

**SANDS ANDERSON
MARKS & MILLER** 
A PROFESSIONAL CORPORATION

George O. Peterson
Attorney

gpeterson@sandsanderson.com

RICHMOND • BLACKSBURG • FREDERICKSBURG
MCLEAN • RESEARCH TRIANGLE

WWW.SANDSANDERSON.COM

1497 Chain Bridge Road, Suite 202
McLean, Virginia 22101
Main: (703) 893-3600
Fax: (703) 893-8484

December 21, 2007

VIA HAND-DELIVERY

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

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

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

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

In re: Church of the Word, Gainesville; (Circuit Court of Prince William County; CL 2007-11514);

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

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

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

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

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

Letter to Clerk of the Court
December 21, 2007
Page 3

Dear Ms. Brooks:

I am enclosing for filing in the above-styled case an original CANA Congregations' Opening Post-Trial Memorandum Concerning Application of Va. Code § 57-9, plus twenty-one (21) copies of a one-page covers sheet to be placed in the file for the above-styled cases.

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

Very truly yours,

SANDS ANDERSON MARKS & MILLER, PC



George O. Peterson

cc: Seana C. Cranston, Law Clerk to the Honorable Randy I. Bellows (via hand-delivery)
Bradfute W. Davenport, Jr., Esquire
Heather H. Anderson, Esquire
Gordon A. Coffee, Esquire
Steffen N. Johnson, Esquire
Mary A. McReynolds, Esquire
James A. Johnson, Esquire
E. Andrew Boucher, Esquire
Scott T. Ward, Esquire
R. Hunter Manson, Esquire
James E. Carr, Esquire
Edward H. Grove, III, Esquire

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In re:

Multi-Circuit Episcopal Church

Litigation

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

Civil Case Numbers:

CL 2007-248724,

CL 2006-15792,

CL 2006-15793,

CL 2007-556,

CL 2007-1235,

CL 2007-1236,

CL 2007-1237,

CL 2007-1238,

CL 2007-1625,

CL 2007-5249,

CL 2007-5250,

CL 2007-5362,

CL 2007-5363,

CL 2007-5364,

CL 2007-5682,

CL 2007-5683,

CL 2007-5684,

CL 2007-5685,

CL 2007-5686,

CL 2007-5902,

CL 2007-5903, and

CL 2007-11514

**CANA CONGREGATIONS' OPENING POST-TRIAL MEMORANDUM
CONCERNING APPLICATION OF VIRGINIA CODE § 57-9**

Truro Church, The Falls Church, Church of the Apostles, Church of the Epiphany, Church of Our Saviour at Oatlands, Church of the Word, St. Margaret's Church, Christ the Redeemer Church, St. Stephen's Church, St. Paul's Church, and Potomac Falls Church (collectively, the "CANA Congregations") and various associated defendants respectfully submit this

memorandum of law concerning the application of Va. Code § 57-9 to the facts established at the bench trial conducted between November 13 and November 20, 2007 (the “hearing” or “trial”).¹

¹ (CL 2007-1236; CL 2007-1238; CL 2007-1235; CL 2007-1237; CL 2007-5683; CL 2007-5682; CL 2007-5684; CL 2007-5362; CL 2007-5364; CL 2007-5250; CL 2007-5902; and CL 2007-5903).

TABLE OF CONTENTS

Page(s)

INTRODUCTION AND SUMMARY OF ARGUMENT - 1 -

I. There Is No Evidentiary Dispute Over The Ordinary 19th Century Usage Of “Division” And “Branch,” The Key Terms In Virginia Code § 57-9. - 4 -

 A. The Term “Division” Connotes the Separation of a Group of Congregations, Clergy, or Members from Their Former Denomination in Sufficient Numbers to Establish a New Polity or Governmental Structure. - 6 -

 B. There Is No Basis to the Contention of TEC and the Diocese that Separations of Religious Entities Are Only “Divisions” if Approved, Recognized, Formally Declared, or Consented to by the Highest Denominational Authorities. - 13 -

 1. The text of § 57-9 provides no support for the notion that “divisions” must be approved by the highest authorities of the denomination. - 14 -

 2. The undisputed evidence concerning the ordinary usage of the term “division” in the 19th century confirms that the term was not limited to formally approved separations..... - 15 -

 3. TEC-Diocese expert Professor Robert Mullin conceded that at least some of the “major” or “great” divisions in the 19th century did not involve denominational approval. - 16 -

 4. Professor Mullin’s testimony on whether the Episcopal Church has experienced “divisions” was contrary to his prior public statements and writings, which used the term “division” in the same manner as ordinary Americans in the 19th century and today. - 20 -

 5. Professor Mullin admitted that he had no knowledge of the common usage of the term “division” in the 19th century, and that his own distinctive reading of that term was a technical historians’ view..... - 23 -

 6. Shortly after its adoption, the division statute was successfully invoked at least 29 times in several Virginia counties, with no evidence that any such division was approved by the denomination. - 25 -

 7. Other considerations confirm that the term “division” in § 57-9 is not limited to formally approved denominational splits, and such a reading would render the statute meaningless. - 28 -

 C. The Term “Branch” Is Properly Interpreted to Include the New Entity Created When a Group of Congregations, Clergy, or Members Separates from Its Former Denomination and Formally Reorganizes a Separate Polity, and to the Original Entity from which the Group Separates. - 30 -

II.	The CANA Congregations Have Satisfied The Core Requirements Of Virginia Code § 57-9 By Establishing The Existence Of A Division In TEC And The Existence Of Branches Resulting From That Division.....	- 33 -
A.	The CANA Congregations Have Established a “Division” in the Episcopal Church.....	- 34 -
1.	In the wake of TEC’s 2003 General Convention, numerous congregations, clergy, and members have disaffiliated from the Church and joined alternative polities.	- 34 -
2.	The testimony of TEC expert Robert Mullin and documentary evidence from the Episcopal Church’s own website both confirm that a division has occurred in TEC.....	- 36 -
B.	The CANA Congregations Have Established that the Convocation of Anglicans in North America and the American Arm of the Church of Uganda Are “Branches” of the Episcopal Church Formed as a Result of the Division in the Church.....	- 38 -
1.	The Convocation of Anglicans in North America Is a “Branch” of the Episcopal Church Formed in Response to the Division in the Church.....	- 38 -
2.	The Church of Uganda’s American Arm Is a “Branch” of the Episcopal Church Formed in Response to the Division in the Church.	- 40 -
3.	The Episcopal Church’s Response to the Establishment of CANA and the American Arm of the Church of Uganda Confirm that Those Entities Are “Branches” Within the Meaning of Virginia Code § 57-9.....	- 41 -
III.	The CANA Congregations Have Independently Satisfied the Core Requirements of Virginia Code § 57-9 By Establishing The Existence Of A Division In The Diocese Of Virginia And The Existence Of A Branch Resulting From That Division.....	- 43 -
A.	The CANA Congregations Have Demonstrated that a “Division” Has Occurred in the Diocese of Virginia.....	- 43 -
1.	In the wake of TEC’s 2003 General Convention, numerous congregations, clergy, and members have disaffiliated from the Diocese and joined the Anglican District of Virginia.	- 43 -
2.	The Diocese has repeatedly acknowledged the existence of a “division” in the Diocese resulting from the 2003 TEC General Convention.	- 44 -
B.	The CANA Congregations Have Established that the Anglican District of Virginia Is a “Branch” of the Diocese of Virginia Formed in Response to the Division in the Diocese.....	- 47 -
IV.	The CANA Congregations Have Independently Satisfied the Requirements of Virginia Code § 57-9 By Establishing The Existence Of A Division In The	

Worldwide Anglican Communion And The Existence Of Branches Resulting From That Division..... - 49 -

A. The CANA Congregations Have Demonstrated that a “Division” Has Occurred in the Anglican Communion. - 49 -

B. The CANA Congregations Have Established that the Church of Nigeria Is A “Branch” of the Anglican Communion that Has Divided From the Episcopal Church. - 54 -

C. The CANA Congregations Have Established that the Anglican Communion Is a “Church” or “Religious Society.” - 55 -

D. The CANA Congregations Were “Attached” to the Anglican Communion by Virtue of Their Affiliation with TEC and the Diocese. - 58 -

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>BBF, Inc. v. Alstom Power, Inc.</i> , 645 S.E.2d 467 (Va. 2007)	14
<i>Enoch v. Com.</i> , 141 Va. 411 (1925)	28
<i>Lawrence v. Craven Tire Co.</i> , 210 Va. 138 (1969)	5, 25
<i>Lewis v. Com.</i> , 184 Va. 69 (1945)	5, 25
<i>Natrella v. Board of Zoning Appeals</i> , 231 Va. 451 (1986)	30
<i>Oraee v. Breeding</i> , 270 Va. 488 (2005)	14
 STATUTES	
Va. Code §§ 8.01-400, 19.2-271.3, 20-26, 24.2-703.1	15
Va. Code § 57-7.1	15
Va. Code § 57-9(A)	1, 55
Virginia Code § 57-9	passim
 OTHER AUTHORITIES	
<i>American Heritage Dictionary of the English Language, Fourth Edition</i> (2004)	58
<i>An Episcopal Dictionary of the Church</i>	11, 37
<i>Black's Law Dictionary</i> 199 (8th ed. 2004).....	31
<i>Compact Oxford English Dictionary of Current English, Third Edition</i> (2005).....	55
<i>Dictionary of the English Language</i> 44 (1872)	58

<i>Merriam-Webster Online Dictionary</i>	55, 56
Michie’s Jurisprudence, <i>Statutes</i> § 39 (2006).....	28
<i>Oxford English Dictionary</i> 558 (1971).....	8
<i>Random House Dictionary of the English Language</i> 420 (1967).....	8
<i>Roget’s New Millennium™ Thesaurus</i> (1st ed. 2007).....	56
<i>Webster’s New Universal Unabridged Dictionary</i> 538 (2d ed. 1983)	8
<i>Webster’s Ninth New Collegiate Dictionary</i> 817 (1983).....	14
White & J. Dykman, <i>Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America</i> 318-319 (1954).....	30

INTRODUCTION AND SUMMARY OF ARGUMENT

From the days of Thomas Jefferson, James Madison, George Mason, and the Virginia Statute for Religious Freedom, the Commonwealth of Virginia has had a long history of deferring to local control of congregational property. In keeping with this tradition, in 1867 the Virginia General Assembly, acting in response to the myriad denominational splits in the 19th century, passed the statute now codified at Va. Code § 57-9(A).² Recognizing that local congregations should generally retain property held by their duly appointed trustees in the event of a past or future denominational split, the General Assembly provided that where a “church or religious society” experiences a “division,” congregations “attached” to such a church or religious society may vote to determine which “branch” of the divided body they wish to join. Each voting congregation may then report its determination to the local circuit court, and the court’s approval of that determination is “conclusive as to the title and control of any property held in trust for such congregation.” The statute remains on the books today, after several recodifications, with only minor, non-substantive changes.

At trial, the CANA Congregations showed that they have satisfied each of the core requirements of § 57-9.³ Specifically, they demonstrated that there has been a “division” in the

² § 57-9. How property rights determined on division of church or society.

A. 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, by a vote of a majority of the whole number, determine to which branch of the church or society such congregation shall thereafter belong. Such determination shall be reported to the circuit court of the county or city, wherein the property held in trust for such congregation or the greater part thereof is; and if the determination be approved by the court, it shall be so entered in the court’s civil order book, and shall be conclusive as to the title to and control of any property held in trust for such congregation, and be respected and enforced accordingly in all of the courts of the Commonwealth.

³ Pursuant to the Court’s direction at the September 14, 2007, hearing (Sept. 14, 2007, Tr. 41), the resolution of certain related issues, such as whether the CANA Congregations’ majority de-

“church” or “religious society” to which they were formerly “attached”—namely, the Episcopal Church (“TEC”), the Diocese of Virginia (“Diocese”), and the worldwide Anglican Communion—and that they have joined a “branch” of the divided body created as a result of that division. Indeed, the evidence on many of these points was undisputed.

In the brief that follows, we summarize the evidence proffered on these issues at trial and explain why it supports judgment in the CANA Congregations’ favor. In Part I, we discuss the proper interpretation of the key terms in § 57-9—“division” and “branch”—in light of the expert testimony at trial. CANA experts Mark Valeri and Charles Irons demonstrated from their exhaustive review of primary source materials that ordinary 19th century Americans would have understood a “division” to have occurred when a group of congregations, members, or clergy broke away from their denomination—typically without the denomination’s approval—in sufficient numbers to set up a new organization. Relatedly, a “branch” was most commonly understood to be that new organization—a group of churches with its own, newly established polity, but with a historical connection to the prior denomination. Indeed, the testimony on this issue was essentially undisputed, because TEC’s historical expert conceded that he knew nothing about the common usage of “division” and “branch” in the 19th century. Instead, he offered an admittedly “distinctive,” “narrow,” and “technical” historian’s definition.

Against this backdrop, we explain in Parts II, III, and IV how the evidence at trial independently satisfies these statutory requirements at the TEC, Diocese, and Anglican Communion levels, respectively. Here again, much of the evidence is undisputed. Numerous congregations and clergy have disaffiliated from TEC and formed new branches thereof. CANA is one such branch, and since its formation in 2005 CANA has quickly grown into a religious denomination

terminations satisfied the procedural requirements of § 57-9, and whether the property at issue is held by the Congregations’ trustees, has been deferred to a later date.

that provides ecclesiastical oversight for some 60 congregations and 12,000 members, the vast majority of whom are former members of TEC. Since intervening in this litigation, TEC has studiously avoided referring to any “division,” but its use of that term outside of this Court—including in reference to past splits in the Church, such as the division that created the Reformed Episcopal Church—confirm that TEC has experienced such a division. Indeed, TEC’s leading expert effectively conceded as much on cross examination. He acknowledged not only that he had used the term “division” in prior public statements and writings to describe splits in TEC, but also that TEC has experienced a post-2003 “schism,” which he defined as a group’s “voluntary action” to separate from its denomination—*i.e.*, in a manner consistent with the common understanding of the term “division.”

As shown in Part III, moreover, the CANA Congregations have proven a division not only at the TEC level, but also at the diocesan level, thereby providing a separate basis for satisfying the statute. The division in the Diocese is evidenced not only by the many congregations, clergy, and several thousand members that have disaffiliated from the Diocese to form the Anglican District of Virginia—according to the Diocese’s own statistics, more than 11 percent of the Diocese’s membership and 18 percent of its average Sunday attendees disaffiliated between 2005 and 2007—but also by the admissions of several senior diocesan officials, formally appointed committees, and the Diocese’s Annual Council. Indeed, the Bishop of the Diocese, Peter Lee, wrote to the members of the voting congregations on the eve of their vote, and said this:

American Christianity has been punctuated over the years by frequent divisions, with one group choosing to separate because they believed the separated group might be more pure than their former identity. That has not been characteristic of the way we Anglicans have dealt with differences.

I encourage you when you vote, to vote for the unity and mission of the church, therefore remaining one with your diocese, and reject the tempting calls to division

“Frequent divisions, with one group choosing to separate” to form a new “identity.” Bishop Lee’s words are a testament to the common understanding of “division” and “branch,” not only today but in 1867. Indeed, the statute was invoked at least 29 times shortly after its adoption, in circumstances much like those that gave rise to this dispute.

Finally, as demonstrated in Part IV, the CANA Congregations’ showing that the Anglican Communion is divided independently satisfies the requirements of § 57-9. The division at the international level is evidenced by many official pronouncements of “division” by the organs and offices of the Anglican Communion, including its Primates and the Windsor Report issued by the Lambeth Commission on Communion; by formal statements of “broken communion” between numerous Anglican Provinces and TEC; and by the decision of the Church of Nigeria, with which CANA is affiliated, to amend its constitution to cut off all legal and structural relations with TEC. The international element of this dispute also confirms the magnitude of the division in TEC and the Diocese, as many TEC congregations, clergy, and members have reaffiliated with foreign Anglican provinces in order to maintain their ties with the historic Anglican faith.

In summary, the General Assembly enacted the division statute to ensure that a neutral principle—majority rule—would govern situations when a group of congregations and clergy divided from their former denomination and formed a new branch of the church. That happened in the 19th century, and it happens today. What is perhaps unique about this case is that the division has played out at the international level of the church as well. But it is no less a division within the meaning of § 57-9, and the evidence at trial demonstrated as much.

I. There Is No Evidentiary Dispute Over The Ordinary 19th Century Usage Of “Division” And “Branch,” The Key Terms In Virginia Code § 57-9.

In Virginia, “the popular, or received import of words, furnishes the general rule for the interpretation of statutes.” *Lawrence v. Craven Tire Co.*, 210 Va. 138, 140-41 (1969) (quotation

omitted). Moreover, when interpreting undefined statutory terms, courts examine the terms' ordinary meaning "[a]t the time of enactment of the statute." *Lewis v. Com.*, 184 Va. 69, 72 (1945). Part I of this brief addresses the meaning of the terms "division" and "branch," which is central to a proper interpretation of Virginia Code § 57-9.

In Part I.A, for example, we explain that in mid-19th century America (as today), the term "division" was most commonly understood to refer to a split in a religious denomination involving the separation of a group of congregations, clergy, or members who formed an alternative polity. The evidence on this issue was undisputed, as TEC's historical expert admitted that he had no knowledge concerning the common usage of the term during the relevant time period.

In Part I.B, we explain that there is no basis—in the text, history, or purpose of the statute—to the notion that the separation of a group of congregations from its mother church is not a "division" unless the highest authorities of the denomination formally approve of it. TEC's historical expert conceded that most of the church "separations" in the 19th century were not consensual. The division statute was successfully invoked some 29 times shortly after its adoption, including in contested cases arising in denominations whose divisions were anything but consensual. And any reading of § 57-9 that limited its application to denominationally authorized divisions would render meaningless the voting rights that it confers.

In Part I.C., we explain that the term "branch" was most commonly understood in mid-19th century America to refer to an offshoot of a denomination created as a result of a division, or to the group left behind—not to an administrative subunit of the church, or to a new diocese created by administrative or geographical redistricting. Indeed, TEC has admitted that when it subdivides an existing diocese, congregations are not permitted to choose which diocese they

wish to join, and that the resulting entities are not “branches”—and thus that the statute has no application in such circumstances.

A. The Term “Division” Connotes the Separation of a Group of Congregations, Clergy, or Members from Their Former Denomination in Sufficient Numbers to Establish a New Polity or Governmental Structure.

The period leading up to 1867 was an era of myriad church splits. CANA expert Mark Valeri explained that there were “divisions all over the place,” Tr. 82:2, and TEC expert Robert Mullin likewise testified that “[t]here are all sorts of separations going on in the 19th Century”—there was “a tremendous flowering of religious differentiation.” Tr. 1102:4-5, 1098. Many of these divisions were over slavery, but others involved issues ranging from “revivalism” to governance to “[d]ebate over liturgical practices” and “the language of the Baptismal Office.” Tr. 81:22, 105:19 (Valeri); Tr. 1120, 1148 (Mullin). In short, denominational divisions were the order of the day, and “were a subject of frequent public commentary” in Virginia and elsewhere in the nation. Tr. 104:16-22 (Valeri).

Many of the divisions in the 19th century involved groups separating from the Methodist, Presbyterian, and Baptist churches,⁴ then the nation’s largest denominations. Tr. 103:6-104:14

⁴ There were numerous 19th century divisions among the Methodists. Tr. 183:10-183:14 (Irons) (the Methodist family of churches divided “[m]ore than a dozen times” in the 19th century), Tr. 104 (Valeri) (discussing the divisions that created the Methodist Church in 1830, the Protestant Methodist Church in 1843, the Wesleyan Methodist Church in 1844 to 1845, and the Free Methodist Church in 1860); Tr. 185:19-186:10 (Irons) (Reformed Methodist Church); Tr. 186:11-188:11 (Irons) (African Methodist Episcopal Church and African Methodist Zion Church); Tr. 188 (Irons) (Methodist Protestant Church); Tr. 188-89 (Irons) (Methodist Episcopal Church and Methodist Episcopal Church South); Tr. 188-189 (Irons) (division of the Baltimore Conference from the Methodist Episcopal Church); Tr. 1161 (Mullin) (“the separation of the African Methodist Episcopal [Church] was a great scandal and a great division”).

The same is true of the Presbyterians. *See, e.g.*, Tr. 57-69 (Valeri) (Old School-New School division); Tr. 69-75 (Valeri) (United Synod division from New School Presbyterians, creating a Southern branch of the New School); Tr. 1155 (Mullin) (describing same division as a division of the New School into Northern and Southern branches); Tr. 77-78 (Valeri) (Cumberland Presbyterians division from PCUSA); Tr. 81 (Valeri) (Old Light Synod, Associate Reform Presbyte-

(Valeri); Tr. 183, 208 (Irons); Tr. 1134 (Mullin). Others, however, involved smaller denominations such as the Lutherans and Episcopalians. For example, Professor Mullin testified that “the Lutherans divided into 17 [or] 18 different religious communities” during the 19th century (Tr. 1098), and he admitted to publicly describing as “divisions” splits resulting in the formation of the Episcopal Church in the Confederate States and the Reformed Episcopal Church (Tr. 1124-25; 1129-31).

A great number of 19th century divisions directly involved Virginians, and ordinary Virginians would have been aware of the many divisions occurring elsewhere.⁵ Furthermore, the frequency with which the division statute was invoked shortly after its adoption confirms that Virginians were accustomed to church splits and the resulting litigation over property.

Although § 57-9 does not define “division,” evidence at trial conclusively demonstrated that the most common understanding of that term in mid-19th century America (as today) was of a split, schism, or rupture in a religious denomination that involved the separation of a group of congregations, clergy, or members from the church and the formation of an alternative polity that disaffiliating members could join.⁶ For example, Professor Valeri offered unrefuted testimony

rian Church of the South, Associate Reform Synod); Tr. 83-84 (Valeri) (Old School division into Northern and Southern branches).

The same is also true of the Baptists. Tr. 204-206 (Irons); 1102 (Mullin).

⁵ E.g., Tr. 1153:16-18 (Mullin) (there were “many, many separations that were going on in Virginia”); Tr. 183:10-184:12 (Irons) (Virginians were aware of all of the dozen-plus splits in the Methodist Church, and were directly affected in Virginia by at least nine of them); Tr. 205:12-206:6 (Irons) (Baptists divisions affected Virginia); Tr. 207 (Irons) (Lutheran division involving the Lutheran Church in the Confederate States of America affected Virginia); Tr. 70-72, 104 (Valeri) (discussing Presbyterian and other divisions arising in or affecting Virginia).

⁶ According to definitions that date from the era when § 57-9 was adopted, “division” simply means the “[s]tate of being divided.” See Noah Webster, *A Dictionary of the English Language* 219 (1872) (preface dated 1867). Recent definitions are to the same effect. 1 *Oxford English Dictionary* 558 (1971) (“division” means “the state of being divided into parts or branches; partition; severance.”); *Random House Dictionary of the English Language* 420 (1967) (“the act or

that “the most common definition” of “division” was “[t]he separation of a group from an existing denomination, renunciation of its authority, and beginning of the formation of an alternative structure.” Tr. 55 (Valeri).⁷ Similarly, Professor Charles Irons testified that an “ordinary Virginian” would have understood the term “division” to refer to any “separation” or “fragmentation of one religious jurisdiction” into “two or more jurisdictions.” Tr. 178, 179; *accord id.* at 191 (explaining that a division involved the breaking apart of a church into “separate and distinct organizations”); *cf.* Tr. 1099:1-16, 1101:11-1102:20 (Mullins) (drawing a “distinction between a separation” and a “division,” but acknowledging that all divisions entail “separation” and that other historians use the term “division” to describe the “not-so-great division[s]”).

TEC and the Diocese offered no contrary evidence. Indeed, Professor Mullin disclaimed any knowledge of the ordinary usage of “division” in the 19th century. Tr. 1100, 1149:11, 1135, 1152:18-1153:7, Tr. 1133:9-13 (same).⁸

The historical evidence at trial also demonstrated that although divisions typically began with internal strife, such strife did not itself amount to a “division” under the most common un-

state of being divided”; “Division usually means little more than the marking off or separation of a whole into parts”); *Webster’s New Universal Unabridged Dictionary* 538 (2d ed. 1983) (“a dividing or being divided; separation”).

⁷ *See id.* (Valeri: describing “[t]he most common definition” as “the separation out of the group of members of a religious . . . denomination in sufficient numbers to begin to form an alternative polity and the renunciation of the authority of the original group in that process”); *accord id.* at 54 (a “division” is “a separation” of “a group of congregations or lower adjudicatories . . . and renunciation of the previous group and formation of—beginning of a formation of a separate polity or governmental structure”), *id.* at 116.

⁸ As Professor Valeri explained on cross examination, the meaning of “division” in “church historical parlance” was consistent with its meaning in general 19th century “common parlance.” Tr. 128. In particular, “[f]rom 1890 to 1910, the American Society of Church History produced a series of definitive—what at the time were definitive histories of the major denominations,” “a great new sociological project, and they were to represent official denominational records and accounts, and the words ‘divisions’ and ‘branches’ are used throughout those volumes as I’ve represented the meanings today.” *Id.*

derstanding of that term. As Professor Valeri explained, “internal strife” was occasionally called “division” and “frequently” led to a “division,” but the most common use of that term involved “[t]he separation of a group from an existing denomination” and “beginning of the formation of an alternative structure.” Tr. 78:20-79:16, 54-55. In other words, divisions would often result from internal strife, but the divisions themselves entailed disaffiliating congregations or clergy and the formation of a new entity. Moreover, divisions would often widen over time as additional congregations and members left the denomination to join the new entity. Tr. 79:1-7 (Valeri) (after the initial members “form a group,” “they are later joined by other groups over the period of weeks, months, sometimes years”). For example, TEC expert Mullin admitted that the division of the Old School Presbyterians into Northern and Southern branches took at least two to three years (Tr. 1155:15-17), Professor Irons recounted that the divisions involving the African Methodist Episcopal Church (AME Church), and the African Methodist Episcopal Zion Church (AME Zion Church) widened over several years (Tr. 186-187), and Professor Valeri explained that the division in the Episcopal Church that led to formation of the Reformed Episcopal Church took place over a two-year period, from 1873 to 1874 (Tr. 105:6-16).

The only numerical threshold for a division was that the number of disaffiliating members be sufficient to form a new polity. Tr. 92-94 (Valeri). This would likely preclude the departure of a single congregation from being considered a division, as “a single congregation cannot form a polity or begin to form an alternative polity.” Tr. 93 (Valeri). But apart from whatever number of congregations and ministers was necessary to “form an alternative polity,” there was no specific “stated size” or “minimum size in order to reflect a division.” Tr. 92:4-9, 93:3-22, 94 (Valeri).

Many 19th century divisions began small and grew over time. For example, it is undisputed that the groups that divided from the Methodists to form the Reformed Methodist Church, the AME Church, and the AME Zion Church were “very small”—roughly a dozen congregations formed the AME Church and six or seven congregations formed the AME Zion Church. Tr. 185:19-186:4, 187 (Irons). The Cumberland Presbyterian Church was established by just “three ministers” who divided from their former church and formed a presbytery that quickly grew to include congregations. Tr. 78:4-19 (Valeri). Likewise, the Presbyterian divisions that resulted in the formation of the Old Light Synod, the Associate Reform Presbyterian Church of the South, and the Associate Reform Synod, all involved “very small groups, handfuls . . . of smaller Presbyterian Churches.” Tr. 81:4-16 (Valeri). As TEC’s Professor Mullin acknowledged, “you see the word division used in common parlance to describe other, smaller separations.” Tr. 1153:1-4.⁹

The Reformed Episcopal Church is perhaps the most powerful illustration of how the separation of a relatively small group is appropriately considered a “division,” whether judged by the standard of the 19th century or that of modern usage. Tr. 105-112 (Valeri). As Professor Valeri explained, the division that resulted in the formation of Reformed Episcopal Church in 1873 and 1874 arose out of a disagreement over liturgical practices and the related suspension of TEC Bishop George David Cummins. The division “culminated in a formal organization into a church and then after that into congregations worshipping under [the Reformed Episcopal Church’s] name.” Tr. 105:17-106:5. The Reformed Episcopal Church began with only seven ministers and 19 laypersons, and with only a handful of congregations attending its first conven-

⁹ Most of the 19th century groups that separated from their denomination were smaller than their mother church, Tr. 91:15-92:3, 111:21-112:1 (Valeri), and the name and governmental structure of the former church typically did not change after the division, Tr. 77:13-22, 90:5-8, 194 (Valeri).

tion. Tr. 111:21-112:1 (Valeri); Tr. 1103 (Mullin). Indeed, the Reformed Episcopal Church has always been small in relation to TEC; even today the Reformed Episcopal Church has only 6,000 members. Tr. 111:7-112:1 (Valeri). Yet the Reformed Episcopal Church's modest numbers did not deter the Bishop of the Episcopal Diocese of Minnesota, in his annual address in 1874, from describing the separation as a "division" or from charging Bishop Cummins with causing a "schism." Tr. 109 (Valeri); Tr. 1104-12 (Mullin).

Indeed, TEC has consistently taken the position that the formation of the Reformed Episcopal Church was the result of a "division" in the Church—including, most significantly, in an official resolution adopted by the Church in 1988 at its 69th General Convention. Tr. 112-13 (Valeri); Tr. 1117-18 (Mullin). Resolution D-088, which TEC then adopted, stated:

"Resolved, the House of Bishops concurring, That this 69th General Convention direct the Standing Commission on Ecumenical Relations to explore the possibilities of dialogue with representatives of the Reformed Episcopal Church *looking toward the healing of this particular division* and direct the Standing Commission on Ecumenical Relations to report to the next General Convention.

CANA Exh. 6 (emphasis added). As Professor Valeri explained, TEC adopted this resolution to "reach out" to the Reformed Episcopal Church as a matter of "ecumenical relations," and "quite intentionally" "chose the word 'division' to describe what happened historically." Tr. 112:10-20. Thus, although it took some 115 years, the General Convention of the Episcopal Church has called the church split involving the Reformed Episcopal Church a "division."

Similarly, TEC's own website contains a "Glossary of Church Terms" with definitions from *An Episcopal Dictionary of the Church*, which is published by Church Publishing, Inc., the "official publisher of the General Convention of the Episcopal Church." CANA Exh. 5; Tr. 110:10-111:3; Tr. 906:3-10 (Douglas). "Schism" is among the dictionary terms listed on this website, and it is defined as follows: "This word of Greek origin means *a rip, tear, split, or division*. In ecclesiastical terms, it is a *formal and willful separation* from the unity of the church."

CANA Exh. 5 (emphasis added). After listing some of the best known schisms in church history, the definition concludes: “The earliest *significant schism* from the Episcopal Church was that of the *Reformed Episcopal Church, which began in 1873*. There were also some *smaller schisms* from it in the later twentieth century over Prayer Book revision and the ordination of women.” CANA Exh. 5 (emphasis added).

This definition is instructive for several reasons. *First*, it shows that when TEC is speaking of “divisions” outside of the context of this litigation, it describes them as everyone else does—as “willful separations” from the church, or “splits,” or “schisms.” *Second*, TEC’s own definition undermines Professor Mullin’s claim (discussed below) that TEC has never experienced “divisions,” as it not only describes the division involving the Reformed Episcopal Church as a “significant schism” but acknowledges other, late-20th century divisions involving other points of disagreement. *Third*, in stating that the split involving the Reformed Episcopal Church “began in 1873,” TEC’s definition confirms the testimony of Professors Valeri and Irons that a division or schism sometimes involves a process that unfolds over time. *Fourth*, the definition confirms that the separation involving the Reformed Episcopal Church was a “formal and willful separation” despite the absence of approval from TEC’s General Convention. *Finally*, in indicating that the split that resulted in the formation of the Reformed Episcopal Church was of greater significance than other “smaller,” late-20th century divisions, the definition confirms that there is no particular size requirement for a division. *See also* Tr. 900:14-17 (Douglas) (acknowledging TEC’s view that “there’s no numerical requirement for a division”). In short, this definition confirms that a departure of congregations such as the one that led to this dispute is a division under TEC’s own understanding of that term.

The conclusion of Professors Valeri and Irons that the term “division” was most often used to refer to the separation of a group of congregations who formed a new polity was based on a thorough review of a broad range of primary source materials, including “[s]ecular newspapers, religious journals or serials, sermons, pamphlets, tracts, records of official denominational conventions and also denominational histories”—publications that were “widely available” in Virginia. Tr. 53, 56 (Valeri); *see also* Tr. 176-177, 190, 197, 213-215, 223, 225-245 (Irons) (denominational literature and minutes, sermons, secular newspapers, court records). Professors Valeri and Irons demonstrated the breadth of usage of these terms by reference to papers ranging from *The New York Times* to local Virginia papers to denominational publications such as *The Presbyterian* and *The Christian Observer*. Tr. 68, 69:9-70:6, 87, 99, 241. Moreover, Professor Valeri testified that this definition would not “vary by denomination,” but rather “holds across the board.” Tr. 56; *accord* Tr. 94:4-9. As discussed below (see Part I.B.5), there was no contrary testimony concerning the common usage of the term “division” in the 19th century: TEC expert Mullin admitted that he had no knowledge concerning 19th century common usage (Tr. 1125, 1100, 1149:11, 1135, 1152:18-1153:7, 1133:9-13), and his testimony was largely focused not on primary source material, but on secondary historical “reference books” (Tr. 1135:7-17).

B. There Is No Basis to the Contention of TEC and the Diocese that Separations of Religious Entities Are Only “Divisions” if Approved, Recognized, Formally Declared, or Consented to by the Highest Denominational Authorities.

TEC and the Diocese insist that the “separation” of a group of churches from a religious denomination to form a new polity does not amount to a “division” unless the highest authorities of that body formally declare or approve of the separation. *See, e.g.*, Tr. 1116, 1067:14-1070:13 (Mullin); Tr. 841:16-844:3 (Douglas); *see also* Sept. 14, 2007, Tr. 39 (directing that the parties address whether division “require[s] a formal declaration by the highest level of a hierarchical church”). As explained below, however, this remarkable assertion is inconsistent with the text,

structure, and history of § 57-9—and with the views of their own expert, Professor Mullin, who admitted on cross examination that many 19th century divisions did not receive denominational approval. Moreover, requiring such formal denominational approval would render meaningless the voting rights conferred by § 57-9.

1. The text of § 57-9 provides no support for the notion that “divisions” must be approved by the highest authorities of the denomination.

At the outset, it merits emphasis that the text of § 57-9 provides no support for the position of TEC and the Diocese. Section § 57-9 uses the term “division” without any modifier—let alone the modifiers “approved,” “formal,” “consensual,” or “recognized.” TEC and the Diocese thus ask this Court to read a word into the statute, which the Virginia Supreme Court strictly forbids. *BBF, Inc. v. Alstom Power, Inc.*, 645 S.E.2d 467, 469 (Va. 2007) (“we are not free to add language, or to ignore language, contained in statutes”) (quotation omitted); *Oraee v. Breeding*, 270 Va. 488, 503 (2005) (“[c]ourts cannot add language to the statute the General Assembly has not seen fit to include”).

In addition, the notion that a division is a pre-planned, formal event is flatly inconsistent with the phrasing, verb tense, and verb choice in § 57-9. The statute applies “[i]f a division has heretofore *occurred* or shall hereafter *occur*.” (Emphasis added.) In the mid-19th century (as today), the dictionary defined “occurrence” as “[a] coming or happening; hence, any incident or accidental event.” Noah Webster, *A Dictionary of the English Language* 498 (1872) (preface dated 1867); *cf. Webster’s Ninth New Collegiate Dictionary* 817 (1983) (to “occur” means “to come into existence: happen”; and the term “‘occurrence’ may apply to a happening without intent, volition, or plan”). Thus, the sense of the statute is that divisions “happen,” often in unplanned ways, contrary to the TEC-Diocese position that the statute is limited to divisions that result from a consensual, deliberative process by denominational authorities. Indeed, if the pur-

pose of § 57-9 were to address *consensual* divisions, it would have been far more natural for the General Assembly to have referred to a division having been “effected,” “implemented,” or in some way brought about *by the denomination*. Cf. Va. Code § 57-7.1 (“conveyance . . . shall be used for the . . . purposes of the . . . religious society . . . as determined by the authorities which, under its rules or usages, have charge of [its] administration”); Va. Code §§ 8.01-400, 19.2-271.3, 20-26, 24.2-703.1 (“‘accredited religious practitioner’ means a person who has been . . . accredited by a formal religious order”).

2. The undisputed evidence concerning the ordinary usage of the term “division” in the 19th century confirms that the term was not limited to formally approved separations.

The undisputed evidence at trial likewise showed that there is no historical support for the view that the term “division” is necessarily (if ever) limited to separations from a church that are formally approved by the church’s highest authorities.

Professors Valeri and Irons both testified that all of the denominational divisions that occurred in the 19th century were “[u]namicable and unconsensual”; they were aware of “none” that involved “the approval or consent of the higher ecclesiastical authorities” of the original denomination. Tr. 55:22-56:14 (Valeri); Tr. 181:20-182:4 (Irons) (“I don’t know of one”). Professor Valeri explained that a division generally involved “the renunciation of the authority of the original group” (Tr. 55:15-20), and Professor Irons added that limiting the term “division” to cases involving denominational approval “would preclude most divisions of the 19th century” because “there are no amicable divisions and, indeed, I don’t think I would characterize any of them as consensual” (Tr. 181:8-19, 182:18-20).

The undisputed evidence therefore shows that, whether the divisions involved the Methodists,¹⁰ Presbyterians,¹¹ Lutherans,¹² Baptists,¹³ or Episcopalians,¹⁴ they were quite consistently non-consensual. Indeed, rejection of the authority of the former denomination was a hallmark of 19th century divisions, and it would make no sense, as a linguistic or a historical matter, to limit that term to divisions *recognized* as such by the denomination in which the division occurs.

3. TEC-Diocese expert Professor Robert Mullin conceded that at least some of the “major” or “great” divisions in the 19th century did not involve denominational approval.

TEC expert Robert Mullin claimed on direct examination that the “great” 19th century divisions were consensual or recognized. He acknowledged on cross-examination, however, that the “separations” that he would call “divisions” involved plans for separation that either were not approved by denominational authorities or quickly broke down. His testimony concerning the Presbyterians is illustrative. Professor Mullin testified that there were three “divisions” in the Presbyterian Church in the 19th century, one of which was the split of the Old School and New School Presbyterians beginning in 1837—a split that he would describe as one of the “great divisions” of the 19th century. Tr. 1154:11-17; Tr. 1102:4-11. But Professor Mullin readily admitted on cross-examination that this division was not consensual:

Q And you said the Presbyterian Church split into an Old School and New School in 1837, right?

A That is correct, sir.

¹⁰ Tr. 1158 (Mullin); Tr. 187-89 (Irons).

¹¹ Tr. 1154-58 (Mullin); Tr. 60, 62-69, 87-90 (Valeri).

¹² Tr. 207 (Irons).

¹³ Tr. 205 (Irons).

¹⁴ Tr. 1123-25 (Mullin); Tr. 107-08 (Valeri) (Reformed Episcopal Church); Tr. 1129-32 (Mullin); Tr. 216-217 (Irons) (Episcopal Church in the Confederate States).

- Q And is it your contention there was some kind of Plan of Separation associated with that attempt?
- A There was a Plan of Separation that was proposed and it was never ratified.
- Q Never ratified.
- A Yes. It broke down on certain political issues.
- Q So it wasn't in play in the 1850s or '60s, was it?
- A No, but the division was a fait accompli in the 1850s.

Tr. 1154:15-1155:7. Even TEC's own historical expert, therefore, admitted that lack of a formal or approved plan of separation is not an impediment to a division occurring and becoming a "fait accompli." Professor Mullin's testimony that the Old School-New School split was not consensual was in fully accord with that of Professor Valeri. Tr. 60:7-12, 62:21-69:15.

Similarly, Professor Mullin acknowledged that in at least one of the other two 19th century Presbyterian "separations" that even he would recognize as a "division"—the split of the Old School Presbyterians into Northern and Southern branches, between the late 1850s and late 1860s—the Northern branch did not recognize the validity of the Southern Branch and "still wanted to lay claim to the Southern synods." Tr. 1155:18-1156:17. After the adoption of § 57-9 and a roughly 10-year dispute between the Northern and Southern synods, he explained, "what happens with the Presbyterians is that, in effect, the Old School Presbyterians of the North accept the decision of their Southern brothers and choose instead to create a Plan of Union with the Northern New School Presbyterians." Tr. 1157:19-1158:1. On this subject, too, Mullin's testimony is consistent with the testimony of Professor Valeri, who testified that while there was initially a "hope that the division, when it is made, will be made entirely in peace, harmony, and good feelings," ultimately that "hope . . . was unfulfilled" because the division "was denounced roundly" and the General Assembly of the Northern Church refused to recognize the ordinations of ministers in the Confederate States. Tr. 87:7-90:4.

Thus, it is undisputed that at least two of the three largest Presbyterian divisions in the 19th century were *not* approved by the highest authorities of the denominations. Rather, those authorities were forced, over their objection, to accept that there would be two churches.

Professor Mullin's testimony concerning the Methodists is to the same effect. Specifically, he admitted that the plan of separation that came closest to formal approval by church authorities in the 19th century—the (never ratified) Plan of Separation for the Methodist Episcopal Church —“broke down soon after its enactment in 1844.” Tr. 1158:6-15. His testimony in this regard is consistent with that of Professor Irons, who explained that although “the Methodists envisioned an amicable and consensual separation,” reflected in a “provisional plan of separation,” ultimately “[i]t was not a consensual division.” Tr. 189. Specifically, “the annual conferences in the slave-holding states, 13 annual conferences, assumed it was already active and the annual conferences in the north uniformly rejected it. That is, they did not give that three-fourths approval necessary for the plan.” Tr. 193 (Irons); *accord id.* at 194 (explaining that, before there was an opportunity for ratification, “the Southern conferences went ahead and called for the organization of an independent jurisdiction of the Methodist Church in the south and they met in their first General Conference in 1846”). This “separation” too qualifies as one of what Professor Mullin calls the “great divisions” of the 19th century. Tr. 1160.

Professor Mullin's admission that the 1844 Plan of Separation broke down shortly after its proposal, moreover, confirms that the 1861 division of the Methodist Baltimore Conference was not authorized by the Methodist Episcopal Church. As Professor Irons explained, that Conference, which included parts of Virginia, Maryland, Pennsylvania, and Delaware (Tr. 195), opted in the wake of the 1844 Plan of Separation to stay with the Northern branch of MEC and to adopt a “middle way” position on slavery, prohibiting slave owning by ministers but refusing to

discipline ordinary members for such behavior. Tr. 196:10-20. In 1861, however, one year after MEC passed a resolution more broadly condemning slavery, “the Baltimore Conference renounced the authority of the General Conference,” creating another “division” in which congregations left MEC “in piecemeal fashion” with many “churches physically separating themselves from the Methodist Episcopal Church.” Tr. 198-200 (Irons). The Northern branch of MEC “did not accept the division by the Baltimore Conference and sought to recoup their lost members and their lost churches by targeting individual congregations” and “convinc[ing] many northern Methodists to rejoin and resubmit to their authority.” Tr. 200-01 (Irons). Many other congregations, however, “reject[ed] these overtures” and for much of the 1860s there were two Baltimore Conferences, each seeking the allegiance of congregations within the former conference. Tr. 201-02 (Irons).

There is no question, however, that none of these actions was taken pursuant to the 1844 Plan of Separation. As Professor Irons explained:

Q Could one make the argument that the division of the Baltimore Conference in 1861 was done pursuant to the 1844 plan of separation?

A No.

Q Why not?

A Well, the most obvious answer is that in 1846 the Baltimore Conference, A, rejected the plan of separation saying it could never divide pursuant to the plan of separation because it disagreed with the very foundations of it, and then just for good measure it voted to stay in the Methodist Episcopal Church North. So it rejects the plan but then anyway votes to remain with the northern branch.

Q To your knowledge, did the Baltimore Conference when it left the Methodist Episcopal Church in 1861 [invoke] the plan of separation?

A No, they did not.

Tr. 202:22-203:17; Tr. 243:17-19 (“Q * * * what relevance, if any, did the 1844 plan of separation have in 1867? A None.”). As discussed below, moreover, it is undisputed that numerous Methodist congregations in the Baltimore Conference successfully invoked the division statute

just months after its adoption, with some voting to remain with the Northern branch and others to align with the Southern branch. Tr. 232:18-233:15, 242:11-244:7 (Irons).

In summary, TEC's historical expert admitted that three of the largest 19th century divisions—the Old School-New School division of the Presbyterians, the Old School division into Northern and Southern branches, and the Methodist Episcopal division into Northern and Southern branches—lacked denominational approval. Moreover, given Professor Mullin's failure to offer testimony about the many other non-Episcopal divisions in the 19th century—including the Methodist division involving the Baltimore Conference that immediately preceded the adoption of § 57-9—it is undisputed that the vast majority of 19th century church splits were non-consensual.

4. Professor Mullin's testimony on whether the Episcopal Church has experienced "divisions" was contrary to his prior public statements and writings, which used the term "division" in the same manner as ordinary Americans in the 19th century and today.

Professor Mullin further acknowledged that various other "separations" (large and small) that resulted in the formation of new organizations were not officially blessed by their former denominations. Tr. 1099, 1102, 1107, 1137, 1139, 1146-49, 1151, 1153. Similarly, he acknowledged that his colleague Professor Russell Richey, who has written "a very nice work on divisions in the Methodist Church," uses the term more broadly than Professor Mullin would. Tr. 1136-37. And although Professor Mullin emphatically denied at trial that the Episcopal Church had ever experienced a "division," he acknowledged on cross examination that his position was inconsistent with this own prior statements and scholarly writings.

For example, Professor Mullin initially claimed that TEC never "divided" in the Civil War, notwithstanding the Northern Episcopal Church's refusal to approve of the formation of a Southern branch. But cross-examination elicited a contrary view:

Q And you would never use the word division to describe what happened during the Civil War with respect to the Episcopal Church, would you?

A I know what you're going to do, sir. And I don't remember what language I used in 1986.

Q You used the word division to describe what happened, did you not?

A I don't read my own work, sir, at least not as carefully as you do.

* * *

Q You said, did you not, in your own book, "When succession and *the division* within the Church between North and South ended this concern, Episcopal Evangelicals often moved closer to the sensibilities concerning slavery shown by their Protestant neighbors."

A That is correct.

Tr. 1129:13-1131:6 (emphasis added). Thus, without hesitation, Professor Mullin used the word "division" in his book to describe the separation between the northern and southern branches of the Episcopal Church.

Of course, now having been retained to offer expert testimony in five separate matters for TEC, Professor Mullin says: "I'd like to revise that word"—"now I . . . would use the word separation." Tr. 1131:19-1132:9. But the fact remains that, before this litigation, he used the term "division" in the same way that everyone else does—to refer to situations where a group of congregations and clergy breaks away from its former denomination and sets up a new polity.

Professor Mullin further admitted that in ordinary parlance people—including himself—would refer to the breakaway of the Reformed Episcopal Church from the Episcopal Church as a "division":

Q. In your view, how many divisions has the Episcopal Church suffered in its long history?

A In my view, none, sir.

Q Professor Mullen, I'd like to hand you what's been marked as Exhibit 293.

* * *

Q This is a more contemporary news article, is it not?

A Yes, sir.

* * *

Q * * * And you are quoted, are you not, as saying, “My sense is that there’s still a lot of anger, frustration and ill will. But the thing you have to understand about the Episcopal Church is that it has been remarkably resilient and it has suffered *very few divisions* in its long history.”

You didn’t say zero divisions, did you, Professor Mullen?

A No, I did not.

Q What divisions did you have in mind when you were talking to this newspaper reporter?

A Well, sir, I must say, I don’t recall. When I talk to a newspaper reporter, I sometimes do not speak as carefully as one speaking to a lawyer like you.

There have been splinter groups, and I will agree with that. There was the Reformed Episcopal schism.

If he would have said, “Do you mean the term division in a technical term,” I would have then probably said, “Well, no, it’s technically not a division the same way that the Presbyterians divided in 1837 or the Methodists divided in 1844, but a new organization emerged from out of the Episcopal Church.”

Q So what happened was that you lapsed to the more common, ordinary meaning of the word division, did you not?

A Yes, sir.

Tr. 1123:14-1125:15 (emphasis added). Thus, TEC’s leading expert admits that when he “lapses to the more common, ordinary meaning of the word, division,” non-consensual church splits—including the departure of the Reformed Episcopal Church from TEC—qualify as a “division.” *Id.*

Finally, Professor Mullin acknowledged that one of the Episcopal Church’s leading historians—Professor Robert Prichard of Virginia Theological Seminary, whom Professor Mullin listed on his bibliography—specifically described the Reformed Episcopal Church’s departure from TEC as a “division” in his respected work on the Church’s history. Tr. 1115:16-1116:6, 1119:11-1120:2.

In short, TEC's own expert witness ultimately confirmed the point made by CANA's expert witnesses, namely, that in ordinary parlance, in 1867 as now, the term "division" does not require the approval of the religious body in which the division occurs.

5. Professor Mullin admitted that he had no knowledge of the common usage of the term "division" in the 19th century, and that his own distinctive reading of that term was a technical historians' view.

Even assuming, *arguendo*, that a handful of the denominational "separations" during the 19th century were approved by the highest denominational authorities, that fact would in no way prove that *most* such splits were consensual, let alone that common usage of the term "division" excluded unapproved separations. Indeed, Professor Mullin drew distinctions among different types of divisions that have no basis in the text of § 57-9. For example, he distinguished between the "great" or "major" divisions of the 19th century and other, smaller "divisions." *E.g.*, Tr. 1101-02, 1161. The following exchange from his cross-examination is instructive:

Q And is it your contention that no self-respecting historian would use the word division to describe what you characterize as a separation?

A I would not say that, sir.

Q So some historians don't have the same distinction that you draw, correct?

A Some historians will talk about this, but I will say that they will usually highlight the great divisions of the Presbyterians, Methodists and Baptists as being distinct.

* * * There are all sorts of separations going on in the 19th Century. And historians will talk about them. But when, in a standard history, they'll talk about the great divisions, they're going to be talking about these divisions between 1837 and 1844 with the Presbyterians—and '45, the Presbyterians and Methodists and Baptists. That's not to say that there were not—the AME came off in 1816, and the AME Zion came off in 1820. But that is a traditional point where historians will say this is an important event in 19th Century American religious history.

Q But historians often would attach the label division to what you would call the not-so-great division, correct?

A I know some who do.

Tr.1101:11-1102:20.

Perhaps historians do view the “great divisions” as “distinct” in some respect, but that does not mean that the “not-so-great divisions” were any less “divisions.” Section 57-9 does not distinguish between “great,” “major,” and other divisions, and it does not support Professor Mullin’s admittedly “distinctive,” “narrow,” and “technical” construction of that term. Tr. 1125-1126; Tr. 1122:6-11; Tr. 1124:19-1125:15.

Most importantly, however, although Professor Mullin suggested that separations were not “divisions” unless formally blessed by the mother church,¹⁵ he readily admitted that he had no knowledge of “common usage” during the 19th century, and thus that his definition of the terms at issue was not based on such usage:

Q And is it your contention that this distinction that you draw between a separation and a division was well-known to the general public in the 19th Century?

A I do not have an understanding of what the general public was. In both the contemporary—in contemporary literature that distinction is being made.

Q So you don’t really know what people—what terms people commonly used in the 19th Century, do you?

A *I know what terms some people used, but I do not know what the public usage was.*

Q And indeed, the public may not draw such a fine distinction between division and separation that you do, correct?

A That is correct.

Tr. 1100 (emphasis added). *Accord* Tr. 1149:11 (“I don’t know about the public at large, sir.”); Tr. 1135 (“Q. And again, you’re talking about experts as opposed to the ordinary people in the mid-19th Century. A. That is correct, sir.”); Tr. 1152:18-1153:7 (contrasting “the historians’ view versus the public’s view” and acknowledging “the fact that you see the word division used in common parlance to describe other smaller separations”); Tr. 1133:9-13 (same).

¹⁵ Tr. 1099 (Mullin) (drawing a “distinction between a separation and what you would attach the label of division to”).

In light of the fact that “the popular, or received import of words, furnishes the general rule for the interpretation of statutes” (*Lawrence*, 210 Va. at 140-41), Mullin’s admission that he knew nothing about “public usage” of the term “division” in the 19th century renders virtually his entire testimony irrelevant. *See also Lewis*, 184 Va. at 72 (looking to ordinary meaning “[a]t the time of enactment of the statute”). Professors Valeri and Irons, by contrast, both testified, based on extensive review of primary source materials, to their familiarity with common usage of the terms at issue during the relevant time period. Tr. 52 (Valeri); Tr. 176-179 (Irons). Thus, the CANA Congregations’ evidence concerning the common meaning of church “divisions” in the 19th century is therefore undisputed.

6. Shortly after its adoption, the division statute was successfully invoked at least 29 times in several Virginia counties, with no evidence that any such division was approved by the denomination.

The CANA Congregations also offered undisputed testimony that many congregations successfully invoked the division statute shortly after its adoption, without any indication that the divisions were approved by their former denominations.

As Professor Irons testified (and no one disputed), numerous 19th century divisions resulted in litigation over local church property, including in Virginia. Tr. 219:16-220:5. The 1860s in particular were years of “[v]ery significant ecclesiastical disorder and competition for the[] [Methodist Baltimore Conference] churches’ allegiance,” and the division of that Conference led to “litigation about the control of church property for over a decade after [1866].” Tr. 202:6-203:4 (Irons). Similarly, it is undisputed that the Presbyterian divisions in the 1860s were not resolved until after the division statute’s adoption, and the Presbyterians too resorted to the courts well after 1867 to resolve issues of property ownership. Tr. 1157:19-1158:1 (Mullin); Tr. 87:7-90:4 (Valeri); Tr. 243 (Irons).

The division statute was thus enacted in a period when ownership of church property was hotly contested, and Professor Irons' review of court records in various Virginia counties (Augusta, Fairfax, Rockbridge, Rockingham) not surprisingly confirmed that between 1867 and 1869 at least 25 Methodist congregations and four Presbyterian congregations invoked the statute. Tr. 220, 225-26, 231, 242-244; Exhs. 95-98, 118-19. Notwithstanding the absence of any evidence of denominational approval, however, the courts without exception ruled for the majority of the congregation. Tr. 220, 230, 232-33 (Irons); CANA Exhs. 95-98, 118-19.

Eighteen of these 29 disputes involved congregations in Augusta County, Virginia, which was located in the Baltimore Conference of the Methodist Episcopal Church and was home to a large number of churches. Tr. 222, 228-30, 242, 243:20-244:1 (Irons); Exhs. 95-98. As discussed above, the Baltimore Conference divided in the 1860s when the Northern branch of the Church (MEC) changed its position on slavery, resulting in the formation of two Baltimore Conferences, respectively affiliated with the Northern and Southern branch (MECS) of the Methodist Episcopal Church. In the wake of the division statute's adoption, therefore, Virginia congregations in the Baltimore Conference region were voting to determine which branch of the Church to join and reporting their votes to the local circuit courts. Tr. 230, 243:13-244:7 (Irons). The congregations' petitions recounted the tallies of the votes, many of which reflected divided congregations, and identified the branch that the congregations voted to join. CANA Exh. 95-98. Most of the Methodist congregations in Augusta County voted to join the Southern branch of the Church, but some, including one black congregation, voted to join the Northern branch. Tr. 230, 241:14-22, 242:11-243:1 (Irons); CANA Exhs. 95-98. Again, there is no evidence that the denomination approved of any of these disaffiliations.

Indeed, as discussed above, it is undisputed that the 1844 Plan of Separation would not have covered the votes of these Baltimore Conference congregations—even if the Plan had been ratified, and even if it had not broken down. Tr. 200-03, 243 (Irons), Tr. 1158 (Mullin). Some of the petitions, moreover, were objected to by the dissenting factions in the congregation. Tr. 241, 230 (Irons). Indeed, one of the most well known and hotly contested Augusta County disputes involved a Methodist congregation in Staunton represented by John Baldwin, Speaker of the Virginia General Assembly's House of Representatives and author of the statute now known as § 57-9. Tr. 221-23, 241 (Irons). As the local newspaper then reported, the congregation that he represented sought, over the objection of the dissenters, "to claim the benefit of [the statute's] protection," namely "to protect local religious congregations who when their church divided" made "[a] choice between the different branches of it, and to allow them in some such cases to take their property with them." Tr. 223:19-224:8 (Irons).

Professor Irons also provided undisputed testimony that four Presbyterian congregations in Augusta County successfully invoked § 57-9. Tr. 243:5-12; Exh. 97-98, 119. These four congregations voted to separate from the Northern branch of the Presbyterian Church (Old School, or PCUSA) to join the Presbyterian Church in the United States (PCUS), the Old School Presbyterian's Southern branch. Tr. 243:5-12 (Irons); Exhs. 97-98, 119. Here, too, in each case the congregation's majority prevailed. Exhs. 97-98, 119. And here too, there is no indication, in any of the court records or related newspaper articles that Professor Irons discussed, that denominational approval was sought, obtained, or even thought necessary for any of these congregations to rely on the statute. Tr. 244:4-12, 224:9-12 (Irons).

In summary, this consistent pattern of local congregations invoking the division statute in contested cases and without any evidence of denominational approval both confirms that the stat-

ute was routinely applied and refutes TEC's argument that a "division" within the meaning of the statute requires such approval. But this is not surprising. The notion that the General Assembly in 1867 would require denominational consent to any "division" flies in the face of the broader historical backdrop. See *Enoch v. Com.*, 141 Va. 411, 434 (1925) (it is the "duty" of courts to consider "history and life of the country"); accord 17 Michie's Jurisprudence, *Statutes* § 39 (2006) (courts appropriately consult "the history of the times"). Virginia had just fought a war over whether individual States had the right to separate from the Union without the Union's consent. Quite apart from the ordinary 19th century meaning of "division"—on which the evidence is undisputed, as discussed above—it is fanciful to suggest that, in the war's immediate aftermath, the pre-Reconstruction General Assembly would have enacted legislation that effectively forbade churches from separating from (typically Northern) denominations and keeping their property without the consent of the highest authorities of the denominations. Yet that is the implication of the position of TEC and the Diocese.

7. Other considerations confirm that the term "division" in § 57-9 is not limited to formally approved denominational splits, and such a reading would render the statute meaningless.

Other considerations preclude reading § 57-9 to apply only to divisions approved by the highest authorities of the denomination. To begin with, the TEC-Diocese interpretation is at odds with the guidance that the Virginia Supreme Court has provided concerning the meaning of § 57-9. As that Court explained in analyzing subpart B of the statute in *Reid v. Gholson*, the type of "division" that is "a prerequisite to relief under 57-9" involves a situation where the disaffiliating parties "have expressed [their] desire to separate from the body of their church, and to rend it into groups," and where some are "excommunicated" or viewed as "apostate" based on the underlying disagreement. 229 Va. 179, 192 (1985). Under this common-sense reading of the stat-

ute, a division exists where (as here) different groups have gone their separate ways over what they deem to be important differences. And there is no reason to think that the Virginia General Assembly intended to define “division” differently for purposes of Parts A and B of the statute. *See* Sept. 14, 2007, Tr. 39 (directing the parties to address “whether the term division is defined differently in 57-9(A) and 57-9(B)”).

Finally, but perhaps most importantly, the interpretation of § 57-9 advanced by TEC and the Diocese would render the statute useless. First, where the highest authorities of a denomination approve of the church’s division, there is no dispute over property ownership and no need for the “conclusive” rule of ownership that § 57-9 provides. Yet, as discussed above, the historical evidence shows that § 57-9 was adopted for the very purpose of handling such disputes.

Second, even if (as TEC and the Diocese suggest) the meaning of the statute varied from denomination to denomination—*i.e.*, even if the meaning of the statute here turned on how *Episcopalians* defined “division”—the statute, under their reading, could *never* apply to a division in TEC. The reason is that, under the “fundamentally geographic” divisions of dioceses that are authorized by TEC’s canons, no Episcopal congregation would ever be permitted by TEC to vote to determine which diocese it would join. Tr. 899-900 (Douglas) (“Q. * * * So for a congregation in Western Massachusetts to vote to join the diocese in Eastern Massachusetts at the time when they were divided would be a violation of the Episcopal polity, correct? A. Correct, that would not happen.”); Tr. 898:18-899:16 (Douglas) (same). TEC and the Diocese further admit that when the General Convention administers such a “division,” the resulting new dioceses

would not be considered “successor” entities or “branches,” but rather “two new diocese[s].” Tr. 900:9-13 (Douglas).¹⁶

By TEC’s and the Diocese’s own admission, then, the statute would have no application under their canonical definition of “division,” because allowing congregation to choose where to affiliate would violate church canons. In other words, TEC and the Diocese are urging the Court to adopt an interpretation of § 57-9 that would deny the voting rights conferred by the statute. Such a result is not permitted under Virginia law. *See Natrella v. Board of Zoning Appeals*, 231 Va. 451, 461 (1986) (“[t]he rules of statutory interpretation argue against reading any legislative enactment in a manner that will render any portion of it useless, repetitious, or absurd”).

C. The Term “Branch” Is Properly Interpreted to Include the New Entity Created When a Group of Congregations, Clergy, or Members Separates from Its Former Denomination and Formally Reorganizes a Separate Polity, and to the Original Entity from which the Group Separates.

The evidence at trial also conclusively demonstrated that the term “branch” was most commonly understood in mid-19th century America to refer to an offshoot of a denomination

¹⁶ Related testimony from TEC and the Diocese make clear that it would require a *constitutional amendment* for TEC to divide itself up on a non-geographic basis—to break up the church into two or more separate entities. Tr. 1223:7-17 (Beers) (for the General Convention to “divide the Church in some other non-geographic way” would “require a very substantial rearranging of our polity or our system of governance” and “would require Constitutional and canonical changes”); Tr. 896:8-898:13 (Douglas). Thus, even if the TEC-Diocese definition of “division” were not limited to consensual geographic redistricting, they advance a definition of the term that, by their lights, would not have any application to them.

See TEC-Diocese Exh. 1, TEC Canon I.13.1 (“Every Congregation of this Church shall belong to the Church in the Diocese in which its place of worship is situated”); *id.*, TEC Canon I.16 (congregations wishing to affiliate with TEC must have “the consent of the Bishop in whose Diocese it is situate”); *see also* I E. White & J. Dykman, *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America* 318-319 (1954) (“Whereas a question may arise, whether a congregation within the diocese of any bishop, or within any State in which there is not any bishop settled, may unite themselves with the Church in any other diocese of State, it is hereby determined and declared that all such unions shall be considered irregular and void; and that every congregation of the Church shall be considered as belonging to the body of the Church of the diocese, or of the State, within the limits of which they dwell or within which there is seated a Church to which they belong”).

created as a result of a division, or to the group left behind—not to an administrative subunit of a denomination or to a new diocese created by consensual administrative redistricting. *See* Sept. 14, 2007, Tr. 39-40 (directing the parties to address whether a “branch” is an “offshoot” of a “hierarchical church” or “has to be a creature” that is “created or spun off from” the church).

For example, Professor Valeri testified that a branch was “the new organization or polity that results from [a] division” (Tr. 94:14-21), and Professor Irons explained that this was particularly clear when “branch” was used in the same sentence as division: “the division in that case would be the separation and the branch would be one of the resulting jurisdictions” (Tr. 180:8-16). Although there might be variations between denominations as to the form in which the new groups would reorganize (*e.g.*, into dioceses or presbyteries or conferences), the “essential definition that’s required for a branch remains the same” across the board. Tr. 95 (Valeri); *accord* Tr. 103:1-12 (Valeri).¹⁷

Although a “branch” had common “historical origins” with its mother church and was composed primarily of “people who belong[ed] to the original group” (Tr. 94:14-21, 98 (Valeri)), the new branch typically renounced the former denomination’s authority (*see* Part I.A, *su-*

¹⁷ As with “division,” Professors Valeri and Irons based their testimony concerning the common 19th century meaning of “branch” on a wide range of primary source materials, ranging from secular newspapers such as *The New York Times* to “denominational literature” to “definitive histories of the major denominations” from the late 19th century to court records from the era. Tr. 96-100, 105, 128 (Valeri); Tr. 176-178, 190, 197, 213-215, 223, 225-245 (Irons). *See also* Tr. 128 (Valeri) (explaining that the meaning of “branch” in “church historical parlance” was consistent with its meaning in general 19th century “common parlance”); Noah Webster, *A Dictionary of the English Language* 81 (1872) (preface dated 1867) (defining branch in relevant part as “[a]ny arm or part shooting or extended from the main body of a thing”).

Indeed, Professor Valeri explained that today’s common usage of “division” and “branch” is “very frequently” consistent with 19th century usage. Tr. 101-02; *id.* at 102 (explaining that “many books and officials studies” and “economic” literature and the “contemporary official web site of the Presbyterian Church” use these terms to discuss “nonconsensual, nonamicable splits” in the church’s history). *Cf. Black’s Law Dictionary* 199 (8th ed. 2004) (a “branch” is an “offshoot, lateral extension, or division of an institution”).

pra), thus ending any ongoing connection or recognition, “formal” or “informal,” between the new and old branches (Tr. 94:22-95:6, 97:15-20, 99, 101, 107-09 (Valeri); Tr. 181 (Irons)). Indeed, prior to the reunification of the Episcopal Church (U.S.A.) and the Episcopal Church in the Confederate States, Diocese of Virginia Bishop John Johns referred to both of those bodies as “branches” of the Episcopal Church (Tr. 214-15) (Irons). Moreover, TEC expert Mullin testified on direct examination that a branch would include legally autonomous entities. As he put it: “a branch is seen as an extension that grows out of an earlier body or another body of a Christian communion,” “and it does not necessarily have to be legally connected. So we would talk about the Episcopal Church being a branch of the Church of England, even though it is legally autonomous, but it flowed out of the Church of England.” Tr. 1038:20-1039:6.

As with divisions, branches came in various sizes, and the only size-related requirement for establishing a branch was that the number of members and clergy involved be “sufficient . . . to form an alternative polity.” Tr. 55:18-19; Tr. 92:6-9 (Valeri) (“There’s no stated size, but the operating principle seems to be that groups of three feel themselves qualified to form themselves into new units,” whether “ministers” or “presbyteries” or “synods”); Tr. 93 (Valeri) (“you must have more than one congregation to have a polity”); Tr. 900:14-17 (Douglas) (acknowledging TEC’s view that “there’s no numerical requirement for a division”). Moreover, the new branch would typically be smaller than the old branch. Tr. 91:15-92:3, 111:21-112:1 (Valeri).

Here again, the Reformed Episcopal Church is a leading example of how an offshoot that began very small was nonetheless considered a “branch” in the 19th century. Tr. 105-112 (Valeri). As explained above (in Part I.A), the Reformed Episcopal Church began with only seven ministers and 19 laypersons, and with only a few congregations attending its first convention. Tr. 111:21-112:1 (Valeri); Tr. 1103 (Mullin). Yet the Bishop of Minnesota, in his annual ad-

dress in 1874, had no hesitation in describing the separation as a “division,” or in using the term “branch” to describe the entities’ relationship with each other. Tr. 108:5-110:9 (Valeri); Tr. 1107-08 (Mullin). Moreover, the undisputed testimony showed that the Cumberland branch of the Presbyterian Church started with three ministers who formed a presbytery. Tr. 77-78 (Valeri). Similarly, the groups that formed the Old Light Synod, the Associate Reform Presbyterian Church of the South, the Associate Reform Synod, the Reformed Methodist Church, the AME Church, and the AME Zion Church, among others, were all formed with a small number of congregations. Tr. 185:19-186:4, 187 (Irons), 81:4-16 (Valeri). All of this undisputed historical testimony confirms that, to constitute a “branch,” an offshoot group need only be sufficiently large to form a new polity.

II. The CANA Congregations Have Satisfied The Core Requirements Of Virginia Code § 57-9 By Establishing The Existence Of A Division In TEC And The Existence Of Branches Resulting From That Division.

Having established the proper interpretation of the key terms in § 57-9, “division” and “branch,” we now turn to a discussion of how the evidence at trial demonstrates that the CANA Congregations have satisfied these core requirements of § 57-9. *See* Sept. 14, 2007, Tr. 40, 41 (directing the parties to address whether “there has been a division within the Episcopal Church and the Diocese” and “whether CANA is a branch of the Episcopal Church”).

Here in Part II, for example, we explain how the CANA Congregations have established a division in the Episcopal Church and the creation of branches resulting from that division. Similarly, Part III discusses the evidence demonstrating a division in the Diocese of Virginia and the formation of a branch of that body. Finally, Part IV sets forth the evidence proving yet another division, this time in the worldwide Anglican Communion. This related but legally distinct division is reflected in different branches of the Communion. Part IV will also explain how, within the meaning of § 57-9, the Anglican Communion is a “church or religious society,” and

how the CANA Congregations were “attached” to the Anglican Communion prior to their votes—issues not disputed as to TEC and the Diocese.

A. The CANA Congregations Have Established a “Division” in the Episcopal Church.

As explained above (in Part I.A.), a “division” within the meaning of § 57-9 exists where a group of congregations, clergy, or members separate from a denomination and establish a new organizational structure or “polity” that others leaving the denomination can likewise join. The evidence at trial conclusively showed that such a division has occurred in the Episcopal Church.

1. In the wake of TEC’s 2003 General Convention, numerous congregations, clergy, and members have disaffiliated from the Church and joined alternative polities.

First, it is undisputed that in the wake of TEC’s 2003 General Convention, numerous congregations, clergy, and members have formally disaffiliated from the Episcopal Church and reaffiliated with other Anglican entities. For example, CANA Bishop Martyn Minns testified that, based on CANA’s official denominational records, some 60 congregations, comprising 12,000 members, have affiliated with CANA since its official formation in 2005, and that more than 10,000 of these members were formerly affiliated with TEC congregations. Tr. 324. These congregations and members are located in numerous states across the country, come from at least eight TEC dioceses, and have an average Sunday attendance of roughly 9000 persons. Tr. 325 (Minns). Most of these congregations affiliated with CANA as “entire congregations,” and several more applications for membership are pending before CANA’s Reception Committee. Tr. 324:21-325:3, 326:6-11 (Minns).

Bishop Minns further testified that approximately 100 clergy have affiliated with CANA, 80 of whom are former TEC clergy. Tr. 320. Furthermore, at the time of trial CANA had two bishops and four bishops-elect, each of whom has responsibility for a different geographic re-

gion, and each of whom is a former TEC clergyman or bishop. Tr. 320:19-322:17, 302, 307-08 (Minns). In the short time since its creation, then, CANA is already twice as large as the Reformed Episcopal Church is even today, let alone at its formation. Tr. 111:7-112:1 (Valeri) (the Reformed Episcopal Church has always been small in relation to TEC and even today has only 6,000 members); Tr. 111:21-112:1 (Valeri) (the Reformed Episcopal Church began with only seven ministers and 19 laypersons, and with only a handful of congregations attending its first convention); Tr. 1103 (Mullin) (same). Here too, the numbers in CANA are rapidly growing, reflecting the widening division in TEC. Tr. 324 (Minns).

Similar testimony was offered by Bishop John Guernsey, the Church of Uganda (Anglican Communion) Bishop for Congregations in America. Tr. 382. He explained that, according to official denominational records, some 39 congregations, comprising more than 11,000 members, have affiliated with the Church of Uganda's American arm since TEC's General Convention in 2003, and that some 90 percent of these members (more than 10,000 persons) were formerly affiliated with TEC congregations. Tr. 389, 390:16-391:5.¹⁸ These congregations too come from "a large number of states" and various TEC dioceses, have an average Sunday attendance of more than 6,200 people, are already larger than the Reformed Episcopal Church, and are rapidly growing. Tr. 389:22-290:1, 387-391:8, 392 (Guernsey); Tr. 111:7-112:1 (Valeri).

In sum, it is undisputed that under CANA and the Church of Uganda's American bishop alone there are roughly 100 congregations made up primarily of members who were formerly affiliated with TEC. Indeed, TEC's own witnesses confirmed that some 100 congregations have disaffiliated from the Church in the past few years. Tr. 900:18-22 (Douglas), Tr. 1227:21-1228:4 (Beers). Many of these congregations disaffiliated from TEC to reaffiliate with CANA or the

¹⁸ TEC's own witnesses acknowledged that CANA serves individuals who have left TEC. See also Tr. 902:2-5 (Douglas); Lee Deposition Designations 117:18-118:3.

Anglican Church of Uganda prior to the disaffiliation from TEC of the eleven CANA Congregations who are parties to this litigation.¹⁹ Consistent with the historical notion of divisions widening, those numbers continue to grow today.²⁰

It is unsurprising, in light of these numerous events, that many witnesses would testify that TEC has experienced a “division” in the wake of its 2003 General Convention. Tr. 314:21-315:2, 317-318 (Minns) (TEC has undergone “a major division” in which “[c]lergy and congregations [have] left the Church”); Tr. 498, 513 (Yates); Tr. 410, 425-27 (Julienne).

2. The testimony of TEC expert Robert Mullin and documentary evidence from the Episcopal Church’s own website both confirm that a division has occurred in TEC.

Second, the testimony of TEC expert Mullin and statements of TEC outside this litigation confirm that TEC has experienced a post-2003 division within the meaning of § 57-9. In Professor Mullin’s view, the difference between a “division” and a “schism” is that “a division has to be approved by the highest adjudicatory, but a schism . . . is a voluntary action by individuals.” Tr. 1116:17-20. Applying these definitions, he first testified that “he would call the creation of the Reformed Episcopal Church a schism but not a division” (Tr. 1116:21-1117:2), while admitting that, prior to this litigation, he publicly described past TEC splits, including the one that created the Reformed Episcopal Church, as a “division” (Tr. 1124-25). Indeed, he conceded that

¹⁹ Tr. 311-12, 318-19 (Minns); Tr. 387-389 (Guernsey) (explaining that various congregations transferred from TEC to Uganda between 2004 and 2006); Tr. 318-319 (Minns) (same for CANA); Tr. 467, 476-78, 486, 490 (Yates) (explaining that between late 2003 and 2006 “[t]here were churches leaving around the country” and “groups of churches and individual churches had begun to take steps to leave the Episcopal Church” and there was concern about additional churches leaving); Tr. 417:18-420:10 (Julienne) (discussing disaffiliations in California, Connecticut, Florida between 2003 and 2005).

²⁰ Similarly, TEC’s own official documents on the size of the Episcopal Church show that tens of thousands of members have disaffiliated from the Church in each of the last several years. CANA Exh. 90 at 8; CANA Exh. 102.

“everyone will say that the 1873 withdrawal of the Reformed Episcopal Church was a schism” (Tr. 1122:16-1123:2 (emphasis added)).

Professor Mullin just as readily acknowledged, however, that TEC has experienced a schism as a result of the events of the 2003 General Convention:

Q * * *And indeed, it was a consecration in 2003 that gave rise to another schism in the Episcopal Church, correct?

A Yes, sir.

Tr. 1128:3-12.

Given that Professor Mullin’s definition of “schism”—a group’s “voluntary action” to separate from a denomination, versus a separation that the denomination approves—corresponds to the common understanding of “division” in 19th century common parlance²¹ (and today), there is essentially no dispute that, since 2003, TEC has experienced a division within the meaning of § 57-9. Indeed, prior to his engagement by TEC to offer testimony in this case (and several others), Professor Mullin’s public statements and writings applied the very same definition of “division” to describe various divisions in the Episcopal Church, which he now calls “separations.” Tr. 1124-25 1129-31; *see* Part I.B.4, *supra*.

In sum, outside of the context of this litigation, TEC and the Diocese acknowledge that the events that have occurred in the Church since 2003 are precisely the sorts of events that would ordinarily be described as a “division.”²²

²¹ The Episcopal dictionary that TEC displays on its official website also treats “schisms” and “divisions” as synonyms. CANA Exh. 5 (*An Episcopal Dictionary of the Church* (D. Armentrout, R. Slocum, eds.)); CANA Exh. 171 at 6 (Diocese’s Response to Congregations’ First Set of Interrogatories) (defining “schism” by reference to a “standard reference” dictionary as “a formal division in or separation from a church or religious body”).

²² Professor Valeri offered undisputed testimony that “divisions” and “schisms” are synonymous both “[s]tructurally and procedurally,” but that “the parent or originating denomination” will often use the word “schism” as a “pejorative for what has gone on”—to “imply[]” that the new branch “has bad theology and a contemptuous order and ecclesiastical authority.” Tr. 109:14-

B. The CANA Congregations Have Established that the Convocation of Anglicans in North America and the American Arm of the Church of Uganda Are “Branches” of the Episcopal Church Formed as a Result of the Division in the Church.

As discussed above, the term “branch” was most commonly used in 19th century America to refer to the “new organization” created when a group of congregations, clergy, or members divided from their former denomination and formed a separate polity—to an “offshoot” resulting from a division. *See* Part I.C; Tr. 94:14-21; Tr. 180:8-16 (Valeri). Although the particular form of the new polity would vary from denomination to denomination, the “essential definition” that applied “across the board” was simply a new polity that had a historic affiliation with the prior denomination, a connection reflected in the fact that its members were “people who belong[ed] to the original group.” Tr. 94, 95, 103:1-12 (Valeri).

As shown below, the CANA Congregations have satisfied the “branch” requirement of § 57-9. Indeed, the evidence at trial demonstrated that at least two new branches have formed in the wake of the post-2003 division in TEC. The first is CANA, which as discussed above has gained roughly 12,000 members and 100 clergy since 2005, the great majority of which came from the Episcopal Church. The second is the American arm of the Church of Uganda, which since 2004 has gained 11,000 members, most of whom likewise came from TEC.

1. The Convocation of Anglicans in North America Is a “Branch” of the Episcopal Church Formed in Response to the Division in the Church.

The CANA Congregations offered undisputed testimony that the post-2003 division in TEC was “the precipitating event” that led to the establishment of CANA, and that CANA was established in 2005 to provide “Episcopal and pastoral oversight” for congregations and clergy

110:1. TEC expert Douglas likewise testified that the term “schism” is “a form of division” and is synonymous with a “split” or “tearing” or “ripping” of a church, but that the term “schism” was “a stronger term than division”—“a more abrupt or perhaps more permanent . . . kind of division. Seems to be more acute than a division.” Tr. 966-967:13.

separating from TEC as a result of that division. Tr. 308, 311-12, 317, 319-25; (Minns); CANA Exh. 69 (CANA Articles of Incorporation). CANA is thus a “convocation” or “group of churches” that functions as a “religious denomination.” Tr. 328:6-7 (Minns). The congregations in CANA share “common worship, common vision,” and the “same structure of governance” as TEC, and they worship according to the liturgy in the Book of Common Prayer, as do TEC congregations. Tr. 305, 328 (Minns); TEC-Diocese Exh. 1 at 1, 8 (TEC Constitution Preamble, Art. X). The “ecclesiastical structure” provided by CANA is “available to congregations and clergy in all regions of the United States,” with geographic “districts” across the country that function as TEC dioceses function. Tr:322-23 (Minns).

In terms of governance, CANA has a “mixture” of episcopal oversight by bishops combined with “strong lay involvement and leadership.” Tr. 326 (Minns). CANA’s “ecclesiastical authority” is Bishop Minns, a former Episcopal clergyman who was consecrated as CANA’s Missionary Bishop in 2006. Tr. 302-06, 308 (Minns). CANA’s other bishops, who are responsible for CANA’s various districts, report to Bishop Minns, who provides spiritual oversight for the organization on a national level. Tr. 320-22 (Minns). CANA also has an “Annual Council” of “[c]lergy and elected lay delegates” that meets regularly, “set[s] the broad direction for CANA,” makes “policy decisions,” “appoint[s] committees to handle policy matters,” and “oversee[s] the general direction for CANA.” Tr. 327 (Minns). In addition, CANA has a Board of Trustees that “handles management, fiduciary, [and] budget[.]”-related duties for the denomination. Tr. 327 (Minns); *cf.* TEC-Diocese Exh. 1, Art. I, at 1 (TEC constitutional provision setting out General Convention’s governance responsibilities and election procedures).

CANA is legally incorporated as a Texas non-profit corporation. Tr. 308 (Minns); CANA Exh. 69 (CANA articles of incorporation). The denomination is funded by “voluntary

assessments” from member congregations and other private donations (Tr. 329 (Minns)), and it provides its member clergy with various benefits such as healthcare and pensions (Tr. 328 (Minns)). CANA has established procedures for receiving membership applications from congregations, for consecrating bishops, and for ordaining clergy, among other things, and it has ordained 15 clergy since Bishop Minns was consecrated in 2006. Tr. 319-20, 328-29 (Minns).

CANA is part of the Anglican Communion by virtue of its affiliation with the Church of Nigeria (Anglican Communion), one of the largest Provinces in the Anglican Communion. Tr. 306 (Minns). CANA initially stood for the “Convocation of Anglican Nigerians in America,” as its first members were ex-patriot Nigerian clergy and congregations who were formerly affiliated with TEC but disaffiliated from it after the 2003 General Convention. Tr. 311 (Minns). From its inception, CANA was designed as a structure for “former Episcopalians,” but in 2006 it changed its name to the “Convocation of Anglicans in North America” as it began receiving additional former TEC congregations and clergy, and it has quickly grown into a nationwide religious denomination. Tr. 311-12, 317-25 (Minns); *see also* Schori Dep. 77-78 (objecting to CANA’s role as an organization that former Episcopalians are invited to join).

2. The Church of Uganda’s American Arm Is a “Branch” of the Episcopal Church Formed in Response to the Division in the Church.

The American arm of the Anglican Church of Uganda is a second branch of TEC created in the wake of the post-2003 division. The CANA Congregations offered undisputed testimony that this offshoot of TEC includes roughly 40 congregations and 11,000 members (and growing), the vast majority of whom were previously affiliated with TEC. Tr. 390-92 (Guernsey). The Church of Uganda first began providing ecclesiastical oversight for congregations that wished to leave TEC in January 2004, after TEC’s 2003 General Convention, and all of the 39 congregations that left TEC to join the Church of Uganda did so after that date. Tr. 389, 391 (Guernsey).

The Church of Uganda is part of the Anglican Communion, and those who affiliated with it thus maintained their connection with Anglicanism. Tr. 386-87 (Guernsey).

3. The Episcopal Church's Response to the Establishment of CANA and the American Arm of the Church of Uganda Confirm that Those Entities Are "Branches" Within the Meaning of Virginia Code § 57-9.

As was typical of 19th century divisions and TEC's earlier reaction to the formation of the Reformed Episcopal Church, TEC has been sharply critical of the decision of CANA and the Church of Uganda to begin providing ecclesiastical oversight to former TEC congregations and clergy. Tr. 390 (Guernsey); Schori Dep. Designation 51-72. Indeed, if history is any guide (*see* Part I.A, *supra*), the escalating level of acrimony between TEC and these new entities confirms that a "division" has occurred in TEC and that these offshoots from TEC are "branches" under § 57-9.

For example, TEC's Presiding Bishop, Katherine Jefferts Schori testified that even "since last year, . . . the level of acrimony is greater" on account of so-called "incursions by foreign Bishops." Schori Dep. Designation 53:16-54:7. In her view, it is "exceedingly inappropriate" and "injurious" to TEC to have bishops of "another branch of the Anglican Communion in our territory." Schori Dep. Designation 54, 55-57. Thus, she will permit a diocese to settle a property dispute with a congregation that leaves to become Roman Catholic, or Baptist, or Methodists, or even to sell its property for "secular purposes" such as a "saloon." Schori Dep. Designation 60, 64, 70-71. But "she told Bishop Lee that [she] could not support negotiations for sale if the congregations intended to set up as other parts of the Anglican Communion." Schori Dep. Designation 62, 83. In those circumstances, she "prefer[s] litigation over negotiation" because

“the Episcopal Church . . . cannot encourage other parts of the Anglican Communion to set up shop within its jurisdiction.” Schori Dep. Designation 62, 63.²³

In other words, it is Presiding Bishop Schori’s view that, when “other Primates of the Anglican Communion . . . establish[] missions in the United States” and “invite[] people to leave TEC,” those actions put them “in competition with the Episcopal Church” and “violate[] [TEC’s] integrity as a church.” Schori Dep. Designation 64, 77:20-78:4.²⁴ Indeed, she publicly urged the Archbishop of the Church of Nigeria not to proceed with the consecration of Bishop Minns, on the ground that it “would display to the world division and disunity.” Schori Dep. Designation 75. But the fact that entities such as CANA and the Church of Uganda are providing an American home for disaffected Episcopalians who still identify themselves as Anglicans simply underscores the fact that CANA and the U.S. arm of the Church of Uganda are “branches” under § 57-9 arising out of the “division” in TEC. As Professor Valeri observed, “when you send” an “unauthorized missionary” into the “territory . . . of an existing church, it is a de facto statement of the illegitimacy of the current ministry in that location.” Tr. 74. Yet such events were “common” aspects of 19th century divisions. Tr. 74 (Valeri).

The foregoing facts are more than sufficient to establish that the division statute applies in these circumstances. Additional facts, however, confirm and provide independent grounds for reaching that conclusion. It is to these facts that we now turn.

²³ Rev. Yates offered corroborating testimony, explaining that Bishop Lee told him that although TEC’s past Presiding Bishop, Frank Griswold, permitted dioceses to settle disputed claims to property and “said that in matters of division of churches leaving Diocese[s], that was going to be left up to the Bishop,” “now it was going to be—it was going to become a matter of concern to the national church” because “there’s a new sheriff in town.” Tr. 499:14-500:8.

²⁴ *Accord* Tr. 904 (Douglas) (initially denying that there is “a dynamic of competing churches between CANA and the Episcopal Church,” but conceding that he had publicly stated that if former Episcopal churches “choose to affiliate with another Anglican church around the world,” “then that sets up a dynamic of competing churches”).

III. The CANA Congregations Have Independently Satisfied the Core Requirements of Virginia Code § 57-9 By Establishing The Existence Of A Division In The Diocese Of Virginia And The Existence Of A Branch Resulting From That Division.

The evidence at trial not only established a division in TEC, but also independently established a division in the Diocese of Virginia and hence a separate basis for invocation of § 57-9. As explained below, this division is of course evidenced by the fact that many congregations and clergy have disaffiliated from the Diocese (*see* Part III.A.1). It is further evidenced, however, by the fact that several Diocesan officials and committees have expressly acknowledged the existence of the division (*see* Part III.A.2), and by the establishment of the Anglican District of Virginia, which is a branch of the Diocese within the meaning of § 57-9 (*see* Part III.B).

A. The CANA Congregations Have Demonstrated that a “Division” Has Occurred in the Diocese of Virginia.

1. In the wake of TEC’s 2003 General Convention, numerous congregations, clergy, and members have disaffiliated from the Diocese and joined the Anglican District of Virginia.

It is undisputed that in the wake of TEC’s 2003 General Convention, numerous congregations, clergy, and members have formally disaffiliated from the Diocese of Virginia and reaffiliated with the Anglican District of Virginia (“ADV”), which operates under the ecclesiastical authority of CANA. Tr. 694 (Allison). For example, documentary evidence from the Diocese’s own website confirms that 15 congregations have disaffiliated from the Diocese in the past two years. CANA Exh. 132. These congregations include not only the 11 congregations that are parties to this litigation, but four others that preceded them in separating from the Diocese. *Id.*; *see also* Tr. 318-319 (Minns); Tr. 387-89 (Guernsey). According to the Diocese’s “annual parochial reports,” these congregations together represented a sizeable portion of the Diocese—“over 7% of the churches in the Diocese,” “11% of baptized membership and 18% of the diocesan average Sunday attendance of 32,000.” CANA Exh. 132.

ADV treasurer and Synod Council member David Allison likewise testified that based on ADV's official records, some 20 congregations, comprising 7,500 members, have affiliated with ADV since its formation in 2006. Tr. 697. "Virtually all" of these members were formerly affiliated with congregations in TEC. Tr. 697 (Allison). Similarly, these 20 congregations have an average Sunday attendance of roughly 6,000 persons, more than 5,800 of whom came from the Diocese of Virginia. Tr. 697 (Allison). All 20 of these ADV congregations are led by former TEC clergy. Tr. 698 (Allison).²⁵

In the year since its formation, then, ADV alone is already 25 percent larger than the Reformed Episcopal Church is even today. Tr. 111:7-112:1 (Valeri) (the Reformed Episcopal Church currently has only 6,000 members). The numbers in ADV continue to grow, moreover, reflecting the widening division in the Diocese. Tr. 324 (Minns), 699-700 (Allison).

2. The Diocese has repeatedly acknowledged the existence of a "division" in the Diocese resulting from the 2003 TEC General Convention.

The division in the Diocese of Virginia is evidenced not only by the disaffiliations of many congregations, clergy, and members, but also by the repeated admissions of the Diocese prior to the commencement of this litigation. Most importantly, on the eve of the CANA Congregations' votes on whether to separate from the Diocese, Bishop Peter Lee wrote to members of the congregations and said this:

American Christianity has been punctuated over the years by frequent divisions, with one group choosing to separate because they believed the separated group

²⁵ Fifteen of these 20 congregations are former Diocese of Virginia congregations who joined ADV as "complete congregations." Tr. 698 (Allison). Eleven of these 15 congregations (the parties to this lawsuit) are also affiliated with CANA, and four of them are also affiliated with the Church of Uganda's American arm (an arrangement approved by the Primates of the Church of Nigeria and the Church of Uganda). Tr. 699-701 (Allison). Of the other five congregations, one came from another TEC diocese in Virginia and four are "church plants," or "new churches." Tr. 699-700 (Allison). Even these four new churches, however, are led by former TEC clergy and "[v]irtually all" of their members came from TEC. Tr. 697-98 (Allison).

might be more pure than their former identity. That has not been characteristic of the way we Anglicans have dealt with differences.

I encourage you when you vote, to vote for the unity and mission of the church, therefore remaining one with your diocese, and *reject the tempting calls to division*

CANA Exh. 68; Tr. 496-98 (Yates).

Now, the Diocese and TEC insist that a “separation” is only a “division” if formally approved by the TEC General Convention. But prior to this litigation, the Diocese’s highest officer described the CANA Congregations’ unapproved separation as a “division,” with “one group choosing to separate” to form a new entity—which is precisely how the term “division” was understood in ordinary 19th century parlance. *See Part I.A, supra.*

Bishop Lee’s letter, however, is only the latest of several diocesan admissions that there is a division in the Diocese. For example, Paul Julienne testified concerning his service on the Diocese’s Reconciliation Commission, which likewise acknowledged the division. The Reconciliation Commission was an ideologically diverse group of 14 persons established by Diocesan resolution (and appointed by Bishop Lee) to “maintain unity” in the Diocese in the face of “profound differences” that “ar[ose] over issues addressed at the 74th General Convention.” CANA Exh. 147 at 267-28 (Resolution R-24sa); Tr. 403-09, 412-15 (Julienne). “[E]very range of opinion and viewpoint was represented” on the Commission, which met ten times from 2004 to 2005 in hopes of serving as a “model” for civil resolution of these differences and preventing “withdrawals” from the Diocese. CANA Exh. 147 at 268, Tr. 415-420, 427 (Julienne); CANA Exh. 15 at 10. The Commission’s members disagreed on a host of issues, but were unanimous in their belief that there was a “division” in the Diocese as a result of TEC’s 2003 General Convention. Indeed, the Commission’s report contains not only many references to “polarizing conflict” and

“profound differences,” but seven references to the “division” in the Diocese. CANA Exh. 15 at 1, 7, 8, 11; Tr. 423-31 (Julienne).

The Reconciliation Commission’s unanimous report also described the situation, based on a “secular conflict model,” as a “level 5 conflict,” the most serious level of organizational conflict. Tr. 423 (Julienne); CANA Exh. 15 at 2-3. Moreover, the report concluded that, unless things changed, there would need to be provision for an “amicable divorce” because of the “very real danger” that the developed “factions” in the Diocese “shall begin to have to learn to walk apart.” CANA Exh. 15 at 11. After the Commission concluded its work, its report was distributed to the entire 2005 Diocesan Annual Council, and the Diocese adopted a resolution commending the report, calling for certain changes to be made at the 2006 TEC General Convention, and acknowledging the “divisions” in the Diocese and TEC. Tr. 431-32 (Julienne); CANA Exh. 148 at 278-79 (Resolution R-22a). Thus, the Annual Council and the Reconciliation Commission it established have openly acknowledged the division in the Diocese.

Finally, the “division” in the Diocese was recognized by a “Special Committee” appointed by Bishop Lee in 2005 and chaired by Diocesan Chancellor Russell Palmore, an officer of the Diocese. Tr. 479-81, 485 (Yates); CANA Exh. 126; TEC-Diocese Exh. 3 at 7, 10 (listing officers of the Diocese). Bishop Lee appointed the Special Committee in response to concerns that “some churches would leave” the Diocese (Tr. 476-79 (Yates)), and he expressly charged it with “helping congregations continuing in conflict over the decisions of the 2003 General Convention get on with their mission in as close a union as possible with the Diocese.” CANA Exh. 126 at 1. The committee explored numerous ways of resolving the conflict in the Diocese short of separation, but ultimately such proposals were found unworkable by representatives on both sides of the debate. Tr. 492, 484-86 (Yates); CANA Exh. 126.

After the 2006 TEC General Convention, therefore, the committee produced a unanimous final report, authored by Chancellor Palmore and signed by all of the committee's members. Tr. 482-83 (Yates); CANA Exh. 126. The Report expressly acknowledged "*the division which may cause some to 'walk apart'*"—indeed, by then congregations had already begun leaving the Diocese—and provided a detailed "Protocol for Departing Congregations" for congregations to follow in order to disaffiliate from the denomination. CANA Exh. 126 at 2, 3; Tr. 490 (Yates). The Protocol included guidelines that, among other things, called for vestry and congregational votes on disaffiliation and amicable negotiation of the parties' differences over property. CANA Exh. 126 at 2. Bishop Lee initially commended the Report, thanked the committee, and called the Protocol the "way forward," after which both the CANA Congregations and the Diocese began following the Protocol. Tr. 493-94 (Yates). But in response to the urging of TEC Presiding Bishop Schori, the Diocese reversed course, abandoned the Protocol, and filed declaratory judgment actions against the CANA Congregations. Tr. 499-501 (Yates); Schori Dep. Designation 62-63, 83.

B. The CANA Congregations Have Established that the Anglican District of Virginia Is a "Branch" of the Diocese of Virginia Formed in Response to the Division in the Diocese.

The evidence at trial also established that ADV is a "branch" of the Diocese for purposes of Virginia Code § 57-9. As explained above, ADV alone already has more members than the Reformed Episcopal Church—far more than is necessary to establish a new polity—and virtually all of them are former members of TEC. *See* Part III.A.1, *supra*.

The CANA Congregations also offered testimony that the division in the Diocese led to the establishment of ADV, and that ADV was established in 2006 "to provide a structure for the Episcopal and pastoral oversight for the[] various congregations" disaffiliating from the Diocese. Tr. 319 (Minns); CANA Exh. 70 (ADV articles of incorporation). As with CANA, the ADV

congregations share “common worship, common vision”; they share the “same structure of governance”; and they use the same liturgy, based on the Book of Common Prayer, as in the Diocese. Tr. 305, 328, 330-31 (Minns); TEC-Diocese Exh. 2 at 1, 8 (TEC Constitution Preamble, Art. X).

ADV is “Episcopal” in governance, with a “balance of Episcopal leadership and lay involvement,” much like CANA, TEC, and the Diocese. Tr. 329-30, 326 (Minns). ADV is under the “ecclesiastical authority” of CANA and its bishops, who are former Episcopal clergy or bishops. Tr. 302, 305-06, 310, 320-22 (Minns); Tr. 694 (Allison). ADV has an “Annual Council” called a “Synod” whose members include both “lay delegates” elected by the member congregations and clergy. ADV also has a “Synod Council” that functions as ADV’s board of directors and governs matters of “policy, programs and finance.” Tr. 329-30 (Minns); Tr. 695-96 (Allison). ADV is funded by voluntary contributions from member congregations and other private donors. Tr. 329, 331 (Minns); Tr. 696 (Allison).

ADV is legally incorporated as a Virginia nonstock, nonprofit corporation whose purposes include serving as a structure “to realign traditional Anglicans in Virginia displaced by the election of the Episcopal Church to walk apart from the Anglican Communion.” CANA Exh. 70 (ADV articles of incorporation); Tr. 310 (Minns). ADV is part of the Anglican Communion by virtue of its affiliation with CANA and the Church of Nigeria (Anglican Communion), one of the largest Provinces in the Anglican Communion. Tr. 306 (Minns); CANA Exh. 70 (ADV articles of incorporation).

In summary, ADV is a new polity composed largely of former members of the Diocese of Virginia (together with some former members of the Diocese of Southern Virginia). ADV was created to provide an ecclesiastical structure for a group of congregations and clergy that sepa-

rated from the Diocese on account of a division in that body. ADV is thus a “branch” within the meaning of Virginia Code § 57-9.

IV. The CANA Congregations Have Independently Satisfied the Requirements of Virginia Code § 57-9 By Establishing The Existence Of A Division In The Worldwide Anglican Communion And The Existence Of Branches Resulting From That Division.

The CANA Congregations proved at trial the existence of divisions not only in TEC and the Diocese, but also in the worldwide Anglican Communion. In Part IV.A, we explain that the division in the Anglican Communion is evidenced by 2005 amendments to the Church of Nigeria’s constitution, which ended that church’s legal and structural relationship with TEC; by official statements of “broken” and “impaired” communion promulgated by multiple Anglican Provinces; and by a number of other official pronouncements from various organs of the Anglican Communion, all recognizing the existence of this international division. In Part IV.B., we explain that the result of this division is the existence of two branches of the Anglican Communion— those who continue relating to all Provinces that relate to the See of Canterbury, and those who have cut off their relationship with TEC and relate only to Provinces that are viewed as adherents to the historic Anglican faith. In Part IV.C, we explain that the Anglican Communion is a “church” or “religious society” within the ordinary meaning of those terms. And in Part IV.D., we explain that prior to their votes the CANA Congregations were, through their affiliation with TEC and the Diocese, “attached” to the Anglican Communion.

A. The CANA Congregations Have Demonstrated that a “Division” Has Occurred in the Anglican Communion.

The evidence presented at trial independently demonstrates that there has been a “division” in the Anglican Communion. *See* Sept. 14, 2007, Tr. 41 (directing the parties to address whether “there [is] a division within the Anglican Communion”).

The division in the Anglican Communion is most decisively demonstrated by the 2005 amendments to the Constitution of the Church of Nigeria, which redefine the Church of Nigeria's legal and structural relationships to other provinces of the Anglican Communion. Registrar Abraham Yisa, the constitutionally elected chief legal advisor to the entire Church of Nigeria (Tr. 544-45), testified at trial that the Church of Nigeria amended its Constitution in 2005 to redefine its relationship to other provinces the Anglican Communion (Tr. 582-84). Registrar Yisa testified that these 2005 amendments changed the legal, structural, and functional relationship between the Church of Nigeria and other Provinces of the Anglican Communion. Tr. 582-84; 590-97.

Prior to 2005, the Church of Nigeria Constitution defined the Church's legal relationship to the Anglican Communion in terms of its relationship to the See (the Archbishop) of Canterbury, by stating that "[t]he Church of Nigeria shall be in full communion with the See of Canterbury and with all dioceses, provinces and regional churches which are in full communion with the See of Canterbury." Tr. 585 (Yisa). The 2005 amendments altered the Church's relationship to the Anglican Communion, changing the relevant sections of the Constitution to provide that "[t]he Church of Nigeria (Anglican Communion) . . . shall be in full communion with Anglican Dioceses and Provinces that hold and maintain 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 39 Articles of Religion." Tr. 584-85 (Yisa). As a result, the Church of Nigeria's constitutional, legal, and structural relationship to the Anglican Communion and to other Anglican Communion Provinces "did not have to be through the See of Canterbury, but that the

Church of Nigeria could be in communion with all of those Anglican dioceses, provinces and churches that share the same historical view, the historical faith with Nigeria.” Tr. 585 (Yisa).

A second 2005 amendment to the Constitution gave the General Synod of the Church of Nigeria the constitutional power “to create convocations, chaplaincies of like-minded faith outside Nigeria, and to appoint persons within or outside Nigeria to administer them, and the Primate shall give Episcopal oversight.” Tr. 587 (Yisa). This amendment was designed to “put structures” in place that would “enable the Primate [of the Church of Nigeria] to give Episcopal oversight” to “congregations in America.” Tr. 587 (Yisa). “The amendment now allowed the Church of Nigeria to—Synod in particular—to create convocations outside Church of Nigeria.” Tr. 589 (Yisa). Similarly, a third 2005 amendment defines the term convocation: “Convocation shall mean non-geographic connection of churches and mission.” Tr. 590 (Yisa). These two constitutional amendments were specifically adopted in order to provide a proper constitutional and legal basis for the establishment of CANA. Tr. 592-93, 609-13 (Yisa).

Registrar Yisa testified that all of these 2005 amendments were essentially structural in character and changed the constitutional structure of the Church of Nigeria. Tr. 590-91. He testified that they were proposed in response to the actions of TEC at its General Convention 2003, Tr. 590, and that they were “necessitated” to effectuate “the resolution of the [Church of Nigeria’s General] Synod that broke communion with ECUSA.” Tr. 584. The primary and immediate purpose of these amendments was to redefine the legal relationships between the Church of Nigeria and TEC, Tr. 585-86, 590-91 (Yisa), and between the Church of Nigeria and other Anglican provinces, Tr. 585-86 (Yisa), as well as to permit the establishment of CANA, Tr. 592-93;

609-13 (Yisa).²⁶ Professor Douglas acknowledged that this change “altered the relationship between the Church of Nigeria and the Episcopal Church.” Tr. 950-51 (Douglas).

The Church of Nigeria resolution that broke communion with TEC was likewise structural in nature: it was initially adopted by the Episcopal Synod (the House of Bishops) of the Church, and then reported to the General Synod (the general legislative body) of the Church, which received it and took further actions on it, including amending the Church’s Constitution and providing for the establishment of CANA. Tr. 557-61 (Yisa). As Professor Douglas acknowledged in response to a question from the Court: “a province declaring that it was out of communion with another province” is “the most severe action one province could take to disassociate itself from another province”—“the most severe declaration it could do.” Tr. 993-94. He further acknowledged that statements of “broken communion” have become “common parlance as of late,” but that “previous to 2003 and in the ‘80s that was not the language that was used to discuss the tensions and relationships between the Churches of the Anglican Communion.” Tr. 999-1000.

This resolution of broken communion with another province of the Anglican Communion also has a major practical impact. It “means that a number of things like the fellowship, exchange of visits by our clergy, by the Primates, training programs, retreats, workshops, indeed financial assistance in some cases were no longer there.” Tr. 591-92 (Yisa). Thus, for example,

26 As the primary author of those 2005 amendments and the undisputed authority regarding the Constitution of the Church of Nigeria (Tr. 550-551; 590), Mr. Yisa’s explanation of these amendments and their legal, structural, and practical effects must be controlling. TEC expert Douglas acknowledged that the Church of Nigeria is the primary interpreter of its Constitution and that TEC does not have any authority to interpret that Constitution or to determine its meaning and effect. Tr. 940-942. Indeed, to the extent that Professor Douglas offered any opinion regarding these amendments and their meaning and effect, he did so without having reviewed the Constitution or the amendments, but rather based entirely upon having “read press releases in I guess it was 2006, summer” that mentioned the changes to the Constitution. Tr. 941:13–942:5.

the Church of Nigeria no longer receives financial contributions from TEC, has refused such contributions when offered, and no longer has exchanges of Bishops with TEC. Tr. 592 (Yisa). The resolution of broken communion also reflected and implemented the departure of existing congregations and clergy (including Nigerian ex-patriots) resident in the United States that had been under the ecclesiastical jurisdiction of TEC and then came under the ecclesiastical jurisdiction of CANA. Tr. 596-97 (Yisa). Here again, as Professor Douglas acknowledged, “[i]f one church or the other functioned as if they had no relationship with another church in the Anglican Communion,” that would “evidence a division of the Anglican Communion.” Tr. 960:4-10. That is precisely what has occurred between TEC and the Church of Nigerian.

The Church of Nigeria was not alone in declaring itself to be in broken or impaired communion with TEC as a result of the actions of TEC at its 2003 General Convention. In his capacity as a member of the Anglican Consultative Council, Registrar Yisa was aware of a number of other Provinces—including the Anglican Provinces of Uganda, Kenya, the West Indies, and Southern Cone—that have done the same. Tr. 597-602. The Windsor Report of the Lambeth Commission on Communion also recognizes numerous declarations of broken or impaired communion CANA Cong. Exh. 61 at 19 & n.17 (*The Report of the Lambeth Commission on Communion* (the “Windsor Report”)).

The legal and practical implications of these declarations are much the same as for the Church of Nigeria. Tr. 591-92 (Yisa). Such Provinces “cannot share fellowship, ministry, Eucharist or gifts.” Tr. 601 (Yisa). Mr. Yisa testified, based upon his experience as Registrar of the Church of Nigeria and as a voting member of the Anglican Consultative Council, that there has never before been any division in the Anglican Communion comparable to the division

caused by the 2003 TEC General Convention. Tr. 613. Professor Douglas' testimony was much to the same effect. Tr. 998-1000.

Finally, the division in the Anglican Communion is evidenced by statements from various organs of the Anglican Communion, TEC, and the Diocese, all recognizing or referring to the division in various ways. For example, the Primates of the Anglican Communion, at their emergency meeting in the fall of 2003, issued a unanimous joint communiqué that the actions of TEC in 2003 would result in "tearing the fabric of the Communion at its deepest level." Tr. 336 (Minns); Tr. 468 (Yates). Similarly, the eighteen Anglican Primates of the Global South issued a Communiqué from their meeting in Nairobi, Kenya in 2004, stating the TEC "has willfully torn 'the fabric of the Communion at its deepest level,' and as a consequence openly cut themselves adrift and broken the sacramental fellowship of the Communion." Tr. 335-336 (Minns).

Following the mandate of the 2003 Anglican Primates Meeting, the Windsor Report acknowledged that the actions of the TEC 2003 General Convention "have uncovered major divisions throughout the Anglican Communion" and stated that "[t]hose divisions have been obvious at several levels of Anglican life: between provinces, between dioceses and between individual Anglican clergy and laity." CANA Cong. Exh. 61 at 4. The Windsor Report recommended, and the Anglican Consultative Council (ACC) implemented, the withdrawal of the representatives of TEC from the ACC at least until the 2008 Lambeth Conference. Tr. 627-629 (Yisa). As Registrar Yisa explained, these actions are yet another indicator of the division within the Anglican Communion, as well as an attempt by the Communion to try to find solutions to this brokenness. Tr. 629.

B. The CANA Congregations Have Established that the Church of Nigeria Is A "Branch" of the Anglican Communion that Has Divided From the Episcopal Church.

As a result of these recent changes, the Anglican Communion is now divided into two “branches”—those that relate to all provinces that relate to the See of Canterbury, and those that relate only to those who are understood as adhering to the historic faith, doctrine, and discipline of the Anglican Communion. *See* Sept. 14, 2007, Tr. 41 (directing the parties to address the branch issue at the Anglican Communion level). The Church of Nigeria, with which the CANA Congregations have affiliated, is the principal leader of this new branch. Tr. 363-64, 372-74 (Minns); Tr. 639-40 (Yisa). Indeed, TEC Presiding Bishop Schori herself referred to CANA as a distinct “part” or “branch of the Anglican Communion” repeatedly in her deposition. Schori Dep, Designations 54-56, 79, 83. The evidence at trial thus independently satisfied the “branch” requirement of § 57-9 at the Anglican Communion level.

C. The CANA Congregations Have Established that the Anglican Communion Is a “Church” or “Religious Society.”

The evidence at trial also established that the Anglican Communion is a “church” or a “religious society” within the meaning of § 57-9. *See* Sept. 14, 2007, Tr. 40 (directing the parties to address whether “the Anglican Communion [is] a church or religious society” and whether a “religious society” “include[s] a non-hierarchical loose affiliation of religious entities”).²⁷

As an initial matter, the common definition of “church” is simply “a particular Christian organization with its own distinctive doctrines,”²⁸ or “a body or organization of religious believers: as a: the whole body of Christians[,] b: denomination <the Presbyterian church>, c: congregation.”²⁹ The Anglican Communion satisfies both of these definitions. As stated in the Pream-

²⁷ It is undisputed that both TEC and the Diocese are a “church” or “religious society” within the meaning of § 57-9. *See* CANA Exh. 171 at 4 (Diocese’s Response to Congregations’ First Set of Interrogatories) (“The Episcopal Church and the Diocese are churches or religious societies within the meaning of § 57-9(A)”).

²⁸ *See Compact Oxford English Dictionary of Current English, Third Edition* (2005).

²⁹ *See Merriam-Webster Online Dictionary*, at www.merriam-webster.com.

ble to the TEC Constitution, the Anglican Communion is a Christian organization with distinctive doctrines and a common liturgy, primarily “the historic Faith and Order as set forth in the Book of Common Prayer.”³⁰ The Anglican Communion is also, as TEC witness Douglas acknowledged, “a body of religious believers.” Tr. 911:10-15.

In an attempt to avoid these plain meanings of “church,” TEC attempts to add new and unnecessary elements to its definition of that term. Thus, Professor Mullin would require not only the existence of common doctrines, but also formally agreed-upon rules of worship, liturgy, ordination, and discipline that are legally binding on all individual members of the organization. Tr. 1029-30. Professor Mullin provides no authority for his personal definition of a church. Tr. 1029:19-1030:14 (“it seems to me that a church—the word church in—has three very different parlances”). He bases it primarily on minor variances in the liturgy of the Book of Common Prayer, as adopted by different provinces of the Anglican Communion (Tr. 1030:18-1031:6), ignoring the fact that the Preamble to TEC’s own Constitution expressly recognizes the use of the Book of Common Prayer, even with provincial variations, as a key defining and unifying element of the Anglican Communion.

The CANA Congregations likewise established that the Anglican Communion constitutes a “religious society” for purposes of §57-9. The term “religious society” is not defined in §57-9, or in relevant historical or modern dictionaries. The term “society” is familiar, however, commonly defined in the 19th century as “[a] number of persons associated for any temporary or permanent objects,”³¹ and in modern dictionaries as “an enduring and cooperating social group

³⁰ TEC-Diocese Exh. 2 at 1 (defining the Anglican Communion as “a *Fellowship* within the One, Holy, Catholic, and Apostolic Church, of those duly constituted Dioceses, Provinces, and regional Churches in communion with the See of Canterbury, *upholding and propagating the historic Faith and Order as set forth in the Book of Common Prayer*” (emphasis added)).

³¹ Noah Webster, *A Dictionary of the English Language* 682 (1872) (preface dated 1867).

whose members have developed organized patterns of relationships through interaction with one another.”³² Indeed, the terms “society,” “association,” and “fellowship” are all synonyms.³³ A religious society is thus an association, fellowship, or group that has a religious nature or purpose.

There was abundant evidence at trial that the Anglican Communion is a fellowship, association, or society of churches—*i.e.*, a religious society. The Preamble to the TEC Constitution defines the Anglican Communion as “a *Fellowship* within the One, Holy, Catholic, and Apostolic Church, of those duly constituted Dioceses, Provinces, and regional Churches.” Moreover, both TEC expert witnesses expressly agreed that the Anglican Communion is a “fellowship of churches.”³⁴ Professor Douglas further acknowledged that the Anglican Communion is an enduring group whose members have developed organized patterns of relationships through their shared history and other interactions with one another, mirroring the modern dictionary definition of “society.” Tr. 908:21-910:4. Indeed, Professor Douglas’ primary concern with the terms “fellowship,” “association,” “society,” and group was not that they are inaccurate, but that he prefers to use *stronger* terms, such as “family,” to describe the nature of communion. Tr. 916:4–918:17. To him, terms such as “association” and “fellowship” and “society” “impl[y] a much looser kind of federation or voluntary association that doesn’t get at the historic DNA and relationship as a family of churches.” Tr. 912:19-21. As such a society, fellowship, association,

³² See *Merriam-Webster Online Dictionary*, at <http://www.merriam-webster.com/dictionary/society> (entry for “society”).

³³ See *Roget’s New Millennium™ Thesaurus* (1st ed. 2007) (entry for “society”).

³⁴ See, e.g., Tr. 1029:14-18 (Mullin) (“the Anglican Communion . . . is a Fellowship within the Holy Catholic and Apostolic Church of churches in communion with the Archbishop of Canterbury.”); Tr. 916:4-918:17 (Douglas) (acknowledging that the Anglican Communion is an association and fellowship of churches); Tr. 846:2-10 (Douglas) (describing the “Anglican Communion as a family of churches”).

group, or family of churches, the Anglican Communion clearly constitutes a “religious society” within the meaning of § 57-9.

D. The CANA Congregations Were “Attached” to the Anglican Communion by Virtue of Their Affiliation with TEC and the Diocese.

The evidence also establishes that prior to their votes in 2006 and 2007, the CANA Congregations were, by virtue of their affiliation with TEC and the Diocese, “attached” to the Anglican Communion within the meaning of §57-9. *See* Sept. 14, 2007, Tr. 41 (directing the parties to address whether “the departing churches [were] attached to the Anglican Communion”).³⁵

The word “attached” is not defined in §57-9, and therefore must be given its common meaning. That meaning, according to both 19th century and modern dictionaries, is simple: “to connect, in a figurative sense”,³⁶ “[t]o connect as an adjunct or associated condition or part”; or “[t]o bind by emotional ties, as of affection or loyalty.”³⁷

Applying these common meanings demonstrates that the CANA Congregations were attached to the Anglican Communion—they were connected, in a figurative sense, through their affiliation with TEC and the Diocese, as well as by “bonds of affection” that characterize the communion of individual Anglicans and of their churches with the broader Anglican Communion.³⁸

³⁵ It is undisputed that the CANA Congregations were “attached” to TEC and the Diocese, within the meaning of Va. Code § 57-9, prior to their votes to disaffiliate therefrom in 2006 and 2007. TEC-Diocese Exh. 5 at 4 (CANA Congregations’ Answer to [TEC-Diocese’s] First Interrogatories).

³⁶ Noah Webster, *A Dictionary of the English Language* 44 (1872) (preface dated 1867).

³⁷ *The American Heritage Dictionary of the English Language, Fourth Edition* (2004) (entry for “attached”).

³⁸ *See Windsor Report*, CANA Exh. 61 at 24 ¶ 45 (“The communion we enjoy as Anglicans involves a sharing in double ‘bonds of affection’: those that flow from our shared status as children of God in Christ, and those that arise from our shared and inherited identity, which is the particular history of the churches to which we belong”).

TEC and the Diocese have admitted that the CANA Congregations were all “attached” to the Diocese and, through the Diocese, to TEC. Professor Douglas testified that a congregation’s attachment to TEC is an indirect one, mediated through the congregation’s relationship with a diocese.³⁹ It is undisputed that at all times that the CANA Congregations were attached to the Diocese and to TEC. Moreover, the Preamble to the TEC Constitution states that TEC is a “constituent member” of the Anglican Communion.⁴⁰ Accordingly, the CANA Congregations were no less “attached” to the Anglican Communion than they were to TEC. In this regard, the CANA Congregations’ attachment to the Anglican Communion while affiliated with the Diocese and TEC parallels their current attachment to the Anglican Communion through CANA and the Church of Nigeria.⁴¹

Thus the plain meaning of “attached” as well as its use within § 57-9 both establish that the CANA Congregations were “attached” to the Anglican Communion within the meaning of § 57-9. *See* Sept. 14, 2007, Tr. 39 (directing the parties to address the “question[s], does a church have to be hierarchical to be subject to 57-9(A)” and “in order to be attached . . . to a church or religious society, does a local church have to be subordinate to or controlled by a national church or religious society”).

* * * * *

In summary, the CANA Congregations have provided three separate grounds on which the Court may find the requirements of Va. Code §57-9 to have been satisfied: the division in

³⁹ *See* Tr. 872:6-14 (congregations are attached to TEC “because they function both under the Constitution and Canons of a Diocese, and the Diocese functions under the Constitution and Canons as set forth by the General Convention”).

⁴⁰ *See TEC Constitution*, TEC-Diocese Exh. 1 at 2.

⁴¹ *See, e.g.,* Tr. 623-624 (Yisa) (CANA “is part of the Church of Nigeria. The Church of Nigeria is part of the Anglican Communion”); Tr. 305-06 (Minns).

the Episcopal Church, the division in Diocese of Virginia, and the division in the worldwide Anglican Communion.

WHEREFORE, the CANA Congregations and various associated defendants, by counsel, respectfully request that this Court make factual findings that the CANA Congregations have satisfied the "division," "branch," "church or religious society," and "attached" requirements of Va. Code § 57-9; that, upon approval of the CANA Congregations' determination to separate from TEC and join CANA, this approval be "entered in the court's civil order book" (§ 57-9), and that the Court grant such additional relief as the case may require and the Court deems just.

Dated: December 21, 2007

Respectfully submitted,

WINSTON & STRAWN

By: 

Gordon A. Coffee (VSB #25808)
Gene C. Schaerr
Steffen N. Johnson
Andrew C. Nichols (VSB #66679)
1700 K Street, N.W.
Washington, DC 20006-3817
(202) 282-5000 (telephone)
(202) 282-5100 (facsimile)

Counsel for Truro Church and its Related Trustees, The Falls Church, Church of the Apostles, and Church of the Epiphany

GAMMON & GRANGE, P.C.

By: 

Scott J. Ward (VSB #37758)
Timothy R. Obitts (VSB #42370)
Robert W. Malone (VSB #65697)
8280 Greensboro Drive, Seventh Floor
McLean, VA 22102
703-761-5000 (telephone)
703-761-5023 (facsimile)

Counsel for Christ the Redeemer Church Trustees, Potomac Falls Church, and The Falls Church

SEMMES, BOWEN & SEMMES, P.C.

By: 

James A. Johnson
Paul N. Farquharson
Scott H. Phillips
250 W. Pratt Street
Baltimore, Maryland 21201
(410) 539-5040 (telephone)
(410) 539-5223 (facsimile)

Counsel for The Falls Church

SEMMES, BOWEN & SEMMES, P.C.

By: 

Sarah W. Price (VSB #68555)
Suite 200
1577 Spring Hill Road
Vienna, Virginia 22182
(703) 760-9473 (telephone)
(703) 356-6989 (facsimile)

Counsel for The Falls Church

SANDS ANDERSON MARKS & MILLER

By: 

J. Jonathan Schraub (VSB # 17366)
George O. Peterson (VSB # 44435)
Michael T. Marr (VSB # 48536)
1497 Chain Bridge Road, Suite 202
McLean, VA 22101
703-893-3600 (telephone)
703-893-8484 (facsimile)

Counsel for Truro Church and its Related Trustees

MARY A. McREYNOLDS, P.C.

By: 

Mary A. McReynolds (admitted pro hac vice)
1050 Connecticut Avenue, N.W.
Tenth Floor
Washington, D.C. 20036
(202) 426-1770 (telephone)
(202) 772-2358 (facsimile)

Counsel for Church of the Apostles, Church of the Epiphany, Herndon, St. Margaret's Church, St. Paul's Church, Haymarket, and St. Stephen's Church, and their Related Trustees

CARR & CARR

By: 

James E. Carr (VSB #14567)
44135 Woodbridge Parkway
Suite 260
Leesburg, VA 20176
703-777-9150 (telephone)
703-726-0125 (facsimile)

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

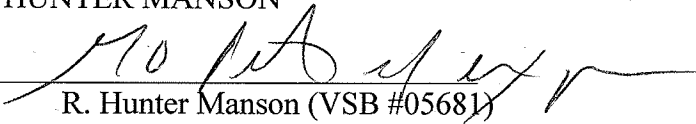
WALSH, COLLUCCI, LUBELEY,
EMERICK & WALSH, PC

By: 

E. Andrew Burcher (VSB # 41310)
4310 Prince William Parkway, S-300
Prince William, VA 22192
703-680-4664 x 159 (telephone)
703-680-2161 (facsimile)

Counsel for Church of the Word, St. Margaret's Church, St. Paul's Church and their Related Trustees

R. HUNTER MANSON



R. Hunter Manson (VSB #05681)

P. O. Box 539

876 Main Street

Reedville, VA 22539

804-453-5600 (telephone)

804-453-7055 (facsimile)

Counsel for St. Stephen's Church

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of December, 2007 a copy of the foregoing CANA Congregations' Opening Post-Trial Memorandum Concerning the Application of Virginia Code § 57-9, was sent by electronic mail and first-class mail, postage prepaid, to:

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

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

Edward H. Grove, III, Esquire
BRAULT PALMER GROVE
WHITE & STEINHILBER, LLP
10533 Main Street
Fairfax, VA 22030
With a courtesy copy by electronic mail and
hand-delivered to:

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

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

Robert C. Dunn, Esquire
Law Office of Robert C. Dunn
P.O. Box 117
Alexandria, VA 22313-0117



Counsel for the CANA Congregations

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In re:)	
Multi-Circuit Episcopal Church	)	Civil Case Numbers:
Litigation	)	CL 2007-248724,
	)	CL 2006-15792,
	)	CL 2006-15793,
	)	CL 2007-556,
	)	CL 2007-1235,
	)	CL 2007-1236,
	)	CL 2007-1237,
	)	CL 2007-1238,
	)	CL 2007-1625,
	)	CL 2007-5249,
	)	CL 2007-5250,
	)	CL 2007-5362,
	)	CL 2007-5363,
	)	CL 2007-5364,
	)	CL 2007-5682,
	)	CL 2007-5683,
	)	CL 2007-5684,
	)	CL 2007-5685,
	)	CL 2007-5686,
	)	CL 2007-5902,
	)	CL 2007-5903, and
	)	CL 2007-11514

**CANA CONGREGATIONS' OPENING POST-TRIAL
MEMORANDUM CONCERNING APPLICATION OF VA. CODE § 57-9**

This acts as a one-page cover sheet reference pleading to the complete CANA Congregations' Opening Post-Trial Memorandum Concerning Application of Va. Code § 57-9, filed in CL 2007-248724 (the omnibus case file), on December 21, 2007. The CANA Congregations' Opening Post-Trial Memorandum Concerning Application of Va. Code § 57-9 and this corresponding one-page reference pleading applies to the Omnibus case number: CL 2007 – 248724 and the following cases:

1. *In re: Truro Church*; (Circuit Court of Fairfax County; CL 2006-15792);
2. *In re: Church of the Apostles*; (Circuit Court of Fairfax County; CL 2006-15793)
3. *In re: Church of the Word, Gainesville*; (Circuit Court of Prince William County CL 2007-11514);

4. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon* (Circuit Court of Fairfax County; CL 2007-1235);
5. *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church* (Circuit Court of Fairfax County; CL 2007-1236);
6. *The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church* (Circuit Court of Fairfax County; CL 2007-1237);
7. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles* (Circuit Court of Fairfax County; CL 2007-1238);
8. *The Episcopal Church v. Truro Church et al.* (Circuit Court of Fairfax County; CL 2007-1625);
9. *In re: Church at the Falls, The Falls Church;* (Circuit Court of Fairfax County; CL 2007-5249);
10. *The Protestant Episcopal Church in the Diocese of Virginia v. The Church at The Falls – The Falls Church* (Circuit Court of Arlington County Case No. 07-125)(Circuit Court of Fairfax County; CL 2007-5250);
11. *The Protestant Episcopal Church in the Dioceses of Virginia v. Potomac Falls Church* (Circuit Court of Loudoun County Case No. 44149)(Circuit Court of Fairfax County; CL 2007-5362);
12. *In re: Church of Our Savior at Oatlands;* (Circuit Court of Fairfax County; CL 2007-5363);
13. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Saviour at Oatlands* (Circuit Court of Loudoun County Case. No. 44148)(Circuit Court of Fairfax County; CL 2007-5364);
14. *In re: Church of the Epiphany;* (Circuit Court of Fairfax County; CL 2007-556);
15. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Margaret's Church* (Circuit Court of Prince William Case No. CL 73465)(Circuit Court of Fairfax County; CL 2007-5682);
16. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket* (Circuit Court of Prince William County Case No. CL 73466)(Circuit Court of Fairfax County; CL 2007-5683);
17. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word* (Circuit Court of Prince William County Case No. CL 73464)(Circuit Court of Fairfax County; CL 2007-5684);
18. *In re: St. Margaret's Church;* (Circuit Court of Fairfax County; CL 2007-5685);

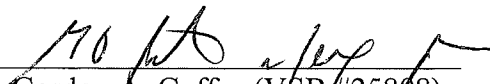
19. *In re: St. Paul's Church, Haymarket*; (Circuit Court of Fairfax County; CL 2007-5686);
20. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church* (Circuit Court of Northumberland County Case No. CL 07-16)(Circuit Court of Fairfax County; CL 2007-5902); and
21. *In re: St. Stephen's Church*; (Circuit Court of Fairfax County; CL 2007-5903).

For the complete CANA Congregations' Opening Post-Trial Memorandum Concerning Application of Va. Code § 57-9, please see the omnibus case file, CL 2007 – 248724.

Dated: December 21, 2007

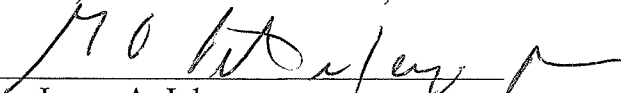
Respectfully submitted,

WINSTON & STRAWN

By: 
Gordon A. Coffee (VSB #25808)
Gene C. Schaerr
Steffen N. Johnson
Andrew C. Nichols (VSB #66679)


1700 K Street, N.W.
Washington, DC 20006-3817
(202) 282-5000 (telephone)
(202) 282-5100 (facsimile)
Counsel for Truro Church and its Related Trustees, The Falls Church, Church of the Apostles, and Church of the Epiphany

SEMMES, BOWEN & SEMMES, P.C.

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

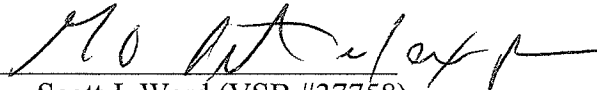
250 W. Pratt Street
Baltimore, Maryland 21201
(410) 539-5040 (telephone)
(410) 539-5223 (facsimile)
Counsel for The Falls Church

SEMMES, BOWEN & SEMMES, P.C.

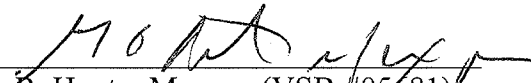
By: 
Sarah W. Price (VSB #68555)

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

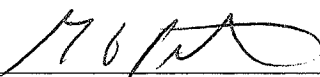
GAMMON & GRANGE, P.C.

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

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


By: 
R. Hunter Manson (VSB #05681)

P. O. Box 539
876 Main Street
Reedville, VA 22539
804-453-5600 (telephone)
804-453-7055 (facsimile)
Counsel for St. Stephen's Church
SANDS ANDERSON MARKS & MILLER

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

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

WALSH, COLLUCCI, LUBELEY,
EMERICK & WALSH, PC

By: 
E. Andrew Burcher (VSB # 41310)

4310 Prince William Parkway, S-300

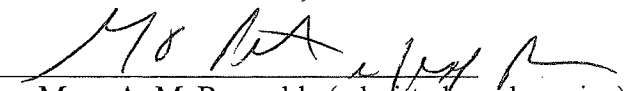
Prince William, VA 22192

703-680-4664 x 159 (telephone)

703-680-2161 (facsimile)

*Counsel for Church of the Word, St. Margaret's Church,
St. Paul's Church and their Related Trustees*

MARY A. McREYNOLDS, P.C.

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

1050 Connecticut Avenue, N.W.

Tenth Floor


Washington, D.C. 20036

(202) 426-1770 (telephone)

(202) 772-2358 (facsimile)

*Counsel for Church of the Apostles, Church of the Epiphany,
Herndon, St. Margaret's Church, St. Paul's Church,
Haymarket, and St. Stephen's Church, and their Related
Trustees*

CARR & CARR

By: 
James E. Carr (VSB #14567)

44135 Woodbridge Parkway

Suite 260

Leesburg, VA 20176

703-777-9150 (telephone)

703-726-0125 (facsimile)

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of December, 2007 a copy of the foregoing one-page Cover Sheet for the CANA Congregations' Opening Post-Trial Memorandum Concerning Application of Va. Code § 57-9 was sent by electronic mail and first-class mail, postage prepaid, to:

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

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


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

Robert C. Dunn, Esquire
Law Office of Robert C. Dunn
P.O. Box 117
Alexandria, VA 22313-0117

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

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

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



George O. Peterson