

In the Supreme Court of Virginia

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF VIRGINIA, APPELLANT

v.

TRURO CHURCH, *ET AL.*, APPELLEES

THE EPISCOPAL CHURCH, APPELLANT

v.

TRURO CHURCH, *ET AL.*, APPELLEES

APPELLEES' APPLICATION FOR REHEARING OR, IN THE ALTERNATIVE, FOR CLARIFICATION AS TO THE SCOPE OF REMAND

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GLOSSARY

ADV	The Anglican District of Virginia
CANA	The Convocation of Anglicans in North America
Congregations	The nine Appellees, collectively
Diocese	The Protestant Episcopal Church in the Diocese of Virginia
TEC	The Episcopal Church in the United States

INTRODUCTION

Pursuant to Rule 5:37 of this Court, Appellees (the “Congregations”) respectfully submit this application for rehearing of the Court’s June 10, 2010, decision in these cases (“Op.”) (attached). Rehearing is sought based solely on two critical “mistake[s] of fact.” See *Tanner v. State Corp. Comm’n*, 266 Va. 170, 172, 580 S.E.2d 850, 851-52 (2003).

Applying Va. Code § 57-9, this Court held that the Congregations established the existence of a “division” in both The Episcopal Church (TEC) and the Diocese of Virginia (Diocese). But the Court further held that the Congregations failed to satisfy § 57-9 in one narrow respect—they did not prove that they voted to join a “branch” of these divided denominational entities. Thus, the Court remanded the cases for further proceedings.

We do not take issue with the Court’s *legal* interpretation of § 57-9’s “branch” requirement. Rather, we respectfully submit that the Court’s application of that interpretation rests on erroneous factual assumptions, both in analyzing the original establishment of the Convocation of Anglicans in North America (CANA), and in determining that the Anglican District of Virginia (ADV) is not a “branch,” even under the Court’s interpretation.

First, the record unambiguously contradicts the Court’s conclusion that CANA was a “pre-existing entity” formed to minister to members of the

Anglican Church of Nigeria living in the United States. Undisputed evidence shows that CANA was formed in 2005, after the division, and that CANA's founders—clergy and congregants—were all members of *TEC* who disaffiliated as a direct result of the division. Indeed, uncontradicted testimony at trial established that *TEC*'s 2003 General Convention, which triggered the division, was “the precipitating event” that led to CANA's establishment.

Second, the Court's opinion incorrectly treated CANA and ADV as synonymous. But as shown at trial, they are distinct. First, ADV has member congregations that are affiliated with *neither* CANA *nor* the Anglican Church of Nigeria. Second, ADV came into being more than a year after CANA and, unlike CANA, was formed in the wake of a “Protocol for Departing Congregations” promulgated by a Diocesan commission—just days before the Congregations' votes to disaffiliate from the Diocese. Third, ADV is a distinct legal entity, expressly created to connect Virginia churches “displaced by the election of the Episcopal Church to walk apart from the Anglican Communion.” Thus, whatever the facts show as to CANA, ADV is *not* “a pre-existing polity” that “descend[ed] from the Church of Nigeria,” and *did* form “as a *result* of the division” within . . . the Diocese.” Op. 29.

Rehearing should be granted to correct these factual oversights, or at a minimum the Court should “remand the case for a further hearing,” since

the circuit court "did not have the benefit of the applicable ['branch'] standards . . . as [the Court] defined them in [its] opinion." *Shenandoah Pub. House, Inc. v. Fanning*, 235 Va. 253, 262, 368 S.E.2d 253, 258 (1988).

GOVERNING LEGAL STANDARD

Rehearing should be granted whenever any "one of the justices who decided the case adversely to the applicant determines that there is good cause for such rehearing." Rule 5:37(e). Good cause for rehearing exists when the Court "based [its] decision on a mistake of fact." *Tanner, supra*.

ARGUMENT

These cases came to the Court from the Fairfax County Circuit Court, which held that the Congregations had met § 57-9's requirements and that § 57-9, as applied, was constitutional. In reviewing that decision, this Court affirmed the circuit court's finding of a "division" in both TEC and the Diocese, but reversed its reading of § 57-9's "branch" requirement. The Court rejected the TEC-Diocese position that a "division" must be "accomplished in conformity with denominational polity," noting that such a reading would raise constitutional concern, conflict with "history and common sense," and "render the statute a nullity." Op. 25, 26. And the Court acknowledged that "the branch joined [by the voting congregation] may operate as a separate polity from the branch to which the congregation formerly was attached."

Op. 30. Nonetheless, the Court agreed with TEC and the Diocese that, by virtue of CANA's relationship with the Anglican Church of Nigeria, both CANA and ADV were disqualified from constituting a "branch." Op. 29-30.

In support, the Court cited the following factual understandings:

- (1) that "when it was initially formed, CANA was a mission of the Church of Nigeria designed to minister to expatriate members of that church in North America"—and thus that CANA was "a pre-existing polity" that "descends from the Church of Nigeria and CANA, not the Diocese or TEC"; and
- (2) that "[t]he subsequent expanding of [CANA's] mission to allow dissident congregations of TEC and the Diocese to affiliate with CANA, and the formation of ADV, unquestionably occurred *in response* to the disputes that had occurred in TEC," but "did not occur as a *result* of the division within TEC and the Diocese."

Op. 29. As we will show, each of these findings rests on a "mistake of fact," justifying rehearing. *Tanner*, 266 Va. at 172, 580 S.E. 2d at 851-52.

I. The Court misapprehended the facts as to the establishment of CANA, which unambiguously show that CANA was created to minister to former TEC clergy and congregations, as a result of the division in TEC.

First, while CANA was originally formed to minister to Nigerian expatriates, those expatriates were not members of the Church of Nigeria. They and their clergy were members of *TEC*. As the trial testimony showed:

Q Bishop Minns, can you tell me what the acronym CANA stands for?

A The Convocation of Anglicans in North America.

Q Has the Convocation of Anglicans in North America always been the acronym that CANA stood for?

A No, it's not. It was originally the Convocation of Anglican Nigerians in North America.

Q Why was that the original name of CANA?

A Because it's a structure set up to provide for the ecclesiastic—I mean, the Episcopal and pastoral oversight for ex-patriot [*sic*] Nigerian ***clergy and congregations who had broken away from the Episcopal Church.***

Q So were these clergy and congregations CANA's first members?

A Yes, they were.

JA 2155 (emphasis added). As Bishop Minns later elaborated:

Q Now, I think I heard you testify that the original CANA, which I think you said was the Convocation of Anglican Nigerians and America, did I get that right?

A You did.

Q All right. That that consisted of Nigerian—no, that the vast majority of its members were Episcopalians. Did I hear you correctly?

A In the beginning, yes. Were involved with the Episcopal Church, yes.

Q What?

A They were functioning within the Episcopal Church, yes.

Q But were they Episcopalians?

A Yes.

JA 2205-06 (JA excerpts attached). As this testimony shows, CANA's first members were fully "Episcopalians." No contrary evidence was introduced. In fact, as TEC's own witness readily admitted, CANA "provides ecclesiastical oversight for former members of the Episcopal Church" and "ministers to individuals who have left the Episcopal Church." JA 2567-68 (Douglas).

Second, the Court called CANA a “pre-existing polity,” suggesting that the Court viewed it as having been created before the actions of the 2003 General Convention that triggered the division in TEC. The uncontradicted testimony, however, was that CANA’s formation in 2005 did not *predate* the division in TEC. Rather, it *resulted from* that division:

Q Bishop Minns, . . . You referred to a division. What sorts of—

A Let me try and explain it in practical terms. Clergy and congregations left the Episcopal Church. That was the damage of the division. It also had a profound impact upon the wider Anglican Communion.

Q And how did these events relate to the establishment of CANA?

A In many ways it was the precipitating event.

JA 2161. Respectfully, therefore, the Court misapprehended key evidence regarding CANA’s establishment, which in turn led the Court to conclude, incorrectly, that CANA was not a “branch.” Rehearing is warranted to correct that “mistake of fact.” *Tanner*, 266 Va. at 172, 580 S.E. 2d at 851-52.

At a minimum, if the Court does not believe the facts unambiguously show that CANA resulted directly from the division in TEC, the record at least provides a *sufficient* basis for that finding. Thus, the Court should remand for trial on whether CANA is a “branch” under the Court’s decision.

II. Regardless of CANA’s status, ADV is not a “preexisting polity” that descended from the Church of Nigeria, but is an independent legal entity created at the time of the Congregations’ votes.

Rehearing is independently warranted because the record also fore-

closes the Court’s branch analysis as to ADV. Unlike the Court’s analysis of the statute’s “church,” “attached,” and “division” prongs—which considered the status of TEC and the Diocese separately¹—the Court’s “branch” analysis treated CANA and ADV as synonymous, overlooking critical facts establishing that ADV is a “branch” even if CANA is not. In fact, the Court’s analysis of whether ADV was a “branch” consisted of one sentence: “Likewise the ADV, as a district of CANA, descends from the Church of Nigeria and CANA, not the Diocese or TEC.” Op. 29. Respectfully, however, that statement cannot be squared with this record, even assuming, *arguendo*, that the Court properly reached a contrary conclusion as to CANA.

First, uncontradicted evidence establishes that ADV was formed “as a *result* of the division within TEC and the Diocese.” Op. 29. As the Court noted, “in 2005 Bishop Lee created a new commission ‘to give attention to this rising threat of division in the Diocese.’” Op. 7. In September 2006, this commission expressly recognized “the division which may cause some to ‘walk apart’” (JA 3034) and “promulgated a ‘Protocol for Departing Con-

¹ The Court rightly held that “TEC and the Diocese are each a ‘church’ as contemplated by [§ 57-9]” (Op. 17) and recognized that it was necessary to analyze whether there was a division at each level. Op. 27-28 (“The evidence . . . establishes that a split or rupture has occurred within the Diocese and . . . the split or rupture has occurred at the national level as well”); Op. 28 (the Congregations were “‘attached’ both to TEC and the Diocese”).

gregations” to follow, including “procedures for congregations to conduct votes ‘regarding possible departure from the Diocese.’” Op. 7.

The Congregations followed the Protocol, creating ADV days before their votes. JA 2991 (ADV articles dated 12/4/06). The Congregations also formed ADV within two days of Bishop Lee’s letter to the Congregations—which candidly noted that “American Christianity has been punctuated over the years by frequent divisions,” but urged those voting to “remain[] one with your diocese, and [to] reject the tempting calls to division.” JA 2980. And as ADV’s articles state, ADV was incorporated as “an association of Virginia churches, together with their clergy and laity, *who join together to realign traditional Anglicans in Virginia displaced by the election of The Episcopal Church to walk apart from the Anglican Communion.*” JA 2988 (emphasis added). ADV thus formed “as a *result* of the division.” Op. 29.

Second, as the foregoing evidence shows, ADV is not a “pre-existing polity” that “descends from the Church of Nigeria” rather than “the Diocese.” *Id.* ADV is separate and distinct from CANA: It is “a discrete ecclesiastical and legal structure” incorporated under “the Virginia Nonstock Corporation Act.” JA 2988 (ADV articles). Further, in contrast to CANA, which was formed in 2005, ADV was formed in December 2006 (JA 2991), as the Congregations began voting to disaffiliate from the Diocese (Op. 7).

Nor was ADV formed by the Anglican Church of Nigeria. True, the incorporators of ADV *chose* to place it “*provisionally . . .* under the ecclesiastical jurisdiction of [CANA]”—and thus to bring it “into full communion with the . . . constituent members of the Anglican Communion.” JA 2988 (emphasis added). But ADV is legally independent and has its own board; only one sentence in ADV’s articles refers to CANA; and the decision to affiliate with CANA and the Church of Nigeria was ADV’s own (provisional) choice. Indeed, ADV’s members include several congregations that disaffiliated from the Diocese but are *not* members of CANA—further confirming that ADV is properly viewed as a descendant of the Diocese, not the Anglican Church of Nigeria. JA 2475-77 (Allison); JA 2175-77 (Minns).²

These are undisputed facts, and the trial court relied on them in analyzing whether ADV was a “branch.” JA 3890-92. But if the record left any doubt on this score, we respectfully submit that the issue could not be resolved against the Congregations as a matter of law. The Court’s analysis

² Like others that disaffiliated from TEC but wished to remain “a part of the worldwide [Anglican] church” (Op. 8), these congregations affiliated with another Anglican province. JA 2475-77 (Allison); JA 2175-77 (Minns).

We do not read the Court’s opinion to hold that the bare fact of affiliation with the Church of Nigeria disqualified CANA and ADV as “branches.” If that were a proper reading of § 57-9, it would violate the First Amendment by expressly discriminating against disaffiliating congregations based on “denominational preference.” *Larson v. Valente*, 456 U.S. 228, 244 (1982) (“one religious denomination cannot be officially preferred over another”).

turned on what it called an “erroneous” “finding.” Op. 28. But any such finding was necessarily *factual*, and factual findings may be reversed only if “plainly wrong or without evidence to support them.” *Perel v. Brannan*, 267 Va. 691, 698, 594 S.E.2d 899, 903 (2004). That is not the case here.

At a minimum, this Court should remand for further factual findings as to whether ADV, CANA, or both are branches under the Court’s new reading of § 57-9.³ That would be especially appropriate given that the Court’s decision marks the first time in 143 years that the Court has addressed the statute’s core requirements, and sets forth an analysis that the circuit court understandably had no opportunity to apply.⁴ Thus, even if the Court does not revisit its findings, clarification of the scope of remand is warranted on the question whether ADV, CANA, or both were “branches.”

CONCLUSION

The Court should grant rehearing, or clarify that the circuit court may consider whether CANA or ADV is a “branch” under the Court’s decision.

³ See *Jones v. Willard*, 224 Va. 602, 607, 299 S.E.2d 504, 507-08 (1983) (it is “familiar appellate practice” to remand “to permit further evidence to be taken or additional findings to be made upon essential points”); *Yarbrough v. Warden*, 269 Va. 184, 188, 609 S.E.2d 30, 32 (2005) (granting rehearing and ordering circuit court to conduct evidentiary hearings).

⁴ *Fanning*, 235 Va. at 262, 368 S.E.2d at 258 (remanding because the trial court “did not [earlier] have the benefit of the applicable . . . standards”); *Lynchburg Div. of Soc. Serv. v. Cook*, 276 Va. 465, 485, 666 S.E.2d 361, 371 (2008) (remanding for “application of the proper statutory standards”).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of July, 2010, a true copy of this foregoing application for rehearing was sent by electronic mail in PDF format to the Office of the Clerk of the Supreme Court of Virginia and a copy of the foregoing application were sent by electronic mail and first-class mail, postage prepaid, each to:

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Court's Opinion of June 10, 2010

Present: Hassell, C.J., Koontz, Kinser, and Millette, JJ.,
and Lacy, S.J.

THE PROTESTANT EPISCOPAL CHURCH
IN THE DIOCESE OF VIRGINIA

v. Record No. 090682

TRURO CHURCH, ET AL.

THE EPISCOPAL CHURCH

OPINION BY
JUSTICE LAWRENCE L. KOONTZ, JR.
June 10, 2010

v. Record No. 090683

TRURO CHURCH, ET AL.

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY
Randy I. Bellows, Judge

These appeals arise from a dispute concerning church property between a hierarchical church and one of its dioceses in Virginia and a number of the diocese's constituent congregations. The principal issue we must decide is whether under the specific facts of these cases Code § 57-9(A) authorized the congregations to file petitions in the appropriate circuit courts for entry of orders permitting them to continue to occupy and control real property held in trust for the congregations after voting to disaffiliate from the church and affiliate with another polity.¹

¹ When used in reference to religious entities, the term "polity" refers to the internal structural governance of the denomination. See, e.g., Note, Judicial Intervention in

BACKGROUND

While the consolidated record in these cases is voluminous, we need recite only those facts necessary to our resolution of the dispositive issue of whether the circuit court correctly ruled that Code § 57-9(A) is applicable to the specific facts in these cases.² See, e.g., Asplundh Tree Expert Co. v. Pacific Employers Ins. Co., 269 Va. 399, 402, 611 S.E.2d 531, 532 (2005). Because the resolution of these appeals requires us to construe the language of Code § 57-9(A), we will set out that language here so that the relationship of the recited facts to the issues to be resolved will be clear:³

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

Disputes Over the Use of Church Property, 75 Harv.L.Rev. 1142, 1143-44 (1962).

² An extended period of discovery, a six-day ore tenus hearing with witnesses, and many subsidiary hearings before the circuit court generated a manuscript record of over 8000 pages, many thousands of transcript pages of testimony and argument, and copious exhibits.

³ The original statute addressing how property rights are to be determined upon a division within a church or religious society was adopted by the General Assembly in 1867. 1866-67 Acts ch. 210. Although the statute has been reenacted and amended several times during the past 150 years, the most significant change being to create separate subsections for its application to hierarchical and congregational churches, 2005 Acts ch. 772, the operative language of the statute construed by the circuit court, and which is the focus of our discussion in these appeals, has remained unchanged.

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.

The Ecclesiastical Relationships Among the Parties

We have previously held that Code § 57-9(A) applies to congregations of "hierarchical churches," that is "churches, such as Episcopal and Presbyterian churches, that are subject to control by super-congregational bodies."⁴ Baber v. Caldwell, 207 Va. 694, 698, 152 S.E.2d 23, 26 (1967). The dispute that resulted in the litigation from which these appeals arise involves a complex interplay between various entities within a faith community that has local, national, and international ties. It is not disputed that the entities involved in this litigation are part of a hierarchical church, although the parties differ on which entities compose that

⁴ Code § 57-9(B) authorizes a circuit court to approve a vote concerning the use and control of property held in trust for the benefit of an autonomous congregation not affiliated with a hierarchical church. The parties stipulated in the circuit court that the petitioning congregations were "not, in their organizations and governments, entirely independent of

church. In order to better understand the context in which the dispute arose, we will first identify the entities involved and their relationship to one another.

The Anglican Communion is an international body that consists of 38 "provinces," which are "regional and national churches that share a common history of their understanding of the Church catholic through the See of Canterbury" in England. The Archbishop of Canterbury is the head of the Church of England, one of the national churches within the Anglican Communion, and is considered the "chief pastor," "first among equals in the wider Anglican Communion," and the "focus of the unity" within the leadership in the Anglican Communion.

The Anglican Communion functions through three "instruments of unity": the decennial Lambeth Conference; the Anglican Consultative Council, which meets every two or three years; and the biennial Primates' Meeting. The Lambeth Conference is the oldest of these institutions, dating from 1867. Participation in the Lambeth Conference is by "invitation only" from the Archbishop of Canterbury, with invitations being directed to individual church bishops and other leaders among the clergy, not to regional or national churches as a unit. Although the Lambeth Conference issues

any other church or general society" and, thus, Code § 57-9(B)

resolutions and reports, these are not binding on the regional and national churches. Rather, the function of the Lambeth Conference and the other international activities of the Anglican Communion are "primarily consultative." Thus, any action within the Anglican Communion has efficacy within a regional or national church only if the church adopts the resolution or report through its own polity structure for the governance of that church.

The Episcopal Church ("TEC") is a province of the Anglican Communion and the principal national church following the Anglican tradition within the United States.⁵ TEC consists of 111 geographical dioceses with over 7000 congregations and over 2 million members. The highest governing body of TEC is the triennial General Convention, which adopts TEC's constitution and canons to which the dioceses must give an "unqualified accession." Each diocese in turn is governed by a Bishop and Annual Council that adopts the constitution and canons for the diocese. Each congregation within a diocese in turn is bound by the national and diocesan constitutions and

would not apply to the facts of these cases.

⁵ TEC is also known by the longer form "The Protestant Episcopal Church in the United States of America," and was identified as such, and by the acronym "ECUSA," in the circuit court. We have adopted the form used in the style of the appeal brought by TEC and by the parties in briefing both appeals.

canons. The Protestant Episcopal Church in the Diocese of Virginia ("the Diocese") is one of the dioceses within TEC.⁶

Priests of TEC are "canonically resident" within a specific diocese and may not function as priests in any other diocese of TEC without the permission of the local bishop. Similarly, a priest ordained by a diocese of TEC may not function as a priest for one of the other regional or national churches that participate in the Anglican Communion without permission from the local authority of that church.

At the 2003 General Convention of TEC, three major points of controversy arose: the Convention's confirmation of the election of Gene Robinson, a homosexual priest, as a bishop of one of the dioceses of TEC; the adoption of a resolution permitting the blessing of same-sex unions; and the rejection of a resolution concerning the "historic formularies of the Christian faith." Following the 2003 General Convention, Peter James Lee, the bishop of the Diocese, who had supported the confirmation of Robinson as a bishop, received "hundreds of letters" opposing these actions taken by the General Convention. Additionally, several congregations opposed to the actions of the General Convention stopped paying pledges

⁶ There are three dioceses affiliated with TEC in Virginia. The "Diocese of Virginia" consists of 38 counties in the northern and central parts of the Commonwealth.

owed to the Diocese and TEC, placing the funds in escrow. As a result, Bishop Lee became concerned that the dissident congregations would "attempt to create a parallel province."

In response to the discord within the Diocese, in 2004 a "Reconciliation Commission" was formed "to find ways to bring about some peaceful conflict resolution." Despite this effort, dissent concerning the actions of the 2003 General Convention continued, and in 2005 Bishop Lee created a new commission "to give attention to this rising threat of division in the Diocese." The following year, the commission promulgated a "Protocol for Departing Congregations." Under this protocol, the Diocese initiated procedures for congregations to conduct votes "regarding possible departure from the Diocese," and several congregations initiated procedures under the protocol to separate from the Diocese. However, Bishop Lee subsequently advised leaders of the dissident congregations that due to a change in leadership in TEC, separation of congregations had become a matter of concern to the national church, and that a vote to separate would not be binding on the Diocese or TEC.

Nonetheless, between December 2006 and November 2007, 15 congregations voted to separate from the Diocese. As a result, 22 members of the clergy associated with these congregations were deposed, or removed, from their pastoral

duties in the Diocese by Bishop Lee. Congregations in other dioceses of TEC also took similar action to separate from their dioceses over the controversies arising from the 2003 General Convention. These congregations, as well as newly formed congregations of former members of TEC, began seeking to affiliate with other polities within the Anglican Communion in order "to be a part of the worldwide church."

The Church of Nigeria is a province of the Anglican Communion and governs the Anglican churches in the Federal Republic of Nigeria, a former British colony. In 2005, the Convocation of Anglican Nigerians in America was established as a mission of the Church of Nigeria to provide oversight for expatriate Nigerian congregations in the United States. In 2006, the Church of Nigeria changed the name of this mission to the Convocation of Anglicans in North America ("CANA") and began accepting former TEC congregations. In 2006, the Anglican District of Virginia ("ADV") was formed as a district of CANA. By 2007, CANA included 60 congregations in eighteen states and 12,000 members, of which 10,000 were in congregations previously affiliated with dioceses of TEC. This action was viewed by the Archbishop of Canterbury and the leadership of TEC as an improper "incursion" of one member of the Anglican Communion on the territory of another member.

The leadership of TEC actively opposed the decision of the Nigerian Primate, Archbishop Peter J. Akinola, to install Rev. Martyn Minns, the Rector of one of the dissident congregations in the Diocese, as the bishop of CANA. In part because of this conflict, Archbishop Akinola made a declaration of "broken communion" with TEC. Although Archbishop Akinola installed Minns as the Bishop of CANA, Minns was not placed on the "invitation list" for the Lambeth Conference.

Procedural History

These appeals arise from petitions filed between December 2006 and July 2007 pursuant to Code § 57-9(A) by nine congregations formerly affiliated with the Diocese which now purport to be congregations within ADV and CANA ("the CANA Congregations").⁷ The petitions were originally filed in the five circuit courts "wherein the property held in trust for [each] congregation or the greater part thereof" is located. Each congregation averred in its petition that a "division has

⁷ The nine congregations are The Church at the Falls - The Falls Church, in Arlington County; Truro Church, Church of the Apostles, and Church of the Epiphany, Herndon, in Fairfax County; St. Margaret's Church, Woodbridge, St. Paul's Church, Haymarket, and Church of the Word, Gainesville, in Prince William County; Church of Our Saviour at Oatlands, in Loudoun County; and St. Stephen's Church, Heathsville, in Northumberland County.

occurred at the international, national, and local levels” that “resulted from a profound theological break by TEC and the Diocese from the majority of the other provinces of the Anglican Communion.” The congregations alleged that as a result of this division, they had “determined to disaffiliate from TEC and the Diocese and to reaffiliate with another branch of the Anglican Communion.” Although the petitions did not expressly identify the “branch” with which the congregations proposed to affiliate, exhibits attached to the petitions identify it as the ADV as a constituent part of CANA, acknowledging that CANA is a part of the Church of Nigeria.

The Diocese and TEC intervened in these cases to oppose the granting of the petitions and also filed declaratory judgment actions against the CANA Congregations, seeking a determination of trust, proprietary, and contract rights, if any, that the Diocese and TEC had in the properties used by the CANA Congregations which were the subject of the Code § 57-9(A) petitions.⁸ The CANA Congregations filed answers to

⁸ TEC filed a single complaint for declaratory judgment against the CANA Congregations along with two others, Christ the Redeemer Church and Potomac Falls Church; the Diocese filed individual complaints for declaratory judgment against the CANA Congregations and the two others. The congregations of Christ the Redeemer Church and Potomac Falls Church are not parties to these appeals.

the declaratory judgment actions as well as counterclaims seeking declaratory judgment in favor of the congregations, to which the Diocese and TEC filed answers. A three-judge panel appointed by this Court under the Multiple Claimant Litigation Act, Code §§ 8.01-267.1, et seq., consolidated all these cases in the Circuit Court of Fairfax County.

Both TEC and the Diocese challenged the legitimacy of the CANA Congregations' petitions on multiple grounds. Their threshold position, and the issue that is ultimately dispositive in these appeals, was that relief under Code § 57-9(A) is not available to the CANA Congregations because there has been no "division" within TEC or the Diocese and that, even if there had been, neither CANA nor the ADV is a "branch of the church" resulting from that division to which the congregations could, as contemplated by the statute, attach themselves. The circuit court held a six-day evidentiary hearing to determine the scope and application of Code § 57-9(A) and, specifically under the facts of these cases, whether the statute would authorize the court to grant the requested relief to the petitioning congregations.

During this hearing, the CANA Congregations, TEC, and the Diocese presented extensive expert testimony regarding the enactment of Code § 57-9(A) and the history of divisions in religious denominations in Virginia. The CANA Congregations'

experts testified that TEC had experienced a "division" because various congregations had separated from TEC in order to join a separate polity. In contrast, TEC's and the Diocese's experts testified that TEC could not divide without action by the General Convention, and therefore TEC had not experienced a "division" as a result of the underlying ecclesiastical differences. The experts also gave conflicting testimony as to whether the statutory terms "branch," "attached," and "church or religious society" were met by the situation presented. We will recount more fully the arguments of the parties and the evidence of the expert witnesses on these points subsequently in this opinion.

In a letter opinion dated April 3, 2008, the circuit court opined that the CANA Congregations had properly invoked Code § 57-9(A). The circuit court found the Diocese, TEC, and the Anglican Communion were all "church[es] or religious societ[ies]," and that CANA, the ADV, the Church of Nigeria, TEC, and the Diocese were all "branches" of the Anglican Communion for purposes of applying Code § 57-9(A). Likewise, the court reasoned that CANA and the ADV were also "branches" of TEC and the Diocese. Accordingly, the court concluded that the CANA Congregations were entitled to file petitions under Code § 57-9(A) in order to have the court determine "the title

to and control of any property held in trust" for the benefit of those congregations.

Following these rulings, the circuit court conducted further proceedings addressing constitutional challenges to Code § 57-9(A) raised by TEC and the Diocese under the establishment and free exercise clauses of the First Amendment of the United States Constitution and the equivalent provisions of the Virginia Constitution, as well as arguments concerning whether the statute violates principles of constitutional due process and the contracts clause. During this stage of the proceedings, the Commonwealth intervened for the purpose of defending the constitutionality of the statute.

On June 27, 2008, the circuit court issued a further letter opinion in which it upheld the constitutionality of the statute. Following additional proceedings, the court ultimately issued a final judgment on January 8, 2009 granting the CANA Congregations' petitions and dismissing TEC's and the Diocese's declaratory judgment actions as moot.⁹ By orders

⁹ The circuit court ruled that an endowment fund related to one of the CANA Congregations was held in corporate form and, thus, a determination of its ownership and control could not be decided under Code § 57-9(A). Accordingly, it ordered the resolution of the declaratory judgment actions with regard to the fund to be severed from the proceedings. This ruling has not been challenged by the effected congregation in these appeals. As relevant to the Diocese's appeal only, the court also determined that it lacked jurisdiction to consider a

dated November 9, 2009, we awarded appeals from this judgment to TEC and the Diocese.

DISCUSSION

Although the assignments of error in TEC's appeal and that of the Diocese are not entirely concordant, the two appeals broadly address the same principal themes in challenging the judgment of the circuit court with respect to its finding that Code § 57-9(A) is applicable to the facts in these cases and is not violative of the various constitutional principles argued below. Consistent with the analytical approach taken in the circuit court, we will first decide whether Code § 57-9(A) is applicable in these cases, only reaching the questions concerning the statute's constitutionality if necessary. Davenport v. Little-Bowser, 269 Va. 546, 557, 611 S.E.2d 366, 372 (2005).

The circuit court's rulings with respect to the applicability of Code § 57-9(A) are addressed in TEC's first three assignments of error:

1. The circuit court erred in interpreting and applying the term "division" in Va. Code § 57-9(A) and the statute itself to supersede the Episcopal Church's polity, because its interpretation ignores and conflicts with related Virginia statutory case law, the principle of Constitutional avoidance, and the statute's past application.

challenge to deeds transferring property to one of the CANA Congregations from another congregation of the Diocese.

2. The circuit court erred in holding that CANA and the ADV are "branches" of the Episcopal Church or the Diocese of Virginia (the "Diocese") for purposes of § 57-9(A), because CANA and the ADV were formed by the Church of Nigeria, and because the court's holding impermissibly rested on its own finding of "communion."

3. The circuit court erred in holding that the Anglican Communion satisfied § 57-9(A), because the Anglican Communion has not "divided," even under the court's definition of the term, and also is not a "church or religious society" to which the congregations were "attached."

The Diocese addresses the same issues within its third assignment of error:

The Circuit Court erred as a matter of law by holding that the requirements of Va. Code § 57-9(A) were satisfied in these cases. That holding was error because the court adopted erroneous and entangling definitions of the statutory terms "division," "branch," and "attached," leading the court to err by holding that a "division" has occurred in the Anglican Communion, the Episcopal Church (the "Church" or "TEC"), and the Diocese of Virginia (the "Diocese"); that all relevant entities were "branches" of and "attached" to the Anglican Communion; and that the Convocation of Anglicans in North American [sic] ("CANA") and Anglican District of Virginia ("ADV") are "branches" of the Church and the Diocese.

While the issues raised by these assignments of error deal primarily with questions of statutory construction which are reviewed de novo, Smit v. Shippers' Choice of Va., Inc., 277 Va. 593, 597, 674 S.E.2d 842, 844 (2009), to the extent that we must also review the circuit court's application of a statute, we accord deference to the court's determinations of fact. Virginia Baptist Homes, Inc. v. Botetourt County, 276

Va. 656, 663, 668 S.E.2d 119, 122 (2008). Accordingly, we will first consider de novo the meaning of the relevant terms in Code § 57-9(A), and then apply our construction of those terms to the circuit court's findings of fact to the extent that they remain applicable.

The circuit court's analysis of the applicability of Code § 57-9(A) focused on the meanings of the specific words "division," "church or religious society," "attached," and "branch" within the statute. The court considered each separately and ultimately concluded that, as they were not otherwise defined within the statute or elsewhere in the Code, each of these words was to be given its plain and ordinary meaning, taking into account the historical context of the enactment of the original predecessor statute. While the use of "plain and ordinary meaning" is, of course, a fundamental rule of statutory construction to be applied where a word or phrase is not otherwise defined by the Code, the rule also requires that the courts should be guided by " 'the context in which [the word or phrase] is used.' " Sansom v. Board of Supervisors, 257 Va. 589, 595, 514 S.E.2d 345, 349 (1999) (quoting Department of Taxation v. Orange-Madison Coop. Farm Serv., 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980)).

When considered in the overall context of the statute, a proper construction of the language of Code § 57-9(A) must

take into account the interrelationship of the words being considered. Thus, in order to determine whether a congregation is entitled to petition for the relief afforded by Code § 57-9(A), as a prerequisite the congregation must show that there has been a "division . . . in a church or religious society[] to which any such congregation . . . is attached." Likewise, the authority afforded by the statute permitting such congregations to vote in order to determine "to which branch of the church or society such congregation shall thereafter belong" must be construed within the context of the first phrase of the statute. That is, the "branch of the church or society" to which the congregation votes to belong must be a branch of the "church or religious society[] to which [the petitioning congregation] is attached" prior to the "division." Accordingly, we will construe the language of these two phrases together in this related context.

Initially, we note that the parties to this litigation do not dispute that TEC and the Diocese are each a "church" as contemplated by the phrase "church or religious society" contained in Code § 57-9(A). The circuit court correctly found that such was true when applying the plain meaning of these terms. The circuit court also found that "it need not reach the question as to whether the Anglican Communion is in fact a 'church' under Code § 57-9(A), because there is

abundant evidence in the record . . . that the Anglican Communion is, at the very least, a 'religious society.' "

The clear purpose of Code § 57-9(A) is to provide a method by which the disputed title to and control of any property held in trust for a congregation may be conclusively determined. The "church or religious society" referenced in the statute in which a "division" has occurred contemplates one that has an interest in the property for which the title and control is at issue. TEC and the Diocese have asserted an interest in the property at issue in this litigation. No such assertion is made by the Anglican Communion. However, for purposes of our analysis in these appeals, we need not decide whether the Anglican Communion is a church or religious society as contemplated by Code § 57-9(A) because the evidence in the record does not establish that there has been a "division" in the Anglican Communion. While undoubtedly there was theological disagreement between TEC and the Diocese and CANA, the ADV, the dissenting congregations and the Church of Nigeria concerning the actions of the 2003 General Convention of TEC, all of these entities continue to admit a strong allegiance to the Anglican Communion. Accordingly, we conclude that the circuit court erred in its holding that there was a division in the Anglican Communion for purposes of the application of Code § 57-9(A) in these cases.

It then follows that the focus of our analysis in these appeals is whether the dissenting congregations have established that there had been a "division" in TEC and the Diocese, churches to which the congregations were "attached," and whether the congregations voted to belong to a "branch" of TEC and the Diocese. We first address the issue of a division in TEC and the Diocese.

As a prerequisite to a congregation being permitted to petition a circuit court to confirm the result of a vote to separate from a church to which it is attached as provided in Code § 57-9(A), the congregation must establish that there has been a "division" within that church. Indeed, the circuit court expressed the view that in order to resolve the issue of whether Code § 57-9(A) applied to the CANA Congregations' petitions it had to "address the question at the heart of this litigation: Has a division occurred?" Thus, much of the expert testimony presented by the parties was directed toward placing the concept of a "division" within a church into a historical context in an effort to establish the intention of the General Assembly when choosing this word in enacting the original predecessor statute to Code § 57-9 in 1867.

Dr. Mark Valeri, an expert witness for the CANA Congregations, testified that the most commonly understood definition of "division," as understood in the mid-19th

century, both nationally and specifically in Virginia, is 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." Further, Dr. Valeri stated that typically when a group left the particular denomination, it was not an amicable split, nor was it "with the approval or consent of the higher ecclesiastical authorities." Dr. Valeri highlighted several historical examples of this type of "division," agreeing that in these instances it was not the case that "the new group be acknowledged by the entity from which it divided in order to be viewed in common parlance as a branch."

The circuit court found that "[i]n sum, Dr. Valeri testified that the 'average, ordinary Virginian in 1867' would have understood 'division' to mean 'the separation out of a group in rejection of the authority [of that group],' and that 'it is that act of division which creates a branch.' This understanding would 'encompass situations in which the church or religious society' did not 'approve' of the ['']division,' as well as situations in which the 'new entity, the new polity, was not formally affiliated with the church and religious society from which it divided.' "

Dr. Charles Irons, another expert for the CANA Congregations, testified that "the most common definition of division would be the fragmentation of one religious jurisdiction to create two or more jurisdictions." But there were "additional possible meanings of division" including "internal conflict or discord within a religious body. . . . Division could also be used to describe not the act of separation itself, but one of the resulting branches." Dr. Irons specifically noted that in reviewing prior cases involving petitions under the predecessor statutes to Code § 57-9(A), it was never alleged that the division had been approved by "higher ecclesiastical authorities," or that the filing of the petitions "had been approved by higher ecclesiastical authorities."

By contrast, Dr. Ian Douglas, an expert called for TEC and the Diocese, asserted that neither TEC nor a diocese of TEC could divide "without the action of [the] General Convention." Dr. Douglas further testified that "a congregation or a people can choose to leave a parish or leave the Episcopal Church," but that such action would "not fundamentally constitute a division or a departure of a parish . . . from the wider Episcopal Church."

Dr. Douglas opined that "there can be no division without formal approval of the division by the highest adjudicators of

the religious body involved.” Dr. Douglas also testified that the term “division” as used in Code § 57-9(A) would not be applicable to the Anglican Communion because it was a “family of churches” with a shared historical relationship, but it was not an “intact whole” that would be subject to division.

Dr. Robert Bruce Mullen also testified for TEC and the Diocese. Dr. Mullen stated that in the context of hierarchical church structures “a division is usually understood as a formal separation of a larger religious body such that it looks markedly different after this has been done. Such that we might say that one body becomes two. . . . [I]t [is] a much more formal category than just simply an informal separation.” According to Dr. Mullen, in the 19th century there would have been a distinction made “between a division [in] a denomination as a whole and a mere departure o[r] separation from that denomination.”

After reviewing the conflicting testimony of these experts in its April 3, 2008 letter opinion, the circuit court stated that it found “the testimony of the two CANA congregation experts - Dr. Valeri and Dr. Irons - to be more persuasive and convincing.” The court reasoned that these two experts had based their opinion on “the particular and pertinent historical record relevant to the instant case,”

while the opinions of the experts for TEC and the Diocese "did not appear to be so tethered."

The circuit court also reviewed the prior cases from this Court dealing with divisions within churches. The court recognized that Baber v. Caldwell, 207 Va. 694, 152 S.E.2d 23 (1967), and Reid v. Gholson, 229 Va. 179, 327 S.E.2d 107 (1985), involved divisions within autonomous congregations, not hierarchical churches, but nonetheless found that the discussion of the division that occurred in each case to be instructive. The court recognized that in Baber, "division" was described as "intra-congregational strife" and "dissension," which the circuit court took as supporting Dr. Valeri's contention "that a division need not be consensual or amicable." The court noted that in Reid this Court found that the requisite "division" had not occurred because the petitioners in that case "expressed no desire to separate from the body of their church, or to rend it into groups, each of which seeks to take over all the property and characterize the other as apostate, excommunicated, and outcast." 229 Va. at 192, 327 S.E.2d at 115.¹⁰

¹⁰ The circuit court also reviewed Brooke v. Shacklett, 54 Va. (13 Gratt.) 301 (1856), a case decided prior to the enactment of the original predecessor statute to Code § 57-9, but found that it was "not helpful precedent" because the decision in that case was "premised on a 'division' whose

The circuit court ultimately concluded that "the definition of 'division' as that term is used in [Code §] 57-9(A) is in fact that assigned to it by the CANA Congregations, which is '[a] split . . . or rupture in a religious denomination that involve[s] 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.'" The court further concluded that the more restrictive definition proposed by TEC and the Diocese requiring a formal approval of a division by the consent of the hierarchical church "would make [Code §] 57-9(A) a nullity." While agreeing with TEC and the Diocese "that division, under [Code §] 57-9(A), ought not be 'easy,'" the court opined that the definition it had adopted placed an appropriate burden on a petitioning congregation to show "three major and coordinated occurrences." That is, a "split"

existence was not in serious dispute." Similarly, the court concluded that Hoskinson v. Pusey, 73 Va. (32 Gratt.) 428 (1879), did not establish, as the CANA Congregations contended, that the statute did not "require that a division be recognized or approved by a denomination," finding that the absence of any express discussion of that issue beyond the fact that such was apparently the case in Hoskinson could mean that the "Court simply did not reach the issue." Likewise, the court found that Finley v. Brent, 87 Va. 103, 12 S.E. 228 (1890), was decided "on other grounds" that did not require the Court to construe the meaning of division.

or "rupture" resulting in a separation from the church and the formation of or attachment to an alternative polity.

In addressing its first assignment of error, TEC contends that the circuit court erred in adopting this definition of division because it effectively would allow congregational majorities to "strip hierarchical churches of property rights in violation of denominational polity and rules." TEC contends that historically Code § 57-9(A) "was prompted by and has been applied only to divisions accomplished in conformity with denominational polity." Similarly, the Diocese contends within the argument of its third assignment of error that the "[c]ircuit [c]ourt's interpretation treats the separation of a small minority that form or join an alternative polity as a 'division,' ignoring the Church's hierarchical polity and rules and vesting control solely in local majorities." TEC disputes that its proposed construction of the term would render the statute a nullity because even in divisions formally recognized by the church, the statute would still be necessary to permit congregations to choose between the old and the new polities created by the division. We are not persuaded by these contentions.

Inherent in the concept that a division must be recognized through a formal process within the church's polity is that the courts would ultimately be drawn into an

ecclesiastical dispute to determine whether a division as contemplated by Code § 57-9(A) had occurred. Such a circumstance would risk entangling the courts in matters of religious governance, contrary to the well established principle that under the First Amendment "civil courts are not a constitutionally permissible forum for a review of ecclesiastical disputes." Jae-Woo Cha v. Korean Presbyterian Church, 262 Va. 604, 610, 553 S.E.2d 511, 514 (2001); see also Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 710 (1976); Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449, (1969). While what is or is not an "ecclesiastical dispute" is often debatable, issues of religious governance are unquestionably outside the jurisdiction of the civil courts. Reid, 229 Va. at 187, 327 S.E. 2d at 111-12. The record of the present cases confirms that permitting the polity of the church to determine whether a division has occurred could potentially involve the court in disputes involving church governance.

While it is certainly possible that a division within a hierarchical church could occur through an orderly process under the church's polity, history and common sense suggest that such is rarely the case. To the contrary, experience shows that a division within a formerly uniform body almost always arises from a disagreement between the leadership under

the polity and a dissenting group. The construction of division adopted by the circuit court does not, as TEC and the Diocese contend, "vest[] control solely in local majorities" to determine whether a division has occurred. Indeed, it is clear that a majority vote by one or more congregations to separate from a hierarchical church under Code § 57-9(A) would not alone be sufficient to establish the fact of a division. To the contrary, we agree with the circuit court that the standard it adopted places a significant burden on the petitioning congregation to establish that the requisite "division" has occurred and that this "division" led to the vote to separate. Moreover, in resolving the issue of whether a division has occurred under the standard adopted by the circuit court, there is no requirement that the court involve itself in questions of religious governance or doctrine. Rather, the court simply determines from the facts presented whether the division has occurred, without regard to the nature of the dispute, whether over doctrine or some other cause, which lead to the separation of the congregation and its attachment to a different polity.

The evidence presented by the CANA Congregations clearly establishes that a split or rupture has occurred within the Diocese and, given the evidence of similar events in other dioceses of TEC, the split or rupture has occurred at the

national level as well. Likewise, there can be no question that as a result, members and congregations have separated from the Diocese and TEC and have aligned with different polities, formed in response to the dissension within the Diocese and TEC. Accordingly, we hold that the circuit court did not err in finding that a "division" had occurred in the Diocese and TEC within the meaning of Code § 57-9(A).

The circuit court next found that the CANA Congregations were "attached" to the Diocese and TEC. There was not, nor could there be, any serious dispute that, until the discord resulting from the 2003 General Convention, the CANA Congregations were "attached" both to TEC and the Diocese because they were required to conform to the constitution and canons of TEC and the Diocese. Accordingly, we agree that for purposes of Code § 57-9(A), the CANA Congregations established that they were previously "attached" to TEC and the Diocese.

We turn now to consider the circuit court's finding that CANA and the ADV are "branches" of TEC and the Diocese for purposes of applying Code § 57-9(A). For the reasons that follow, we hold that the circuit court's finding was erroneous.

In its second assignment of error, TEC contends that the circuit court's definition of a "branch" as meaning "a division of a family descending from a particular ancestor"

demonstrates that CANA is a branch of the Church of Nigeria, not of TEC. Likewise the ADV, as a district of CANA, descends from the Church of Nigeria and CANA, not the Diocese or TEC. TEC contends that the historical connection between it and the Church of Nigeria through the Anglican Communion is not sufficient to establish that constituent parts of each church are "branches" of the other. TEC further contends that the circuit court erred in giving particular significance to the fact that the majority of the congregations in the ADV and CANA were formerly affiliated with TEC and its dioceses. We agree.

When it was initially formed, CANA was a mission of the Church of Nigeria designed to minister to expatriate members of that church in North America. The subsequent expanding of the mission to allow dissident congregations of TEC and the Diocese to affiliate with CANA, and the formation of the ADV, unquestionably occurred in response to the disputes that had occurred within TEC. However, it is equally clear that the revision of CANA's mission and the formation of the ADV did not occur as a result of the division within TEC and the Diocese. Indeed, the dissenting congregations maintained that they had "determined to disaffiliate from TEC and the Diocese" in order to join CANA, a pre-existing polity within the Church of Nigeria. Thus, while CANA is an "alternative polity" to

which the congregations could and did attach themselves, we hold that, within the meaning of Code § 57-9(A), CANA is not a "branch" of either TEC or the Diocese to which the congregations could vote to join following the "division" in TEC and the Diocese as contemplated by Code § 57-9(A).

In summary, we conclude that the evidence does not establish that there was a division in the Anglican Communion for purposes of the application of Code § 57-9(A). We further conclude that a proper construction of Code § 57-9(A) requires a petitioning congregation to establish both that there has been a division within the church or religious society to which it is attached and that subsequent to that division the congregation seeks to affiliate with a branch derived from that same church or religious society. While the branch joined may operate as a separate polity from the branch to which the congregation formerly was attached, the statute requires that each branch proceed from the same polity, and not merely a shared tradition of faith. The record in these cases shows that the CANA Congregations satisfied the first of these requirements in that there was a division within TEC and the Diocese, but not the second, as CANA clearly is not a branch of either TEC or the Diocese. Accordingly, we hold that the circuit court erred in ruling that the CANA

Congregations' petitions were properly before the court under Code § 57-9(A).¹¹

By granting the CANA Congregations' Code § 57-9(A) petitions, the circuit court ruled that this "obviate[d] the need to address the merits of the Declaratory Judgment Actions filed by the Episcopal Church and the Diocese and thus render[s] them legally moot." In light of our holding that the circuit court erred in granting the Code § 57-9(A) petitions, the control and ownership of the property held in trust and used by the CANA Congregations remains unresolved. Accordingly, the declaratory judgment actions filed by TEC and the Diocese, and the counterclaims of the CANA Congregations in response to those suits, must be revived in order to resolve this dispute under principles of real property and contract law.¹² See, e.g., Code § 57-7.1; Trustees of Asbury

¹¹ Because we have concluded that the CANA Congregations have not satisfied the requirements for petitioning the circuit court for relief under Code § 57-9(A), we need not address TEC's and the Diocese's assignments of error challenging the court's finding that the statute was not violative of the First Amendment and Due Process.

¹² The Diocese has also assigned error to the circuit courts' determination that it lacked jurisdiction to reconsider an order entered in a prior proceeding approving the transfer of property from Christ Redeemer Church to Truro Church. See note 9, supra. While we agree with the circuit court that the Diocese was attempting to bring an improper collateral attack on a final judgment, it is nonetheless evident that as the property is held for the benefit of Truro Church, the ultimate determination of ownership and control of

United Methodist Church v. Taylor & Parrish, Inc., 249 Va. 144, 452 S.E.2d 847 (1995); Green v. Lewis, 221 Va. 547, 272 S.E.2d 181 (1980); Norfolk Presbytery v. Bollinger, 214 Va. 500, 201 S.E.2d 752 (1974).

CONCLUSION

For these reasons, we will reverse the judgment of the circuit court and remand with direction to dismiss the CANA Congregations' Code § 57-9(A) petitions. We will further direct the circuit court to reinstate the declaratory judgment actions filed by TEC and the Diocese and the counterclaims of the CANA Congregations to those actions, and conduct further proceedings thereon consistent with the views expressed in this opinion.

Record No. 090682 - Reversed and remanded.

Record No. 090683 - Reversed and remanded.

that property will be resolved in the proceedings on the declaratory judgment actions. Accordingly, we need not address this issue.

Relevant Portions of Joint Appendix Cited in
APPELLEES' APPLICATION FOR
REHEARING OR, IN THE
ALTERNATIVE, CLARIFICATION AS TO
THE SCOPE OF REMAND
(in ascending order)

JA 2155

JA 2161

JA 2175-2177

JA 2205-2206

JA 2475-2477

JA 2567-2568

JA 2980

JA 2988-2993

JA 3034

JA 3890-3892

1 (CANA Congregations Exhibit 70 received into
2 evidence.)

3 BY MR. JOHNSON:

4 Q Bishop Minns, can you tell me what the
5 acronym CANA stands for?

6 A The Convocation of Anglicans in North
7 America.

8 Q Has the Convocation of Anglicans in North
9 America always been the acronym that CANA stood for?

10 A No, it's not. It was originally the
11 Convocation of Anglican Nigerians in North America.

12 Q Why was that the original name of CANA?

13 A Because it's a structure set up to provide
14 for the ecclesiastic -- I mean, the Episcopal and
15 pastoral oversight for ex-patriot Nigerian clergy and
16 congregations who had broken away from the Episcopal
17 Church.

18 Q So were these clergy and congregations
19 CANA's first members?

20 A Yes, they were.

21 Q What time period would this have been?

22 A 2004, 2005.

1 that we've entered new territory, then I think you're
2 going to have to renew your objection. Otherwise,
3 there's going to be no record of what it is you object
4 to.

5 MR. DAVENPORT: Understood.

6 BY MR. JOHNSON:

7 Q Bishop Minns, what was the effect of the --
8 or strike that.

9 You referred to a division. What sorts of --

10 A Let me try and explain it in practical
11 terms. Clergy and congregations left the Episcopal
12 Church. That was the damage of the division. It also
13 had a profound impact upon the wider Anglican
14 Communion.

15 Q And how did these events relate to the
16 establishment of CANA?

17 A In many ways it was the precipitating event.

18 Q In your 30 years of ordained ministry in the
19 Episcopal Church, have there been other
20 disaffiliations and separations of this magnitude?

21 A Nothing of this scope.

22 Q Bishop Minns, are you familiar with the

1 A Basically, yes.

2 Q And in your opinion, is ADV functionally
3 equivalent to the Diocese?

4 A Essentially, yes.

5 Q How does the Anglican District of Virginia
6 receive its funding?

7 A From the member congregations.

8 Q Does it receive any funding from the Church
9 of Nigeria?

10 A No, it does not.

11 Q And what percentage of ADV's members would
12 you estimate are former Episcopalians?

13 A The vast majority.

14 Q And approximately how many members does the
15 Anglican District of Virginia have?

16 A I don't recall on that.

17 Q Bishop Minns, apart from your role as Bishop
18 of CANA, do you have any other roles in the
19 Anglican --

20 THE COURT: Counsel, before you move
21 on, did you say that the four churches that you
22 mentioned before, are they members of the ADV?

Minns - Direct

HEARING MULTI-CHURCH EPISCOPAL CHURCH LITIGATION - DAY 2
CONDUCTED ON WEDNESDAY, NOVEMBER 14, 2007

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1 THE WITNESS: Yes.

2 THE COURT: They are? So the total
3 number of churches that are members of the ADV are 15?

4 THE WITNESS: Correct.

5 THE COURT: Including the four, are
6 those four affiliated with CANA?

7 THE WITNESS: No, they're not.

8 THE COURT: Okay. All right. Thank
9 you.

10 BY MR. JOHNSON:

11 Q Bishop Minns, you just indicated that there
12 are, I believe, 15 congregations you said in the
13 Anglican District of Virginia.

14 A Yes.

15 Q Are there any additional congregations in
16 the Anglican District of Virginia?

17 A There's 15. As the Judge pointed out,
18 there's four that are connected with Uganda, whereas
19 the other 11 are affiliated through CANA.

20 Q Are there other church plants in the
21 Anglican District of Virginia?

22 A Yes, there are.

Minns - Direct

HEARING MULTI-CHURCH EPISCOPAL CHURCH LITIGATION - DAY 2
CONDUCTED ON WEDNESDAY, NOVEMBER 14, 2007

Page 333

1 Q Approximately how many?

2 A I believe there are about three right now.

3 Q Okay.

4 THE COURT: What was that question?

5 Are -- the three refers to what?

6 THE WITNESS: Church plants. New

7 beginnings.

8 BY MR. JOHNSON:

9 Q Bishop Minns, apart from your role as Bishop
10 of CANA, do you have any other roles in the Anglican
11 Communion?

12 A Yes. I also serve as the Associate
13 Secretary for the Global South Steering Committee.

14 Q Who are some of the members of that
15 committee?

16 A Archbishop Akinola of the Church of Nigeria
17 is the Chairman, and Archbishop John Chu of the
18 Province of Singapore is the Secretary. And members
19 include the Archbishop of the Southern Cone, Gregory
20 Venables, V-e-n-a-b-l-e-s, and then the Archbishop of
21 the Caribbean, Archbishop Drexel Gomez, Archbishop
22 Emmanuel Kolini of Uganda, and there are some others.

1 A Yes.

2 Q What was another one?

3 A I can't think of anything. Nothing comes to
4 mind at this point.

5 Q How about the new hymnal? Was that one?

6 A I don't think that was a major issue.

7 Q All right.

8 A It depended. If you liked the old hymn book
9 it became a big issue. But I don't remember that at
10 the same level.

11 Q Now, I think I heard you testify that the
12 original CANA, which I think you said was the
13 Convocation of Anglican Nigerians and America, did I
14 get that right?

15 A You did.

16 Q All right. That that consisted of
17 Nigerian -- no, that the vast majority of its members
18 were Episcopalians. Did I hear you correctly?

19 A In the beginning, yes. Were involved with
20 the Episcopal Church, yes.

21 Q What?

22 A They were functioning within the Episcopal

1 Church, yes.

2 Q But were they Episcopalians?

3 A Yes.

4 Q Weren't a lot of the members of the original
5 CANA Nigerian ex-patriots?

6 A Yes.

7 Q And were the Nigerian ex-patriots
8 Episcopalians?

9 A They had been asked to basically join in
10 with the local diocese wherever they were. So in that
11 sense, they were very well thought of being in
12 partnership with the Episcopal Church at that time.

13 Q All right. I believe you testified that
14 CANA is part of the Anglican Communion, right?

15 A I did.

16 Q Will you look at Exhibit 31 in the book that
17 is called the Episcopal Church's -- and it's Binder 2
18 of 3.

19 A I have it in front of me.

20 Q Exhibit 31 says it's from the Secretary
21 General of the Anglican Communion dated December 13,
22 2006. Do you see that?

1 estimate of the average Sunday attendance of the
2 Anglican District of Virginia congregations that were
3 formerly affiliated with the Diocese of Virginia?

4 A More than 5,800.

5 Q Are all of the 20 Anglican District of
6 Virginia congregations led by former Episcopal Church
7 clergy?

8 A Yes.

9 THE COURT: Ms. McReynolds, just hold
10 on. I just want to make sure I understand the math
11 here. There are 20 affiliate congregations, sir?

12 THE WITNESS: That's correct.

13 THE COURT: 15 had previously been in
14 the Diocese of the Episcopal Church?

15 THE WITNESS: That is correct, as
16 complete congregations.

17 THE COURT: Okay. And so five are new
18 congregations that did not exist or had been
19 associated with other denominations, or been
20 independent, or what were they?

21 THE WITNESS: Four of those are with
22 the Ugandan congregations, and one came from a

1 different part of the -- came from a different
2 diocese.

3 THE COURT: All right. I thought the
4 testimony we heard the other day was that there are 11
5 CANA and four Ugandan and that composed the 15.

6 Ms. McReynolds, can you clarify this
7 with questions? Because I thought we were told by
8 another witness there are 15 total in the Anglican
9 District of which four were from the Church of Uganda.

10 BY MS. McREYNOLDS:

11 Q Mr. Allison, could you help clarify this for
12 the Court?

13 A Sure.

14 Q Could you tell the Court the total number of
15 Anglican District of Virginia congregations again,
16 please?

17 A Yes, there are 20.

18 Q And of that 20, how many of those
19 congregations were formerly part of the Diocese of
20 Virginia?

21 A There were 15. And that includes the
22 Ugandan congregations. So the other five are one that

1 came from a different diocese and four church plants.

2 THE COURT: Church plants?

3 THE WITNESS: Yes, new churches.

4 Q So as I understand, you've indicated there
5 are four church plants, one church from a different
6 diocese all together --

7 A Yes.

8 Q -- the 11 CANA congregations and the four
9 Ugandans?

10 A That's correct.

11 Q That totals 20?

12 A Yes.

13 Q Thank you.

14 MS. McREYNOLDS: I have no further
15 questions.

16 THE COURT: Before you begin, I want to
17 see if I understand. Did you say that the Anglican
18 District of Virginia is a subordinate body of CANA?

19 THE WITNESS: It is -- yes. It reports
20 to CANA as a constituent member of CANA, the Anglican
21 District.

22 THE COURT: But CANA is part of the

Douglas - Cross

HEARING IN RE: MULTI-CHURCH EPISCOPAL CHURCH LITIGATION - DAY 4
CONDUCTED ON MONDAY, NOVEMBER 19, 2007

Page 901

1 Q Dr. Douglas, let me ask you about your
2 opinion on the meaning of the term "branch". Your
3 definition of branch is not based on any dictionary,
4 correct?

5 A That's correct.

6 Q And it's not based on any statute, right?

7 A That's correct.

8 Q And it's not based on any historical use of
9 the term, correct?

10 A It's -- no. In that case no, that's
11 correct.

12 Q And in your view, the branch cannot be the
13 result of a division, correct?

14 A A branch, for me, connotes still a
15 relationship with the trunk until it becomes a wholly
16 separate or autonomous church in the Anglican
17 Communion, as in the cases, as I was describing, with
18 Mexico, Central America, the Philippines, Brazil.

19 Q Dr. Douglas, it's your opinion that CANA
20 provides ecclesiastical oversight for former members
21 of the Episcopal Church; is that right?

22 A For individuals in the congregations, that's

1 correct.

2 Q And it's your opinion that CANA is
3 ministering to individuals who have left the Episcopal
4 Church, correct?

5 A That's correct.

6 Q Is it also your opinion that CANA is in
7 competition with the Episcopal Church?

8 A I don't know if I would use the word
9 competition. I would say that it represents an
10 incursion with respect to ecclesiastical polity that
11 is generally frowned upon in the Anglican Communion.

12 Q You wouldn't use the word competition then
13 to describe the relationship between CANA and the
14 Episcopal Church.

15 A I would use the words that are in the, kind
16 of, common conversation in the Anglican Communion and
17 call it an incursion.

18 Q You don't see a dynamic of competing
19 churches between CANA and the Episcopal Church,
20 correct?

21 A I wouldn't use the, kind of, sense of
22 competition. Frankly, I think it's a sad occurrence,

The Diocese of Virginia

The Right Reverend Peter James Lee
The Bishop of Virginia

December 6, 2006

Dear Friend in Christ,

In a few days, your congregation will gather to discuss its future in the Episcopal Church and in the Diocese of Virginia. I write you today with this prayerful appeal that you affirm your ministry in the Episcopal Church and in the Diocese of Virginia.

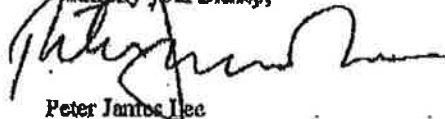
Since the Reformation, our Anglican tradition has included persons with different theological emphases in one community of faith, affirming the same creeds, participating in the same sacraments, honoring Scripture as the basis of our faith, interpreted across the centuries through Reason and Tradition. The Diocese of Virginia, in particular, has affirmed the Windsor Report, issued in 2004 by the Lambeth Commission, as a way forward for our worldwide communion by actions of the Annual Council in 2005 (Resolution R22) and 2006 (Resolution R17). In addition, the Diocese of Virginia, following the recommendations of the Windsor Commission, continues to refrain from public rites of blessing of same gender unions. Since 1607, Anglicans in Virginia have been united in common worship and in common faith and I invite you to affirm that commonality when you gather in your parish meeting. Are there differences among us? Yes. And learning from one another in our differences, is, instead of a threat to our mission, an opportunity to learn from each other about what mission in the 21st century requires of us.

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 and the false promises of a pure church. Until the Day of Judgment, the wheat and the weeds will grow together as Jesus promised in the Gospel. (Matthew 13: 24-30)

My love and prayers are with you and I call you to affirm our unity in Christ.

Faithfully your Bishop,



Peter James Lee

• Strengthen Existing Churches + Reach Out to Neighbors in Need + Expand Youth Ministries + Enhance Conference Centers + Build New Churches



STAMP & RETURN

ARTICLES OF INCORPORATION
OF
ANGLICAN DISTRICT OF VIRGINIA, AN ASSOCIATION OF CHURCHES
A VIRGINIA NONSTOCK CORPORATION

The undersigned, acting as incorporator, pursuant to Chapter 10 of Title 13.1 of the Code of Virginia, submits the following Articles of Incorporation for the purpose of forming a nonprofit religious corporation pursuant to the Virginia Nonstock Corporation Act, and states as follows:

ARTICLE 1: Name. The name of the corporation is **ANGLICAN DISTRICT OF VIRGINIA, AN ASSOCIATION OF CHURCHES**, hereinafter referred to as "the Corporation" or "the District".

ARTICLE 2: Duration. The period of duration for the Corporation is perpetual.

ARTICLE 3: Purposes. The Corporation is a nonstock corporation and is organized and shall be operated exclusively for religious, charitable, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or a related section of a successor statute (hereinafter "Code"). More particularly, the Corporation shall operate as a convention or association of churches, as that term is used in the Code, in the Commonwealth of Virginia.

As such, the Corporation is an association of Virginia churches, together with their clergy and laity, who join together to realign traditional Anglicans in Virginia displaced by the election of The Episcopal Church to walk apart from the Anglican Communion, which is a Fellowship comprising those duly constituted Dioceses, Provinces, and regional churches of the one body of Christ upholding and propagating 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*, the Ordinal of 1662, and the Thirty-Nine Articles of Religion. The Corporation forms a discrete ecclesiastical and legal structure and will provisionally come under the ecclesiastical jurisdiction of the Convocation of Anglicans in North America ("CANAM"), a missionary diocese of the *Church of Nigeria - Anglican Communion*, an affiliation by which the Corporation formally and immediately brings itself and all of its member churches, clergy and laity into full communion with the foregoing constituent members of the Anglican Communion.

The Corporation, its Board of Directors, its members, and its established and recognized ministries and subordinate entities, are and shall at all times be committed to and operated in accordance with the Holy Scriptures of both the Old and the New Testaments; the Apostles Creed and the Nicene Creed as sufficient statements of the Christian faith, and the *Book of Common Prayer*.

To carry out these stated purposes, the Corporation may do any and all lawful acts that may be necessary or useful for the furtherance of the purposes.

ARTICLE 4: Members. The Corporation has no members who exercise the rights and powers of members of a corporation under the laws of this state. However, the Corporation as a convention or association of churches also may have one or more classes of ecclesiastical members determined by ecclesiastical qualifications, who respectively have such rights and obligations of members as may be stated in the Bylaws, Provisional Constitution, Constitution, and Canons of the **ANGLICAN DISTRICT OF VIRGINIA, AN ASSOCIATION OF CHURCHES**, but ecclesiastical membership as such conveys no standing, responsibility, or authority for governance of the Corporation. The qualifications for ecclesiastical membership are stipulated in the Corporation's Bylaws, Provisional Constitution, Constitution, and Canons.

ARTICLE 5: Tax-Exempt Provisions. The Corporation is organized and shall be operated exclusively for religious, charitable, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or a related section of a successor statute (hereinafter "Code"). The property of this Corporation is irrevocably dedicated to charitable, educational, and religious purposes, and no part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, directors (members of the Synod Council), officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation and to make payments and distributions in furtherance of the purposes set forth in these Articles. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

The Corporation may receive property by gift, devise or bequest, invest and reinvest the same, and apply the income and principal thereof, as the Vestry may from time to time determine, either directly or through contributions to any charitable organization or organizations, exclusively for religious, charitable, or educational purposes.

Notwithstanding any other provision of these Articles, the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under section 501(c)(3) of the Code or by a corporation, contributions to which are deductible under section 170(c)(2) of the Code, or the corresponding section of any future Federal tax code.

Upon dissolution of the Corporation, all assets of this Corporation shall be distributed in furtherance of religious, charitable, and/or educational purposes within the meaning of Section 501(c)(3) of the Code (or corresponding section of any future Federal tax code), to such organization or organizations organized and operated exclusively for religious, charitable, and/or educational purposes, that at the time qualify as tax-exempt under Section 501(c)(3) of the Code (or corresponding section of any future Federal tax code), and dedicated to the worship of Almighty God in accordance with the principles set forth in Article 3 above, as shall be determined by the Corporation's Board of Directors (Synod Council). Any such asset not so disposed shall be disposed of by a court of competent jurisdiction in the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

ARTICLE 6: Registered Agent. The name of the initial registered agent of the Corporation in the Commonwealth of Virginia is Gammon & Grange, P.C. The initial registered agent is a Virginia professional corporation authorized to transact business in Virginia.

ARTICLE 7: Registered Office. The Corporation's initial registered office address, including the street and number, if any, which is identical to the business office of the initial registered agent, is 8280 Greensboro Drive, 7th Floor, McLean, Virginia 22102. The registered office is physically located in the County of Fairfax.

ARTICLE 8: Board of Directors. The Corporation shall be governed in all temporal matters by its Board of Directors, which shall also be known as the Synod Council. Directors of the Corporation shall also be referred to in these Articles as "members" of the Synod Council. The number of persons who serve on the Board of Directors (Synod Council) shall be provided in the Provisional Constitution, Constitution, and Bylaws of the Corporation. Prior to ratification of the Constitution of the Corporation, the members of the Board of Directors (Synod Council) shall be appointed by the Ecclesiastical Authority of the Corporation as further provided in the Provisional Constitution and Bylaws of the Corporation. Following the adoption and ratification of the Constitution of the Corporation (as provided in the Provisional Constitution of the Corporation), the members of the Board of Directors (Synod Council) shall be elected by the Synod of the Corporation as further provided in the Constitution and Bylaws of the Corporation.

ARTICLE 9: Initial Members of Board of Directors (Synod Council). The number of persons constituting the initial Board of Directors (Synod Council) shall be five (5). The names and addresses of the persons who are to serve as the initial Board of Directors (Synod Council) until their successors shall be appointed and qualified are:

<u>NAME</u>	<u>ADDRESS</u>
David Allison	5802 Norton Road, Alexandria, VA 22303
Mary McReynolds	2101 Connecticut Avenue, N.W., Washington, D.C. 20008
James L. Oakes, Jr.	5117 Brookridge Place, Fairfax, VA 22030
Warren Thrasher	1850 Brenthill Way, Vienna, VA 22182
Thomas E. Wilson	10438 Democracy Lane, Potomac, MD 20854

ARTICLE 10: Limitation on Liability. To the fullest extent permitted by the Virginia Nonstock Corporation Act, as now in effect or as may hereafter be amended, no Director (member of the Synod Council) or Officer of the Corporation shall be personally liable for damages in any proceeding brought by or in the right of the Corporation, or in connection with any claim, action, suit or proceeding to which he or she may be or is made a party by reason of being or having been a Director (member of the Synod Council) or Officer of the Corporation, provided, however, that such relief from liability shall not apply in any instance where such relief is

inconsistent with any provision applicable to corporations described in Section 501(c)(3) of the Code.

ARTICLE 11: Amendment. These Articles of Incorporation may be amended from time to time in accordance with the applicable provisions of the Virginia Nonstock Corporation Act (or a successor statute).

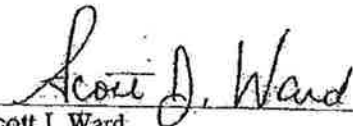
ARTICLE 12: Incorporator. The name and address of the incorporator is:

Scott J. Ward, Esq.
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, Virginia 22102

703-761-5000 (Telephone)

IN WITNESS WHEREOF, I have signed these Articles and acknowledge the same to be my act this 4th day of December, 2006.

By:



Scott J. Ward

MARK C. CHRISTIE
CHAIRMAN
THEODORE V. MORRISON, JR.
COMMISSIONER
JUDITH WILLIAMS JAGDMANN
COMMISSIONER

COMMONWEALTH OF VIRGINIA



JOEL H. PECK
CLERK OF THE COMMISSION
P.O. BOX 1197
RICHMOND, VIRGINIA 23218-1197

STATE CORPORATION COMMISSION
Office of the Clerk

December 5, 2006

SCOTT J WARD
GAMMON & GRANGE PC
8280 GREENSBORO DR. 7TH FL
MCLEAN, VA 22102

RE: ANGLICAN DISTRICT OF VIRGINIA, AN ASSOCIATION OF
CHURCHES
ID: 0668828 - 7
DCN: 06-12-05-0501

Dear Customer:

This is your receipt for \$75.00, to cover the fees for filing articles of incorporation with this office.

This is also your receipt for \$200.00 to cover the fee(s) for expedited service(s).

The effective date of the certificate of incorporation is December 5, 2006.

If you have any questions, please call (804) 371-9733 or toll-free in Virginia, 1-866-722-2551.

Sincerely,

Joel H. Peck
Clerk of the Commission

CORPRCPT
NEWCD
CIS0375

Tyler Building, 1300 East Main Street, Richmond, VA 23219-3630
Clerk's Office (804) 371-9733 or (866) 722-2551 (toll-free in Virginia) www.scc.virginia.gov/division/clerk
Telecommunications Device for the Deaf-TDD/Voice: (804) 371-8208

TRIAL_EX-070-0005



STATE CORPORATION COMMISSION

Richmond, December 5, 2006

This is to certify that the certificate of incorporation of

ANGLICAN DISTRICT OF VIRGINIA, AN ASSOCIATION OF
CHURCHES

*was this day issued and admitted to record in this office and that
the said corporation is authorized to transact its business subject
to all Virginia laws applicable to the corporation and its business.
Effective date: December 5, 2006*



State Corporation Commission

Attest:

Joel H. Beck
Clerk of the Commission

payment shall be determined by agreement, after disclosure of the nature and amount of parish assets, between representatives of the departing congregation and representatives of the Diocese, appointed by the Bishop. The representatives of the Diocese should include a representative of the remaining congregation, if available. In approaching their agreement, we urge the parties to be guided by principles of fairness, equity and Christian charity.

- h. Any agreement will require the further consent of the Bishop, Standing Committee, and Executive Board.
- i. The departing members of the congregation shall not include the word "Episcopal" in any "name" it chooses.

There are many other issues - for example: inclusion of the members of a congregation who wish to stay in the Episcopal Church if the congregational vote is to leave - that we have wrestled with and that will require the input of other members of the Body. Notwithstanding the division which may cause some to "walk apart", we shall always share in our own way our devotion to spreading the Good News. To that end, we shall earnestly seek to find areas of cooperative ministries in "as close a union as possible." What we hope to communicate is that there is a way forward that will require faithful humility and forbearance on the part of all of us, if we wish to model something of Christ's costly reconciling love. Given the state of the world in which we live, we believe we are called as a Diocese to work together and that we will respond to that call.

We end this short epistle on another note of hope. You may have learned that some parishes, considering whether to remain in the Diocese, will be entering a forty day period of fasting, prayer, and discernment later this fall. We recommend that it would be good for all of us, all 192 parishes and missions that make up our church family, to be intentional about reflection and prayer for one another as we all seek God's guidance and grace, especially this year as we pray for the Diocese of Virginia as we prepare to elect a Bishop Coadjutor.

Imagine for a moment if we agreed to fast for six Fridays, agreeing to donate what we would have spent on food to feed the poor. Imagine what we, the Diocese of Virginia, ninety thousand baptized strong, could do to alleviate some of the misery amongst us, and just as importantly, witness to our essential unity in Christ, albeit in trying times.

We acknowledge the challenges we face, we maintain our confidence in God and we are called to remember the words of Jeremiah; "For I know the plans I have for you, declares the Lord, plans for wholeness and not for evil, to give you a future and a hope." (ESV; Jeremiah 29:11).

We believe that every parish, or cluster of parishes or regions, should be free to develop its own approach to this forty day period.

Close is a relational word.

By the time of the 57-9 trial in November of 2007, fifteen individual congregations had voted to leave the Diocese (Pls.' Ex. 301, "Deposition Designations of Peter James Lee," at 15),²⁶ and twenty-two clergy had been removed²⁷ in the Diocese. (Pls.' Ex. 301 at 23.)

6. Evolution of CANA and the Formation of the Anglican District of Virginia ("ADV")

As the conflict within the Diocese escalated, CANA continued to evolve. In 2006, CANA's purpose broadened to encompass all Anglicans within North America who had broken away from the Episcopal Church. Thus, CANA changed its name to "Convocation of Anglicans in North America." (Trial Tr. 312:4-8.) At the time of trial, about 100 clergy had affiliated with CANA, 80% of whom were formerly affiliated with ECUSA. CANA allowed ECUSA bishops to transfer in, while non-ECUSA bishops were first required to be consecrated. (Trial Tr. 320:3-18.) In addition to CANA's Bishop, Martyn Minns, who was a witness for the CANA Congregations at trial, other CANA bishops include David Bena, formerly of the ECUSA Diocese of Albany. At the time of trial, CANA had plans to consecrate four other bishops, all of whom were formerly with ECUSA. (Trial Tr. 320:19-322:4.) Sixty congregations have affiliated with CANA, resulting in a membership of 12,000, with over 10,000 of those members coming directly from ECUSA. CANA has congregations in eighteen states, and the congregations of CANA that were formerly affiliated with ECUSA come from

Christ our Lord, Lake Ridge
Church of the Holy Spirit, Ashburn
South Riding Church, Fairfax
Church of the Apostles, Fairfax
Church of the Word, Gainesville
Truro, Fairfax
The Falls Church, Falls Church
St. Stephens, Heathsville
St. Margaret's Church, Woodbridge
Potomac Falls Episcopal, Sterling
Christ the Redeemer, Centreville

(Pls.' Ex. 132, " 'News Update from the Diocese of Virginia,' 12/18/2006" at 1.)

²⁶ In addition to the twelve churches listed above, the other three are: Church of our Saviour at Oatlands, Church of the Epiphany, Herndon, and St. Paul's Church, Haymarket. See Pls.' Ex. 301 at 15-16.

²⁷ Bishop Lee described this "removal" as a process by which a member of the clergy would first be "inhibited," and then, "unless they returned to the Episcopal Church within six months, they were removed." See Pls.' Ex. 301 at 20-22. The process of removal is called "deposing." (Pls.' Ex. 301 at 22.)

eight different dioceses, ranging from California to Connecticut. (Trial Tr. 324:1-325:17.) At the time of the trial, the latest church to join CANA was the Bishop Seabury Church in Connecticut, a church formerly affiliated with ECUSA. (Trial Tr. 325:18-326:5.)

The Anglican District of Virginia (“ADV”) was incorporated on December 5, 2006. The ADV’s Articles of Incorporation state that the ADV

is an association of Virginia churches, together with their clergy and laity, who join together to realign traditional Anglicans in Virginia displaced by the election of The Episcopal Church to walk apart from the Anglican Communion The Corporation forms a discrete ecclesiastical and legal structure and will provisionally come under the ecclesiastical jurisdiction of the Convocation of Anglicans in North America [by this] affiliation . . . the Corporation formally and immediately brings itself and all of its member churches, clergy and laity into full communion with the foregoing constituent members of the Anglican Communion.

(Pls.’ Ex. 70, “December 4, 2006, Articles of Incorporation for the Anglican District of Virginia, an Association of Churches,” at 1.)

Since 2006, twenty congregations, comprising 7,500 members, affiliated with ADV, and almost all of ADV’s members were former members of ECUSA congregations within the Diocese. All twenty of the ADV congregations are led by former ECUSA clergy.²⁸ (Pls.’ Opening Post-Trial Mem. Concerning

²⁸ Similar to the churches that affiliated with CANA, some ECUSA/Diocese churches joined the Church of Uganda. The Rt. Rev. John Guernsey, who is the Rector of All Saints Church in Woodbridge, Virginia, the Dean of the Mid-Atlantic Convocation of the Anglican Communion Network, and the Church of Uganda Bishop for Congregations in America (Trial Tr. 382:16-19), testified that, prior to its affiliation with the Church of Uganda, All Saints was affiliated with the Diocese. All Saints contemplated leaving after the General Convention of 2003. Bishop Guernsey testified that All Saints decided to join the Church of Uganda, as opposed to operating independently, because it wanted to remain a part of the Anglican Communion; this was “very important” to All Saints, since it “wanted to be a part of the worldwide church that [it] understood that [it] always had been a part of.” (Trial Tr. 384:7-387:4.)

In January of 2004, the Church of Uganda first began providing ecclesiastical oversight for congregations that wished to leave ECUSA. The first church to leave ECUSA to join the Church of Uganda was a Kentucky church that left in January of 2004. Bishop Guernsey became bishop of the American congregations of the Church of Uganda on September 2, 2007. Thirty-nine congregations have come under his ecclesiastical oversight. Ninety percent of

Application of Va. Code § 57-9 at 44.) Of these twenty congregations, eleven are affiliated with CANA, and four are affiliated with the American Arm of the Church of Uganda. Four others are “church plants,” or “new churches.”²⁹ (Pls.’ Opening Post-Trial Mem. Concerning Application of Va. Code § 57-9 at 44 n.25.)

7. Post-Separation Events within the Anglican Communion

Turning back to the events unfolding within the Anglican Communion, on February 15th, 2007, the Primates met in Dar es Salaam, Tanzania. Following this meeting, the Primates issued a communiqué, stating that “[s]ince the controversial events of 2003, [they] ha[d] faced the reality of increased tension in the life of the Anglican Communion—tension so deep that the fabric of [their] common life together ha[d] been torn.” (Pls.’ Ex. 12A, “The Communiqué of the Primates Meeting in Dar es Salaam, 2/19/07,” (Redacted) at ¶9.) The communiqué expressed dissatisfaction with the “response” of ECUSA to the whole controversy, and stated that ECUSA “ha[d] not persuaded this meeting that we are yet in a position to recognize that The Episcopal Church has mended its broken relationships.” (Pls.’ Ex. 12A at ¶24.) Further, the communiqué stated:

It is also clear that a significant number of bishops, clergy and lay people in The Episcopal Church are committed to the proposals of the Windsor Report and the standard of teaching presupposed in it. These faithful people feel great pain at what they perceive to be the failure of The Episcopal Church to adopt the Windsor proposals in full. They desire to find a way to remain in faithful fellowship with the Anglican Communion. They believe that they should have the liberty to practice and live by that expression of Anglican faith which they believe to be true. We are deeply concerned that so great has been the estrangement between some of the faithful and The Episcopal Church that this has led to recrimination, hostility and even to disputes in the civil courts.

(Pls.’ Ex. 12A at ¶25 (internal citation omitted).) The communiqué further concluded that it “believe[d] that the establishment of a Covenant for the Churches of the Anglican Communion in the longer term may lead to the trust required to re-establish [its] interdependent life.” (Pls.’ Ex. 12A at ¶29.) The communiqué concluded: “We do not underestimate the difficulties and heart-

the membership of those thirty-nine congregations came from ECUSA. (Trial Tr. 389:5-391:12.)

²⁹ The twentieth church is said to have come “from another [ECUSA] diocese in Virginia.” (Pls.’ Opening Post-Trial Mem. Concerning Application of Va. Code § 57-9 at 44 n.25.)