. Each church has a corporate ecclesial personhood and exists in and for its fellow churches. Each church has for itself the greatest possible liberty which is compatible with the unity and good order of the Anglican Communion, in governance, ministry, doctrine, liturgy, rites, ecumenism and property.
85. Autonomy gives full scope for the development of authentic local living out of the Christian faith and mission, in what has come to be known as inculturation. This is an essential part of the Christian mission: each church must find fresh ways to proclaim the Gospel of Christ into the context of the world in which it is living. The eternal truth of the gospel relates in different ways to the particulars of any one society, as we see already within the life of the earliest church as described in Acts. This combination of faithfulness to the gospel and inculturation into different societies will inevitably produce a proper and welcome diversity within the life of the Church. Such diversity sometimes raises the question as to whether faithfulness has been abandoned (think of the shock to some devout Orthodox worshippers at observing western Christians crossing themselves the wrong way round); but diversity, as we have seen, is in principle to be welcomed and celebrated as normal and healthy. As the 1988 Lambeth Conference put it:

“It is right and proper that the one faith and discipline of the Church should be ‘incarnate’ in varied cultural forms ... the Gospel of Jesus does not come to people in the abstract, but to specific men and women.”

This means that the much discussed problem of ‘Christ and Culture’ is in large part a problem of how to communicate the gospel effectively in widely differing cultural situations.

86. There are, however, limits to diversity. In the life of the Christian churches, these limits are defined by truth and charity. The Lambeth Conference of 1920 put it this way:

“The Churches represented in [the Communion] are indeed independent, but independent with the Christian freedom which recognises the restraints of truth and love. They are not free to deny the truth. They are not free to ignore the fellowship.”

This means that any development needs to be explored for its resonance with the truth, and with the utmost charity on the part of all – charity that grants that a new thing can be offered humbly and with integrity, and charity that might refrain from an action which might harm a sister or brother.

Pages 47, ¶ 115:

The primates at Kanuga 2001 also considered the following propositions:

- ◆ The principles about communion, autonomy, discernment in communion and inter-Anglican relations, enunciated at global level by the Instruments of Unity, have persuasive moral authority for individual churches; they do not have enforceable juridical authority unless incorporated in their legal systems (and generally they are not incorporated).
- ◆ This may be contrasted with the juridical experience of the particular church, in which enforceable canon law, the servant of the church, seeks to facilitate and order communion amongst its faithful.
- ◆ The canon law of each church should reflect and promote global communion.

Page 52, ¶ 128: “there is no doubt that in terms of its constitutional proprieties, the Episcopal Church (USA) was at liberty to take the steps that it did ...” (referring to the

consecration of Gene Robinson, an active homosexual, as the Bishop of New Hampshire).

(Footnote omitted.)

**A Statement by the Primates of the Anglican Communion meeting in Lambeth Palace,
16 October 2003 (Exhibit 3 to congregations' § 57-9 Petitions) (*quoted in Windsor Report***

Appendix Three: Supporting documentation at 81-82):

Therefore, as a body we deeply regret the actions of the Diocese of New Westminster and the Episcopal Church (USA) which appear to a number of provinces to have short-circuited that process, and could be perceived to alter unilaterally the teaching of the Anglican Communion on this issue. They do not. Whilst we recognise the juridical autonomy of each province in our Communion, the mutual interdependence of the provinces means that none has authority unilaterally to substitute an alternative teaching as if it were the teaching of the entire Anglican Communion.

To this extent, therefore, we must make clear that recent actions in New Westminster and in the Episcopal Church (USA) do not express the mind of our Communion as a whole, and these decisions jeopardise our sacramental fellowship with each other. We have a particular concern for those who in all conscience feel bound to dissent from the teaching and practice of their province in such matters. Whilst we reaffirm the teaching of successive Lambeth Conferences that bishops must respect the autonomy and territorial integrity of dioceses and provinces other than their own, we call on the provinces concerned to make adequate provision for episcopal oversight of dissenting minorities within their own area of pastoral care in consultation with the Archbishop of Canterbury on behalf of the Primates.

The Presiding Bishop of the Episcopal Church (USA) has explained to us the constitutional framework within which the election and confirmation of a new bishop in the Episcopal Church (USA) takes place. As Primates, it is not for us to pass judgement on the constitutional processes of another province. We recognise the sensitive balance between provincial autonomy and the expression of critical opinion by others on the internal actions of a province. Nevertheless, many Primates have pointed to the grave difficulties that this election has raised and will continue to raise. In most of our provinces the election of Canon Gene Robinson would not have been possible since his chosen lifestyle would give rise to a canonical impediment to his consecration as a bishop.

If his consecration proceeds, we recognise that we have reached a crucial and critical point in the life of the Anglican Communion and we have had to conclude that the future of the Communion itself will be put in jeopardy....

The Anglican Communion Primates' Meeting Communiqué, February 2005 (Exhibit 6

to congregations' § 57-9 Petitions), ¶ 8:

We believe that the Windsor Report offers in its Sections A & B [¶¶ 1-96] an authentic description of the life of the Anglican Communion, and the principles by which its life is governed and sustained. While we believe that many elements of this account offer a picture of what is ideal, rather than what is currently actually experienced, we accept the description offered in Sections A & B of the Windsor Report as the way in which we would like to see the life of the Anglican Communion developed, as we respond in faithful discipleship to Christ. These sections speak of the central place Anglicans accord to the authority of scripture, and of "autonomy-in-communion" as the balanced exercise of the inter-dependence between the thirty-eight Provinces and their legitimate provincial autonomy....

¶ 10:

.... While we welcome the ministry of the Archbishop of Canterbury as that of one who can speak to us as *primus inter pares* [first among equals] about the realities we face as a Communion, we are cautious of any development which would seem to imply the creation of an international jurisdiction which could override our proper provincial autonomy....

¶ 14:

Within the ambit of the issues discussed in the Windsor Report and in order to recognise the integrity of all parties, *we request* that the Episcopal Church (USA) and the Anglican Church of Canada *voluntarily withdraw* their members from the Anglican Consultative Council for the period leading up to the next Lambeth Conference. [Emphases added.]

VIRGINIA:

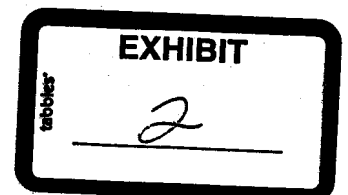
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

In re:
Multi-Circuit Episcopal Church Litigation

)
) **Civil Case Numbers:**
) CL 2007-248724,
) CL 2006-15793,
) CL 2006-15792,
) CL 2007-556,
) CL 2007-1625,
) CL 2007-1235,
) CL 2007-1236,
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) 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' ANSWERS TO THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF VIRGINIA'S AND THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA'S FIRST INTERROGATORIES

Pursuant to Rule 4:8, Defendants The Falls Church, Truro Church, Church of Our Saviour at Oatlands, Church of the Apostles, Church of the Epiphany, Church of the Word, St. Margaret's Church, Christ the Redeemer Church, St. Stephen's Church, Potomac Falls Church, and St. Paul's Church (hereafter collectively as the "CANA Congregations") and each of their Rectors, Vestry Members, and Trustees who are named defendants, except for those who are separately represented (hereafter collectively as "Related Individuals"), answer and respond to



the Protestant Episcopal Church in the Diocese of Virginia's and the Protestant Episcopal Church in the United States of America's first set of interrogatories.

The CANA Congregations generally object to the Interrogatories because, with subparts, they total more than the number permitted by Rule 4:8.

INTERROGATORIES

1. To the extent that you deny any of the accompanying First Requests for Admissions, in whole or in part, describe and explain the reasons for such denial and identify all documents and describe all facts which you contend support your position that such requests for admissions are not true and accurate.

ANSWER: The CANA Congregations attempted, when responding to each Request, to explain the basis for any partial admissions, qualified admissions, or partial denials. The CANA Congregations nevertheless add the following information:

a. **Request No. 6.** Although the Diocese has some limited ecclesiastical authority, Episcopal parishes and missions historically have enjoyed broad autonomy, including but not limited to the authority to select vestry members to govern the temporal affairs of the parish or mission, to select, hire, oversee, and remove rectors, to collect and use funds donated by parishioners, and to direct outreach activities. Moreover, the Diocese's authority has not always been exercised exclusively, as the Diocese frequently has deferred to TEC's wishes and/or directives.

b. **Request 9.** At least one canon, the so-called "Dennis Canon" (Canon I.7.4), was not adopted in compliance with TEC's Constitution and canons and therefore was not in effect in December 2006.

c. **Request 10.** At least one canon, the so-called "Dennis Canon" (Canon I.7.4), was not adopted in compliance with TEC's Constitution and canons and therefore was not in effect in January 2007.

d. **Request 20.** The Diocese has impliedly if not expressly authorized the decision of the CANA Congregations to join CANA. Specifically, the Diocese authorized the formation of a special committee, with half of its members appointed by the bishop, to help churches continuing in conflict over the decisions of the 74th General Convention in 2003 to get on with their mission in as close a union as possible with the Diocese. The special committee, which included the Diocesan Chancellor, concluded that for some members of the Diocese, separation was likely. The special committee accordingly developed and unanimously approved a protocol for those congregations that wished to consider disaffiliation. Far from rejecting the protocol, the Diocese and its bishop characterized it as a potentially useful way forward.

2. Identify each person whom petitioners or any petitioner expect(s) to call as an expert witness at any evidentiary hearing or trial conducted to address the applicability of Va. Code § 57-9 to these cases; and with respect to each such person, state the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which each expert is expected to testify; a summary of the grounds for each opinion; a listing of literature, treatises, or supporting materials the expert intends to rely upon for his opinion; the educational background and work experience which qualifies each expert to testify as an expert witness; and a list of all depositions and trials (by case name, case number and jurisdiction) at which the expert has testified as an expert during the past five years.

ANSWER: The CANA Congregations have not determined which persons they expect to call as expert witnesses at the November 2007 evidentiary hearing or trial. The

CANA Congregations later will supplement this response in accordance with the scheduling order established by the Court.

3. Identify the "church or religious society" to which you were attached (within the meaning of Va. Code § 57-9) prior to your respective votes to disaffiliate from the Episcopal Church. If you claim that you were attached to more than one such "church or religious society" for purposes of Va. Code 5 57-9, identify each of them.

ANSWER: The CANA Congregations (other than defendant Christ the Redeemer Church) were attached to the Diocese and TEC, and through them the Anglican Communion, prior to their votes to disaffiliate from the Diocese and TEC. Defendant Christ the Redeemer Church has never been affiliated with the Episcopal Church and therefore did not vote to disaffiliate from the Episcopal Church.

4. For each "church or religious society" identified in response to Interrogatory No. 3, identify all documents and describe all facts which support your contention that it is the "church or religious society" or one of the "churches or religious societies" to which you were attached for purposes of Va. Code § 57-9.

ANSWER: The CANA Congregations object to this Interrogatory on the basis that it is vague and unintelligible. Without waiving the objection, the Congregations state that the Congregations (other than Christ the Redeemer Church) previously were attached to TEC and the Diocese within the meaning of Va. Code § 57-9 because they had voluntarily affiliated with those entities, accepted certain limited oversight from the Diocese (while nevertheless retaining substantial autonomy), and voluntarily contributed financially to the Diocese, at least until TEC's 2003 General Convention. The CANA Congregations (other than Christ the

Redeemer Church) had derivative membership in the Anglican Communion by virtue of TEC's membership in that body.

5. For each "church or religious society" identified in response to Interrogatory No. 3:

a. Identify its governing body or bodies;

ANSWER:

Governing authority within the Diocese is divided among its bishop, Standing Committee, Executive Board, and Annual Council. As discussed in response to Interrogatory No. 1, individual parishes within the Diocese retain autonomy over many aspects of governance, including but not limited to governance of temporal affairs and property. The governing body of TEC for overall policy is the General Convention, with an Executive Council having the duty to carry out that policy and a Presiding Bishop nominally exercising day-to-day authority. Governance of the Anglican Communion is divided among the instruments of communion – the Lambeth Conference, the Primates Meetings, and the Anglican Consultative Council, with the Archbishop of Canterbury acting as the instrument of unity.

b. Describe in detail the manner in which each governing body or bodies identified in response to Interrogatory 5.a exercises governing authority over the applicable "church or religious society";

ANSWER: The CANA Congregations object to this Interrogatory on the basis that it is vague. Without waiving the objection, the Congregations state that the Diocese exercises authority through resolutions adopted by the Annual Council, through statements issued by the bishop and Standing Committee, and by directives or approvals of the bishop, where authority to issue directives or to confer approvals exists, and by actions of the Executive

Board, where authority to act exists. TEC generally acts through resolutions passed at General Conventions in accordance with the TEC Constitution and canons.

c. State whether you contend its governing body or bodies has or have “divided” for purposes of Va. Code § 57-9 and describe the act or acts of the applicable governing body or bodies that created each “division”;

ANSWER: The CANA Congregations object to this Interrogatory on the basis that it is vague and unintelligible and appears to presume incorrectly that a division of a governing body is a necessary predicate for application of the statute. Without waiving the objection, the Congregations state that while TEC has experienced divisions on several occasions since the enactment of Section 57-9, the Congregations are not certain whether TEC’s governing body also divided on each of those occasions. Similarly, though the Diocese also experienced similar divisions on those occasions, the Congregations are unsure whether the governing bodies of the Diocese had a parallel division. While the Anglican Communion has recently suffered a division, as discussed below, the governing bodies of the Anglican Communion do not yet fully reflect that division.

d. If you contend that any “division” identified in response to Interrogatory No. 5.c did not result from the act or acts of the “church or religious society’s” respective governing body or bodies, describe in detail the date on and manner in which such “division” occurred;

ANSWER: See the response to Interrogatory No. 5.c. The CANA Congregations note that some of the events that gave rise to divisions within TEC (whether or not there were also divisions in its governing body), were: (1) the acts of bishops and dioceses in seceding states during the Civil War to establish the Protestant Episcopal Church in the

Confederate States ("PECCS") and to amend diocesan constitutions and canons to reflect affiliation with PECCS; (2) disputes over ritual, evangelism, and the role of episcopacy in the 1870s; and (3) changes to the book of common prayer and authorization of the ordination of women in the 1970s. The most recent division resulted from decisions of TEC at its 2003 General Convention to reject the authority of scripture and longstanding resolutions of the Lambeth Conference, to ordain an openly non-celibate homosexual minister as bishop, and to authorize rites of blessing for same-sex unions. The origins of this recent division are described in more detail in the reports accompanying the § 57-9 petitions of several of the Congregations.

The CANA Congregations believe that the Diocese had divisions in the 19th and 20th centuries that mirrored the divisions in TEC. The division in the Diocese over the decisions of the 2003 General Convention was even more pronounced than in TEC itself, triggered not only by the decisions, but also by the vote of the Diocese's bishop and deputation in favor of those decisions. The division within the Anglican Communion resulted from the actions of TEC at its 2003 General Convention coupled with its later refusal to fully implement the recommendations of the Windsor Report. This led to (1) the decision of the majority of Provinces to declare themselves in broken or impaired communion with TEC and (2) the unanimous passage of communiqués by the Primates demanding certain corrective measures by TEC.

e. Identify all documents and describe all facts which support any claims of "division" identified in response to Interrogatory 5.c or 5.d;

ANSWER: See the response to Interrogatory No. 5.c. The CANA Congregations note that documents found on TEC's website discuss several of the previous divisions within the denomination, while documents on the Diocese's website chronicle the

division created by the actions of TEC at the 2003 General Convention and the vote of the bishop of the Diocese in favor of those actions. The CANA Congregations are producing additional documents attesting to the existence of the recent division.

f. Identify the "branches" of that church or religious society (within the meaning of Va. Code § 57-9) that resulted from each "division" identified in response to Interrogatory 5.c or 5.d;

ANSWER: See the response to Interrogatory No. 5.c. Some of the branches that resulted from divisions within TEC include the Protestant Episcopal Church in the Confederate States, the Reformed Episcopal Church, the Southern Episcopal Church, the Traditional Protestant Episcopal Church, CANA, the Anglican Province of America, and the Anglican Mission in America. The CANA Congregations believe that parishes and missions within the Diocese also chose to affiliate with each of those branches in the wake of the above-referenced divisions. The Anglican District of Virginia is a branch of the Diocese that arose in the wake of the most recent division in the Diocese identified above.

g. Identify all documents and describe all facts that support your claim that each entity identified in response to Interrogatory 5.f is a "branch" of the applicable church or religious society within the meaning of Va. Code 5 57-9;

ANSWER: See the response to Interrogatory No. 5.c. Documents on TEC's website discuss the Reformed Episcopal Church's status as an offshoot of TEC and the short-lived existence of the Protestant Episcopal Church in the Confederate States as a separate entity. The websites of the Southern Episcopal Church, the Anglican Province of America, and the Traditional Protestant Episcopal Church attest to their creation as an offshoot of TEC. The CANA Congregations are producing additional documents on this point.

h. Identify the "branch" identified in response to Interrogatory 5.f to which you now contend you belong.

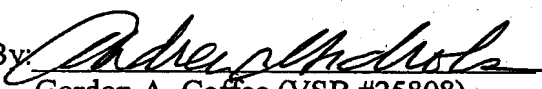
ANSWER: See the response to Interrogatory No. 5.c. The CANA Congregations also note that they are now affiliated with CANA, which represents a branch of TEC formed (1) in response to the decision of the 2003 General Convention and TEC's refusal to implement the recommendations of the Windsor Report and (2) out of a desire to maintain communion with all of the other Provinces of the Anglican Communion, and with the Anglican District of Virginia.

Relevant documents are being produced in response to Plaintiffs' document requests.

Dated: July 6, 2007

Respectfully submitted,

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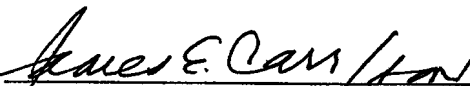
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Named Defendants*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answers to the Diocese of Virginia's and the Episcopal Church's First Interrogatories were served this 6th day of July, 2007, by e-mail and first-class mail, postage prepaid, upon the following:

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Soyong Cho, Esquire
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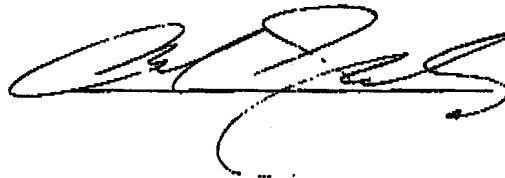
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Brault Palmer Grove White & Steinhilber, LLP
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Counsel for the Trustees of The Church at the Falls—The Falls Church


Andrew C. Nichols

VERIFICATION

I declare under penalty of perjury that the foregoing answers are true and correct.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

FROM : MARK T. ROBBINS

Jul. 06 2007 12:42PM P2


VERIFICATION

I declare under penalty of perjury that the foregoing answers are true and correct.

A handwritten signature in black ink, appearing to read "Mark T. Robbins", written over a horizontal line.

VERIFICATION

I declare under penalty of perjury that the foregoing answers are true and correct.

A handwritten signature in black ink, appearing to read "Robin Rauh", written over a horizontal line.

Rev. Robin Rauh
Rector, Epiphany, Herndon

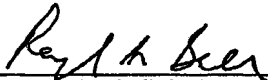
VERIFICATION

I declare under penalty of perjury that the foregoing answers are true and correct.

E. William Harding
Senior Warden
St. Margaret's Episcopal Church

VERIFICATION

I declare under penalty of perjury that the foregoing answers are true and correct.


Raymond A. Bell, Senior Warden
St. Paul's Church - Haymarket

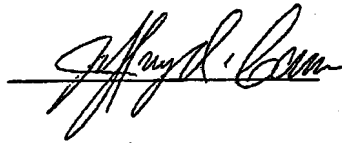
FROM :

FAX NO. :

Jul. 06 2007 12:00PM P2

VERIFICATION

I declare under penalty of perjury that the foregoing answers are true and correct.

A handwritten signature in black ink, appearing to read "Jeffrey R. Green", is written over a horizontal line.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

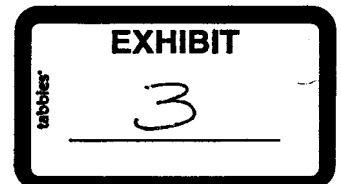
In re:

Multi-Circuit Episcopal Church Litigation

-)
-) **Civil Case Numbers:**
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-) CL 2007-5685,
-) CL 2007-5683,
-) CL 2007-5682,
-) CL 2007-5684,
-) CL 2007-5902, and
-) CL 2007-5903.

**CANA CONGREGATIONS' RESPONSES TO THE DIOCESE OF VIRGINIA'S AND
THE EPISCOPAL CHURCH'S FIRST REQUESTS FOR ADMISSIONS**

Pursuant to Rule 4:11, Defendants The Falls Church, Truro Church, Church of Our Saviour at Oatlands, Church of the Apostles, Church of the Epiphany, Church of the Word, St. Margaret's Church, Christ the Redeemer Church, St. Stephen's Church, Potomac Falls Church, and St. Paul's Church (hereafter collectively as the "CANA Congregations") and each of their Rectors, Vestry Members, and Trustees who are named defendants, except for those who are separately represented (hereafter collectively as "Related Individuals"), by counsel, submit the following responses to the Episcopal Church's and the Diocese of Virginia's First Requests



for Admission.

1. The Diocese is a diocese in the Episcopal Church.

RESPONSE: Admit.

2. The Episcopal Church is a “hierarchical” or “super-congregational” church, as those terms are used in *Reid v. Gholson*, 229 Va. 179, 188-89, 327 S.E.2d 107, 113 (1985); *Baber v. Caldwell*, 207 Va. 694, 152 S.E. 2d 23 (1967); *Diocese of Southwestern Virginia v. Buhrman*, 5 Va. Cir. 497 (Clifton Forge Cir. Ct. 1977), *pet. refused*, Rec. No. 780347 (Va. June 15, 1978); and *Dixon v. Edwards*, 290 F.3d 699, 716 & n.23 (4th Cir. 2002).

RESPONSE: Defendants object to this request because the terms “hierarchical” and “super-congregational” are not fully defined or consistently used in those cases. Without waiving the objection, Defendants admit that the Episcopal Church and the Diocese have some limited characteristics of a hierarchical church and some limited characteristics of a super-congregational church, while their affiliated individual dioceses, parishes, congregations, and missions retain considerable autonomy. The request otherwise is denied.

3. The Episcopal Church has three levels or tiers of organization and governance: the national Episcopal Church; its “dioceses”; and its individual worshipping congregations, which are generally known as “parishes” or “missions.”

RESPONSE: Defendants object to Request No. 3 because the phrase “organization and governance” is vague and ambiguous. Without waiving the objection, Defendants admit that, apart from its membership in the Anglican Communion, the Episcopal Church principally has three levels of organization: the national Episcopal Church; its affiliated “dioceses”; and its individual affiliated worshipping congregations, which are sometimes referred to as “parishes” or “missions.” The request otherwise is denied.

4. Each parish and mission described in Request for Admissions 3 is attached to and is a part of the Episcopal Church.

RESPONSE: Defendants admit that prior to taking a vote pursuant to Va. Code § 57-9, each CANA congregation was voluntarily attached to the Episcopal Church and the Diocese, except for defendant Christ the Redeemer Church, which has never been attached to the Episcopal Church or the Diocese. Defendants further state that, after reasonable inquiry, the information known to or readily obtainable by them is insufficient to enable them to admit or deny the remainder of this Request as to other parishes and missions. Accordingly, the request is otherwise denied.

5. Each parish and mission described in Request for Admissions 3 also is attached to and is a part of the diocese in which it is located.

RESPONSE: Defendants admit that prior to taking a vote pursuant to Va. Code § 57-9, each CANA congregation was attached to the Episcopal Church and the Diocese, except for defendant Christ the Redeemer Church, which has never been attached to the Episcopal Church or the Diocese. Defendants further state that, after reasonable inquiry, the information known to or readily obtainable by them is insufficient to enable them to admit or deny the remainder of this Request as to other parishes and missions. Accordingly, the Request is otherwise denied.

6. The Diocese has exclusive ecclesiastical jurisdiction and authority over the Episcopal parishes and missions within its geographical territory, subject to the Constitution and canons of the Episcopal Church.

RESPONSE: Defendants admit that, subject to the limitations of civil law and during the time period when a parish or mission remains voluntarily attached to the Episcopal

Church and the Diocese, the Diocese has certain limited ecclesiastical jurisdiction and authority over the Episcopal parishes and missions within its geographical territory, in accordance with the Constitution and canons of the Episcopal Church and subject to the spiritual and moral authority of the Anglican Communion. The request is otherwise denied.

7. The jurisdiction and authority of the Diocese of Virginia extend to all of the Episcopal parishes and missions in a geographical portion of the Commonwealth of Virginia which includes the counties of Fairfax, Arlington, Loudoun, Prince William and Northumberland, and the cities of Fairfax and Falls Church.

RESPONSE: Defendants admit that, subject to the limits of civil law, the limited ecclesiastical jurisdiction and authority of the Diocese of Virginia extend to all of the Episcopal parishes and missions in a geographical portion of the Commonwealth of Virginia which includes the counties of Fairfax, Arlington, Loudoun, Prince William and Northumberland, and the cities of Fairfax and Falls Church, during the time period when a parish or mission remains voluntarily attached to the Diocese. The request otherwise is denied.

8. The Episcopal Church, through its General Convention, has adopted and from time to time has amended a Constitution and other rules, known as "Canons," that apply to all Episcopal dioceses, parishes and missions.

RESPONSE: Defendants admit that the Episcopal Church, through its General Convention, has adopted and from time to time amended a Constitution and other rules, known as "Canons," that, subject to the limits of civil law, generally apply to all Episcopal dioceses, parishes, and missions while they remain voluntarily attached to the Episcopal Church. Moreover, certain Canons recognize Diocesan or congregational autonomy on various matters of governance and administration. Defendants are without sufficient information to admit that all

amendments to the Constitution and canons were properly adopted in accordance with the Constitution and canons. At least one canon, the so-called "Dennis Canon" (Canon I.7.4), was not adopted in compliance with TEC's Constitution and canons and therefore was not in effect in December 2006. The request otherwise is denied.

9. Exhibit 1 to these Requests for Admissions is a true and correct copy of the Episcopal Church's Constitution and Canons in effect in December 2006.

RESPONSE: Defendants admit that the document is a true and correct copy of the Constitution and Canons. Defendants deny that all of the provisions of the Constitution and all Canons were in effect in December 2006.

10. Exhibit 2 to these Requests for Admissions is a true and correct copy of the Episcopal Church's Constitution and Canons in effect as of January 2007.

RESPONSE: Defendants admit that the document is a true and correct copy of the Constitution and Canons. Defendants deny that all of the provisions of the Constitution and all Canons were in effect as of January 2007.

11. The Diocese of Virginia, through its Annual Council, has adopted and from time to time has amended a diocesan Constitution and Canons.

RESPONSE: Defendants admit that the Diocese has adopted and from time to time has amended a constitution and canons. Defendants are without sufficient information to admit that all amendments to the constitution and canons were properly adopted in accordance with the diocesan constitution and canons.

12. Exhibit 3 to these Requests for Admissions is a true and correct copy of the Diocese of Virginia's Constitution and Canons in effect in December 2006 and until the adjournment of the Annual Council on January 27, 2007.

RESPONSE: Defendants admit that Exhibit 3 is a true and correct copy. Defendants are without sufficient information to admit that all of the canons were in effect in December 2006 until January 27, 2007.

13. Exhibit 4 to these Requests for Admissions is a true and correct copy of the Diocese of Virginia's Constitution and Canons in effect after January 27, 2007.

RESPONSE: Admit.

14. Exhibits 1-4 to these Requests of Admissions contain several provisions addressing the holding and use of parish property, including national Canons I.7(3)-(5), 11.6, III.9(5), and diocesan Canon 15.

RESPONSE: Defendants admit that Exhibits 1-4 to these Requests of Admissions contain several provisions, including national Canons I.7(3)-(5), 11.6, III.9(5), and diocesan Canon 15, that purport to address the holding and use of parish property while the parish remains voluntarily attached to the Episcopal Church. The request is otherwise denied.

15. The General Convention of the Episcopal Church has not voted to declare or establish a division in the structure or organization of the Episcopal Church or the Diocese in response to or in connection with recent theological disputes.

RESPONSE: Admit; however, certain votes of the General Convention of the Episcopal Church have created a division that has been widely recognized throughout the Anglican Communion and by its membership.

16. The Annual Council of the Diocese has not voted to declare or establish a division in the structure or organization of the Diocese in response to or in connection with recent theological disputes.

RESPONSE: Admit; however, certain persons acting under the authority of the

Diocese have recognized a division in the Diocese.

17. The General Convention of the Episcopal Church did not found, create, or establish the Convocation of Anglican Nigerians in North America, also known as the Convocation of Anglicans in North America ("CANANA").

RESPONSE: Admit; however, CANANA was created in response to a division within the Episcopal Church and the Diocese and as a result of actions of the Episcopal Church that resulted in a large majority of the Provinces of the Anglican Communion declaring themselves to be in broken or impaired communion with the Episcopal Church.

18. The Annual Council of the Diocese of Virginia did not found, create, or establish CANANA.

RESPONSE: Admit; however, CANANA was created in response to a division within the Episcopal Church and the Diocese, and as a result of actions of the Episcopal Church that resulted in a large majority of the Provinces of the Anglican Communion declaring themselves to be in broken or impaired communion with the Episcopal Church.

19. The General Convention of the Episcopal Church has taken no action to authorize the cession or release of any Episcopal dioceses, parishes, or missions to CANANA.

RESPONSE: Defendants object to Request No. 19 in that it implies that, when a diocese, parish, or mission that is voluntarily attached to the Episcopal Church decides to end that affiliation, some action by the Episcopal Church is required to authorize the cession or release of that diocese, parish, or mission. Without waiving their objection, defendants admit the statement in Request No. 19.

20. The Annual Council of the Diocese of Virginia has taken no action to authorize the cession or release of any Episcopal parishes or missions to CANANA.

RESPONSE: Denied.

21. Church of Nigeria (Anglican Communion), also known as the Church of Nigeria, has Constitutions and Canons that apply to dioceses, parishes, and missions within the Church of Nigeria.

RESPONSE: Defendants admit that the Church of Nigeria (Anglican Communion) has a Constitution and canons that, subject to the limits of civil law, apply to dioceses, parishes, missions, and missionary jurisdictions of the Church of Nigeria while they remain voluntarily attached to the Church of Nigeria. The request otherwise is denied.

22. CANA is not a part or a branch of the Episcopal Church or the Diocese.

RESPONSE: Although CANA is not subject to the authority of the Episcopal Church or the Diocese, it was created in response to a division within the Episcopal church and the Diocese and thus is a “branch” of those entities within the meaning of Va. Code § 57-9.

23. The Church of Nigeria is not a part or a branch of the Episcopal Church or the Diocese.

RESPONSE: Admit.

24. The Anglican Communion is not a “hierarchical” or “super-congregational” church, as those terms are used in *Reid v. Gholson*, 229 Va. 179, 188-89, 327 S.E.2d 107,113 (1985); *Baber v. Caldwell*, 207 Va. 694, 152 S.E. 2d 23 (1967); *Diocese of Southwestern Virginia v. Buhrman*, 5 Va. Cir. 497 (Clifton Forge Cir. Ct. 1977), *pet. refused*, Rec. No. 780347 (Va. June 15, 1978); and *Dixon v. Edwards*, 290 F.3d 699, 716 & n.23 (4th Cir. 2002).

RESPONSE: Defendants object to this request because the terms “hierarchical” and “super-congregational” are not fully defined or consistently used in those cases. Without waiving the objection, defendants admit that the Anglican Communion does not share all of the characteristics of a “hierarchical” or “super-congregational” church, as those terms are evidently used in *Reid v. Gholson*, 229 Va. 179, 188-89, 327 S.E.2d 107,113 (1985); *Baber v. Caldwell*, 207 Va. 694, 152 S.E. 2d 23 (1967); *Diocese of Southwestern Virginia v. Buhrman*, 5 Va. Cir. 497 (Clifton Forge Cir. Ct. 1977), *pet. refused*, Rec. No. 780347 (Va. June 15, 1978); and *Dixon v. Edwards*, 290 F.3d 699, 716 & n.23 (4th Cir. 2002). In some respects, however, the Anglican Communion is “hierarchical” and “super-congregational.” The request is otherwise denied.

25. The Anglican Communion is a fellowship of autonomous “Provinces” around the world that trace their respective roots to the Church of England and meet other indicia of membership.

RESPONSE: Defendants admit that the Anglican Communion is a fellowship of duly constituted Dioceses, “Provinces,” regional churches, and their members around the world that trace their respective roots to the Church of England and who maintain a relationship of communion with it. The request is otherwise denied.

26. The Anglican Communion has no juridical authority over the Episcopal Church.

RESPONSE: Admit; however, the Anglican Communion has spiritual and moral authority over the Episcopal Church, which by the Preamble to its Constitution, declares itself to be “a constituent member of the Anglican Communion.”

27. The Anglican Communion has no juridical authority over the Church of Nigeria.

RESPONSE: Admit.

28. The Church of Nigeria has its own Constitution, Canons, and governing body or bodies that apply to its dioceses, parishes, and missions.

RESPONSE: Defendants admit that the Church of Nigeria has its own Constitution, Canons, and governing body or bodies that, subject to the limits of civil law, apply to its dioceses, parishes, and missions while they remain voluntarily attached to the Church of Nigeria.

29. At the time that its vote to sever its denominational ties with the Episcopal Church and the Diocese began, each subject church was a parish or mission of the Episcopal Church in the Diocese of Virginia.

RESPONSE: Defendants object to this request because the term "each subject church" is undefined. Without waiving the objection, defendants admit that each of the CANA congregations was voluntarily attached to the Episcopal Church and the Diocese of Virginia at the time of its congregational votes referred to in Request No. 29, except for defendant Christ the Redeemer Church, which has never been attached to the Episcopal Church or the Diocese.

30. At the time that its vote to sever its denominational ties with the Episcopal Church and the Diocese began, each subject church was not entirely independent, in its organization and government, of any other church or general society,

RESPONSE: Defendants object to this request because the term "each subject church" is undefined. Without waiving the objection, defendants admit Request No. 30 as to the CANA congregations except for defendant Christ the Redeemer Church, which was independent, in its organization and government, of any other church or general society until it voluntarily affiliated with CANA and the Anglican District of Virginia following a congregational vote in December 2006.

31. At the time that its vote to sever its denominational ties with the Episcopal Church and the Diocese began, each subject church was not autonomous.

RESPONSE: Defendants object to this request because the term “each subject church” is undefined. Without waiving the objection, defendants admit that each CANA congregation (other than defendant Christ the Redeemer Church) was not fully autonomous; however, each CANA congregation enjoyed considerable autonomy with respect to ecclesiastical, governance and property issues. Defendant Christ the Redeemer Church was fully autonomous until it voluntarily affiliated with CANA and the Anglican District of Virginia following a congregational vote in December 2006.

32. At the time that its vote to sever its denominational ties with the Episcopal Church and the Diocese began, each subject church was attached to the Diocese and the Episcopal Church.

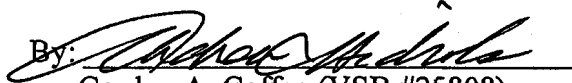
RESPONSE: Defendants object to this request because the term “each subject church” is undefined. Without waiving the objection, defendants admit that at the time that its vote to sever its denominational ties with the Episcopal Church and the Diocese began, each CANA congregation was voluntarily attached to the Diocese and the Episcopal Church, except for defendant Christ the Redeemer Church, which has never been attached to the Episcopal Church or the Diocese.

33. At the time that each of the subject churches’ votes to sever its denominational ties with the Episcopal Church and the Diocese began, the Diocese and the Episcopal Church were churches and religious societies to which each subject church was attached.

RESPONSE: Defendants object to this request because the term “each subject church” is undefined. Without waiving the objection, defendants admit that at the time that each of the CANA congregations’ votes to sever its denominational ties with the Episcopal Church and the Diocese began, the Diocese and the Episcopal Church were churches and religious societies to which each subject church was voluntarily attached, except for defendant Christ the Redeemer Church, which has never been attached to the Episcopal Church or the Diocese.

Respectfully submitted,

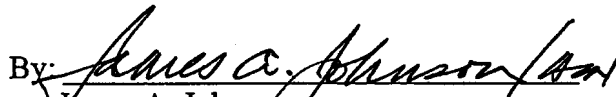
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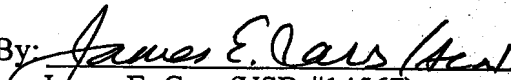
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Responses to the Diocese of Virginia's and the Episcopal Church's Request for Admissions were served this 6th day of July, 2007, by e-mail and first-class mail, postage prepaid, upon the following:

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Andrew C. Nichols

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What is CANA?

Some people have been asking, "What is CANA?" To start with, the acronym CANA stands for "Convocation of Anglicans in North America". It is an Anglican missionary effort in the US sponsored by the Church of Nigeria (Anglican Communion).

It's a little known fact that Nigerians have a significant presence in the US-many are doctors, communications professionals, and successful business people-and a large segment of these Nigerians are Anglican Christians. For a while, the Anglican Church of Nigeria attempted to wo with Presiding Bishop Griswold and ECUSA dioceses to meet the pastoral needs of these Anglkl Nigerians in the US.

But, ECUSA proved over and over again that it was unwilling to respect the faith of Anglican Nigerians by its divisive actions. One of these actions was that ECUSA unilateraly sacked the former Nigerian chaplain appointed to care for Anglican Nigerians in this country, the Rev. Car Gordon Okunsanya. So, we can really say that ECUSA itself made the creation of CANA necessary. Necessity is truly the mother of invention.

Archbishop Peter Akinola of Nigeria attempted to meet the needs of Anglican Nigerians in this country himself. But, he soon realized that maintaining a vital mission in the US could not be sustained without the presence of a domestic church structure and a local bishop. Thus, my election as CANA's missionary bishop.

Archbishop Akinola is also well aware of the pastoral crisis that ECUSA has caused for Anglcar of all races and ethnicities in the US. And so, he is committed to seeing that CANA is welcomin of everyone-whether they're from Nigeria or not-who believe in the uniqueness of Jesus the Messiah, the authority of the Bible in our lives, and the historic faith of the Anglican tradition.

In every place and in all our years of ministry, my wife Angela and I have attempted to lead ai build communities of faith where the radical message of Galatians 3:28 is lived out: "There is neither Jew nor Greek, slave nor free, male nor female, for you are all one in Christ Jesus." CANA will be no different. It will be a place where people of diverse backgrounds show the wo that true unity is possible when we are connected by "one Lord, one faith, one baptism" (Ephesians 4:5).

Your brother in Christ,
 Martyn Minns
 Bishop of CANA

CANA Convocation :: email: archdeacon.sasser@canaconvocation.org

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Frequently Asked Questions:

Updated November 29, 2006

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- Q21. May a priest presently in TEC join CANA?
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- Q25. A number of issues are still to be decided about CANA. Who will make those decisions?


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tabbles

Q1. What is CANA?

CANA is the "Convocation of Anglicans in North America." CANA is a growing group of Anglican churches and missions throughout the USA with a bishop resident in the United States. It has a governance structure with clergy and lay representation, and provision for subdividing itself into "regions or districts" and obtaining additional bishops as it grows. It is a missionary initiative of the Church of Nigeria (Anglican Communion).

Q2. What is the Anglican District of Virginia (ADV)?

The Anglican District of Virginia (ADV) is an association of Anglican congregations in Virginia. Its members are in full communion with constituent members of the Anglican Communion through the Missionary Bishop of CANA.

Q3. What does CANA believe?

CANA holds to the traditional formularies of Anglican Christianity. It adheres to "the Historic Faith, Doctrine, Sacrament and Discipline of the one Holy, Catholic, and Apostolic Church as the Lord has commanded in his holy word and as the same are received as taught in the Book of Common Prayer and the ordinal of 1662 and in the Thirty-Nine Articles of Religion" (quotation from the Constitution of the Church of Nigeria). The Articles of Religion are a statement of faith first adopted by the Church of England during the Reformation and containing strong affirmations of the authority of Scripture. You can find them at page 867 of the 1979 Book of Common Prayer.

CANA also, with the Church of Nigeria, "believes that Marriage, by Divine institution is a lifelong and exclusive union and partnership between one man and one woman." CANA therefore strongly supports the traditional views on human sexuality as expressed by the Anglican Communion in Lambeth Resolution 1.10. It also supports the Windsor Report as received and accepted by the Primates of the Anglican Communion in their Dromantine Communiqué.

Q4. What are CANA's core values?

CANA is Christ-centered and outwardly focused, mission driven with an emphasis on evangelism and discipleship, church planting, and a passion for reaching and serving the least, the last and the lost.

CANA's structures are simple and flexible so that it might creatively adjust to rapidly changing conditions. The administration serves the mission.

Q5. How does CANA worship?

Worship in CANA reflects a lively expectation of God's presence and a commitment to our historic biblical faith. CANA's worship life draws on the diversity of worldwide Anglican worship. The worship preferences of different CANA congregations vary considerably and include more traditional ones as well as informal non-liturgical services with contemporary music. The 1979 and 1928 Books of Common Prayer and the Church of Nigeria Prayer Book are all authorized for use in CANA.

Q6. What is CANA's relation to the Anglican Communion?

CANA is a duly constituted convocation within the Church of Nigeria, which, in terms of active membership, is the largest Province of the Anglican Communion. It was regularly established by Church of Nigeria's governing bodies pursuant to the Church of Nigeria's constitution, which expressly provides for creation of convocations outside Nigeria, and its bishop was regularly elected and publicly consecrated just as is any other bishop of the Church of Nigeria. Thus, CANA, its bishop, and its constituent churches and missions are members of the Anglican Communion just as any other Church of Nigeria diocese, bishop, church, and mission.

At their meeting in September 2006, the Global South Primates of the Anglican Communion, who represent more than 70% of the active membership of the Communion, stated their conviction that "the time has now come to take initial steps towards the formation of what will be recognized as a separate ecclesiastical structure of the Anglican Communion in the USA." They are in close consultation with the Archbishop of Canterbury. The intention of the Primate of the Church of Nigeria and of the Missionary Bishop and other leadership of CANA is that it will serve as a transitional entity that may by God's grace be a building block for this new ecclesiastical structure.

Q7. How is CANA organized and governed within the United States?

CANA is a non-profit corporation under the laws of Texas, and headquartered in Fairfax, Virginia. It has a board of directors known as a Board of Trustees to manage its corporate affairs as required by state law. The Primate of the Church of Nigeria appoints the trustees upon recommendation from the Missionary Bishop (and has authority to remove them) and to date there are three trustees, residing in Illinois, Maryland, and Nigeria. Efforts are underway to identify additional trustees to represent the growing diversity of CANA.

Following the model of Nigerian missionary districts, and much like the diocesan structure with which American Anglicans are familiar, there will be Convocational Council to govern CANA's ecclesiastical affairs. The Missionary Bishop will be the president of this Council. The Council also will include additional bishops, regional and district deans, clergy and lay representatives from each of the congregations, and will have an annual meeting at which it will elect a nine-member Executive Committee of clergy and laity.

Q8. How does CANA relate to the ACN (Anglican Communion Network)?

CANA enjoys a very good working relationship with the Network and operates in close coordination. CANA's Bishop Martyn Minns is a member of the ACN's Cabinet, and he and the Network's Moderator, Bishop Robert Duncan of the Episcopal Church's Diocese of Pittsburgh, are very close friends who have been working together for many years. Unlike the ACN dioceses and parishes, CANA is not under the authority of TEC.

Q9. How is CANA working to reduce the fragmentation of Anglicanism in the USA?

CANA is a member of Common Cause (along with other bodies, including the Anglican Communion Network, the Anglican Mission in America, the Reformed Episcopal Church, and the Anglican Province in America), established to bring together many of the separate members of the continuing Anglican family. In 2006, Common Cause has taken steps to become a more formal federation with a covenant declaration of common purpose and an agreed theological statement. The proposals are available on the Network's website: www.acn-us.org.

In addition, CANA and the Church of Nigeria in November 2005 entered into a concordat with the Reformed Episcopal Church and the Anglican Province in America, pledging close cooperation.

Q10. How does ecclesiastical discipline operate in CANA? Are CANA clergy subject to discipline by the Church of Nigeria?

CANA acknowledges the importance of moral and doctrinal discipline in the life of the church and seeks to exercise it with humility and grace.

Ecclesiastical discipline will operate principally within CANA with provision for appeal to the Primate of the Church of Nigeria in the case of an unresolved dispute.

Q11. How are clergy for CANA congregations called and who will have the final approval authority?

CANA congregations will call their own clergy following a prayerful process of analysis and discernment in consultation with the CANA Bishop. Candidates would be considered ineligible if they held theological and personal convictions at odds with the core beliefs of CANA (Q3)

Individual congregations will be responsible for appropriate financial and benefits provision for their clergy.

Q12. How will additional CANA bishops be chosen? If CANA gets up to three bishops will they have authority to elect and consecrate additional ones?
 Additional bishops for CANA will be identified by the CANA Missionary Bishop and, with the recommendation of the CANA trustees, proposed to the Primate of the Church of Nigeria for election by the House of Bishops of the Church of Nigeria. This will continue until the new ecclesiastical structure is fully matured and a provincial recognition established.

It is anticipated that future consecrations will likely take place in the USA.

Q13. What is CANA's position on women's ordination?

CANA recognizes that there are differing theological positions in the Anglican Communion about women in ordained ministry. CANA acknowledges the integrity of those who understand the Holy Scriptures to permit the ordination of women to the priesthood and those who believe the Scriptures prohibit women's ordination. Archbishop Peter Akinola has stated that there needs to be freedom for CANA to include both perspectives because of its North American character. CANA believes that for the health and well being of the church the particular gifts of women must be freely expressed.

CANA will welcome applications from congregations and female clergy on the same basis as other applications with the expectation that women clergy will be licensed to continue their ministry. Because of the differing positions regarding the ordination of women to the priesthood CANA policies regarding the ordination of new female aspirants will be developed from a biblical and pastoral perspective. This is a matter that is being actively pursued by the CANA clergy and elected lay leadership.

Q14. What is CANA's position on divorced clergy?

CANA embraces and celebrates traditional biblical teaching on marriage. Healthy clergy marriages and families are an important testimony in the life of the church. There will not be an automatic bar for divorced and remarried clergy who apply for transfer into CANA. There will, however, be a review of the particular circumstances that lead to the breakup of the marriage prior to acceptance.

If any CANA clergy marriages are terminated in divorce the situation will be handled with pastoral sensitivity. Where it is considered necessary the clergy involved may be asked to resign their post, at least temporarily, for a time of pastoral care and healing. While there is grace and forgiveness for everyone, the biblical standards for ordained leaders are clear and are intended to be God's gift to his Church.

Q15. What is CANA's position on divorced lay leadership?

The issue of divorce and remarriage for lay leaders will be considered as a pastoral matter to be handled within the local congregation. It is expected that each congregation will seek to balance the importance of holding to a high view of Holy Matrimony with the recognition that we all fall short of the glory of God and that the Church is intended to demonstrate the grace and mercy that is characteristic of its founder. Divorce is not the "unforgivable sin" and those who have divorced are not to be treated as second-class citizens in the church.

Q16. What about church property—who will own a congregation's property?
Each local congregation will hold title to its own property. CANA will not have a "Dennis Canon" (a national canon purportedly passed in 1979 by which The Episcopal Church asserts an ownership interest in the property of all constituent member dioceses and congregations, subject to state law).

Specific guidelines regarding the stewardship of local church property will be developed in such a way as to express biblical principles of justice and mutual accountability.

Q17. How will CANA be supported financially?

CANA will be supported financially by its member churches and others who share CANA's vision for Anglican mission and orthodoxy. There will be no mandatory assessments. It is expected that each constituent congregation will give a portion of its operating income to the CANA operating fund to build up its mission and ministry within North America. There are no expectations or requirements for funds to be transferred either to or from the Church of Nigeria either now or in the future.

Q18. What are the rules for disaffiliation from CANA?

Congregations and clergy may choose to separate from CANA without penalty. There are no specific rules in place at this time.

Q19. How does CANA relate and compare to AMiA (Anglican Mission in America)?

CANA and AMiA are both members of "Common Cause" which is an organization dedicated to strengthening the highest degree of unity among the various orthodox Anglican bodies in North America. Both are dedicated to offering a fresh expression of Anglican orthodoxy in the USA and reaching the unchurched through planting new congregations. There are several distinctives that set CANA apart:

- a. The vision for CANA, and the election of its bishop, had broad-based support in the largest province in the Anglican Communion (i.e., the Church of Nigeria) and from the Global South Primates.
 - b. The organization of CANA, with a defined church governance structure, was established through a constitutional and canonical process with a clear connection to the Anglican Communion.
 - c. CANA was established after The Episcopal Church had rejected the Anglican Communion's recommendations in "The Windsor Report".
 - d. CANA is an independent American financial structure; CANA is not required to provide financial support to its founding province.
 - e. CANA anticipates adding additional missionary bishops to ensure that episcopal care is readily accessible and strategically located for rapid growth.
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Q20. How does CANA relate to The Episcopal Church USA (TEC)?

CANA has no intention of interfering with the ministry and work of TEC but will provide an alternative way to live and function as Anglicans in the USA. While CANA recognizes that there are faithful Christians serving and worshipping in TEC, CANA acknowledges that the current direction of The Episcopal Church is in contradiction to the orthodox foundations of the Anglican Communion.

Q21. May a priest presently in TEC join CANA?

Yes. Episcopal clergy are welcome to apply for canonical transfer and license in CANA. The Reception Committee considers each application on a case-by-case basis.

Q22. How many clergy and congregations have joined CANA to date?

As of November 2006, around twenty clergy and a dozen congregations have joined CANA. A number of these are mission churches of the Church of Nigeria, who have been adrift since 2003. In addition, several former Episcopal congregations which have left TEC in recent months have applied for membership in CANA, and a growing number of other churches still in TEC have inquired about membership.

Q23. Is CANA in violation of the Anglican Communion Primates' Communiqué of February 2005 where Primates agreed to not "initiate cross-boundary interventions"?

No. The Church of Nigeria's mission was already in existence in early 2004. During their meeting in Dromantine the Primates specifically discussed and recognized this mission initiative of the Church of Nigeria as fully legitimate.

The Church of Nigeria, while establishing the canonical and legal structure for CANA in 2005, prayerfully delayed electing and consecrating a bishop until after TEC's 2006 General Convention, in the hope that TEC would repent. Only after TEC's unambiguous decision to walk apart from the Communion, did the Church of Nigeria proceed with this critical step.

Q24. Does CANA have plans for church planting?

Yes. Given both its American and Nigerian roots, CANA is a very mission-minded and entrepreneurial body. Many of the current CANA congregations are new and emerging fellowships around the USA. CANA welcomes leaders and congregations who have a vision for church planting.

Q25. A number of issues are still to be decided about CANA. Who will make those decisions?

CANA was deliberately formed to be as flexible as possible to meet the needs of orthodox Anglicans in North America. The CANA Board of Trustees and the Convocation Council within the basic framework of traditional Anglican Christianity will prayerfully make decisions about its future direction, organization, policies, and structure.
