

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

In re Multi-Circuit Episcopal Church)	Case Nos.: CL 2007-248724,
Property Litigation:)	CL 2007-1235,
)	CL 2007-1236,
)	CL 2007-1238,
)	CL 2007-1625,
)	CL 2007-5250,
)	CL 2007-5682,
)	CL 2007-5683,
)	CL 2007-5684, and
)	CL 2007-5902

Post-Trial Opening Brief
for the Episcopal Diocese of Virginia

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INTRODUCTION

This is only one (or seven) of many cases concerning property held by congregations that have separated from their hierarchical denominations. Hierarchical churches have prevailed in every such case in Virginia. See *Green v. Lewis*, 221 Va. 547, 272 S.E.2d 181 (1980); *Trustees of Cave Rock Brethren Church v. Church of the Brethren*, 77 Va. Cir. 457 (Botetourt Co. 1976) (Stephenson, J.); *Diocese of Southwestern Va. of the Protestant Episcopal Church v. Buhrman*, 5 Va. Cir. 497, 503 (Clifton Forge 1977) (Stephenson, J.), *pet. refused*, Rec. No. 780347 (Va. June 15, 1978); and *Diocese of Southwestern Va. v. Wyckoff* (Amherst Co. Nov. 16, 1979) (PX-CTREC-021) (Koontz, J.).¹ With rare exceptions the Episcopal Church (TEC) and/or its dioceses have prevailed in such cases around the country. This litigation should be decided the same way all other Virginia cases have been. Whether described as “trust,” “proprietary,” or “contractual,” the rights and interests of TEC and the Diocese are valid, enforceable, and entitled to recognition in each of these cases.

The Supreme Court remanded this case with directions to decide the Diocese’s and TEC’s declaratory judgment actions and the Congregations’ counterclaims under principles of real property and contract law, citing *Green v. Lewis*, 221 Va. 547, 272 S.E.2d 181 (1980), and *Norfolk Presbytery v. Bollinger*, 214 Va. 500, 201 S.E.2d 752 (1974). The Court also cited Va. Code § 57-7.1, which addresses trusts for churches, and *Trustees of Asbury United Methodist Church v. Taylor & Parrish, Inc.*, 249 Va. 144, 452 S.E.2d 847 (1995), a case that cites § 57-7.1.

¹ The parties employed various conventions for exhibit numbering. In this brief, leading zeroes have been eliminated to the extent of reducing each exhibit number and each page number to three digits (except for a few four-digit page citations without leading zeroes). Thus, for example, “DSTS-013-00055” is cited as DSTS-013-055, “TRU146.0052” is cited as TRU146.052, and “DX-FALLS-0060-000015” is cited as DX-FALLS-060-015. The 2011 trial transcript is cited “Tr. [page].” 2007 trial transcripts are cited by year and page. 2008 trial transcripts are cited by date because that transcript is not consecutively paginated.

See Protestant Episcopal Church in the Diocese of Virginia v. Truro Church, 280 Va. 6, 29, 694 S.E.2d 555, 567-68 (2010) (*Truro Church*).

SUMMARY OF ARGUMENT

This Summary is provided to place the ensuing factual recitation in its legal context:

First: The Diocese and TEC have proprietary and contractual interests in the real and personal properties held and used by the churches by application of “neutral principles of law,” as described in *Green v. Lewis*, 221 Va. at 555, 272 S.E.2d at 185-86. *Green* requires consideration of any applicable statutes, the language of the deeds conveying the properties, the “constitution of the general church, and ... the dealings between the parties.” *Id.* We briefly address those factors *seriatim*:

Statutes: Previous proceedings have established that Va. Code § 57-9 does not apply. Va. Code §§ 57-15 and 57-16.1 support recognition of the proprietary and contractual interests of the Diocese and the Church. *See also* Va. Code § 57-7.1 (discussed *infra*).

Deeds: Nearly all of the deeds are specifically made to trustees for “Episcopal” churches, just as the deed in *Green v. Lewis* was “to ‘Trustees of the A.M.E. Church of Zion.’ ... for the purpose of erecting an A.M.E. Church of Zion (to be known as Lee Chapel), not a church of some other denomination, or an independent church.” 221 Va. at 553, 272 S.E.2d at 184. “[A] reasonable interpretation of these deeds leads inescapably to the conclusion that the trustees cannot hold title to the subject property for persons or groups who are withdrawn from and not under the authority of The Episcopal Church.” *Buhrman*, 5 Va. Cir. at 503.

The “constitution” of the general church – both of TEC and of the Diocese – provides that properties held and used by local congregations of the Episcopal Church are held in trust for the Episcopal Church and the Diocese and include numerous other provisions which demonstrate the general church’s interests in and control over local church properties. The A.M.E. Zion

Discipline, for example, “requires that all property transfers be approved by the bishop.” *Green*, 221 Va. at 556, 272 S.E.2d at 186. TEC’s Canons II.6.2 and I.7.3 and Diocesan Canon 15 do likewise (including encumbrances as well as conveyances), excepting unconsecrated property of a church. Diocesan Canon 14 also requires the Diocese’s approval of debt above a certain level. Local leadership must make declarations assenting to these rules, and the CANA Congregations have shown their understanding and assent to them in numerous ways over the years.

The dealings between the parties: The preceding factors were already matters of record, and the focus of the 2011 trial was the dealings between the parties. The record reflects that the dealings between the parties in these cases fit squarely within, and indeed went well beyond, the scope of the dealings that the Supreme Court described in *Green v. Lewis* and support the hierarchical church’s claims in this case, just as in *Green*:

In *Green* the “pastors of Lee Chapel ha[d] been installed by the Annual Conference and their appointment accepted by the local congregation.” *Id.* at 550, 272 S.E.2d at 182. All of the pastors of the Episcopal churches in these cases were ordained as Episcopal priests by Episcopal bishops and swore oaths of fidelity to the “doctrines, worship, and discipline” of the Episcopal Church. The Diocesan Bishop must be satisfied that a person chosen as a rector is duly qualified, and the Bishop either appointed or approved many of the Congregations’ clergy. When a church called a rector from another Diocese, the Diocesan Bishop’s express consent was necessary; and the church requested and obtained it. On occasion, a clergyman was dismissed at the Diocesan Bishop’s instructions.

In *Green* “[t]he church owe[d] no funds, assessments or other monies to the A.M.E. Zion Church or its Annual Conference.” *Id.* So here.

In *Green* “[t]he church ... functioned as an A.M.E. Zion Church until October 1977. It

became and was an integral part of the supercongregational or hierarchical structure of the A.M.E. Zion Church.” *Id.* at 553, 272 S.E.2d at 184. The same is true here: throughout their histories, which are of varying lengths, the Congregations functioned as Episcopal churches and as part of the structure of the Diocese.

In *Green* “[t]he general church ... provided the organization and structure which is necessary if a church is to function and to fulfill its mission. A Sunday School was organized, and its materials were furnished by the general church. Hymnals and other literature were provided. Baptisms, marriages, and funerals were conducted from the church’s Discipline.” *Id.*, 272 S.E.2d at 184-85. “All religious services and ceremonies conducted by the pastors of that church have followed its Discipline. The literature used by the church and by the Sunday School came from the publishing house of the A.M.E. Zion Church.” *Id.* at 555, 272 S.E.2d at 186. The same is true here, with minor exceptions. The Book of Common Prayer adopted by the Episcopal Church’s General Convention provided the framework for worship. Diocesan Bishops or their delegates performed the services for which a bishop is essential: consecrating churches, ordaining clergy, and confirming or receiving members. The Congregations generally used Episcopal hymnals, and several used Episcopal Sunday School materials. And the Church and the Diocese made available a variety of other resources that the Congregations used.

In *Green*, “since 1875 ... the name, customs, and policies of the A.M.E. Zion Church have been used in such a way that Lee Chapel is known, recognized, and accepted to be an A.M.E. Zion Church.” *Id.* The same is true, *mutatis mutandis*, with respect to each of the churches in this litigation.

In *Green*, “[t]he various conferences to which the membership of Lee Chapel’s congregation sent delegates were all organized and held under the direction of the A.M.E. Zion

Church.” *Id.* Likewise, these churches all sent delegates every year or nearly every year to the Annual Councils of the Diocese, with exceptions where the churches were inactive or otherwise unable to do so (*e.g.*, during and immediately after the Civil War).

In *Green* “the members of Lee Chapel, by payment of their assessments and in numerous other supportive ways, contributed to this state, national, and international ecclesiastical organization, and they *presumably* benefitted from the association, spiritually and otherwise.” 221 Va. at 553-54, 272 S.E.2d at 185 (emphasis added). The same is true here, of course; but in addition, there is abundant evidence that these churches *actually* benefitted spiritually from their “association” with the Diocese and the Episcopal Church. In this case, that need not be merely presumed. It is a fact, proven by uncontroverted evidence.

In *Green* the Supreme Court concluded, based on the foregoing discussion:

It is reasonable to assume that those who constituted the original membership of Lee Chapel, and who established the church in the manner directed by the grantors in the deed, and those members who followed thereafter, united themselves to a hierarchical church, the A.M.E. Zion Church, with the understanding and implied consent that they and their church would be governed by and would adhere to the Discipline of the general church. And para. 437(1) of the Discipline requires that all property transfers be approved by the bishop.

....

We find from [1] the language of the deed involved, [2] the Discipline of the A.M.E. Zion Church, and [3] the relationship which has existed between the central church and the congregation over a long period of years, that the A.M.E. Zion Church does have a proprietary interest in the property of Lee Chapel, and that its interest in the church property cannot be eliminated by the unilateral action of the congregation. The Discipline of the A.M.E. Zion Church requires that all property transfers be approved by the bishop of the district of the Annual Conference, and such approval has not been given.

Id. at 555-56, 272 S.E.2d at 186. The same conclusion necessarily follows here, under similar facts. But the case for enforcing the Diocese’s and the Church’s proprietary interests in the properties of the CANA congregations is even stronger than the case in *Green*.

Each of the Congregations, like other Episcopal churches in the Diocese (and elsewhere)

recognized the authority of the Constitutions and Canons of TEC and the Diocese and conformed their conduct to those requirements:

They followed the canons of the Church and the Diocese with respect to property, requesting consent when required.

They organized themselves as required by canon, by electing vestries, who elected wardens, in all respects as required by canons.

They recognized the authority of the Bishops of the Diocese and received official episcopal visitations, which included services of confirmation and reception.

They submitted annual parochial reports through the Diocese to the Episcopal Church. They contributed financially to the support of the Diocese. They contributed to the Church Pension Fund on behalf of their clergy. They either obtained health insurance through the Diocese, as required (after 1994) by Diocesan canon, or obtained a partial exemption from the Diocesan Executive Board pursuant to that canon.

Most of the churches at issue provided specifically in various governing documents and other official pronouncements that they were bound and governed by canon law to the extent that it applied. Their vestries all took oaths to “yield [a] hearty assent and approbation to the doctrines, worship and discipline of The Episcopal Church.” And notwithstanding the self-serving denials of some of their witnesses at the trial, their clergy and vestries all recognized and understood that they were bound by the canons as the “law of the church.”

Second: The real and personal properties held and used by the churches are held in trust for the Church and the Diocese, pursuant to Va. Code § 57-7.1 and applicable canons of TEC and the Diocese. The Court should reconsider its previous interpretation of § 57-7.1. Alternatively, the Court should hold that Virginia’s refusal to recognize trusts for general

churches violates constitutional guarantees of the free exercise of religion and unconstitutionally discriminates against such churches. The Court then should hold that the trust canons of the Church and the Diocese are enforceable in this action.

Third: If the Court were to hold that the properties at issue belong to the local churches, it must conclude that the local churches are the continuing Episcopal congregations, in the cases of The Falls Church, St. Margaret's, St. Stephen's, and Church of the Epiphany. The Diocese has recognized those groups as the legitimate continuations of the pre-2007 churches, and a civil court may not second-guess that decision. As to Truro, Church of the Apostles, and St. Paul's, the Diocesan Executive Board is the entity with local authority. The churches did not cease to exist when clergy and members departed. They merely became inactive, as defined by Diocesan Canon 9.3, and under that Canon their authority is assigned to the Executive Board. All of the Congregations' clergy were deposed and the property declared abandoned.²

FACTS

I. TEC and the Diocese

The Supreme Court's June 2010 opinion establishes the following:

The Episcopal Church ("TEC") is a province of the Anglican Communion and the principal national church following the Anglican tradition within the United States. 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 canons.* The Protestant Episcopal Church in the Diocese of Virginia ("the Diocese") is one of the dioceses within TEC.

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.

² The Diocese also adopts the separately-filed first post-trial brief of The Episcopal Church.

Truro Church, 280 Va. at 14-15, 694 S.E.2d at 559 (emphasis added; footnotes omitted). *See also id.* at 12, 694 S.E.2d at 557 (these cases “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”); *id.* at 13, 694 S.E.2d at 558 (quoting reference in *Baber v. Caldwell*, 207 Va. 694, 698, 152 S.E.2d 23, 26 (1967), to “churches, such as Episcopal and Presbyterian churches, that are *subject to control* by super-congregational bodies” (emphasis added)).

The Diocese is governed in major part by its Bishop and Annual Council, as the Supreme Court stated in *Truro Church, supra*. *See also* Letter Opinion, April 3, 2008 (“57-9 Opinion”), at 6. The Annual Council comprises lay and clerical orders, with delegates representing each church and mission in the Diocese. *Id.*; Tr. 199-201. The Annual Council legislates for the Diocese. Tr. 199-202; PX-COM-003-006. The Diocesan Constitution provides that “[e]very Congregation within the Diocese of Virginia, however called, shall be bound by the Constitution and the Canons adopted in pursuance hereof.” *Id.* at -011; Tr. 203. *See also* PX-COM-003-005 (the Diocese “acknowledges the authority and power of the General Convention” of TEC). Actions of the Annual Council and numerous other Diocesan facts and activities are recorded in its Journal. Tr. 203-04, 1139; PX-COM-003-012, -013, -017, -019, -020, -028, -029. *See, e.g.*, PX-COM-247A (2006 Journal).

In addition to the Diocesan Bishop, officers of the Diocese include a Suffragan Bishop, may include an Assistant Bishop and/or a Bishop Coadjutor (the Diocesan Bishop’s designated successor), and include the Diocese’s Secretary, Treasurer, and Chancellor. Tr. 187-91, 213-14; PX-COM-003-007, -009 - 010; 57-9 Opinion at 6. The Diocesan Bishop’s staff may include a Canon to the Ordinary and an Archdeacon, who are members of the clergy. Tr. 204-05, 221; PX-COM-003-015. Diocesan governance also is shared with the Standing Committee and the

Executive Board, which have specific areas of responsibility. Tr. 207-12; PX-COM-003-007, -010, -015 - 016, -031; 57-9 Opinion at 6. *See, e.g.*, PX-COM-003-020, -027 (Standing Committee authority in creation of missions, approval of indebtedness, and approval of sale or encumbrance of real property); *id.* at -019, -028, -031 (Executive Board role in creation of churches, authority to declare abandonment of property, and supervision of financial affairs); Tr. 637 (Executive Board prepares draft budgets).

One of the many duties of Bishops is to conduct regular visitations to each church and mission in the Diocese. *See* Tr. 205-07; PX-COM-001-103. The visiting Bishop presides at the Holy Eucharist and at “Initiatory Rites” (confirmation and reception), which only a Bishop may perform. *Id.*; Tr. 313-14. He also reviews the church’s records and inspects its property. Tr. 314-15; PX-COM-001-085 (Canon III.9.5(b)(5)), -103 (Canon III.18.4). “[E]specially for a small congregation,” a Bishop’s visit is “a highlight of the church year.” Tr. 206.

Local churches in the Diocese are known either as “churches” (or “parishes”) or “missions.” Tr. 184-85, 214-15, 217-20; PX-COM-003-019, -020. A mission is a group which does not meet all of the qualifications of a full church. *Id.* A mission is eligible for direct financial aid from the Diocese; a church is not. Tr. 333. A church’s head pastor is its rector, a mission’s its vicar. PX-COM-003-020, -024. A church is governed by its Vestry, which is required by canon to elect senior and junior wardens and other officers. *Id.* at -021, -022; Tr. 221-22, 227-28. The Diocesan Bishop may either appoint or allow a mission to elect its Vestry Committee, which functions generally in the same manner as a Vestry. PX-COM-003-023 - 024, -025. Diocesan canons spell out qualifications to vote for and to serve as members of a vestry and outline the basic duties of vestries. PX-COM-003-021 - 025; Tr. 221-29. Vestry members must take an oath (or “declaration and promise”) assenting to “the doctrines, worship

and discipline of The Episcopal Church.” PX-COM-003-022; Tr. 229-30. The “discipline” of the Church “refers to the constitution, the canons, the rubrics, and the ordinal of the Book of Common Prayer.” Tr. 231 (Bishop Jones); *accord*, PX-COM-001-164. That basic understanding of the “discipline” as including the Constitution and Canons of the Church is not only found in the Canons of the Church, *id.*, it is widely and generally held (again notwithstanding the testimony of some Congregation witnesses to the contrary). *See* Tr. 397-98, 749-51, 2330-31, 2795, 3785, 4266-67, 4505-06, 4562-63, 4630-31, 4647, 4660, 4669-70.

Every rector or other clergy serving an Episcopal church has been ordained by an Episcopal Bishop. The process leading to ordination is lengthy and detailed, and it is managed by the Diocese almost from the beginning. In the Diocese of Virginia, a person seeking ordination (an “aspirant”) must first attend a “discernment weekend,” designed to test his or her call to the ministry. Tr. 243-44. The Diocesan Commission on Ministry, which “oversees the entire process,” then conducts “a very extensive process of its own discernment” before deciding whether to recommend to the Bishop that the aspirant be admitted to the next stage, as a “postulant for holy orders.” Tr. 244-45. The Bishop is responsible for admission to postulancy, and the postulant must report to the Bishop quarterly on his or her activities. Tr. 245. The Bishop directs “where that person is permitted to go to seminary and stays in very close contact with that person.” Tr. 246; *see* Tr. 3159, 4508. In addition to the postulant’s quarterly reports, the seminary also reports to the Bishop on the postulant’s progress, and the Bishop receives reports on the person’s fieldwork and summer work. Tr. 246. At some point during seminary education, the postulant advances to the stage of “candidate.” Tr. 248. During his or her third (final) year of seminary, the candidate must take “general ordination examinations and medical examinations” and meet other requirements. Tr. 248-49. Ordination as a deacon then follows

shortly after graduation from seminary and further review by the Diocesan Standing Committee. Tr. 248, 252-53. After 6 to 12 months, a deacon may be ordained as a priest. Tr. 255-56. Only a Bishop can ordain a deacon or a priest, and only a priest can be a rector of an Episcopal church. Tr. 253, 256-57; PX-DEP-008-035. The Diocesan Bishop, assisted by the Commission on Ministry and the Standing Committee, is intimately involved in the entire process; once a person becomes a postulant, he or she “belongs to the [B]ishop.” Tr. 246-47, 4560.³

The Church and the Diocese regulate and exercise authority over local church actions in numerous respects, and the record shows that each of the seven defendant Congregations understood and obeyed those rules. Among other things, churches must obtain consents of the local congregation and/or Diocesan authorities to incur debt above a stated threshold or to encumber or alienate any real property. PX-COM-003-027; PX-COM-001-045, -066; Tr. 290-94, 297-98, 532-34. They must elect vestries and govern themselves as described above. They must submit annual parochial reports. PX-COM-001-043; PX-COM-003-029; Tr. 284. They must adhere to certain business practices, including insuring property and conducting annual audits. PX-COM-001-44 - 45; PX-COM-003-025 - 026; Tr. 285-88. They must participate in the Church Pension Fund for their clergy, PX-COM-001-046 - 047; Tr. 301; and when they offer health insurance to their employees, they must offer the Diocesan health insurance program. PX-COM-003-038. Their clergy must obtain authorization from the Diocesan Bishop for various things, including to remarry a person who has been divorced or to allow a lay person to deliver the sacrament of communion. PX-COM-001-060 - 064, -68; Tr. 302, 304-06.

³ The process is similar but shorter if the person seeking ordination already has a Master in Divinity, usually from a seminary affiliated with another denomination. *See* Tr. 250-52.

Episcopal churches also benefit in many ways from their affiliation with the Diocese and the Church. The primary benefits are spiritual and therefore intangible, but they can be described in part. Churches also benefit in numerous “secular” or practical ways.

One of the principal spiritual benefits is the ability to share in missions and other ministries with other Episcopal churches and cooperatively to accomplish more than any church or group of churches could do alone. Tr. 1144-46, 4507, 4569-70, 4638-39, 4651. Different churches have different “perspectives and resources,” and the relationship is “symbiotic.” Tr. 4569. As one Episcopal rector expressed it at trial, “part of the nature of the Church ... is that we benefit through giving.” Tr. 4636. *See also, e.g.*, Tr. 3331-32; DX-FALLS-212-015 (discussing TFC’s service in “missionary opportunities” through the Diocese).

Another major spiritual benefit is the Bishops’ pastoral care, particularly at times of crisis in the local church but at other times as well, such as when the church has no rector. *See* Tr. 620-21, 1144-47, 1149-51, 4637. *See also* Tr. 3233 (Apostles Rector David Harper refers to “the pastoral care of a bishop”); Tr. 2740 (TFC Rector John Yates “looked to the bishop as a spiritual shepherd”); PX-DEP-019-045, -047 - 049 (Bishop is rector’s “shepherd”); PX-STMARG-480-001 (“The bishop of a diocese is seen as a ‘chief shepherd’”). A further benefit, spiritually profound (Tr. 329) but inherently immeasurable, is the relationship to bishops in the “historic episcopate” or “apostolic succession,” referring to a sequence of ordination of bishops by three bishops which can be traced “back to the Apostles who knew and walked with Jesus.” Tr. 330; *see id.* at 325-26, 329-30. A further benefit is the simple fact of recognition “as an Episcopal [c]hurch by a member of the Episcopal Church nationwide.” Tr. 322.

The numerous more tangible, “secular” benefits of affiliation are likewise unquantifiable (for the most part) but more easily described. The Diocese (and TEC) assists in recruitment of

clergy, including “supply priests” who fill in from time to time, and including preparation of parish profiles; and it protects churches by investigating clergy recruited from other dioceses as well as through the detailed ordination process described above. *See* Tr. 183, 272, 538-40, 563, 567-68, 659, 1144, 4637, 4652. It prepares clergy compensation guidelines, not as a mandate but as a service. Tr. 632-34, 690-91; *see, e.g.*, PX-TRU-254. It helps churches to navigate the debt consent process described above, and it helps as needed with preparation of audits and parochial reports. Tr. 287, 370-71, 635-36. It is a resource to which churches turn for assistance in numerous areas, among them taxes, insurance, pensions, and web site hosting. Tr. 632, 661, 682-87, 702-03; PX-DEP-038-022. It provides an enormous variety of educational programs and human resources assistance for churches and clergy. *See* Tr. 202, 323, 676, 682-84, 687-90, 775, 1148-49, 1163, 1408-09, 4569. The Diocese’s mandatory sexual misconduct training is an important example. *See* Tr. 1148-49, 1161, 1170, 1409, 4045, 4117-18. It also publishes the *Virginia Episcopalian* newspaper (formerly the *Virginia Churchman*), which is sent to all Episcopal households reported to the Diocese, and electronic news updates. *See, e.g.*, Tr. 587-88, 661-62, 808.

For individual clergy, the Church Pension Fund is perhaps the single most important secular benefit of affiliation with the Church. *See* Tr. 301, 324-25, 673-75; PX-TRU-238. That benefit also is available to lay employees of Episcopal churches, at the church’s option. Tr. 675. The Diocese contracts for group health and dental insurance (and a variety of other insurance products, *see* Tr. 632); and due to the size of the participating population, the Diocese is able to negotiate favorable terms – both rates and benefits – that most individual churches could match only in exceptional circumstances. *See* Tr. 325, 664-71; *but cf.* Tr. 2478-79 (TFC separately obtained comparable coverage at lower rates). An important aspect of the Diocesan health plan

is the absence of any restriction based on pre-existing conditions. *See* Tr. 670-71. The Diocese also has assisted clergy serving the now-CANA congregations who were facing extraordinary (uninsured) medical expenses. *See* Tr. 671-73; PX-SSH-489. The Diocese has assisted churches dealing with insurance companies. Tr. 684-87. It provides preferential reservations and discounted rates for the use of its Roslyn and Shrine Mont facilities to Episcopal churches. Tr. 549-50, 675-80, 4698-4701. *See also* Tr. 656-57 (Diocese subsidizes the cost of Shrine Mont camps). Another area of benefits is purely financial: churches may (and many do) manage their investments through the Diocesan Trustees of the Funds, which historically has provided excellent returns. Tr. 691-96. Churches also may invest with and/or obtain loans from the Diocesan Missionary Society (DMS), which regularly makes loans, on very favorable terms, to churches that cannot obtain the same financing from commercial banks. Tr. 186, 323, 564-65, 680-82. *See also* Tr. 4651 (DMS loan to St. Paul's, Alexandria, was "the best deal" available).

History of the Diocese

Many of the historical facts related in this brief are based on the testimony of Dr. Edward Bond. Dr. Bond is an accomplished historian of the Episcopal Church and of the Diocese. *See* Tr. 872-77. He has twice been qualified as a historical expert in this litigation – previously without objection and after an offer to stipulate by the Congregations, and this time with objection only as to 1890-1950. *See* Tr. 29, 36 (Oct. 20, 2008); Tr. 883-84. Dr. Bond was the only testifying historical expert with expert knowledge of the history of the Episcopal Church in Virginia before this litigation – indeed, he co-authored a history of the Diocese for the 400th anniversary of the Church in Virginia. *See* Tr. 877-78. His base of knowledge is extensive, and he was the only testifying expert regarding the histories of the four older local churches at issue and the dealings between the parties historically. *See* Tr. 878-83, 890-91.

Virginia had an established church, the Church of England, during the colonial period.

Tr. 892. Parishes and vestries in Virginia in the 1700s were different entities from those to which those terms refer today. Parishes in the 1700s were geographical units of the Church of England and of local government and were created and organized by the General Assembly.

Tr. 893-94. Parishes often encompassed more than one local church or congregation, but they had only one vestry and rector. Tr. 894-95. Vestries governed the parishes, performing both ecclesiastical and governmental functions. Tr. 892-93, 895. Vestries financed parish matters through a tax levied on certain persons (tithables) throughout the parish. Tr. 893.

Orphaned from England by the American Revolution, representatives of colonial parishes gathered to form the Diocese in 1785. Tr. 895-96. Representatives of the Church in Virginia were among the founding members of the Episcopal Church. TEC-01-004, -006. After the organization of the Diocese, the churches and congregations in Virginia came under the jurisdiction and governance of the Diocese, acting through its Annual Council. Tr. 896.⁴

Disestablishment occurred over time, beginning with the American Revolution and ending by 1802. Tr. 895, 897. After 1785, parishes continued to be geographically based, but the Diocese began allowing individual congregations separate lay delegate representation in 1823. Tr. 896, 933; PX-COM-071-454 (adopting a canon for the division of parishes).⁵

⁴ The Diocese's governing body initially was known as the "Convention." Tr. 896; *see, e.g.*, PX-COM-072-001. At the time of the Civil War, it became known as the "Annual Council." Tr. 897; *see, e.g.*, PX-COM-101-001. With the exception of several years prior to 1812 (*see* PX-COM-071-376), the Diocese's Council has met annually, including in every year since 1812. *See* PX-COM-071-380 and subsequent Journals. In this brief, we refer to the Diocese's governing body as the Annual Council (except in quotations).

⁵ Over time, the geographic aspect to the word parish has faded. The Diocese reorganized away from the geographic parish system as part of a multi-faceted restructure in 1972. *See* PX-COM-0210-058 – 59, -150, -152; PX-COM-0211-039 - 40. The word "parish" has evolved to be a rough synonym for a church. *E.g.*, Tr. 894.

The Diocese long has chosen to delegate much day-to-day authority to vestries and clergy. Historically the Diocese has exercised its own authority over churches within the Diocese in numerous ways, however. *See* Tr. 901-03 and the following discussion.⁶

Since 1785, the Annual Council has created rules governing the Diocese and its member churches – rules which later became known as the Constitution and Canons. Tr. 900-01; *see* PX-COM-071-301 - 304. The Diocese’s earliest rules delegated specific property-related responsibilities to wardens and other local officials and required reports to the Bishop (*id.* at -303 ¶¶ 23, 25); and they regulated clergy extensively, including requiring them to “subscribe to be conformable to the doctrine, discipline, and worship of the Protestant Episcopal Church” (*id.* at -302 ¶ 13), mandating place of residence and attire (*id.* at -304 ¶¶ 39 & 41), and providing for discipline in cases of “disregard to the rules and canons of the church” (*id.* at -303 ¶ 32).

After the Virginia General Assembly in 1787 repealed a 1784 Act authorizing church incorporation, the Annual Council again enacted detailed rules. *See* PX-COM-071-315 - 318. Those rules declared that the vestries and wardens were trustees “*for the members of the Protestant Episcopal Church ... to hold the property, both real and personal, belonging to the said church, for their use and benefit*, subject to such regulations as shall be made from time to time by the Convention” (emphasis added); defined how and when vestries are elected, their terms of service, and how vestrypersons are to be replaced if necessary; mandated that “[e]very vestryman, before he acts in office, shall subscribe in vestry to be conformable to the doctrine,

⁶ It is inaccurate historically to focus solely on the direct authority of the Bishop, as opposed to authority of the Annual Council. The Bishop led the Annual Council, had the right to speak last before a vote at Annual Council, and exercised functions for which bishops are required. Tr. 899-900. The Annual Council governed, however (Tr. 899); and the Bishop’s direct powers had limits, unlike those of the Annual Council. *See* Tr. 904-05, 1011 (parishes formed and participated in a larger institution; Annual Council’s powers were not limited).

discipline, and worship of the Protestant Episcopal Church”; defined the scope and limits of vestries’ and wardens’ authority over church property; and provided that “Future Conventions . . . shall regulate all the religious concerns of the church, its doctrines, discipline, and worship, and institute such rules and regulations as they may judge necessary for the good government thereof, and the same revoke and alter at their pleasure.” *See* PX-COM-071-315 (2nd column) – 316. The rules also regulated clergy, mandating an oath of conformity (*id.* at -317 (Canon XIII)), requiring that employment contracts provide that clergy held their position “subject to removal upon the determinations of the Convention of the Protestant Episcopal Church in this state” (*id.*) and allowing trial of a clergyman for “disregard to the rules and canons of the church” (*id.* at -318 (Canon XXXI)).

As early as the 1790s, the Diocese’s Annual Council required that parishes obtain “the consent of a [Diocesan] Convention” for the disposition of certain church property (“as is of the nature of principal or stock,” PX-COM-071-326) and exercised that power, giving permission for trustees to sell church property (glebe lands, at the time) provided “that it can be done with advantage to the Protestant Episcopal Church.” PX-COM-071-324.

After the Revolution and disestablishment, the Diocese and its parishes experienced great difficulties. *See* Tr. 897-98. Virginia law also became inhospitable for the Diocese and other hierarchical churches in the early 1800s. *See, e.g., Gallego’s Ex’rs v. Attorney Gen.*, 30 Va. (3 Leigh) 450, 477-80 (1832) (describing “the general grounds, upon which rests the legislative policy, in relation to the power of acquiring and holding property by religious societies”); *Maguire v. Loyd*, 193 Va. 138, 149-50, 67 S.E.2d 885, 892-93 (1951) (quoting *Gallego* and stating that there was no doubt that the Assembly “intended to restrict” the power of churches).

Such disabilities and discrimination later fell away, however. By 1814, the revival of the

Episcopal Church in Virginia was underway under Bishop Richard Channing Moore, spurred by evangelical clergy and churches in developed (urban) areas. Tr. 898. Virginia law has evolved too – especially in the modern era – to allow greater religious freedom and to respect churches’ self-governance. *See, e.g.,* Va. Code § 57-16.1; *Reid v. Gholson*, 229 Va. 179, 188-89, 327 S.E.2d 107, 113 (1985).

The precise content of the Diocese’s rules has varied over time, but a central, constant feature has been that local churches are bound by the Constitution and Canons of the Diocese and the Episcopal Church, as amended over time. *See* PX-COM-071-405 (Art. XII, 1815):

Every parish within this diocese shall be entitled to the entire benefit of this constitution, as soon as it shall have signified its ratification thereof, either in writing or by sending a lay delegate to the Convention; and such parish shall thereafter be benefited and bound, equally with the other parishes in this diocese, by every rule and canon which shall be framed, by any Convention acting under this constitution, for the government of this church in ecclesiastical concerns.

Accord, PX-COM-072-020 (Art. XI, 1836); PX-COM-086-062 (Art. XI, 1850); PX-COM-127-276 (Art. XI, 1890); PX-COM-142-140 - 141 (Art. XI, 1904); PX-COM-004-008 (Art. XIX, 1940: “Every parish, separate congregation and mission church within the Diocese of Virginia at the effective date of this Constitution, and all others that may be canonically connected with or created within this Diocese thereafter, shall be bound by this Constitution and the Canons adopted in pursuance hereof”); PX-COM-005-010 (Art. XVII, 1962: “Every parish, separate congregation and mission church within the Diocese of Virginia shall be bound by this Constitution and the Canons adopted in pursuance hereof”); PX-COM-010-011 (Art. XVII, 1983: “Every Congregation, however called, within the Diocese of Virginia shall be bound by this Constitution and the Canons adopted in pursuance hereof”); PX-COM-003-011 (2005); Tr. 203; PX-COM-003-005 (“acknowledg[ing] the authority and power of the General Convention” of TEC). As Bishop James Madison (the President’s cousin) stated to Annual

Council in 1799, “the canons, or laws, which have been enacted for the government of our church arise from two sources: the General Convention of the United Episcopal Churches in America, and your State Convention, both regularly constituted and authorized by you to enact all necessary laws for the above purpose.” PX-COM-071-371; *accord* PX-COM-150-018 (1912, Bishop Gibson):

It seems like a platitude to say that the constitution of the Protestant Episcopal Church in the United States is (after the rubrics of the prayer-book) the source of our laws and the chief directory of our church order. Then come the Canons of this same General Protestant Episcopal Church in the United States; then comes the constitution of our own Diocese; then the Canons of the Diocese, and finally the resolutions of Council, except so far as they are set aside by resolutions of succeeding Councils. Except as to the rubrics of the prayer-book this order follows exactly the order of precedence of the laws in the United States and in the State of Virginia.

See also Truro Church, 280 Va. at 15, 694 S.E.2d at 559 (“Each congregation within a diocese in turn is bound by the national and diocesan constitutions and canons”).

Throughout much of its existence, the Diocese set amounts of expected monetary contributions from parishes and churches to the Diocese. Tr. 921-23. In modern times, the Diocese no longer does so, having chosen to adopt a voluntary system. *See* PX-COM-196-036.

Historically, the Diocese has expended substantial money and effort in sustaining local Episcopal churches, including through the Diocesan Missionary Society, its regional organizations, and other member churches.

Ordained Episcopal clergy were a key ecclesiastical resource in short supply. *See* Tr. 914-15. The Diocese has attempted to address clergy shortages in a number of ways, including allowing and encouraging associations of congregations served by the same minister. Tr. 915. (When churches share clergy or other functions, that has been referred to by various terms – as associated, combined, linked, or yoked churches. *Id.*)

The Diocesan Missionary Society (DMS) was formed in 1829. *See* PX-COM-071-521.

The Bishop was its President, and the Annual Council elected its executive committee. *Id.* Historically, the DMS helped “destitute” parishes and churches obtain and pay for the services of a minister by providing part of the clergyman’s salary. *E.g.*, Tr. 915; *see also* Tr. 919-20. The term “destitute” was interpreted broadly. Tr. 978-79. After canonical changes in 1954 created the Executive Council (later renamed the Executive Board) of the Annual Council and other executive departments of the Diocese (*see, e.g.*, PX-COM-193-026 - 027, -037, -040 - 041), the DMS transitioned from supporting clergy to providing financial support for church property, predominantly through low interest loans to churches. *See, e.g.*, Tr. 680-82.

In 1823, the Virginia Theological Seminary (VTS) was formed. *See* Tr. 916. It was governed by individuals appointed by the Diocese, and the Bishop of the Diocese was the Chairman of its Board. *See, e.g.*, PX-COM-071-447 (reporting Annual Council’s adoption of a constitution for VTS, with such provisions in ¶¶ 1-2). Upon completion of their studies, VTS seminarians were assigned on occasion by the Bishop of the Diocese to churches in Virginia. Tr. 916. VTS professors and seminarians have long helped to ensure the continuation and operation of Episcopal churches in the Diocese. *See, e.g.*, Tr. 933-34, 945.

Throughout the history of the Diocese, there have been regional organizations within the Diocese, known throughout much of its history as “convocations.” *See* Tr. 916-17. Convocations helped churches in their geographic areas to advance the mission and ministry of the Church. Sometimes that occurred through sponsoring and holding associations (essentially a form of Episcopal revival) to promote the Church in particular areas. *See* Tr. 924. Convocations also facilitated financial support of congregations, either by acting as a conduit for funds from other congregations or through direct support. *See* Tr. 916, 979-80, 990, 999. (A number of specific citations for convocation financial assistance may be found in the fact summaries for

individual churches, *infra*.) Convocations persisted until approximately 1972, when they were replaced canonically by organizations known as “regions.” *See, e.g.*, PX-COM-211-038 - 039 (1972: creating Regions); PX-COM-212-039 (1973 Standing Committee report discussing “the establishment of 15 Regional Councils and the disbanding of the 5 Convocations”).

The Diocese also has used clergy not resident within a particular area to sustain congregations. Bishops of the Diocese traveled and preached extensively, and their visitations helped to sustain Episcopal churches and develop new ones. *See, e.g.*, Tr. 917-18. The Evangelist or General Missioner of the Diocese was tasked as needed to sustain Episcopal worship. The Evangelist/General Missioner was essentially a missionary-at-large paid by the Diocese from missionary funds or the Albert Baker Fund (created in 1912 from a bequest). *See, e.g.*, Tr. 918-19; PX-COM-150-018; PX-COM-155-079 - 080. The Diocesan Archdeacon was an administrative and pastoral position that existed at certain times in history and involved assisting and overseeing missions. *See, e.g.*, Tr. 221; PX-APOST-299, PX-APOST-300, and Apostles_Ex_013.0039 (correspondence with Archdeacon W. Leigh Ribble, who officially established Apostles as a mission on Palm Sunday 1968, and pictures of the service on that date).

Another example of how the Diocese has assisted its member churches is the Bruce Fund, created from a bequest from Mrs. Elvira A. Bruce in the 1860s for building Episcopal churches in destitute parishes in Virginia. *See* Tr. 920, 949, 980. The Bruce Fund was used to assist congregations in the Diocese with building construction and/or maintenance. *See, e.g.*, Tr. 947-48, 980; PX-COM-260-006 (1873 grant “towards the completion of Zion Church, at the Co. Ho.”); *id.* at -015 - 016 (1877 grant “For roof & other repairs Falls Ch.”).

The Diocese also has assisted its churches in necessary ecclesiastical ways. For example, it has been true throughout the history of the Diocese that a bishop must perform consecrations,

ordinations (as deacons and as priests), and confirmations. *E.g.*, Tr. 899-900. The Bishops of the Diocese historically performed such tasks (or, on occasion, gave permission for other Episcopal or Anglican bishops to do so). *See, e.g.*, Exhibit B. Bishops also receive and issue letters dimissory for clergy coming into and leaving the Diocese, may issue pastoral directives to clergy, and may perform the service to install a rector. *See, e.g.*, PX-COM-001-083 – 84; PX-COM-001-084 (III.9.5(a)(1)), -115 (IV.1.1(h)), -165 (defining “Pastoral Direction”).

II. Provisions of the Constitutions and Canons of the Church and the Diocese

“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.*” *Truro Church*, 280 Va. at 27, 694 S.E.2d at 566 (emphasis added); *see also supra* at 8.

The Church’s “Dennis Canon,” Canon I.7.4, enacted in 1979, and the Diocese’s Canon 15.1, enacted in 1983, provide, respectively:

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons. [PX-COM-001-045.]

and:

All real and personal property held by or for the benefit of any Church or Mission within this Diocese is held in trust for The Episcopal Church and the Diocese of Virginia. The Vestry of every Church and, when authorized by the Bishop, the Vestry Committee of a Mission, shall elect Trustees for appointment pursuant to law to hold title to such property. [PX-COM-003-027.]

Those are not the only relevant canons, however. As discussed above, the earliest Canons of the Diocese exercised control over and demonstrated interests in property. National Church Canon II.6.1, enacted in 1871 (*see* TEC-005-042 - 43; Tr. 1197), requires that

consecrated property be “secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with this Church and subject to its Constitution and canons.” PX-COM-001-066.⁷ Church Canons II.6.2 (enacted in 1868, *see* TEC-004-001 – 2; Tr. 1193) and I.7.3 prohibit local churches from encumbering or alienating property without the consent of the Diocesan Bishop and Standing Committee. PX-COM-001-045, -066. Similarly, Diocesan Canon 14.1, enacted in 1938 (PX-COM-177-032), requires the approval of the Bishop and the Standing Committee before any congregation may incur indebtedness above certain monetary thresholds, and Diocesan Canon 15.2, enacted in 1940 (PX-COM-179-036), requires Diocesan approval for the alienation, sale, encumbrance, or other transfer of consecrated church property or any property of a mission. PX-COM-003-027. Diocesan Canon 15.3 provides that whenever any real or personal property of an Episcopal congregation has ceased to be so occupied or used by such congregation, the Executive Board has the authority to declare such property abandoned and to take charge and custody of it. And TEC’s Canon III.9.5 specifies that the Episcopal rector of each parish – discerned, educated, and ordained as discussed above – is at all times entitled to the use and control of parish property, “[f]or the purposes of the office.” PX-COM-001-084.

III. Facts common to all seven churches

Before December 2006 (for Epiphany, January 2007), all of the churches in this consolidated litigation were Episcopal churches. That is undisputed. They were known to the community as Episcopal churches. They used the name and symbols of denominational affiliation, including signs on the nearby streets and roads. They were served by clergy ordained

⁷ Each of the Canons cited in this paragraph has been amended from time to time. The version of Canon II.6.1 enacted in 1871, for example, required that consecrated property be “secured by the terms of the devise, or deed, or subscription by which they are given, from the danger of alienation from those who profess and practise the doctrine, discipline, and worship of the Protestant Episcopal Church in the United States of America” TEC-005-043 (Canon 21.1).

in the Episcopal Church by Bishops of the Episcopal Church, and they used the Episcopal Church's Book of Common Prayer as the basis for all or most of their worship services.

They used resources provided by the Church. All used the Episcopal Church Hymnal. *See, e.g.*, Tr. 393, 427, 746, 820, 1164, 1372, 1587, 1883-84. Several of them used another Episcopal hymn book, "Lift Every Voice and Sing" (or "LEVAS"). *See* Tr. 275, 1157, 1162, 4679. Some of them used the "Seabury Series" or other Episcopal Sunday School materials. And they used various other publications and programs of the Church and the Diocese.

The churches recognized the authority of the Constitutions and Canons of TEC and the Diocese and conformed their conduct to those requirements in numerous ways, including:

- They followed the canons of the Church and the Diocese with respect to property, requesting consent when required.
- They organized themselves as required by canon. They elected vestries, as required by canons, in the number of members provided by canons, by votes of persons qualified to vote by canonical rules. Those vestries elected senior and junior wardens, as required by canons. Their vestries all took a canonical oath to "yield [a] hearty assent and approbation to the doctrines, worship and discipline of The Episcopal Church."
- In addition to their clergy, they elected and sent lay delegates to the Annual Council of the Diocese and otherwise participated in Diocesan governance.
- They recognized the authority of the Diocesan Bishop and other Bishops of the Diocese, as required by canons of the Church. They received official Episcopal visitations of the Diocesan Bishop, of other Bishops of the Diocese (or, on occasion, of other Episcopal or Anglican Bishops who were invited by the Diocesan Bishop), as required by canons. They presented individuals to those Bishops for confirmation or reception into the Episcopal Church

and, on occasion, for reaffirmation of their confirmation or reception vows.

- They submitted annual parochial reports through the Diocese to the Episcopal Church, as required by Church canons. They contributed financially to the support of the Diocese.
- They all contributed to the Church Pension Fund, which was established in 1917 by the General Convention of TEC (*see* Tr. 673), on behalf of their clergy. *See, e.g., Near the Falls*, DX-FALLS-060-086 (quoting TFC Vestry resolutions, provided by the Pension Fund and adopted “in obedience to the Canons of the General Convention and the Diocese of Virginia”); TRU145.0111 (March 1917 Truro Vestry resolution with the same “obedience to the Canons” language); PX-TRU-399 (2007: regarding participation in the optional Lay Employees’ Defined Contribution Retirement Plan); PX-SSH-183-002; PX-STMARG-677-005; Apostles_Ex_089.009 - 010; PX-APOST-468-001; Tr. 760, 824-25, 941, 975, 986-97, 2001, 2311, 3743, 4119.
- They all obtained health insurance through the Diocese, as required (after 1994) by Diocesan Canon 31 (PX-COM-003-038); or, in one case (TFC), they obtained a partial exemption from the Diocesan Executive Board pursuant to that canon.
- They obtained the consent of the Bishop as required in ecclesiastical matters, such as in remarriage of divorced persons.

In sum, the Congregations all recognized that they were bound and governed by canon law and adhered to that “law of the church,” and they were “integral part[s] of the supercongregational or hierarchical structure of the Church.” *Green v. Lewis*, 221 Va. at 553, 272 S.E.2d at 184.

Summaries of facts applicable to particular churches are provided beginning at page 56, including many additional citations. Arguments regarding the Truro Instruments of Donation and The Falls Church Endowment Fund are included with descriptions of the related facts.

ARGUMENT

I. The Diocese and TEC have proprietary and contractual interests in the real and personal properties held and used by the churches, by application of neutral principles of law.

A. *Green v. Lewis* states the applicable rule.

“In determining whether [a general] Church has a proprietary interest in [local church] property, we look [1] to our own statutes, [2] to the language of the deed conveying the property, [3] to the constitution of the general church, and [4] to the dealings between the parties.” *Green*, 221 Va. at 555, 272 S.E.2d at 185-86 .

B. Deeds

As set out in the descriptions of the seven churches, *infra*, most of the deeds to properties at issue are to trustees for “Episcopal” churches. To that extent, these cases are legally indistinguishable from *Green v. Lewis*, where “[t]he grantors conveyed the property to ‘Trustees of the A.M.E. Church of Zion.’ The conveyance was for the purpose of erecting an A.M.E. Church of Zion (to be known as Lee Chapel), not a church of some other denomination, or an independent church. And this is what occurred.” 221 Va. at 553, 272 S.E.2d at 184. *See also id.* at 555, 272 S.E.2d at 186: “the A.M.E. Zion Church is the grantee in the deed, the property having been conveyed to trustees of that church to establish an A.M.E. Zion Church thereon.”⁸

So too here. As Judge (later Justice) Stephenson held in *Buhrman*, “a reasonable interpretation of these deeds leads inescapably to the conclusion that the trustees cannot hold title to the subject property for persons or groups who are withdrawn from and not under the authority of The Episcopal Church.” 5 Va. Cir. at 503. That construction is eminently sensible and

⁸ The Congregations cannot seriously contend that the conveyance in *Green* was for the benefit of the *national* A.M.E. Zion Church, having argued repeatedly that conveyances for the benefit of general churches were not valid at least until 1993.

persuasive. A deed to trustees of “the Episcopal Church, known and designated as the ‘Falls Church’ ...,” for example, or to trustees of “St. Stephen’s Parish of the Protestant Episcopal Church, Northumberland County, Virginia, for the use and benefit of St. Stephen’s Protestant Episcopal Church of Heathsville, Virginia,” cannot be construed as a conveyance to trustees for a religious congregation which has renounced its affiliation and is no longer an Episcopal church.

To this extent only, plaintiffs’ case is not as strong with respect to deeds that do not use the word “Episcopal” in identifying the grantee. There are nine such deeds.⁹ Deeds are merely one of the four factors that decide church property disputes in Virginia, however; the entities that held and used those properties were still Episcopal churches; and the extensive other evidence of the Diocese’s rights and interests outweighs the absence of a denominational qualifier.

C. Statutes

Code § 57-9 does not apply. *Truro Church*, 280 Va. at 28-29, 694 S.E.2d at 567. Section 57-7.1 should be held to validate the Diocese’s and the Church’s express trust interests, as discussed *infra*. And several closely related statutory provisions further support recognition of the interests of the Diocese and the Church in this case. Code § 57-16.1 provides that if local congregations choose to incorporate – as the Congregations have done – those corporations may hold, administer, and manage church property only “for any purpose *authorized and permitted by the laws, rules, or ecclesiastic polity of the church or body.*” (Emphasis added.) Section 57-15 provides that “[u]pon evidence being produced ... that it is the wish of the congregation, or church or religious denomination or society, or branch or division thereof, or *the constituted*

⁹ The nine deeds consist of five related to TFC (two in 1746 and three from the 1950s), the 1971 conveyance of title from the Diocesan Missionary Society to Apostles, the 1972 conveyance of title from the Bishop to “St. Margaret’s Church, Dettingen Parish, Prince William County, Woodbridge, Virginia,” and a pair conveying one parcel from “Christ the Redeemer Episcopal Church” to Truro at the time of the December 2006 votes. The deeds related to each church are fully identified in the individual church fact summaries *infra*.

authorities thereof having jurisdiction in the premises, or of the governing body of any church diocese” to sell, exchange, encumber, or take other specified actions regarding property, “the court shall make such order as may be proper.” (Emphasis added.) “In the case of a super-congregational church ... § 57-15 requires a showing that the property conveyance is the wish of *the constituted authorities of the general church.*” *Norfolk Presbytery*, 214 Va. at 503, 201 S.E.2d at 755 (emphasis added). Thus, a transfer of property to a different denomination can only be legally effected under § 57-15 if it has been approved as appropriate under a hierarchical church’s rules and polity. *See Green*, 221 Va. at 553, 556, 272 S.E.2d at 184, 186, applying § 57-15 and A.M.E. Zion Church Discipline provision requiring Bishop’s consent for transfers of property to invalidate alienation of local church property from the hierarchical church, despite the absence of any formal transfer or conveyance.

D. The “constitution” of the general church

Our Supreme Court held in this case that “[e]ach congregation within a diocese ... is bound by the national and diocesan constitutions and canons.” *Truro Church*, 280 Va. at 15, 694 S.E.2d at 559. That is the law of the case.

The “constitutions” of both TEC and the Diocese provide that properties held and used by local congregations of the Episcopal Church are held in trust for the Episcopal Church and the Diocese. Whether or not the trust interests expressed in the Dennis Canon and Diocesan Canon 15.1 are valid as such, those canons are among the governing documents of the general church and a partial expression of the contractual relationships among the parties. Application of those provisions leads inexorably to the conclusion that the contractual and proprietary interests of the Diocese and the Church should be recognized and enforced in this case.

But the analysis does not stop there. In *Green v. Lewis*, the Supreme Court reasoned

that those who constituted the original membership of Lee Chapel, and who established the church in the manner directed by the grantors in the deed, and those members who followed thereafter, united themselves to a hierarchical church, the A.M.E. Zion Church, with the understanding and implied consent that they and their church would be governed by and would adhere to the Discipline of the general church. And para. 437(1) of the Discipline requires that all property transfers be approved by the bishop.

221 Va. at 555-56, 272 S.E.2d at 186. Similar provisions apply here. With the sole exception of the unconsecrated property of a “church” (*i.e.*, not a mission), “all [real] property transfers” must be approved by the Bishop and Standing Committee of the Diocese. *See* TEC Canons II.6.2 and I.7.3, PX-COM-001-045, -066, and Diocesan Canon 15, PX-COM-003-027. Even more specifically, TEC’s Canon II.6(1) requires that consecrated property be “secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with this Church and subject to its Constitution and canons.” PX-COM-001-066. The CANA Congregations no longer satisfy that requirement, but they are bound contractually by the Canons in effect during their affiliation. *Truro Church*, 280 Va. at 15, 27, 694 S.E.2d at 559, 566. Diocesan Canon 14.1 (PX-COM-003-027) and TEC Canon III.9.5 (PX-COM-001-084) further support the conclusion that the Church and the Diocese have, and for many years have had, contractual and proprietary interests in properties held by Episcopal missions and churches.

Any argument that the neutral principles analysis is limited to documents that the church calls its “Constitution” must be rejected. First and foremost, it would be improper for a civil court to assign levels of priority or importance to a church’s governing documents, and we are aware of no decision which has done so. Second, both *Green*, 221 Va. at 555, 272 S.E.2d at 185-86, and *Norfolk Presbytery*, 214 Va. at 505, 507, 201 S.E.2d at 757, 758, referred to “the constitution of the general church,” using a lower case “c,” indicating that the term was used generically. In fact, “the constitution of the general church” in *Green* was “The Doctrines and Discipline of the African Methodist Episcopal Zion Church,” which the Supreme Court

applied. 221 Va. at 549, 272 S.E.2d at 181-82.¹⁰

E. The dealings between the parties

In *Green*,

The church was organized, the building was constructed, and it functioned as an A.M.E. Zion Church until October 1977. It became and was an integral part of the supercongregational or hierarchical structure of the A.M.E. Zion Church. The general church supplied the ministers and provided the organization and structure which is necessary if a church is to function and to fulfill its mission. A Sunday School was organized, and its materials were furnished by the general church. Hymnals and other literature were provided. Baptisms, marriages, and funerals were conducted from the church's Discipline. Revival services were held. The central church, of which Lee Chapel was a part, conducted world missions and sent missionaries abroad. Colleges were founded, scholarships provided, and loans and grants made available when, in the discretion of the general church, they were needed. And the members of Lee Chapel, by payment of their assessments and in numerous other supportive ways, contributed to this state, national, and international ecclesiastical organization, and they presumably benefitted from the association, spiritually and otherwise.

221 Va. at 553-54, 272 S.E.2d at 184-85. *See also id.* at 555, 272 S.E.2d at 186:

since 1875 ... the name, customs, and policies of the A.M.E. Zion Church have been used in such a way that Lee Chapel is known, recognized, and accepted to be an A.M.E. Zion Church. All religious services and ceremonies conducted by the pastors of that church have followed its Discipline. The literature used by the church and by the Sunday School came from the publishing house of the A.M.E. Zion Church. The various conferences to which the membership of Lee Chapel's congregation sent delegates were all organized and held under the direction of the A.M.E. Zion Church.

¹⁰ Arguments based on amendment procedures and time periods are irrelevant. Different churches have different methods of amending governing documents. Those are purely ecclesiastical determinations, not proper for review or prioritization by a civil court. The Congregations have cited no authority recognizing such a distinction, and we are aware of none. Moreover, the churches at issue assented and adhered to the rules of the Church for decades after passage of the various canons discussed in this brief. *See, e.g., Daniel v. Wray*, 580 S.E.2d 711, 718 (N.C. App. 2003) (the local church "elected delegates to participate in various conventions at which new and revised canons were adopted, and defendants did not contest the adoption of those canons thereafter"); *In re Church of St. James the Less*, 833 A.2d 319, 324-25 (Pa. Commw. 2003), *aff'd in relevant part*, 888 A.2d 795 (Pa. 2005) (ruling in favor of the Episcopal Church where the congregation "waited twenty years after the adoption of the Dennis canon to take action inconsistent with it").

The descriptions of the defendant churches and their histories in this brief (both *supra* and *infra*), necessarily truncated as they are, demonstrate that all or virtually all of those factors, and many more, apply to each of the seven churches in this litigation:

- Each of the seven churches was organized and functioned as an Episcopal Church until December 2006 or January 2007. The “name, customs, and policies” of the Episcopal Church were “used in such a way that [each of the churches was] known, recognized, and accepted to be an [Episcopal] Church.”

- Each of the seven churches “became and was an integral part of the supercongregational or hierarchical structure of the [Episcopal] Church” and the Diocese. The churches regularly and routinely sent delegates to the Annual Councils “organized and held under the direction of the [Diocese],” and they participated directly and actively in the affairs of the Diocese and its Regions. Several of them at times participated directly in the governance structures of the national Church as well.

- The rectors that served the churches were all Episcopal priests, who were educated and ordained according to the doctrines and discipline of the Episcopal Church and took oaths to follow, *inter alia*, the discipline of the Church and the authority of their Bishop. The Congregations may emphasize that in the Episcopal Church, unlike the A.M.E. Zion Church, local churches choose their own rectors; the general church does not assign clergy to churches. That is a trivial distinction at best, and it is not entirely accurate. A parish may not elect a Rector “until the names of the proposed nominees have been forwarded to the Ecclesiastical Authority” (who normally is the Diocesan Bishop) “and a time, not exceeding sixty days, given to the Ecclesiastical Authority to communicate with the Vestry, nor until any such communication has been considered by the Vestry at a meeting duly called and held for that purpose.” PX-COM-

001-080 - 081 (TEC Canon III.9.3(2)). And TEC's Canon III.9.3(3) requires the wardens to give written notice of the election of a Rector to the Ecclesiastical Authority, who must be "satisfied that the person so elected is a duly qualified Priest and that such Priest has accepted the office to which elected" and must forward the wardens' notice to the Secretary of the "Convention" (the Council, in Virginia), who shall record it, thus formalizing the appointment. *Id.* at -081.

In addition, three of the churches (St. Margaret's, Apostles, and Epiphany) began as missions, and the Diocesan Bishop assigns vicars to missions. Other churches, such as Truro and St. Paul's, were assigned deacons who later became their rectors. Any clergy who is hired from another diocese must obtain a letter dimissory from the diocese of origin. The record also shows that the churches always sought the advice and counsel of the Bishop or Bishops, and frequently their approval, in the search for a rector. There is *no* evidence that any of these churches ever disregarded a Bishop's advice and counsel or hired any clergy in defiance of a Bishop's will. That would simply be contrary to the fundamental Episcopal ethos and mindset, as portrayed by numerous witnesses at the trial. As TFC Parish Administrator William Deiss testified, for example, TFC followed the rules of the Church because "[w]e were part of the club and part of the Episcopal Church." Tr. 2544. *See also, e.g.*, Tr. 1591 (Truro witness Paul Julienne: "we were part of a family").

- The Diocese and the Church "provided the organization and structure which is necessary if a church is to function and to fulfill its mission." This is not to say that a congregational church is incapable of functioning or defining and fulfilling its own mission, of course. But these were not congregational churches. They were Episcopal churches, members of a hierarchical structure and a hierarchical church; and it was the Diocese and the Church, not the congregations, which "provided the organization and structure" which is necessary for a church

to function and to fulfill its mission in the hierarchical context.

- The churches used the Episcopal Church's Book of Common Prayer (BCP), as mandated by the canons of the Church (in St. Stephen's case, after vigorously and strenuously protesting the imposition of the 1979 BCP). There is no canonical mandate for the use of the Episcopal Hymnal (or other authorized sources of music such as "LEVAS," *see* Tr. 275) or Sunday School literature; but each of the churches used the Episcopal Hymnal, Tr. 393, 427, 746, 820, 1164, 1372, 1587, 1883-84; several of them used LEVAS (*see* Tr. 1157, 1162, 4679); and several of them used Episcopal Sunday School materials such as the "Seabury Series," as referenced in the individual church fact sections which follow.

- Marriages and remarriages were conducted according to the rules of the Church.
- In several cases, revival (or "mission") services were held under the direction of the Diocesan Archdeacon (PX-COM-144-029 (1906), in Truro and Fairfax Parishes and St. Stephen's, Heathsville) or other Diocesan personnel.

- The Church and the Diocese conducted world missions and sent missionaries abroad, *see* Tr. 658, 732, 1144-46, 1176-77, and these seven churches supported those missions.

- The Episcopal Church and the Diocese are affiliated with seminaries, *see* Tr. 251-52, 337-38, 916, 1335-36, and the Diocesan Bishop controls an aspirant's choice of seminary.

- The seven churches and their members, "by payment of their assessments" until 1957, and thereafter by voluntary contributions (*see* PX-COM-196-036) "and in numerous other supportive ways, contributed to this state, national, and international ecclesiastical organization."

- "[A]nd they presumably benefitted from the association, spiritually and otherwise." Spiritual benefits must be presumed, under *Green*, and that makes perfect sense. It would be fanciful to suggest that these churches remained part of the Diocese and the Church for decades,

even centuries, if they were getting nothing out of it. But in addition, in these cases there is a great deal of evidence of spiritual benefits to the churches, as discussed elsewhere in this brief. Here, those benefits need not merely be presumed. They have been proved, from the churches' own records – records created at times when the congregations were not as guarded in their communications as they were later, under the shadow of impending separation and litigation. *Cf.* Tr. 4596-99 (“THE COURT: ... the closer you are to litigation, the less you can derive from the course of dealings.... Even if I conclude that the protocol is relevant, could be relevant to the course of dealings, the closer it is to the actual litigation, the more concern I would have that it’s not especially helpful.... [T]he closer you are to litigation, perhaps less weight you put on certain testimony”).¹¹

Thus, essentially all of the “course of dealing” factors enunciated in *Green* apply to the churches at issue in these cases, most of them directly and all of them in one fashion or another. But of course there is a great deal more, additional factors which further demonstrate that the same conclusion that the Court adopted in *Green* necessarily follows in this case as well:

- Our Supreme Court has already held that the churches “were required to conform to the constitution and canons of TEC and the Diocese.” *Truro Church*, 280 Va. at 27, 694 S.E.2d at

¹¹ Numerous courts have agreed with the common sense proposition that course of dealing or course of performance evidence is useful only if it “predates any controversy.” *Employers Reinsurance Co. v. Superior Court*, 74 Cal. Rptr. 3d 733, 742 (Cal. App. 2008). *See Old Colony Trust Co. v. City of Omaha*, 230 U.S. 100, 118 (1913); *Certain Underwriters at Lloyd’s, London v. Sinkovich*, 232 F.3d 200, 205 (4th Cir. 2000) (“[t]he absence of trustworthiness is clear...when a report is prepared in the anticipation of litigation because the document is not for the systematic conduct and operations of the enterprise but for the primary purpose of litigating”); *Hertz v. Luzenac Am.*, 370 F.3d 1014, 1020 (10th Cir. 2004); *Schultz v. Metropolitan Life Ins. Co.*, 872 F.2d 676, 679 (5th Cir. 1989); *Julius Goldman’s Egg City v. United States*, 697 F.2d 1051, 1058 (Fed. Cir. 1983); *Macke Co. v. United States*, 467 F.2d 1323, 1325 (Ct. Cl. 1972); *Gateway 2000 v. Kelley*, 9 F. Supp. 2d 790, 794 (E.D. Mich. 1998) (“conduct taken in anticipation of litigation” should be given “little weight”); *Federal Ins. Co. v. Americas Ins. Co.*, 691 N.Y.S.2d 508, 512 (App. Div. 1999).

566. That holding was required by the law of the Church itself: in its own Constitution, the Diocese “acknowledges the authority and power of the General Convention” of TEC and provides that “[e]very Congregation within the Diocese of Virginia, however called, shall be bound by the Constitution and the Canons adopted in pursuance hereof.” PX-COM-003-005, -011. That has been the rule throughout the Diocese’s history. *See supra* at pages 16, 18-19.

- Each of the churches at issue, like other Episcopal churches in the Diocese (and elsewhere) recognized the authority of the Constitutions and Canons of TEC and the Diocese and conformed their conduct to those requirements in numerous ways. Among those:

- They invariably obtained consents of the local congregation and Diocesan authorities, when required by the Canons, to incur debt above a stated threshold or to encumber or alienate real property. (*See* PX-COM-003-027; PX-COM-001-045, -066; Tr. 290-94, 297-98, 532-34.)

- They elected vestries, as required by canons, in the number of members provided by canons, by votes of persons qualified to vote by canonical rules. They elected senior and junior wardens, likewise as required by canons.

- They recognized the authority of the Diocesan Bishop and other Bishops of the Diocese, as required by canons of the Church. They received official Episcopal visitations of the Diocesan Bishop, of other Bishops of the Diocese (or, on occasion, of other Episcopal or Anglican Bishops with the invitation of Diocesan Bishop), as required by canons. They presented individuals to those Bishops for confirmation or reception into the Episcopal Church and, on occasion, for reaffirmation of their confirmation or reception vows.

- They submitted annual parochial reports through the Diocese to the Episcopal Church, as required by Church canons.

- After 1917 they contributed to the Church Pension Fund, which was established in that

year by the General Convention of TEC, on behalf of their clergy.

- They obtained health insurance through the Diocese, as required (after 1994) by Diocesan canon, or (in the case of The Falls Church) obtained a partial exemption from the Diocesan Executive Board pursuant to that canon.

- They provided specifically in governing documents and other official pronouncements that they were bound and governed by canon law to the extent that it applied.

- They adhered to business practices specified by Diocesan Canons and manuals, including insuring property and conducting annual audits. (*See* PX-COM-001-044 - 045; PX-COM-003-025 - 026; Tr. 285-88.)

- The members of their vestries took oaths to “yield [a] hearty assent and approbation to the doctrines, worship and discipline of The Episcopal Church,” and their clergy took similar oaths. The “discipline” includes the Constitution and Canons of the Church, as stated in its Canons (PX-COM-001-164), and as widely and generally understood. *See* Tr. 231, 397-98, 749-51, 2330-31, 2795, 3785, 4266-67, 4505-06, 4562-63, 4630-31, 4647, 4660, 4669-70.

- And notwithstanding the self-serving denials of some of their witnesses at the trial, their clergy and vestries all recognized and understood that they were bound by the canons as the “law of the church.”

The churches also benefited from their denominational affiliation in numerous practical ways, in addition to the spiritual benefits referenced above. Those more tangible, “secular” benefits include assistance in recruitment of clergy, including “supply priests,” and in preparation of parish profiles; protection of churches against improvident hiring decisions, both by the detailed ordination process and by investigating clergy recruited from other Dioceses; dissemination of clergy compensation guidelines; assistance in navigating the debt consent

process and with audits, parochial reports, taxes, insurance, and pensions; educational programs and human resources assistance; the Church Pension Fund; group health and dental insurance on very favorable terms; financial assistance to clergy facing extraordinary medical expenses; preferential reservations and discounted rates for the use of Diocesan facilities at Roslyn and Shrine Mont; investment management through the Diocesan Trustees of the Funds; and DMS loans, on favorable terms, to churches that cannot obtain financing from commercial banks.

In short, the seven churches at issue were “part of the club and part of the [hierarchical] Episcopal Church” (Tr. 2544) for many years. They were bound by the law of the Church, they knew it, and they abided by it. As the Supreme Court concluded in *Green*,

those who constituted the original membership of Lee Chapel, and who established the church in the manner directed by the grantors in the deed, and those members who followed thereafter, united themselves to a hierarchical church, the A.M.E. Zion Church, with the understanding and implied consent that they and their church would be governed by and would adhere to the Discipline of the general church.

221 Va. at 555-56, 272 S.E.2d at 186.

The relationship established by the laws of a hierarchical church are contractual in nature, as recognized in *Norfolk Presbytery*, *Green*, and numerous other cases.¹² The canons of the Episcopal Church and the Diocese, like the A.M.E. Zion Discipline, requires the Bishop’s (and the Standing Committee’s) approval for most property transfers (including all consecrated property, without exception). In *Green* the Supreme Court treated the local church’s attempt to take A.M.E. Zion Church property out of that Church as a transfer, for purposes of enforcing the Discipline. The same conclusion should follow here, where the Congregations are attempting to

¹² See, e.g., *Bradley v. Wilson*, 138 Va. 605, 612, 123 S.E. 273, 275 (1924), quoting *Kalbitzer v. Goodhue*, 44 S.E. 264, 266 (W.Va. 1903) (“The constitution and by-laws adopted by a voluntary association constitutes a contract between the members, which, if not immoral or contrary to public policy or the law, will be enforced by the courts”).

take Episcopal Church property to another denomination.

The *Green* Court also found,

from the language of the deed involved, the Discipline of the A.M.E. Zion Church, and the relationship which has existed between the central church and the congregation over a long period of years, that the A.M.E. Zion Church does have a proprietary interest in the property of Lee Chapel, and that its interest in the church property cannot be eliminated by the unilateral action of the congregation.

Id. at 556, 272 S.E.2d at 186. Again, the same conclusion follows inexorably with respect to the seven formerly-Episcopal churches in this litigation. The relationship factors are not all identical with those in *Green*, of course, but the case made out at trial, and from the churches' own records, establishes relationships between churches and the general church that were far more intimate, pervasive, and detailed than those which were sufficient to establish "a proprietary interest ... that ... cannot be eliminated by the unilateral action of the congregation" in *Green*.

F. This result is consistent with decisions of numerous other courts in Virginia and elsewhere.

Hierarchical churches have prevailed in every case litigated to judgment in Virginia and in the overwhelming majority of cases around the country. In Virginia, hierarchical churches have prevailed in *Green*, in *Cave Rock*, in *Buhrman*, and in *Wyckoff* – the latter two cases involving Episcopal churches. A congregation that separated from a hierarchical church has never won a property case in Virginia. The Episcopal Church or its Dioceses also have prevailed in the great majority of cases in other states. *See* TEC's separate brief (filed today) at § I(E).

II. The real and personal properties held and used by the churches are held in trust for TEC and the Diocese, pursuant to Va. Code § 57-7.1 and applicable canons of TEC and the Diocese.

Another path by which the Court may rule for the Church and the Diocese is to conclude that property held and used by local Episcopal churches is held in trust for the Church and the Diocese, as the rules of the Church and the Diocese provide.

Before 1993, Virginia statutes did not validate trusts for general churches. *See, e.g., Norfolk Presbytery*, 214 Va. at 505-07, 201 S.E.2d at 757-58, construing former Va. Code § 57-7. Section 57-7 was repealed in 1993 and § 57-7.1 enacted in its place. In the context of determining whether § 57-9 required application of the *Green v. Lewis* analysis, this Court construed § 57-7.1 as identical in effect to § 57-7. Five Questions Opinion (June 27, 2008) at 13-14. (The Diocese assigned error to that ruling on appeal, but the Supreme Court did not reach the question.) The Court should now reconsider that holding.

Section 57-7.1 should be interpreted in accordance with its plain language, which differs significantly from prior statutes. Unlike in past cases, related statutes now weigh against interpreting § 57-7.1 in the same limited manner as past statutes. In addition, interpreting § 57-7.1 to validate trusts only for local churches discriminates unconstitutionally and interferes with the free exercise of religion. The Court should interpret § 57-7.1 to avoid such constitutional issues; but if the Court does not do so, it must address those issues. (Neither this Court nor the Supreme Court has addressed the constitutional questions.)

Section 57-7.1 differs from the former § 57-7 in numerous important respects, and the plain language is controlling.¹³ First, § 57-7 was limited to uses of property that “belong peculiarly to the local society,” *Brooke v. Shacklett*, 54 Va. (13 Gratt.) 301, 313 (1856), and it only validated trusts controlled by “local functionaries,” *Moore v. Perkins*, 169 Va. 175, 180-81, 192 S.E. 806, 809 (1937). Section 57-7.1 is not so limited. It provides that “[e]very conveyance or transfer of real or personal property ... made to or for the benefit of *any church, church*

¹³ “Under basic rules of statutory construction, we consider the language of [a statute] to determine the General Assembly’s intent When a statute’s language is plain and unambiguous, courts are bound by the plain meaning of that language.” *Woods v. Mendez*, 265 Va. 68, 74-75, 574 S.E.2d 263, 267 (2003) (citations omitted).

diocese, religious congregation or religious society ... shall be valid,” and that property conveyed without a specific statement of purpose “shall be used for the religious and benevolent purposes of the *church*, *church diocese*, religious congregation or religious society *as determined appropriate by the authorities which, under its rules or usages*, have charge of the administration of the temporalities thereof.” (Emphases added.) Former restrictions to particular uses – places for worship, burial, or ministers’ or bishops’ residences – are gone. Dioceses are explicitly included in § 57-7.1, and statutory terms may not be rendered meaningless by construction. *E.g.*, *Monument Assocs. v. Arlington County Bd.*, 242 Va. 145, 149, 408 S.E.2d 889, 891 (1991) (it is “the settled rule of statutory construction that an enactment should be interpreted, if possible, in a manner which gives meaning to every word”).¹⁴

Second, the Supreme Court found in *Norfolk Presbytery* that the limits on church property ownership in former Code § 57-12 “evidence[d]” a “restrictive legislative intent” inconsistent with validation of trusts for non-local religious groups. 214 Va. at 507, 201 S.E.2d at 758. Section 57-12 was repealed by 2003 Va. Acts, ch. 813, and now there are no such limits.

Third, *Norfolk Presbytery* and prior cases relied on the fact that the Constitution of Virginia “prohibited ... incorporating any church or religious denomination.” 214 Va. at 505, 201 S.E.2d at 757. That prohibition was held unconstitutional in *Falwell v. Miller*, 203 F. Supp. 2d 624, 632 (W.D. Va. 2002). The General Assembly then enacted Va. Code § 57-16.1, which specifically allows incorporation of churches and explicitly defers to a church’s “laws, rules, or

¹⁴ Section 57-7.1 also uses the terms “religious society” and “church.” The April 3, 2008, 57-9 Opinion (at 74-75) held that “religious society” in § 57-9(A) is a broad term, encompassing even the Anglican Communion. The same term should not be given a different meaning in two such closely related statutes. *See City of Virginia Beach v. Bd. of Supervisors*, 246 Va. 233, 236-37, 435 S.E.2d 382, 384 (1993). “Church” is also a broad term, and it has been undisputed in this litigation that TEC and the Diocese qualify as such. 57-9 Opinion (April 3, 2008) at 75. The explicit mention of “church diocese” in § 57-7.1 is sufficient, but § 57-7.1’s other terms – “church” and “religious society” – also encompass denominational entities.

ecclesiastic polity,” and the Constitution has been amended to delete the ban on incorporation.

Fourth, Va. Code § 57-14, which was amended in 2005 to apply to sales of property of “any church diocese ... whose property is held by trustees,” confirms the General Assembly’s understanding that trusts for “church diocese[s]” now are valid.

Section 57-7.1 therefore should be construed as validating trusts for denominational churches. Such a trust is stated by TEC’s Dennis Canon and Diocesan Canon 15.1, *supra*.

If § 57-7.1 does not allow church property to be held in trust for the Diocese, however, then it is unconstitutional. Article I, § 16 of the Virginia Constitution provides that “all men are equally entitled to the free exercise of religion, according to the dictates of conscience” and, further, that “the General Assembly shall not ... confer any peculiar privileges or advantages on any sect or denomination.” The First Amendment also requires a level playing field in the law. *See, e.g., McCreary County v. ACLU*, 545 U.S. 844, 860 (2005) (“the ‘First Amendment mandates governmental neutrality between religion and religion, and between religion and non-religion’”); *Falwell*, 203 F. Supp. 2d at 631 (“the Free Exercise clause ‘protect[s] religious observers against unequal treatment’” (quoting *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 542 (1993))). It is obvious and undisputed that property may be held in trust, without limitation, for local religious entities and for local, regional, and national secular entities. To deny the same rights to non-local religious groups – such as hierarchical churches – would discriminate unconstitutionally. Any construction of a statute that raises such questions should be avoided. *Va. Society for Human Life, Inc. v. Caldwell*, 256 Va. 151, 156-57 & n.3, 500 S.E.2d 814, 816-17 & n.3 (1998). But if those issues are not avoided by construing § 57-7.1 according to its plain language, as discussed above, then it is unconstitutional and void.

As the U.S. Supreme Court stated in *Jones v. Wolf*, 443 U.S. 595, 606, 607-08 (1979),

and as numerous courts have held, an express trust recited in “the constitution of the general church,” such as Diocesan Canon 15.1 and the “Dennis Canon,” should be enforced. *See* cases cited in TEC’s brief at § I(E).

III. Alternatively, the continuing congregations and the Diocesan Executive Board are the only legitimate representatives of the local churches which hold beneficial title.

We stress at the outset that this argument is presented in the alternative. If the Diocese or TEC have trust, contractual, and/or proprietary interests in the properties at issue, then this issue is moot. If the Court rejects those arguments and holds that the properties belong solely to the local churches, however, then it must identify those churches, as the Court recognized at trial (*see* Tr. 1504-06) and as other church property cases have noted. *See, e.g., Jones v. Wolf*, 443 U.S. 595, 606-09 (1979).

A. The local churches are the continuing Episcopal congregations of The Falls Church (Episcopal), St. Margaret’s Episcopal Church, St. Stephen’s Episcopal Church, and Church of the Epiphany (Episcopal).

The Diocese has recognized the continuing congregations of The Falls Church (Episcopal), St. Margaret’s Episcopal Church, St. Stephen’s Episcopal Church, and Church of the Epiphany (Episcopal) as the legitimate continuations of those churches, by seating their delegations at a series of Annual Councils. *See* PX-COM-247A-074 (2007), PX-COM-248A-072 (2008), PX-COM-248A-016, -020, -022 (2009), and PX-COM-276A-016, -020, -022 (2010). That should end the matter. A civil court may not second-guess or review the decisions of a religious institution regarding the identities of its members. The court “must defer to the acts of the representatives of the Episcopal Church in determining who were the true members of the church, and, under canon law, who were the lawful directors of the Parish corporation. These are matters of ‘credentials and discipline’ and ‘polity and administration.’” *New v. Kroeger*, 84 Cal. Rptr. 3d 464, 485 (Cal. App. 2008), *review dismissed*, 202 P.3d 1089 (Cal. 2009). *See also*,

e.g., Metropolitan Philip v. Steiger, 98 Cal. Rptr. 2d 605, 610 (Cal. App. 2000) (“the question of which group is the true church is clearly ecclesiastical and ... therefore the ecclesiastical authorities’ determination of the issue is binding and conclusive on the trial court”) (internal quotation marks omitted).

Diocese of Southwestern Va. v. Wyckoff (Amherst Co. Nov. 16, 1979), PX-CTREC-021, is almost directly on point. Applying the former rule that trusts for general churches are invalid, then-Judge Koontz found it “abundantly clear ... that title to the property,” prior to a divided congregational vote to separate from the diocese and TEC, was held by trustees for the benefit of the local (Ascension Episcopal Church, Amherst) congregation. PX-CTREC-021-004. The majority obviously were entitled to leave the Episcopal Church if that was their choice, *id.* at 004 - 005; but “even a majority could not thereby require the minority to transfer their allegiance or be put out of existence as a church entity,” *id.* at 005. The local church congregation “while perhaps reduced in number still existed as it had before the vote.” *Id.* Applying neutral principles, the court

found no provision of the constitution or canons of the general church or the diocese which permit a vote of even the majority of the local congregation to alienate the real property of the church without the written consent of the Bishop acting with the advice and consent of the Standing Committee of the Diocese. In fact, Canon 21 expressly prohibits such alienation.

Id. at 006. “The net result ... based on the constitution and canons of the church and the state statutes is that the effect of the congregational vote in May, 1978 on the title to the real property in question was that title remained exactly where it was prior to the vote, that is, in the trustees for the benefit of the local protestant episcopal congregation.” *Id.* at -007. *See also id.* at 007 - 008:

The result of the May, 1978 congregational vote did not and could not extinguish that part of the Protestant Episcopal congregation known as Ascension Episcopal Church, Amherst remaining loyal to the Diocese of Southwestern Virginia and the National Episcopal Church. The vote may well have indicated that fifty-nine members of that congregation transferred their allegiance to the Anglican Catholic

Church which is unquestionably a separate entity. Nothing, however, has occurred under neutral principles of law to transfer the title and control of the property in question from the beneficial use of the remaining congregation of the Ascension Episcopal Church, Amherst....

The same, of course, is true of TFC, Epiphany, St. Margaret's, and St. Stephen's.

Venerable Virginia authority points to the same conclusion. In *Brooke v. Shacklett*, 54 Va. (13 Gratt.) 301 (1856), a church property dispute between factions adhering, respectively, to the Methodist Episcopal Church (MEC) and the Methodist Episcopal Church South (MEC South), the Court first determined that the property belonged to the local church. It then held:

If at any time before the division of the church a controversy had arisen among the members of the society at Salem church-house, in respect to the occupancy of the house – each party under the lead of a preacher claiming its exclusive use for purposes of worship – the dispute must have been determined by enquiring, not which of the two parties constituted a majority, or represented the wishes of a majority, of the members of the society, but which of the two preachers had been appointed and assigned to the society in accordance to the laws of the church; which of the two parties was acting in conformity with the discipline of the church, and submitting to its lawful government.

Id. at 321. The 1844 Methodist Plan of Separation changed the rules of the church, however, and allowed “border societies” (such as the church at issue) to choose between the MEC and the MEC South; but applicable law remained the same. *See id.* at 324:

Upon the hypothesis that the plan of separation is constitutional, the questions upon which such a controversy would now turn, would be, Which of the two parties is in regular connection with the Methodist Episcopal church south, recognizing its discipline, submitting to its government, and receiving its pastors? Those who can identify themselves with the party indicated in the enquiry, are entitled to the use of the property.

Cases in other states likewise analyze and resolve questions regarding the “identity” of a local church entitled to control of property by accepting the determination of the hierarchical church. In *Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc.*, 552 S.W.2d 865 (Tex. App. 1977), for example, the court held:

When a division occurs in a local church affiliated with a hierarchical religious body, and a dispute arises between rival groups as to the ownership or control of the local church property, *the fundamental question as to which faction is entitled to the property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division, and that is determined by which of the two factions adheres to or is sanctioned by the appropriate governing body of the organization. It is a simple question of identity.* [Citations.] In making such a determination, the civil court exercises no role in determining ecclesiastical questions. It merely settles a dispute as to identity, which in turn necessarily settles a dispute involving property rights. In doing so, the court applies neutral principles of law

Id. at 871 (emphasis added).

The Rectors of the defendant churches have been deposed and replaced with priests-in-charge or new Episcopal rectors. That is an ecclesiastical decision which a civil court cannot disturb. *See, e.g., Cha v. Korean Presbyterian Church*, 262 Va. 604, 612, 553 S.E.2d 511, 515 (2001); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976). The Vestries which left the Church likewise vacated their positions. Vestrypersons must be “confirmed adult communicants in good standing of the church, as defined in General Convention Canon I.17” (PX-COM-003-021), and the members of the secessionist vestries voluntarily renounced that status. *See, e.g.,* Tr. 2604, 2850. *Cf. Judicial Comm’n of PCA Korean Capital Presbytery v. Kim*, 56 Va. Cir. 46 (Fairfax 2001) (refusing to review a church’s decision to remove elders from their positions on a local governing body, the Session).

TEC Canon III.9.5(a) assigns exclusive use and control of the church property to the Rector in carrying out his or her duties, and Canon I.14 assigns control over property to the Vestry in other respects. It follows necessarily that removal of the Rectors and separation of the Vestries removed control of the property from those officials. The Executive Board’s determinations that the properties were abandoned, pursuant to Diocesan Canon 15.3, further establishes that authority over church property no longer resided in local leaders that had departed from the denomination. *See* PX-TRU-510; PX-FALLS-788; PX-APOST-477; PX-

EPIPH-283; PX-STMARG-1128; PX-STPAUL-764; PX-SSH-485; *Buhrman*, 5 Va. Cir. at 507 (“The Executive Board, by a formal resolution, has determined that the St. Andrew’s property has been abandoned within the context of church law, and it is most doubtful if that determination is subject to review by this court”). The determinations in *Buhrman* are similar to the determinations in this case. *Compare* Apostles_Ex_298.012 - 016 (corrected version filed July 28, 2011) (Standing Committee and Executive Board abandonment determinations in *Buhrman*) to PX-TRU-510 (and other such exhibits listed in this paragraph).

B. The Diocesan Executive Board is the only legitimate representative of Truro Episcopal Church, Church of the Apostles (Episcopal), and St. Paul’s Episcopal Church.

Most of the deeds at issue grant properties to trustees for an “Episcopal” church. “It is evident that the designated cestui que trust in each deed was a unit or component of the Protestant Episcopal Church in the United States of America within the then existing diocese.... [A] reasonable interpretation of these deeds leads inescapably to the conclusion that the trustees cannot hold title to the subject property for persons or groups who are withdrawn from and not under the authority of The Episcopal Church.” *Buhrman*, 5 Va. Cir. at 503.

There are no longer any *active* Episcopal churches at the former locations of Truro Episcopal Church, the Church of the Apostles (Episcopal), or St. Paul’s Episcopal Church. The congregations which now hold and occupy those properties “are withdrawn from and not under the authority of The Episcopal Church.” *Buhrman*, 5 Va. Cir. at 503. The trustees therefore cannot hold title for their benefit.

Withdrawal of those congregations from the fellowship of the Episcopal Church did not, however, terminate the existence of the Episcopal churches to which those individuals and congregations previously belonged. Those Episcopal churches are merely “inactive” within the meaning of Diocesan Canon 9.3, *i.e.*, they have “no functioning Vestry or Vestry Committee.”

PX-COM-003-019. Their authority therefore “is assigned to the Executive Board.” *Id.*

The Executive Board has declared the properties abandoned and directed the trustees to convey those properties to the Bishop, but the local churches – the institutions – remain. *See, e.g.,* PX-COM-247A-074; Tr. 1297; *Presbytery of the Covenant*, 552 S.W.2d at 871-72. *Cf. Schofield v. Superior Court*, 118 Cal. Rptr. 3d 160, 166 (Cal. App. 2010) (“[t]he continuity of the diocese [of San Joaquin] as an entity within the Episcopal Church,” after it purportedly severed its ties with the Church, is “a matter of ecclesiastical law, finally resolved, for civil law purposes, by the Episcopal church’s recognition of [Provisional Bishop Jerry A.] Lamb as the bishop of that continuing entity”); *Calvary Episcopal Church v. Duncan*, No. G.D. 03-020941 (C.C.P. Allegheny Cty., Pa.) (Oct. 6, 2009), *aff’d*, No. 293 C.D. 2010, 2011 Pa. Commw. Unpub. LEXIS 113 (Pa. Commw. Feb. 2, 2011) (the Episcopal Diocese of Pittsburgh “did not cease to exist” when former diocesan leaders attempted to take it out of the Church because those leaders “could not extinguish an entity that was created and recognized by [the Church]”) (dictum).

C. Incorporation of the churches is irrelevant.

Counsel for the Congregations appeared to suggest at trial that identification of the local churches may be affected by the churches’ incorporation (which occurred in 2006, by which time the Congregations anticipated and were acting in preparation for this litigation, *see, e.g.,* PX-APOST-101; PX-STMARG-1136A). The suggestion that incorporation affects this Court’s property determination is simply wrong.

Until 2002 it was unconstitutional for churches to incorporate in Virginia. After the *Falwell* decision invalidated that prohibition, the General Assembly enacted Va. Code § 57-16.1, which allows local churches to incorporate but protects denominational prerogatives. It provides that a corporation created by a church or religious body to hold, administer, and manage its real and personal property “shall have the power to (i) acquire ... any real or personal property *for*

any purpose authorized and permitted by the laws, rules, or ecclesiastic polity of the church or body, and not prohibited by the law of the Commonwealth and (ii) hold, improve, mortgage, sell, and convey the same in accordance with such law, rules, and ecclesiastic polity, and in accordance with the law of the Commonwealth.” (Emphases added.) The statute clearly establishes the policy of the Commonwealth that churches which incorporate remain subject to “the laws, rules, or ecclesiastic polity of the church.”

These churches did not require their trustees to convey any property to their corporations (in hopes of prevailing under § 57-9, *see* Tr. 4079-80); but under § 57-16.1 such conveyances would have changed nothing anyway. Removal of the property of an Episcopal church from the authority of TEC and the Diocese is neither authorized nor permitted by their laws, rules, or ecclesiastic polity, and of course the churches were “bound by the national and diocesan constitutions and canons” at the time of their incorporation. *Truro Church*, 280 Va. at 15, 694 S.E.2d at 559. Incorporation of the churches is simply irrelevant to any issues presented here.

IV. The Court should grant plaintiffs’ motion to strike the Congregations’ counterclaims.

The Congregations’ counterclaims for unjust enrichment and constructive trust are legally defective for several reasons. They fail as a matter of law because a ruling in favor of TEC and the Diocese as to the properties at issue will establish conclusively that TEC and the Diocese will not be unjustly enriched by the restoration of those properties to the Church. The constructive trust counterclaims fail because a constructive trust is a merely a remedy for unjust enrichment, not a cause of action. And the Congregations’ counterclaims fail with respect to all real and personal properties because they failed to prove their alleged damages.

A. A final judgment in favor of TEC and the Diocese would not be unjust, as a matter of law.

“To state a cause of action for unjust enrichment, [plaintiff] had to allege that: (1) he

conferred a benefit on [defendant]; (2) [defendant] knew of the benefit and should reasonably have expected to repay [plaintiff]; and (3) [defendant] accepted or retained the benefit without paying for its value.” *Schmidt v. Household Finance Corp.*, 276 Va. 108, 116, 661 S.E.2d 834, 838 (2008). *See also, e.g., Sevilla v. Del Castillo*, 28 Va. Cir. 164, 166-67 (Fairfax 1992) (sustaining demurrer to unjust enrichment claim).

The “benefit” conferred on the counterclaim defendants will result from the Court’s determination that TEC and the Diocese have trust, contractual, and/or proprietary rights in the properties and therefore are entitled to those properties. The unjust enrichment counterclaims ask the Court to hold that its own adjudication, applying the law of the Commonwealth, would be unjust – a contradiction and indeed an absurdity. If the Court determines that TEC and the Diocese are entitled to the property, such a conclusion can never be deemed unjust or inequitable. Moreover, under the theory embodied in the Congregations’ counterclaims, a hierarchical church could never win a property dispute where a local church has paid for all or most of the property at issue. That argument directly contradicts *Green*, 221 Va. at 556, 272 S.E.2d at 186 (“The fact that the general church has made no loans or grants for the benefit of Lee Chapel and that, in fact, it may have refused to contribute to the remodeling program of the local church, is not dispositive. A proprietary interest or a contractual obligation does not necessarily depend upon a monetary investment”), both Virginia Circuit Court decisions adjudicating Episcopal property disputes, and case law from across the country.

By much the same token, the Congregations offered no evidence that TEC or the Diocese “should reasonably have expected to repay” them for any benefit conferred. And the Dennis Canon, Diocesan Canon 15, and numerous cases (including two in Virginia) show that the Diocese and the Episcopal Church expected exactly the opposite – that all local church property

was held in trust for the Diocese and the Church. On both grounds, therefore, the Congregations' unjust enrichment counterclaims must be denied.

B. The Congregations' constructive trust counterclaims fail because a constructive trust is a remedy, not a cause of action.

A constructive trust is not a cause of action. It is “substantially an appropriate remedy against unjust enrichment, usually after an act of fraud, or breach of confidence or duty.” *Pair v. Rook*, 195 Va. 196, 213, 77 S.E.2d 395, 404 (1953). *See also, e.g., Buchanan v. Buchanan*, 266 Va. 207, 214, 585 S.E.2d 533, 537 (2003) (“[a] constructive trust is a mechanism by which the person holding title to property is subjected to an equitable duty to convey the property to another because allowing the title holder to retain the property would be unjust”); *Faulknier v. Shafer*, 264 Va. 210, 217, 563 S.E.2d 755, 759 (2002) (“A constructive trust is appropriately imposed to avoid unjust enrichment of a party”); *New Amsterdam Casualty Co. v. Waller*, 301 F.2d 839, 842 (4th Cir. 1962) (“A constructive trust is merely a procedural device by which a court of equity may rectify certain wrongs. It is suggestive of a power which a court of equity may exercise in an appropriate case, but is not a designation of the cause of action which justifies an exercise of the power”); *Khader v. Hadi Enters.*, No. 1:10cv1048, 2010 U.S. Dist. LEXIS 135514 at 15 (E.D. Va. Dec. 22, 2010) (a constructive trust is not a cause of action “but rather remedies for stated causes of action”); RESTATEMENT OF RESTITUTION § 160 (1937). The Congregations' unjust enrichment claims fail as a matter of law, as discussed above, and there are no facts warranting imposition of a constructive trust.

At trial, Congregations' counsel indicated that evidence about future use of property and the “viability” or “vitality” of congregations was offered in support of their constructive trust claim. The Court allowed the evidence for that reason alone, taking under advisement a continuing objection to it. *See* Tr. 515-20. The Court should sustain the objection. The issue in

these cases is legal and beneficial ownership of real and personal properties of seven Episcopal churches. Whether plaintiffs or defendants would make “better” use of the properties is not a question the Court can decide. It also is entirely irrelevant, as is the question whether the continuing Episcopal congregations are able to maintain such properties either with or without Diocesan assistance. As the Court recognized at the trial (*see* Tr. 458-518), its job is to determine legal and beneficial interests under Virginia law, not to redistribute church assets to advance anyone’s projection of what socially desirable uses will occur if a decision is rendered for one side or another.

C. The Congregations’ real property appraisals are legally insufficient to prove damages.

The Congregations seek to admit evidence of 18 appraisals valuing the real property of many of the churches involved in this litigation:

<i>Exhibit Number</i>	<i>Church</i>	<i>Date of Valuation</i>
DCOE-002	Church of the Epiphany	July 11, 1988
DCOE-003	Church of the Epiphany	October 30, 2003
DCOE-004	Church of the Epiphany	February 22, 2011
Apostles_Ex_52	Church of the Apostles	February 10, 2011
Apostles_Ex_53	Church of the Apostles	February 17, 2011
DSTM-046	St. Margaret’s Church	April 27, 1988
DSTM-047	St. Margaret’s Church	April 18, 2000
DSTM-048	St. Margaret’s Church	January 31, 2011
DSTM-049	St. Margaret’s Church	February 1, 2011
DSTP-356	St. Paul’s Church	February 1, 2011
DSTP-357	St. Paul’s Church	September 29, 2005
DSTS-038	St. Stephen’s Church	January 25, 2011
DSTS-039	St. Stephen’s Church	August 4, 2006
DX-FALLS-070	The Falls Church	October 25/November 1, 2006
DX-FALLS-071	The Falls Church	March 10, 2011
DX-FALLS-072	The Falls Church	February 23, 2011
TRU043	Truro Church	April 26, 2001
TRU242	Truro Church	August 1, 2006

Half of the appraisals value the properties as of dates prior to 2011.¹⁵ Even the more recent appraisals, which have effective dates in January - early March 2011, are irrelevant as a matter of law on the issue of property value in these cases under the Supreme Court's holding in *Little v. Cooke*, 274 Va. 697, 652 S.E.2d 129 (2007).

The Congregations nonetheless seek to admit these appraisals to prove damages. By the Congregations' theory of recovery, they would be entitled to the value of the properties as of the date that the TEC and the Diocese prevail in this case. The relevant date for valuation purposes therefore would be the date on which the Court decides in favor of TEC and the Diocese, if that comes to pass. Given the impossibility of obtaining appraisals that would pertain to an uncertain future date of decision, the date of this trial is the next best reference point from which to test the relevance of the Congregations' appraisals.

None of the Congregations' dated appraisals provides relevant values under *Little v. Cooke*. In *Little* a group of limited partners, suing the partnership and its general partner, attempted to establish the market value of a property known as Fox Rest at the time of an October 16, 2002, breach of contract. 274 Va. at 721, 652 S.E.2d at 143. At trial, the limited partners used expert testimony "establishing the fair market value of Fox Rest on the closing date of the sale, January 30, 2003, and on a date shortly before trial, June 30, 2005" *Id.* The trial judge refused to award any damages to the limited partners, explaining that "damages pertaining to the value of Fox Rest at the date of sale are too speculative to award" given that neither of the appraisals valued the property as of the date of breach. *Id.* The Supreme Court agreed, reasoning that the "Limited Partners offered no proof to establish that the fair market value of [the property] on the date of breach, October 16, 2002 ... exceeded the contract price." *Id.* at

¹⁵ The only appraisals for Truro date to April 2001 and August 2006.

722, 652 S.E.2d at 144 (emphasis added). As the Court further explained, “[t]he fair market value ... on either January 30, 2003 or June 30, 2005 was irrelevant and did not establish any damages on the date of breach.” *Id.* (emphasis added). The Court’s holding was categorical and did not rely on any case-specific changes in market conditions.

In short, the Supreme Court has determined that expert testimony valuing property approximately three months after the date on which a claim arose was irrelevant as a matter of law on the issue of value on the date of breach. The Congregations’ various appraisals are likewise irrelevant to the question of property values on the as yet undetermined future date on which the Congregations’ counterclaims would in theory arise. Even if the Court uses the trial as a reference point, these dated appraisals are still speculative and irrelevant under *Little*.¹⁶

The Congregations’ appraisals are speculative and irrelevant as a matter of law and therefore should be excluded. Accordingly, they are insufficient to prove any damages.

D. The Congregations’ “replacement value” evidence is legally insufficient to prove damages.

By Order entered February 8, 2011, with the agreement of all seven Congregations, the Court granted the Congregations’ motion for leave to amend and provided, in accordance with their representations at a hearing on January 21, 2011, that the total amount of damages sought in connection with their counterclaims “shall not exceed the fair market value of the real and personal property at issue.” But the Congregations presented *no* evidence of the fair market value of any of their personal property. They all presented evidence instead, and only, of replacement values. That evidence is factually and legally irrelevant and should be struck.

There are undeniable differences between fair market values and replacement values, as

¹⁶ Likewise, if the Court were to conclude that the dates of the Congregations’ votes were the relevant dates, the appraisals still would not pass muster under *Little*.

even some of the Congregations' own witnesses admitted. *See* Tr. 2181, 2375-76, 2389-90, 2598-99. The established and recognized meaning of "fair market value" is "the price the goods would bring if they were offered for sale by one who desires, but is not obliged to sell, and were bought by one who desires, but is under no necessity of having them." *Wharton, Aldhizer & Weaver v. Savin Corp.*, 232 Va. 375, 377 n.2, 350 S.E.2d 635, 636 n.2 (1986) (citation omitted) (holding that a purchaser failed to prove damages for breach of warranty where its only evidence of value was that the goods had "absolutely no value to our firm"). The "replacement" values described by the Congregations' evidence, on the other hand, are "what it would cost to acquire a like item in order to replace anything that we presently had." Tr. 2375; *see* Tr. 2172, 2598, 3693, 3968, 3990-91.

The Congregations had ample opportunity to hire personal property appraisers and offer appraisals. They did not. Nor did they offer any evidence, expert or otherwise, relating their replacement values to fair market values. It is beyond question that many items of personalty depreciate in value with time and use – furniture and computers, for example. Some goods may appreciate in value over time, if they remain in acceptable condition – such as objects made from silver or other precious metals. But there is absolutely no evidence in this case to allow the Court to determine that the Congregations' replacement values do not exceed the fair market values of the personal properties at issue. Their counterclaims with respect to personal property therefore must be dismissed for failure of proof. *See Wharton, Aldhizer, supra.*

V. The Court should strike the Congregations' "departure from doctrine" evidence.

The Congregations have argued that they should be allowed to present evidence that "the bishops departed from the biblical teaching of the church" (or "depart[ed] from scripture"), Tr. 2693 (TFC Rector John Yates) *because* the Court may *not* decide that question (as all parties agree) and therefore the contractual relationships between the parties lack "mutuality."

Those arguments must be rejected. They have no support in the law of Virginia (or any other state for that matter, as far as we know), and they run directly contrary to well-established precedent that prohibits doctrinal matters from playing any role in property disputes. *See, e.g., Jones v. Wolf*, 443 U.S. at 602 (the First Amendment “prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice,” and methods for resolving such disputes may not “entangle the civil courts in matters of religious controversy”); Constitutionality Letter Opinion (June 27, 2008) at 14 (“the *Hull Church* Court held that it violates the First Amendment when courts decide church property disputes based upon the courts’ or juries’ own opinion as to whether the church in question has substantially departed ‘from the tenets of faith and practice existing at the time of the local churches’ affiliation”)) (quoting *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 450 (1969)); *see also Green*, 221 Va. at 552, 272 S.E.2d at 184 (“it is not within the scope of this opinion to determine the validity of the grievances between the membership and the church”); *Truro Church*, 280 Va. at 26, 694 S.E.2d at 566 (it is a “well established principle that under the First Amendment ‘civil courts are not a constitutionally permissible forum for a review of ecclesiastical disputes’” (citation omitted)).

The Congregations’ suggestion that the Court should reject denominational claims based on the Congregations’ own assessment of doctrinal departures actually compounds the constitutional and legal problems with their “mutuality” defense. Nor are the Congregations’ reasons for departure relevant.

Once the Congregations explain the nature and legal basis for their defense, the Diocese will address the “mutuality” issue further. The Diocese asks, however, that questions and answers regarding any alleged “departure from doctrine” – including the Congregations’ own

“understanding” or “belief” about such matters – be disregarded and/or stricken.

FACT SUMMARIES (individual churches)

The Falls Church (Episcopal) (“TFC”)

The first church structure at TFC’s present location was built in 1733, by the Vestry of Truro Parish. PX-FALLS-045-003. Legislation dividing Truro Parish and creating Fairfax Parish became effective on June 11, 1765. See H.R. McIlwaine, *Journals of the House of Burgesses of Virginia, 1619-1776* (Richmond, VA: 1904-1915), Vol. X at 350; W. Hening, *Statutes at Large* (Richmond: Franklin Press, 1820), Vol. VIII at 157 (2008-TECEDV-066-004); Tr. 51 (Oct. 20, 2008).

The Rev. David Griffith “was chosen rector of Fairfax Parish (Christ Church, Alexandria, and the Falls Church) February 17, 1779.” PX-FALLS-053-089 (Stewart History).¹⁷ According to a grant application prepared by TFC in December 1983, the Rev. Griffith

was, by 1783, one of the leaders in the effort to transform the Anglican parishes in Virginia into a new diocese and to initiate a Protestant Episcopal Church in the United States of America as the successor to the Church of England in the new nation, independent of governmental establishment. On Easter Monday, 1785, the Fairfax parish vestry, meeting at The Falls Church, declared itself conformants to the ‘Doctrine, Discipline and Worship of the Protestant Episcopal Church.’ Since then The Falls Church has been a church of the Protestant Episcopal Church in the United States of America, the Diocese of Virginia.

“Restoration of the Falls Church,” DX-FALLS-068-015 - 016.

By the 1790s, following disestablishment of the Church by the Commonwealth of Virginia, TFC was “struggling”; and “[b]y 1798, it’s likely that The Falls Church was no longer functioning as an Episcopal congregation.” Tr. 927 (Dr. Bond). See also *id.* at 929, 930-31; PX-COM-074-009; PX-FALLS-053-099, -115 - 119; Tr. 69-72, 98 (Oct. 20, 2008).

¹⁷ The “Stewart History,” PX-FALLS-053, was written by Senior Warden Charles A. Stewart and completed in 1941. PX-FALLS-053-001, -009.

In 1823 John Moore applied to the Annual Convention of the Diocese to be lay delegate from TFC. Moore argued that the Falls Church Vestry was “organized agreeably to the canons of the church”; but the Convention denied the petition because Fairfax Parish was already represented by a delegate from Christ Church, Alexandria, on the ground that “if there is an Episcopal Congregation belonging to that church, then it is under the government of [another] vestry.” PX-COM-071-451, -453; DX-FALLS-060-040 - 041¹⁸; PX-FALLS-053-127 - 133. *See* Tr. 932-33. A further petition from Mr. Moore stated again that the TFC Vestry was organized according to the canons of the Episcopal Church and requested reconsideration. The Council referred the matter to the Committee on the State of the Church, which determined that no current canon provided for the division of a parish and prepared a “Canon for the division of Parishes,” which the Annual Council approved. PX-COM-071-454. Several churches took advantage of that Canon to become members of the Convention over the next ten years or so, in at least three cases as individual churches rather than parishes; but there was no further application from any Falls Church Vestry to the annual Convention of the Diocese until 1836. Tr. 86-89 (Oct. 20, 2008).

Article XII of the Diocesan Constitution, enacted in 1815, provided: “Every Parish within this diocese shall be entitled to the entire benefit of this constitution, as soon as it shall have signified its ratification thereof, either in writing or by sending a lay delegate to the Convention; and such parish shall thereafter be benefited and bound, equally with the other parishes in this diocese, by every rule and canon which shall be framed, by any Convention acting under this constitution, for the government of this church in ecclesiastical concerns.” *See*

¹⁸ DX-FALLS-060 is *Near the Falls: Two Hundred Years of the Falls Church*, written by its Rector, the Rev. Joseph Hodge Alves, and Senior Warden Emeritus Harold Spelman, and published by TFC in 1969. It is cited *infra* as “*Near the Falls*.”

also PX-COM-071-625 (Article XI, 1835) (same).

In 1836, TFC petitioned the Annual Council of the Diocese to become a separate congregation in Fairfax Parish, pursuant to the Canon for the division of Parishes. *See* 1836 Diocese Journal at 6-7, 13 PX-COM-072-004, -007. The 1836 Annual Council approved that petition. *See id.* at -007 - 008; Tr. 934-35. As a result or in the aftermath of that approval of its petition, TFC elected its own Vestry, which took over the management of its affairs. Tr. 106 (Oct. 20, 2008). TFC's first parochial report was printed in the Journal of the Annual Council of the Diocese in 1837. PX-COM-073-014.

“From 1837 to 1861 the Falls Church had an organized congregation in charge of a minister or rector,” but “all church records for this period were lost or destroyed when Federal soldiers occupied the building and looted the minister’s home.” PX-FALLS-053-143 (Stewart history). “The church was abandoned in the Spring of 1861 as the country thereabouts was occupied by the Federal troops.” *Id.* at -171. The church building was heavily damaged in the Civil War, during which the United States military used the building at various times as a hospital and a stable. *E.g.*, DX-FALLS-060-046 (*Near the Falls*).

According to the Stewart History, “[t]he old building ... was restored [by the Federal government] within twelve months after the war closed and turned over to the Bishop in February, 1866.” PX-FALLS-053-195. *See also id.* at -205 (building “was turned over to the proper church authorities in 1866”); PX-COM-103-015 - 016. “Worship services were now held regularly in the old church by the men from the Seminary, though there was no formal organization of the congregation until 1873. Records of these eight years are few. We know, however, that Bishop Johns gave permission to the Methodists to hold some services in The Falls Church....” DX-FALLS-060-063 (*Near the Falls*). *See also* PX-FALLS-726-005; PX-FALLS-

727-005.

The church was formally reorganized and a Vestry was elected on November 27, 1873. DX-FALLS-060-064 (*Near the Falls*). “[A] meeting of gentlemen connected with this church” was “held, after due notice, for the purpose of forming a vestry” on November 27, 1873, and the gentlemen elected to the Vestry “proceeded to organize ...” Vestry minutes, DX-FALLS-201-002. The Vestry “was elected for the remainder of the Episcopal year.” PX-FALLS-044-045.

TFC Junior Warden Carol Jackson has testified that in the 1995-97 time period, when she was on the Vestry, TFC’s “rules of operating came from the constitution and canons of the Episcopal Church.” PX-DEP-019-014. TFC’s Rector, the Rev. John Yates, testified at trial in November 2007 that the Episcopal Church’s governing documents are its Constitution and Canons, under the umbrella of the Holy Scriptures (2007 Tr. 507); that the Diocesan Annual Council and TEC’s General Convention have power to adopt amendments to their respective Constitutions and Canons (*id.* at 509); and that TFC’s Vestry, in its actions regarding giving options for those who did not want to give to the Diocese, sought to be respectful to the Canons of the Church (*id.* at 524).

The Rev. Yates also testified that that all members of TEC, and parishes and missions, are bound by the laws of TEC (the Constitution and Canons) as long as they do not differ with the Lordship of Christ as understood in the Scriptures (*id.* at 507-08) and that members of the Diocese and parishes and missions in the Diocese are bound by the Diocese’s Constitution and Canons unless they call for doing something that goes against the teachings of Christ (*id.* at 508-09). No witness for TFC (or any other church) testified to an understanding that any provision of the Constitution and Canons of either TEC or the Diocese is contrary to the Lordship of Christ as understood in the Scriptures or calls for doing anything that goes against

the teachings of Christ. *See, e.g.*, Tr. 3008-09 (2011) (TFC witness Thomas Wilson).

TFC's records further demonstrate that throughout its history, the church and its leaders were both aware of the national and Diocesan Constitutions and Canons (*see, e.g.*, DX-FALLS-204-062, DX-FALLS-206-002, -217 - 218 and DX-FALLS-207-002, -017 (duties and responsibilities of Vestry and officers); DX-FALLS-210-037; DX-FALLS-216-088; PX-FALLS-019-041; Tr. 2553 (Diocesan trust canon); Tr. 3001) and careful to adhere to the requirements of those documents. That care manifested itself in numerous ways, including:

- Scrupulous observance of canonical rules governing sale or encumbrance of property, including those rules which require consents of the Diocesan Bishop and Standing Committee. *E.g.*, DX-FALLS-205-216, -217 - 218; DX-FALLS-206-052, -053, -094, -240, -242; DX-FALLS-209-107, -122, -126, -131; DX-FALLS-228A-037; PX-FALLS-704-001; PX-FALLS-123-001; PX-FALLS-124; DX-FALLS-211-078; PX-FALLS-186-004 - 005; DX-FALLS-283-035; DX-FALLS-225-188 - 189; PX-FALLS-338; PX-FALLS-339; DX-FALLS-050-001 - 002; DX-FALLS-034-001; DX-FALLS-052-005; Tr. 1377-81, 2542-44, 2712-13. *See also* DX-FALLS-044 (Bishop's consent to incur indebtedness, with conditions); DX-FALLS-046-001 - 002 (Circuit Court Order granting leave to encumber church property, noting "that the Church has received the necessary approvals from the Standing Committee of the Episcopal Diocese of Virginia and from the Bishop of Virginia ...").¹⁹

¹⁹ Several of the cited exhibits also demonstrate that third parties, including lenders and reviewing courts, likewise required compliance with applicable canons. *See also* PX-FALLS-793-073 (opinion letter to lending bank); "Restoration of The Falls Church," DX-FALLS-068-006 and -009 (grant proposal and request dated December 1983) ("*In accordance with the Canons of the Diocese of Virginia and the laws of the Commonwealth of Virginia, the trustees of The Falls Church hold legal title to the property of The Falls Church.... Under the Constitution and Canons of the Protestant Episcopal Church in the Diocese of Virginia, the signers of this grant request are authorized as such by the vestry of The Falls Church*" (signed by TFC's Rector, Senior Warden, Junior Warden, and Business Manager, *id.* at -010)). (Emphases added.)

- Meticulous obedience to canonical rules governing qualifications, elections, tenure, and duties of vestries, vestry members, wardens, and other officers; qualifications of voters; vestry meetings, including special meetings; annual congregational meetings; and other related provisions of Episcopal canon law. *E.g.*, DX-FALLS-201-020, -029, -185, -428; DX-FALLS-203-216, -286; DX-FALLS-204-017, -056, -099, -143 - 144, -195, -238, -285; DX-FALLS-205-011, -035, -100, -298; DX-FALLS-206-305; DX-FALLS-207-017; DX-FALLS-208-005; DX-FALLS-210-007, -044; DX-FALLS-211-003, -050; DX-FALLS-213-003, -016; DX-FALLS-214-011; DX-FALLS-215-046, -120, -125; DX-FALLS-216-010, -028, -052; DX-FALLS-217-012, -030, -129; DX-FALLS-218-079; DX-FALLS-220-003, -049; DX-FALLS-221-007; DX-FALLS-223-017 - 019, -033; DX-FALLS-224-055; PX-FALLS-017-009, -044; PX-FALLS-018-011; PX-FALLS-019-057; PX-FALLS-020-019; PX-FALLS-172-001; PX-FALLS-181-005; PX-FALLS-360-001; PX-FALLS-512; Tr. 2811-14.

- Careful conformity to church rules governing church membership. *E.g.*, PX-FALLS-225-004 (“contrary to the perception of some, transfers of confirmed communicants into The Falls Church are accepted as long as the canonical requirements are met”); PX-FALLS-345 (copies of TEC and Diocesan Canons regarding church membership and voting eligibility, with handwritten notes and underlines); PX-FALLS-346 (a partial copy of Diocesan Canon 17 (“Of Regulations Concerning the Laity,” including church membership), with handwritten markings); PX-FALLS-347 (a copy of two pages of Diocesan Canons, including all of Canon 17, with handwritten additions focusing on membership (confirmation) and communicants in good standing); PX-FALLS-078-293 (“Membership Definitions (from the Canons)”); Tr. 2808, 3008.

- Purposeful compliance with canonical rules governing the duties and prerogatives of rectors. *E.g.*, PX-FALLS-021-072; DX-FALLS-222-005 - 006 (Rector explained at Annual

Meeting “that his vows bind him to obey the Bishop and the canons and directives adopted by the General Convention. If they ask for trial uses, he will use them; and if they adopt a new Prayer Book, he will use it. He cannot be bound by a vote of the congregation of the liturgy of the Church”; motions then tabled or withdrawn); PX-FALLS-224-041 (paper prepared by TFC Rector John Yates for the Vestry and submitted for course work at Fuller Seminary, stating, “[t]he canons bind us to a system whereby the Rector oversees spiritual matters and the Vestry oversees financial and property matters”); PX-FALLS-225-004 (“within the context of authorized services in accordance with the Book of Common Prayer the authority of the Rector in liturgical matters must be recognized. Details of liturgical style within the context of the Prayer Book are the province of the Rector”). *See also* DX-FALLS-222-014 (deacon’s report of being permitted to “participate in every facet of the parish ministry” with “the exception of those things, which by canon law I am not permitted to do”).

- And conscious attention to a miscellany of other canonical requirements and authorities. *E.g.*, DX-FALLS-201-295 (filling a vacancy on the Vestry “in accordance with the authority given ... by the Canons”); DX-FALLS-203-286 (rejecting a proposed congregational resolution changing the terms of vestrymen after a retired Rector objected to it as “uncanonical”); DX-FALLS-204-028 (observance of “Canon 23 forbidding a minister of any other than the Episcopal Church to officiate at a service, but permitting him to speak when authorized by the Bishop”); DX-FALLS-205-061, -063, -071, -074, -076, and -077 (audit and bond requirements); PX-FALLS-514 (audit requirements); Tr. 1384-85, 2589 (same); Tr. 1385 (insurance requirements); DX-FALLS-205-072 (requirements for handling the Rector’s discretionary fund during a vacancy in the rectorship); DX-FALLS-205-110 (Vestry resolution regarding burials in the churchyard, citing Diocesan Canon as source of the duty to act); DX-FALLS-217-137 - 138

(letter from an attorney regarding responsibilities of the Treasurer under both Virginia law and Diocesan Canons); PX-FALLS-018-045 (designation of legal advisor as “‘Chancellor to the Vestry’ in accordance with canonical nomenclature”); PX-FALLS-021-079 (Christian Education Commission “will function under the provisions of Canon 20”); DX-FALLS-221-111, -114 (policy statement citing “the canons of the Church” as placing “the use of Church grounds or other property for burials or memorials ... within the control of the Vestry”); DX-FALLS-228A-133 - 143; DX-FALLS-228A-144 (stating Treasurer’s responsibilities “in accordance with the Canons”); PX-FALLS-167 (letter requesting Bishop’s permission to conduct an interfaith worship service); PX-FALLS-233 (Diocesan Bishop’s permission for a visiting Bishop to administer confirmations, as required by Article II, § 3 of TEC’s Constitution, PX-COM-001-011); PX-FALLS-358 (letter and report from a CPA to TFC’s Vestry, focusing largely on compliance with Canons as requested); PX-FALLS-439 and PX-FALLS-440 (adherence to “diocesan canonical procedures” regarding church “planting”) (October 2006); PX-FALLS-498 (rules for weddings); PX-FALLS-500 and Tr. 2702-03 (marriages of divorced persons). *See generally* Tr. 2586-92, 2738-42, 2998; PX-DEP-019-003, -026 - 028, -035.

TFC’s 1982²⁰ and 1999 Vestry Manuals provide, under the heading “The Structure of the Protestant Episcopal Church”: “The Falls Church is subject to the constitution and canons of the national church (the Protestant Episcopal Church in the United States of America) and of the Diocese (the Protestant Episcopal Church in the Diocese of Virginia). Each vestry person should have a working knowledge of the structure and functioning units at the national, diocesan, and regional levels.” PX-FALLS-226-005; PX-FALLS-078-085. Each of those Vestry Manuals

²⁰ In 1982, “for the first time, the vestry officially adopted a manual for vestry members of The Falls Church that summarizes the basic canonical and other requirements that underlie and govern the operation of vestries.” DX-FALLS-286-007.

contains numerous additional quotations and citations to national and Diocesan Constitutions and Canons. *See* PX-FALLS-226-007 - 013, -021 - 023, -025 - 031; PX-FALLS-078-031 - 081, 086 - 093; Tr. 3002-08.²¹

TFC's records demonstrate further that the church not only followed national and Diocesan canons but also complied with the Diocese's policies and instructions. *See* DX-FALLS-060-077 (*Near the Falls*) ("special permission from the Bishop to decorate the Altar" for a wedding, in 1892); DX-FALLS-201-221 (Bishop's approval for the Rector to reside in a rectory offered by another church); DX-FALLS-201-372 ("by permission of Bishop Brown the Every Member Canvass would be held on June 16th ..."); DX-FALLS-205-244 (local church Committee on Evangelism created in response to a Diocesan recommendation); PX-FALLS-175-001 and PX-FALLS-173 (pastoral letter from Diocesan Bishop read at Sunday services and printed one week later as a supplement to TFC's Sunday bulletin); PX-FALLS-236-001, PX-FALLS-237, and PX-DEP-035-024 - 025 (Diocesan Bishop's permission to use the 1928 Prayer Book for two services); PX-FALLS-394 (Diocese's Policy and Procedures on Sexual Misconduct in Pastoral Care); PX-FALLS-407-003 (following Bishop's advice "against setting up a nearby mission church since other Episcopal Churches are in the area").

The Diocese, the Diocesan Bishop, and the DMS have provided financial assistance to TFC – supporting its clergy for many decades, when the congregation was unable to do so alone; paying for repairs to its buildings; and assisting its clergy and members with grants to support advanced education, sabbaticals, and mission trips. TFC clergy supported by the DMS include

²¹ In a similar fashion, Article 3 ("RELATION TO CHURCH CANONS") of the Constitution of The Falls Church Day School states, "No provision of this constitution shall be in conflict with the canons of The Episcopal Church or the Diocese of Virginia." PX-FALLS-759-001 (1983); DX-FALLS-227-020 (1973).

the Rev. Richard T. Brown, who served from 1842 to 1844 and from 1855 to 1861²² (*see* PX-COM-094-128; PX-COM-095-120; PX-COM-096-115; PX-COM-097-080; PX-COM-098-054; PX-COM-099-031, -047; PX-COM-267-008; PX-FALLS-044-031); the Rev. William F. Lockwood, who served from 1845 to 1852 (*see* PX-COM-082-018; PX-COM-084-015, -016; PX-COM-085-014, -016; PX-COM-086-029; PX-COM-088-036; PX-COM-090-024, -073; PX-COM-267-036, -037, -047); the Rev. R. A. Castleman, who served from 1892 to 1895 and from 1911 to 1931 (*see* PX-COM-092-099; PX-COM-093-131; PX-COM-131-113, -114, -115, -116; PX-COM-132-102, -104, -105, -106; PX-COM-158-049, -061; PX-COM-159-067; PX-COM-161-069; PX-COM-167-067; PX-COM-169-068; PX-FALLS-812-081, -082, -109, -145, -173); the Rev. John McGill, who served from September 1877 to May 1878, from 1895 to 1899, and from March to September 1913 (*see* PX-COM-133-053; PX-COM-134-044, -045; PX-COM-136-049, -050); the Rev. George S. Somerville, who served from 1899 to 1908 (*see* PX-COM-139-046, -047; PX-COM-140-048, -049; PX-COM-141-056, -058; PX-COM-142-061, -062, -063, -068; PX-COM-143-051, -052, -053; PX-COM-144-059; PX-COM-145-056; PX-COM-146-058; PX-COM-260-046; PX-FALLS-811-058, -080); the Rev. A.G. Grinnan, who served from 1913 to 1917 (*see* PX-COM-152-060; PX-COM-153-065; PX-COM-154-072; PX-COM-155-069; PX-FALLS-736; PX-FALLS-737-002; PX-FALLS-811-203; PX-FALLS-812-047, -068). *See also* Tr. 944-45, 946-49; PX-COM-268-306 (moving expenses for the Rev. Clarence McClellan, in 1932); PX-COM-159-072, PX-COM-160-057, and PX-COM-161-075 (support of parish house); DX-FALLS-204-110, -112 - 113, -115 - 116 (loan from Diocese to buy an organ (or “orgatron”), in 1938); DX-FALLS-206-153 (support for an assistant to the rector); DX-

²² Dates of rectors’ service are provided by DX-FALLS-060-126 (*Near the Falls*). As there noted, before 1917 the rectors who served TFC also served other nearby churches.

FALLS-221-057 (Deacon-in-Training Program); DX-FALLS-223-070 (“Contribution from Diocese”); PX-FALLS-216, PX-FALLS-217, PX-FALLS-222, and Tr. 2701-02, 2801 (clergy’s doctoral studies); PX-FALLS-342, PX-FALLS-343, and PX-FALLS-344 (Rector John Yates’ sabbatical leave); PX-FALLS-402 and Tr. 2531 (Falls Church Fellows Program); PX-FALLS-427 and PX-FALLS-428 (TFC member’s mission trip); Tr. 671-73 (clergy’s extraordinary medical expenses).

TFC contributed financially to the Diocese, both under canonical mandate until 1957 and thereafter voluntarily under the “Virginia Plan.” *See* PX-COM-196-036; Tr. 365-66, 560-61, 2538-42, 2593-94, 3018-19.

TFC’s records also document various other aspects of the close and enduring relationship between the church and the Diocese, such as TFC’s repeated requests to the Diocese for assistance in locating and employing a new rector or other clergy; the Diocese’s responses to those requests; and TFC’s adherence to related Diocesan rules and policies, including obtaining the Bishop’s permission to hire new clergy. *See, e.g.*, DX-FALLS-060-069, -084, -089, -090 (*Near the Falls*); PX-FALLS-201-250, -328 (*see also* PX-FALLS-044-097); DX-FALLS-203-168, -171, -172, -257, -293; DX-FALLS-205-073, -078, -093; DX-FALLS-208-053, -056, -069, -070, -071, -081, -085, -111, -116, -124, -132; DX-FALLS-209-014; DX-FALLS-210-067, -071; DX-FALLS-217-072; PX-FALLS-017-142; PX-FALLS-019-133; DX-FALLS-218-045, -062, -068; PX-FALLS-146-002; PX-FALLS-147; PX-FALLS-148; PX-FALLS-149; DX-FALLS-223-129, -134; DX-FALLS-224-015, -108; DX-FALLS-283-033; DX-FALLS-225-057.

A striking example of this assistance is the hiring of the Rev. Joseph Hodges Alves, Jr., who at first declined a call to be TFC’s Rector but was persuaded to accept through the intervention of Bishops Frederick D. Goodwin and Robert F. Gibson. *See* DX-FALLS-060-102;

DX-FALLS-209-050. Bishop Goodwin “officially instituted Mr. Alves as the Rector of The Falls Church” on June 22, 1958 (DX-FALLS-060-103), and he served for the next 14 years.

TFC’s records also show that when the Vestry wanted a rector to resign,²³ it turned to the Bishop for help and obtained the help that it desired. *See* DX-FALLS-201-241 - 244.

Bishops or their delegates installed rectors at TFC. *See* DX-FALLS-205-121 (1945); DX-FALLS-225-247 (1979). TFC obtained letters dimissory, as required by Episcopal polity, when it sought to hire clergy who were canonically resident in other Dioceses. PX-COM-198-041 (Joseph H. Alves); PX-COM-199-057 (Wallace C. Shields); PX-COM-210-067 (Rev. Robin G. E. Murray); PX-COM-212-077 (Rev. Joel Wilson Pugh II); PX-FALLS-213; PX-FALLS-214; PX-COM-222-075, -076, -128, -129. *See also* PX-FALLS-382 and PX-DEP-035-046 - 047 (license, in accordance with Canon of TEC, for a priest canonically resident in the Diocese of Pittsburgh to perform priestly functions in the Diocese of Virginia). TFC’s records also demonstrate that on at least two occasions, Diocesan Bishops vetoed the employment of clergy at TFC and the church complied. *See* DX-FALLS-207-025; PX-FALLS-419 and PX-DEP-012-030 - 031. *See also* Tr. 2741-42 (discipline and removal of a priest at TFC).

Bishops of the Diocese and TEC and other Diocesan clergy also attended and participated in numerous ordinary and special occasions at TFC, in addition to Bishops’ regular episcopal visitations for purposes of confirmation and reception of new members (discussed *infra*). *See, e.g., Near the Falls*, DX-FALLS-060-042 (“A number of services when Bishop William Meade and Assistant Bishop John Johns were present were held in the years between 1843 and 1846”); PX-COM-148-024 (in April 1910 Diocesan Bishop Robert A. Gibson “held services in Falls

²³ It has long been the rule that only the Diocesan Bishop can remove a Rector without his consent. *See, e.g.,* TEC-24-092 - 094. *See also* Tr. 306-08.

Church for the unveiling of a tablet to Rev. G.S. Somerville”); DX-FALLS-203-265, -267, and PX-FALLS-053-259 (bicentennial celebration, November 1934); DX-FALLS-060-101 and DX-FALLS-209-015 (225th anniversary of the church’s founding, November 1957, “with our beloved Bishop Goodwin presiding”); PX-FALLS-141 and PX-FALLS-020-025, -034 (200th Anniversary of the completion of the present church building, May 1969²⁴); PX-FALLS-020-153 and PX-FALLS-021-025 (visits to TFC by Bishop Suffragan Philip A. Smith in 1970, to close the youth group’s “fall series” and speak on “The Christian Family in Today’s World”); DX-FALLS-219-045 (informal meeting of Bishop Coadjutor Robert B. Hall with the vestries and other lay leaders of the Diocese’s Region 8 at TFC in May 1973); PX-FALLS-151-001, -010 (Bishop Suffragan John A. Baden’s visit and participation in a Sunday School Faculty Meeting in November 1973); PX-FALLS-158-004 (Bishop Baden’s service as Lenten speaker in 1975); PX-FALLS-180-004 (Diocesan Bishop Robert Hall’s visit to TFC on July 4, 1976, including preaching at 9 AM and 11 AM services); DX-FALLS-224-179 (Bishop Baden’s attendance at a “Unity Supper for the Family of The Falls Church” in November 1978); PX-FALLS-786-003 (consecration of TFC’s new church building by Diocesan Bishop Peter Lee, September 1992); PX-DEP-034-030 - 031 (informal meetings of Bishops and Vestry in 2000-06). *See also* DX-FALLS-286-004 and -007 (TEC’s Presiding Bishop, the Rt. Rev. John Allin, was invited and visited TFC as part of a 250th anniversary celebration in November 1982).

Further examples of the relationship between TFC and the Diocese include the Diocesan Bishop’s advice and assistance in church building restoration, in the early 1900s (*see* PX-COM-144-023); mission services conducted by a Diocesan Archdeacon (PX-COM-144-029); the

²⁴ Diocesan Bishop Robert F. Gibson, Jr., presided and TEC’s Presiding Bishop, the Rt. Rev. John Hines, presented a “Bicentennial Sermon,” which was published in TFC’s Sunday bulletin on June 8, 1969. PX-FALLS-142.

Diocesan Bishop's support for TFC's parish hall fundraising campaign, in 1949-50 (PX-FALLS-117-004); TFC's election of a "Keyman to maintain liaison with Lay Organizations of the Diocese" (DX-FALLS-206-221) or between laymen and the Bishop (PX-FALLS-020-065); selection of TFC as "one of the Pilot Parishes in an effort being made by the Committee on Overseas Missions of the Diocese of Virginia, to bring a warmer and more personal contact between congregation and missionary," in 1961 (DX-FALLS-213-015); TFC's "enthusiasti[c]" participation "in the consideration by the Diocese in the Venture in Mission (VIM) program recommended by the National Church" (DX-FALLS-283-006) and in the VIM program itself (DX-FALLS-225-260); the Diocesan Bishop's support for an "Alpha" conference at TFC, in 2003 (PX-FALLS-429, -430, and -431)²⁵; visits from Diocesan staff to TFC to support its Vestry and/or to speak or preach at Sunday services (*e.g.*, DX-FALLS-215-120; PX-FALLS-158-005; PX-FALLS-160-001 - 002; PX-FALLS-490-001); the Vestry's response to the Diocesan Committee on Canons' request for suggestions or comments on proposed changes in Diocesan Constitution and Canons (*see* DX-FALLS-216-105 - 107); Diocesan assistance with clergy's immigration (Tr. 683-84); submission of a series of Vestry and congregational resolutions on the deaths of prominent members of the church to the *Virginia Churchman* (*see* DX-FALLS-205-228; DX-FALLS-206-154, -347; DX-FALLS-209-134; DX-FALLS-212-094; DX-FALLS-216-069); and Bishops' participation in funeral services of Rectors at TFC (*see* PX-COM-146-172; PX-FALLS-053-265). *See generally* PX-DEP-034-035 - 037 (Diocesan support for lay ministries to the elderly at TFC).

In a 2004 letter to Diocesan Bishop Peter Lee, stating their "profound disagreement" with Bishop Lee's "recent actions and the reasoning that supports them," TFC's wardens nevertheless

²⁵ Alpha is "a practical introduction to Christianity." DX-FALLS-300-015.

“recognize[d] that the Diocese continues to provide certain services to The Falls Church and ... that there are costs incurred to provide these services,” specifically noting the Diocese’s “operating expenses in service to The Falls Church, including health care administration for parish employees, investment administration for parish funds.” PX-FALLS-435; Tr. 2592-93.

TFC’s records describe some of the spiritual benefits received from its association with the Diocese and the Church. *See, e.g.*, Rector’s Report for 1963, DX-FALLS-215-007 (“The Bishop’s Mission was a profound and outstanding spiritual experience of the Diocese of Virginia. 250 members of The Falls Church attended and we shared in all preparation and activities of our Convocation”); Vestry minutes, July 11, 1979, DX-FALLS-225-138 (“We are indebted to Mr. Liu and Bishop Chilton for their loving assistance to us and would like to have a special service of Thanksgiving, once Mr. Yates is with us, to honor these men”); Report of the Senior Warden for 1979, DX-FALLS-225-247 (“Spiritual leadership and guidance came to us from Bishop Chilton and the Rev. John Liu, clergymen from the surrounding areas, and professors at Virginia Seminary. Bishop Chilton and John Liu spent many hours each week at the church ministering to our needs”); Annual Report for 1990, DX-FALLS-294-015 (“A total of more than 150 people participated in the two sessions [of TFC’s Discovery Class] and each was either baptized, confirmed, received or reaffirmed by the Bishop in a moving Confirmation service in the church at the end of each session”). *See also* Tr. 1406-07. A particularly touching account is provided by the 1838 obituary of a member of TFC who “for several years had been anxious to receive the rite of confirmation, but being too infirm to get to Alexandria, several miles distant,” was not confirmed until barely a year before her death, because there had been no episcopal visitation “since the time of Bishop Madison.” Thus “it was not until the Assistant Bishop, in his episcopal visitation, about the middle of July last, administered this ordinance at

the Falls church, that she enjoyed this privilege. There upon this aged disciple of Christ were the hands of the Bishop laid as she kneeled beside her own daughter, and several who, in the bloom of youth, were making those solemn vows, they dare not break.” PX-FALLS-721-002.

TFC used the Church’s Book of Common Prayer, the Episcopal Hymnal and other music, and Episcopal literature in Sunday Schools. *See, e.g.*, DX-FALLS-207-088; DX-FALLS-208-019; DX-FALLS-209-020; DX-FALLS-210-020; DX-FALLS-211-025; DX-FALLS-212-024; DX-FALLS-213-024; DX-FALLS-214-011, -039; DX-FALLS-215-024; DX-FALLS-217-035, -036; PX-FALLS-020-077, -090; PX-FALLS-225-004; Tr. 746, 1372.

TFC consistently submitted parochial reports to the Diocese. *See, e.g.*, PX-COM-073-014; PX-FALLS-044-168; DX-FALLS-313 - DX-FALLS-341.

TFC shared a rector with one or more other Episcopal churches from approximately June 1, 1878, through late 1889 (*see, e.g.*, PX-COM-116-169; PX-COM-117-013; PX-COM-118-013; PX-COM-119-010; PX-COM-120-012; PX-COM-122-165, -166; PX-COM-123-011; PX-COM-124-010; PX-COM-125-012; PX-COM-126-011) and from 1896-1905 (*see* PX-COM-133-005, -078; PX-COM-134-005, -068; PX-COM-136-005, -072; PX-COM-137-005, -071 - 072; PX-COM-138-005, -064 - 065; DX-FALLS-201-116; PX-COM-139-070; PX-COM-140-075, -076; PX-COM-141-080, -082; PX-COM-142-092, -093; PX-COM-143-075, -076).

TFC made frequent use of Diocesan conference facilities at Roslyn and conference and camp facilities at Shrine Mont. For Roslyn,²⁶ *see, e.g.*, PX-FALLS-162-002; DX-FALLS-221-064; DX-FALLS-222-061; DX-FALLS-225-104, -170; DX-FALLS-228A-003; Tr. 1383-84, 1459-60, 2474. For Shrine Mont, *see, e.g.*, DX-FALLS-283-005; PX-FALLS-192-006;

²⁶ The cited events were Vestry retreats. Diocesan Bishop Robert B. Hall participated in a portion of TFC’s Vestry retreat in March 1979. DX-FALLS-225-104.

PX-FALLS-193-001; PX-FALLS-194-005; PX-FALLS-196; PX-FALLS-197; PX-FALLS-198-001; PX-FALLS-199-002; DX-FALLS-295-008, -011, -012; DX-FALLS-297-025; DX-FALLS-293-011; DX-FALLS-291-012, -015; DX-FALLS-290-014; DX-FALLS-287-020, -027; DX-FALLS-286-015, -021; PX-FALLS-036-001; DX-FALLS-217-047; PX-FALLS-019-029, -083; PX-FALLS-020-034; DX-FALLS-218-031, -069; DX-FALLS-221-071, -090; DX-FALLS-223-027, -082; DX-FALLS-228A-081; PX-FALLS-204; PX-FALLS-205; Tr. 1383, 2468. “More than 600 parishioners gathered for the annual Columbus Day weekend retreat at Shrine Mont, October 6-8,” 2006. DX-FALLS-308-018. (Groups from TFC have continued to visit Shrine Mont since 2006, but they have not received the preferred reservations (*i.e.*, holiday weekends) or discounted rates that are available only to Episcopal church groups. Tr. 2468-69, 4698-4701.)

TFC participated in the Diocese’s ordination process. *See, e.g.*, DX-FALLS-221-005 (Vestry minutes, January 1975, approving a certificate endorsing a member’s candidacy for Holy Orders). Other similar endorsements are recorded at DX-FALLS-224-063 (1978); PX-FALLS-357 (1990); PX-FALLS-411 (1999); and PX-FALLS-425 (2002).

Diocesan Bishop Peter Lee wrote to TFC’s Vestry on January 9, 1988, regarding TFC’s plans for a new church building. That letter states, *inter alia*, that “*In the Episcopal Church, all church property is held in trust for the diocese.* I mention that reality because I believe your plan demonstrates that you are exercising that trust with a balance of boldness and prudence.” PX-FALLS-349 (emphasis added). Bishop Lee reiterated the Diocese’s trust interest in a letter dated July 20, 1990, stating, “it is well to remember that *the property which the vestry plans to mortgage in this plan is held in trust for the Episcopal Church and the Diocese of Virginia.* Thus, it is prudent for the Standing Committee to be assured that other diocesan mission and ministry will continue to be appropriately supported as you make your plans and that the diocese

will not be forced to curtail mission in order to protect its property interests in The Falls Church.” DX-FALLS-035-002 (emphasis added).

TFC (or Fairfax Parish, of which TFC was a part) has been represented by one or more lay or clerical delegates at the Annual Council of the Diocese throughout history, including from 1785-87 and 1909-2010. *See* Exhibit A.²⁷ TFC has long been an active contributor to Diocesan Councils and other activities, beginning with the Rev. David Griffith, discussed above. It would take many pages merely to list TFC’s contributions to the Diocese, but a few outstanding examples include the Rev. R.A. Castleman’s appointment in 1919 to the Committee on Canons (PX-COM-157-020); Gen. Rufus H. Lane’s long service on the Executive Committee of the DMS (*see, e.g.*, PX-COM-176-003 - 004); Dr. Randal M. Robertson’s and Lawrence W. Harrison’s service on the Diocesan Executive Council (*see, e.g.*, PX-COM-194-003; PX-COM-199-003); Walter R. Tinsley’s service in numerous Diocesan positions (*see* PX-FALLS-212), including President of the Executive Board of the Diocese, “the most important lay position in the Diocese, as a distinction and honor for this congregation” (DX-FALLS-220-054) and Deputy to the General Convention of TEC (PX-COM-214-003); Harrison D. Hutson’s long service on the Ecclesiastical Trial Court (*see, e.g.*, PX-COM-237-136); and Rector John Yates’ service as Dean of the Diocese’s Region 8 (*see, e.g.*, DX-FALLS-290-002 - 003).²⁸ References to TFC’s participation in other activities of the Diocese and TEC also are numerous and include DX-FALLS-060-118 (*Near the Falls*) (“The parish ... entered enthusiastically into the Diocesan and Parish Survey for a year of intensive self study ...guided by The General Division of Research

²⁷ Council Journals for the years 1899, 1900, and 1904, list TFC vestrymen S.D. Tripp and James B. Hodgkin (*see, e.g.*, DX-FALLS-060-066), as delegates for Fairfax Parish.

²⁸ TFC participated actively in Region 8 “in all the normal ways that a parish should be involved in their region.” PX-DEP-034-018. *See also, e.g.*, DX-FALLS-219-016 (“Our own Robert Hubbell was elected President of the Region”).

and Field Study of the National Church”); PX-FALLS-447-006 (Bishop’s Conference for Clergy); and DX-FALLS-293-003 (Rector’s Annual Report, 1989) (“Our Vestry has become more and more conscious this year of our need as a parish to be more and more deeply involved in the affairs of the Diocese of Virginia”).

Bishops of the Diocese, or occasionally other Bishops acting on behalf of the Diocesan Bishop and at his invitation, have visited TFC and preached and/or confirmed, received, reaffirmed, and/or baptized one or more persons for more than 170 years, including in every year from 1934 through 2005. *See* Exhibit B. Contrary to the impression that may have been given by the Rev. Neal Brown’s trial testimony for St. Margaret’s, those visits often were more than mere Sunday morning stopovers. Visiting Bishops frequently met with the Vestry, for example, and visits often lasted all or most of two days. *See, e.g.*, DX-FALLS-205-032, -039, -040 (1943); DX-FALLS-205-061 (1944); DX-FALLS-205-159, -160 - 162 (Bishop met with Vestry on December 1, 1946, in addition to his official visitation, “follow[ing] the usual custom”); PX-FALLS-021-078 (a two-day “in depth visit” in 1971, during which Bishop met with the Vestry, spoke on the “Trial Liturgy,” and confirmed 42); PX-FALLS-150 and DX-FALLS-219-045, -080 (a two-day visit in 1973); DX-FALLS-293-016 (in 1989 Bishop Lee met with TFC’s Vestry, was a guest at TFC’s Discovery Class dinner, “and later confirmed, received and reaffirmed members of the class during a moving confirmation service in the church”). TFC’s records sometimes reflect the levels of excitement that attended Bishop’s visitations. At a Vestry meeting in December 1939, for example, the Senior Warden reported that “the attendance at the Bishop’s visitation was 312 ... the attendance in the month of November ... averaged 180, with the lowest 100.” DX-FALLS-204-186. And at a Vestry meeting in December 1941, the Senior Warden stated “his opinion that Mr. L.W. Harrison needed more assistance in ushering,

especially in connection with the approaching visit of the Bishop” and that “there would be need for chair handling and for direction of the automobile parking. It was moved and carried that the Wardens be authorized to employ a special policeman.” DX-FALLS-204-281; *see id.* at 282-83. *See also* Tr. 2743 (Rector Yates) (a Bishop’s visit is a special occasion).

Fairfax Parish Vestry minutes from the first Vestry meeting after disestablishment of the Church include the following:

[“]We the subscribers, this day elected Vestrymen for Fairfax Parish do declare that we will conform to Doctrine, Discipline and Worship of the Protestant Episcopal Church. Vestry House, 28 March 1785.”
(Signed by the 12 Vestrymen)

DX-FALLS-060-035. *Near the Falls, id.* at -065 - 066, also reports a similar event which is recorded in The Falls Church’s vestry minutes for April 30, 1876:

THE VESTRY OATH OF THE DIOCESE OF VIRGINIA

Thrilling moments come to one who peruses Vestry minutes of a century ago. Suddenly, I turned to a page in beautiful Spencarian writing. It was a record of the Vestrymen taking the same oath as is still taken by our Vestry members today:

DECLARATION AND PROMISE of Vestrymen Diocese of Virginia

“I do believe the Holy Scriptures of the Old and New Testament to be the Word of God, and to contain all things necessary to salvation; and I do give my hearty assent and approbation to the doctrines, worship and discipline of the Protestant Episcopal Church in this United States; and I promise that I will faithfully execute the office of Vestryman of Falls Church, in Fairfax County according to my best knowledge and skill.”

The April 1876 oath is at DX-FALLS-201-021. The heading as there recorded also includes, after “Diocese of Virginia,” “– Canon IX, Sec. 8.” TFC’s Vestry minutes and records (signed oaths) show that the members of its Vestry subscribed to the oath (or “declaration”) prescribed by Diocesan Canons, which at all times included a pledge of fidelity to the “discipline” of the Episcopal Church, in at least each of the following years: 1874 (DX-FALLS-201-015, -017);

1876 (DX-FALLS-201-022); 1877 (DX-FALLS-201-030, -031, -032); 1880 (DX-FALLS-201-049); 1889 (DX-FALLS-201-067); 1890 (DX-FALLS-201-073); 1894 (DX-FALLS-201-087, -088); 1899 and 1902 (DX-FALLS-201-087); 1908 (DX-FALLS-201-166); 1909 (DX-FALLS-201-185, -188); 1910 (DX-FALLS-201-202); 1912 (DX-FALLS-201-234); 1913 (DX-FALLS-201-248); 1914 (DX-FALLS-201-288); 1915 and 1918 (DX-FALLS-201-229); 1919 (DX-FALLS-201-393); 1920 (DX-FALLS-201-229, -406); 1921 (DX-FALLS-201-229, -413); 1924 (DX-FALLS-203-023); 1930 (DX-FALLS-203-118); 1933 (DX-FALLS-203-219 – oath undated, associated with 1933 congregation and vestry minutes); 1935 (DX-FALLS-203-118, -287); 1937 (DX-FALLS-204-057); 1939 (DX-FALLS-204-139, -146); 1940 (DX-FALLS-204-139, -196); 1941 (DX-FALLS-204-139, -239, -243); 1942 (DX-FALLS-204-139, -289); 1944 (DX-FALLS-205-038, -301); 1945 (DX-FALLS-205-063, -301); 1946 (DX-FALLS-205-123, -150, -301); 1947 (DX-FALLS-205-166, -170, -301); 1948 (DX-FALLS-205-208, -301); 1949 (DX-FALLS-205-301); 1950 (DX-FALLS-206-020, -021); 1951 (DX-FALLS-206-020, -080, -084); 1952 (DX-FALLS-206-020, -147, -152); 1953 (DX-FALLS-206-020, -217, -228, -249); 1954 (DX-FALLS-206-020, -305, -315; DX-FALLS-207-003); 1955 (DX-FALLS-207-003, -017); 1956 (DX-FALLS-207-003, -065); 1957 (DX-FALLS-208-035); 1958 (DX-FALLS-209-039, -051); 1959 (DX-FALLS-210-036); 1960 (DX-FALLS-211-035); 1961 (DX-FALLS-212-039, -041); 1962 (DX-FALLS-213-037); 1964 (DX-FALLS-215-060); 1965 (DX-FALLS-216-049, -117); 1966 (DX-FALLS-217-049); 1967 (PX-FALLS-017-042, -133); 1968 (PX-FALLS-018-092); 1970 (PX-FALLS-020-004, -049); 1971 (PX-FALLS-021-036, -071, -110); 1972 (DX-FALLS-218-003, -100); 1973 (DX-FALLS-219-042, -079); 1974 (DX-FALLS-220-046, -060, -070); 1975 (DX-FALLS-221-055, -102); 1976 (DX-FALLS-222-052, -146); 1977 (DX-FALLS-223-064); 1978 (DX-FALLS-224-055, -142); 1979 (DX-FALLS-225-094); 1980 (DX-

FALLS-226-027); 1983 (DX-FALLS-227-134); and 1999 (PX-FALLS-078-002; Tr. 3002). *See also* Tr. 941-42, 1376-77, 2601; PX-DEP-035-037. A large majority of the cited Vestry minutes refer to the oath by such terms as the “Vestryman’s Oath,” the “oath of office,” the “promise provided for in the Canons,” the “declaration and promise in Section 7, of Canon XI,” or simply as “the oath.”

TFC has relied on the Diocesan Trustees of the Funds to manage financial investments. *See* PX-FALLS-749-003; PX-FALLS-750-003; PX-FALLS-751-002, -008, -016; PX-FALLS-752; PX-FALLS-752b-006; PX-FALLS-752c; PX-FALLS-752d; PX-FALLS-752e; Tr. 695-97, 724-25, 740-41.

Throughout its history, prior to December 10, 2006, TFC was known both to its members and to the community at large as an Episcopal church. *See, e.g.*, in addition to other documents cited throughout this brief, TFC letterheads at DX-FALLS-216-105 (1965), PX-FALLS-507 (1977), PX-FALLS-509-001 (1980), PX-FALLS-511 (1987), PX-FALLS-513 (1989), PX-FALLS-514 (1995), PX-FALLS-516 (1998), and PX-FALLS-518-001 (2006: referring to TFC as “An Episcopal Church in the Diocese of Virginia”); TFC Annual Reports at DX-FALLS-286-001 (1982), DX-FALLS-290-001 (1986), DX-FALLS-295-001 (1991), and DX-FALLS-300-001 (1997); Order appointing trustees, DX-FALLS-429 (1851); Letter to Junior Warden regarding “the fund held by the trustees of the Falls Church Episcopal Church,” DX-FALLS-201-435 (1922); Letter signed by “Trustees, Old Falls Church Episcopal Church,” DX-FALLS-201-436 (1922); Contract “between the Rector and Wardens of the Falls Episcopal Church” and public school trustees to lease premises “known as The Episcopal Parish Hall,” “The rent to be paid monthly to the Treasurer of the Falls Episcopal Church,” DX-FALLS-203-015 (1923); letter from a bank to “Trustees of the Falls Church Episcopal Church,” DX-FALLS-203-140 (1931);

undated newspaper article, apparently from North Carolina, reporting that Rev. Clarence McClellan had “accepted the call to Old Falls Episcopal church, Falls Church, Virginia, near Washington,” DX-FALLS-203-187; letter from TFC’s Register stating that TFC’s Vestry had voted to rent “the Episcopal Parish Hall” for \$3 per use, DX-FALLS-204-010 (1935); Vestry minutes, authorizing the Rector and Senior Warden to use “the phrase ‘under the auspices of the Episcopal Church[’]” on tickets and advertising for a concert, DX-FALLS-204-078 (1937); Vestry minutes, approving a motion for a sign designating “The Falls Church, Episcopal, Parish Hall,” DX-FALLS-204-218 (1940); will excerpt with a bequest to “the Treasurer of ‘The Falls Church’, an Episcopal Church ...,” DX-FALLS-205-196 (1945); Vestry minutes, voting “to procure Episcopal Church signs for placement at suitable locations,” DX-FALLS-207-010 (1954) (*see also id.* at -029, indicating that the signs were in place); *Near the Falls*, DX-FALLS-060-113 (“A newspaper notice of July 1962 stated, ‘The Falls Church (Episcopal), Washington at Fairfax Street in Falls Church, is establishing an Episcopal Day School ...’”); Public Relations Report, stating, “[t]he Committee has ... placed Episcopal directional signs at six strategic entrances to the city,” DX-FALLS-215-034 (1963); Vestry minutes, approving a “The Falls Church / (Episcopal) ...” sign, PX-FALLS-018-094 (1968); Congregational resolution, stating that “The Falls Church, a church in the Protestant Episcopal Church in the Diocese of Virginia ..., owns property within the so-called Historic Triangle...,” PX-FALLS-519 (1979); Letter from the City to “The Falls Church Episcopal Church,” PX-FALLS-520 (1979); Letter to the Rev. Yates at “The Falls Church Episcopal,” PX-FALLS-766a (1983); Petition of Church Wardens Pursuant to Va. Code § 57-8, DX-FALLS-029 (1988); Deed of Trust, DX-FALLS-047 (1991); Order, DX-FALLS-049 (1994); Petition of Church Trustees, DX-FALLS-052 (1996); Deed from Ray Sims Company to Trustees of The Falls Church (Episcopal), DX-FALLS-010 (1996); Group

Disability Income Insurance Proposal “for The Falls Church Episcopal Church,” PX-FALLS-529-001 (1998); “Spreading the Flame ... The Vision for the Outreach Ministries of The Falls Church (Episcopal),” prepared for the Rev. Yates and the Vestry, PX-FALLS-532-001 (1999); Community school newsletter, reporting support from “120 women of The Falls Church (Episcopal),” PX-FALLS-536 (1999); “Staff and Vestry of The Falls Church (Episcopal)” webpage printout, PX-FALLS-542 (4/19/00); Bank and/or investment statements (redacted) dated January 2006, PX-FALLS-544 - PX-FALLS-544e; Tr. 1373, 2445-46, 2581-82.

The earliest deed to property at issue was to the Vestry of Truro Parish. *See* DX-FALLS-198-004. The remaining properties at issue were deeded to named Trustees of (1) “the Episcopal Church, known and designated as the ‘Falls Church’ in Fairfax County, of the County of Fairfax in the State of Virginia”; (2) “the Falls Church Episcopal Church”; (3) “The Falls Church”; (4) “The Falls Church (Episcopal)”; and (5) “The Falls Church (Episcopal), a Parish Church of the Protestant Episcopal Church in the Diocese of Virginia.” *See id.* at -002 - 004.

Endowment Fund (including Argument)

The Articles of Incorporation of The Falls Church Endowment Fund, Inc., provide, in part, “Membership shall be comprised of Class A and Class B members, as described below:

A. Class A members shall be those individuals who are members of the vestry of The Falls Church, Episcopal Church. B. Class B members shall be those members of the parish who are defined as eligible to vote for the vestry at each of the annual meetings of The Falls Church.”

DX-FALLS-367-002. Article I § 2 of the By-Laws of the Endowment Fund provides, “None but members of The Falls Church, Protestant Episcopal Church, Falls Church, Virginia, shall be members of the Board of Directors.” Article I § 3 of those By-Laws provides, in part, “The Directors shall be elected by the vestry of The Falls Church, Episcopal Church, as set forth in

Articles of Incorporation.” PX-FALLS-368-001. In addition, Harrison Hutson, a TFC member for over 40 years and one of the founders of the Endowment Fund, testified that when he helped found the Endowment Fund it never occurred to him that its directors could be appointed by non-Episcopalians. Tr. 4248, 4256. That is precisely what The Falls Church CANA proposes – that its Vestry, on which there are no Episcopalians, appoint the directors of the Endowment Fund, notwithstanding the clear mandate of the Articles and By-Laws to the contrary.

The only issue is which Vestry is the Vestry of The Falls Church, Episcopal Church, which has the authority to elect the Directors of the Endowment Fund. The Annual Council of the Diocese has resolved that issue by seating the delegates elected by the Vestry of The Falls Church (Episcopal) at every meeting of Annual Council from 2007 to date. *See* PX-COM-247A-024, -074 (2007); PX-COM-248A-015, -072, -120 (2008); PX-COM-249A-016, -054, -103 (2009); PX-COM-276A-016, -031, -122 (2010). As discussed *supra* at pages 42-46, a civil court may not second-guess or review that decision. *Cf. Buhrman*, 5 Va. Cir. at 503 (“a reasonable interpretation” of deeds to church trustees ““for the erection of a church building to be used as a place of worship by the Episcopal Congregation of Clifton Forge Parish”” and “to named ‘Trustees of St. Andrew’s Episcopal Church of Clifton Forge, Virginia’” “leads inescapably to the conclusion that the trustees cannot hold title to the subject property for persons or groups who are withdrawn from and not under the authority of The Episcopal Church”).

Truro Episcopal Church (Truro)

Truro Episcopal Church (a.k.a. Truro Church) began in 1843, when TFC Rector Richard Templeman Brown began holding services in the Fairfax courthouse area. Tr. 950; *see* PX-COM-079-022; PX-TRU-186-008. Truro is not the colonial era Truro Parish, and there was no Episcopal church in the City of Fairfax before 1843. Tr. 929-30; *see* Tr. 953-54; PX-TRU-505-

056; *id.* at -169, -170; PX-TRU-397; PX-TRU-186-008 (1975 parish profile); PX-TRU-402-008 (parish profile c. 1990); page 15 *supra*.

Truro was sometimes referred to simply by its location – Fairfax Court House. *See, e.g.*, PX-COM-081-005; Tr. 951. By June 1845, when Diocesan Bishop William Meade consecrated the first building, the church had begun to use the name Zion Protestant Episcopal Church, or “Zion Church” for short. *See* Tr. 951; PX-TRU-490A; PX-TRU-186-008; TRU180.015.

The name was changed from “Zion” to “Truro” in 1934. Again the occasion was a new church building, the oldest building that remains today. Tr. 952; *see* TRU146.052 (1934 Vestry vote to change the name to Truro, as the congregation preferred); PX-TRU-186-009 (1975 parish profile: “The cornerstone of the new building was laid down as Zion Church, but when it was consecrated in 1934 by Henry St. George Tucker, the name given was Truro Episcopal Church”). (Tucker was the Diocesan Bishop. *Id.*; Tr. 955; PX-TRU-516-001, -015.)

Throughout its existence as an Episcopal church, Truro recognized and adhered to the Constitution and Canons of the Diocese. Perhaps the best indication of Truro’s awareness of the Constitution and Canons is its 1998 Vestry Handbook, PX-TRU-028, which states:

To perform effectively, each Vestry member should have a thorough understanding of the functions and operations of the Protestant Episcopal Church in the United States, The Diocese of Virginia, and Truro Episcopal Church. To this end, Vestry members are strongly encouraged to:

- a. read this Handbook from cover to cover.
- b. review and have a general understanding of the contents of the most recent Diocese of Virginia Annual Council Journal.
- c. read, or at a minimum, review, the Constitution and Canons for the Episcopal Church.

The Annual Council Journal and the Constitutions and Canons are both available in Truro’s library. Individual copies may be ordered and purchased through Truro’s Bookstore. [*Id.* at -003]

See also, e.g., TRU147.026 (1948: “Canon XX of ‘The Duties of Vestries, Wardens and Parish

Officers' was read by Mr. Hayward and discussed. At the conclusion of discussion, each vestryman resubscribed to the declaration in Section 8 of Canon XIX with determination to execute the duties of the Vestry and its officers"); TRU147.050 (1949: member "reviewed the statements of the canons concerning Vestry duties"); TRU152.024 - 025 (1956: "the theme for study by the Vestry ... is the structure and organization of the Episcopal Church"); *id.* at -031 (August topic was the Constitution and Canons); *id.* at -038 (Rector "explained that according to canon law, the congregation is not required to vote on these matters which are the sole responsibility of the Vestry. He said that *since he had been Rector of Truro he had always made sure that canon law be followed scrupulously*") (emphasis added); TRU176.014 (1986: Rector "distributed ... to each vestry member" materials that included "the constitution and canons of the Diocese"); TRU185.028 (1995: vestry nominees "were briefed on," *inter alia*, "the canonical directions for vestries"); PX-DEP-023-058 (during 1997-2006, the period for which Rule 4:5(b)(6) deponent could speak, "we had copies of and referred to the constitution and canons").

Truro's local governing documents recognize that the canons are binding. *See* PX-TRU-002-001, -002 (1986 bylaws, reciting that Vestry's size is "[i]n accordance with the canons of the Diocese," listing "Canonical Requirement" of being a confirmed adult communicant in good standing, and allowing nominations from the floor "if the canonical requirements have been met"); PX-TRU-015-005 ("Criteria for Vestry Service," listing "Canonical Requirement[s]"); *id.* at -006 (resolution adopted at 1978 Annual Meeting, reciting that "the Canons of the Diocese of Virginia empower the vestry to fill a vacancy" and deeming it "appropriate for the congregation to adopt a uniform method of filling vacancies on the vestry in keeping with the Canons"); *id.* at -008 ("guidelines" from a 1976 Vestry meeting, favoring unanimity but noting that "we retain the canonical right to take action by a simple majority vote"); PX-TRU-028-039 (Finance

Committee Charter, listing as one of its “major responsibilities” to “[p]erform such other functions as required by Canon or as directed by the Vestry”); PX-TRU-083-001 (“Personnel Policies” approved by the Vestry in 1977, as amended through 1988, which “are understood to come under the Canons of the Protestant Episcopal Church of the Diocese of Virginia”); PX-TRU-085-001 (policy adopted by Vestry in 1996, stating a “desire that all restricted or designated gifts be handled in a prudent manner consistent with ... the Canon law of the Protestant Episcopal Church in the United States of America and the Diocese of Virginia”).

Many of the above appear in a 1998 Truro Vestry handbook, which also explained that the very nature of local leadership is defined by the laws of the Church. *See* PX-TRU-028-008 (“Congregations that have been granted parish status by their diocese are governed by their rector and the vestry. Traditionally, and by canon law, the vestry, consisting of wardens and other members, is the legal representative of the parish ‘in all matters concerning its corporate property and the relations of the Parish to its Clergy,’ except as may be provided by state law or diocesan canons,” citing TEC Canon I.14.2); *id.* at -009 (the congregation and its leaders, lay and ordained, “are created by, and accountable to, the diocese through their clergy and vestry”).

Truro has consistently adhered to the Diocese’s and TEC’s property canons, such as by requesting Diocesan approval of borrowing. *See* TRU145.095 (1911: “Motion made and carried that Bishop Gibson be notified by Register of the Action taken by the congregation in passing the resolution of encumbering the Rectory property for \$2000. And that a copy of the resolution be forwarded to the Bishop, and his consent to borrowing the money be secured”); PX-TRU-047 (1957 letter from Senior Warden seeking “Diocesan approval” of borrowing for a new church building), PX-TRU-048-005, and PX-TRU-049 (approval); PX-TRU-050 (1958 letter expressing thanks “for the official consent to our loan”); PX-TRU-051 (1963 letter from Senior Warden and

Trustee James Keith, *see* TRU159.012, asking whether additional consent was required for refinancing); TRU161.011 (1965: approving a motion that “Bishop Chilton be contacted by the Treasurer on the Vestry’s obligation to the congregation on encumbrances to the Church property”); *id.* at .013 (approving a motion that “[t]he congregation and the Diocese be requested to authorize a loan up to \$450,000”); PX-TRU-056, PX-TRU-057, and PX-TRU-059 (1965: correspondence with Truro Treasurer regarding Diocesan approval and letter in suggested form requesting approval). Truro also has shown careful attention to the level of debt at which Diocesan approval is required. *See* TRU172.007 (1976: additional indebtedness “would require approval of the Bishops”); PX-TRU-071-001 (2001: “we only need [Bishop’s] approval if we are borrowing 150% of our annual budget as averaged over the last three years”).

Truro has appointed trustees pursuant to the Canons. *See, e.g.*, TRU145.0147 (1928: “under the Canons of the Church, the Vestry is the proper body to nominate for appointment by this court, trustees”); PX-TRU-078-001 (1986 petition to appoint substitute Trustees [granted, *see* PX-TRU-079]: Vestry controls real estate, including appointing trustees, “[p]ursuant to the Constitution and Canons of the Protestant Episcopal Church and the Diocese of Virginia”); TRU203.001 (1980); *see also* PX-TRU-081 (1998 petition for substitution of trustees [granted, *see* PX-TRU-082]: “the procedure for the selection of new Church Trustees is provided for in the Canons of the Diocese of Virginia and ... such procedure was duly followed”).

Truro has followed the canons on bringing property matters to the congregation. *See* TRU214.003 (1965: meeting “duly called because of the canonical requirement, that the congregation approve the mortgaging of the church property”). Indeed, a 2002 petition (granted by this Court, TRU223.001) recited that Truro followed Canon 15 and was required to do so:

At a duly called meeting held at the Church on September 15, 2002, following procedures set forth in Canon Fifteen of the Canons of the Protestant

Episcopal Church in the Diocese of Virginia (the “Governing Procedures”), the congregation authorized the Trustees to (i) grant easements ... and (ii) sell the resultant 1.1166 acre lot.... Attached hereto as Exhibit C is a Certification...

WHEREFORE, Petitioners, in accordance with the express wishes of the congregation, as approved according to the Church’s Governing Procedures, respectfully request [authorization to grant easements and sell land].
[TRU223a.002]

The referenced “Certification” (signed by Parish Administrator Douglas LeMasters) states that “Canon Fifteen of the Canons of the Protestant Episcopal Church in the Diocese of Virginia requires a majority congregational vote to sell property and to grant easements on church property.” TRU223a.004. *Accord* PX-TRU-072-003 (2002) (“Canon 15 requires that when the church encumbers a property in any way, congregational approval must be secured”). There is no coherent explanation of why only part of Diocesan Canon 15 would be binding on Truro.

The Instruments of Donation (discussed *infra*) are not the only documents in which Truro has recognized the Diocese’s rights. In a 1998 City of Fairfax filing, Truro listed the Diocese as the property owner. *See* PX-TRU-486-004 (signed by Truro trustee and former Vestry member Mary Petersen). Two months earlier, Truro’s parish administrator named the Diocese as property owner on a prior form and asked the Diocesan Treasurer to sign it. PX-TRU-068.²⁹

Truro’s September 2000 Vestry minutes, TRU190.052, record:

1. Approve Mr. Tom Yates as a Truro Trustee: With Ed Prichard’s death, we are left with only two trustees *The trustees hold the title for the property in*

²⁹ Truro did not go forward with the project described in PX-TRU-068 and never filed that form. PX-DEP-023-063 - 64. Mr. LeMasters testified that he mistakenly listed the Diocese as owner on both – that despite being administrator for more than a year, he did not know who owned the property. Tr. 3452. (That was the only “exception” to his knowledge. Tr. 3464.) The fact that trustee and former Vestry member Mary Petersen certified that the Diocese was the owner (on a form that was submitted) undermines LeMasters’ claim that he simply goofed.

Truro has made a number of similar City filings over the years in varying forms. In 2004, in the only filing made after the 1998 ones and before the litigation, Truro listed the trustees as owners, without responding to a direction to name “each beneficiary having an interest in such land.” *See* PX-TRU-487-005 – 006.

trust for the Diocese. Tom Yates is being recommended to fill the vacancy. John Lehrer made a motion to invite Tom Yates to serve as trustee for Truro Church. The motion was seconded and unanimously approved. [Italics added.]

And at a congregational meeting after the 2003 General Convention, a parishioner asked “Who owns the Truro church property?” The meeting leadership’s answer recorded in the minutes is: “Trustees hold the title of the property in trust for the Diocese. The ECUSA is a hierarchical church. If it goes to court, courts generally lean toward the hierarchy.” PX-TRU-074-002.

Truro has followed canon law regarding numerous other matters as well:

- Truro faithfully obeyed canonical rules governing qualifications, elections, tenure, and duties of vestries, vestry members, wardens, and other officers; church membership and qualifications of voters; vestry meetings; annual congregational meetings; and other related provisions of Episcopal canon law. *See* TRU145.0102 (1913), .0150 (1929); TRU146.0136 (1944); TRU147.079 (approving motion to strike minutes of August 1950 Vestry meeting because it was “called illegally” under canon law); TRU149.008 (1953); TRU150.008 (1954); PX-TRU-257-001 - 002 (1956: Rector explaining to the congregation qualifications under the canons for vestry elections and duties of Episcopalians under the BCP); TRU166.009 (1970); TRU168.015 (1972); TRU172.010 (1976: Rector read to the congregation the “canonical requirements” for Vestry membership and elections); TRU174.016 (1984: Rector “declared that according to the Church canons, we are indeed a quorum”); TRU175.011 (1985); TRU176.010 (1986: reviewing eligibility requirements and “not[ing] the recent changes to the Church canon”); TRU178.0015 (1988); TRU185.020 (1995); TRU186.004 - .005, .014 (1996); TRU191.010 (2001); PX-TRU-086-003 (2002); PX-TRU-477-001 (2004).

- Truro followed Canons governing the duties and prerogatives of rectors. *See, e.g.,* TRU146.0125-26 (1943); TRU172.005 (1976); TRU176.013 (1986); PX-TRU-028-009, -017

(1998 Vestry handbook).

- Truro recognized and adhered to canonical requirements regarding business methods, including audits, bonds, and finance committees. *See, e.g.*, TRU146.089 (1939: Vestry members “asked to audit treasurer’s books prior to next meeting in order to conform to Canon Law”); TRU147.043 (1949: moving that Treasurers be bonded “in accordance with the intent of the canons”); TRU147.064 (1950); TRU175.018 (1985); TRU176.004 (1986); TRU185.031 (1995); PX-TRU-028-040, -043 (1998: Finance Committee, Treasurer, and Audit Committee all responsible for following the canons). Truro also consulted publications from the Diocese and the Episcopal Church on financial matters, including the Diocese of Virginia’s Clergy Manual and TEC’s Manual of Business Methods in Church Affairs. *See, e.g.*, TRU147.040 (1949); PX-TRU-392-001 (1988: discussing memo from Diocesan Treasurer Michael Thomas); PX-TRU-203-001 - 002 (1998); PX-TRU-333 (1999).

- Truro started four mission churches in the Diocese, pursuant to Diocesan canons and processes. *See, e.g.*, PX-EPIPH-007-001 - 002 (1985) (“We at Truro are enthusiastic at this new opportunity and gladly accept all responsibilities described in the Canons and the Diocesan ‘Policy on New Church Startup’”); TRU183.018, .020 (1993: “According to the Diocesan Canons, a Western Fairfax Vestry Committee will need to be appointed,” and stating at the next meeting that such a committee is being established); PX-TRU-101 (joint letter from Truro’s Rector and a Bishop inviting the Rev. Clancy Nixon to become a mission’s vicar).

One of the missions Truro started was Christ the Redeemer Episcopal Church (CtRE), started in cooperation with the Diocese in 1994. *See* PX-TRU-093; PX-TRU-488-014 - 015; PX-COM-234-046 (1994 Council Journal, listing CtRE as a “Mission of a Founding Church,” as that term is used in Diocesan Canon 10.8). A piece of land formerly held by trustees for CtRE is

at issue, and accordingly, a brief summary of CtRE's history is relevant to that analysis.

CtRE was started in 1994, at which time the Diocese's Constitution and Canons were substantially the same as in December 2006, when CtRE voted to disaffiliate. *See* PX-COM-235-258 - 288 (printing the 1995 Constitution and Canons; and the 1995 Annual Council made no material changes, *see id.* at -085, -108 - 109); PX-TRU-488-033 (letter reflecting vote). During its existence, CtRE functioned in the normal manner that other Episcopal churches in the Diocese functioned. *See, e.g.*, PX-COM-235-187 (1994 episcopal visit by Bishop Lee); PX-TRU-306 (2004 CtRE parochial report). As is typical of missions, CtRE received direct financial assistance from the Diocese (as well as Truro, the founding church). *See, e.g.*, PX-TRU-412 (1996); PX-TRU-488-017 - 018 (1998). CtRE also abided by the Constitution and Canons of the Diocese. Indeed, CtRE specifically acted pursuant to Canon 15.1 in appointing its trustees to hold the property at issue. *See* PX-TRU-488-019 (seeking Bishop Lee's permission to elect trustees for appointment to hold title to land "in accordance with Canon 15 Section 1"); PX-TRU-488-021 (trustees elected pursuant to canon).

Truro not only followed national and Diocesan canons but also complied with the Diocese's policies and recommendations. *See, e.g.*, TRU146.0163 (1946: approving "a series of special services ... in line with a recommendation of the general church"); PX-TRU-143-001 (1975: search committee "is proceeding ... with the preparation of a parish profile" following the advice of bishops, consultant, vestry and other churches; and "Bishop Baden noted that this is the policy of the Diocese of Virginia"); TRU178.032 (1988: voting to invite an interim rector "with the understanding that he would not be a candidate for Rector, in keeping with diocesan policy"); TRU187.008 (1997: Diocesan policy on Prevention of Sexual Misconduct with Minors); *id.* at .011 (resolution adopting Diocesan policy); *id.* at .017 (reporting "good progress

in obtaining compliance with the diocesan sexual misconduct guidelines”); PX-TRU-347-001 (2006: Rector Search Committee will screen candidates by means that include a “[t]horough background check ... in accordance with Diocese of Virginia standards”).

Although Truro grew to be a large, well-established church (Tr. 982) in a densely-populated suburb of Washington, D.C., it received assistance for many years. Tr. 977, 982. Assistance from the Diocese has included direct financial assistance regarding property. After Truro’s church building was destroyed during the Civil War (*see, e.g.*, Tr. 978-79), the Diocese’s Bruce Fund (*see* Tr. 920, 980), the Piedmont Convocation (*see* Tr. 916, 979), and other Episcopal sources helped Truro restart and rebuild. Tr. 979-81; PX-COM-260-006 (1873 Bruce Fund grant of \$100 “towards the completion of Zion Church, at the Co. Ho.”); PX-COM-257-009, -019, -021, -022, -023, -025 (Piedmont Convocation); PX-COM-258-007, -019, -028, -039 (same); PX-COM-259-002, -005, -008, -011, -014 (same).

Over an extended period of years, Truro also received assistance with clergy compensation, both directly and in the form of subsidies that came from sharing clergy with other Episcopal churches in the Diocese. Tr. 977-79 (Dr. Bond). Records reflecting aid from the Piedmont Convocation and the DMS to clergy serving Truro include PX-COM-082-018; PX-COM-083-021, -023, and -024; PX-COM-084-015 and -016; PX-COM-085-014 and -016; PX-COM-086-050 and -051; PX-COM-088-036; PX-COM-090-024; PX-COM-092-099; PX-COM-093-052 and -131; PX-COM-095-120; PX-COM-096-047 and -115; PX-COM-097-080; PX-COM-098-048 and -054; PX-COM-140-049 - 050; PX-COM-267-008, -011, -022, -029, -031, -036, -037, -047, -055, -059, -064, -068, -072, -076 and -128; PX-FALLS-810-193, -200; and PX-FALLS-811-174 (all DMS); and PX-COM-258-054 and PX-COM-259-007, -009, -010, -012, -013, -015, -017, -018, -019 and -020 (Piedmont). *See also* TRU167.012 (1971: approving

a motion to accept a deacon for one year, during which the Diocese would pay \$2000 of his salary, “under a temporary arrangement with a period of evaluation, subject to the approval of the Diocese”); TRU190.0065-66 (2000: Diocesan matching gift “will double our money” in paying a mission’s vicar).

Records documenting Truro’s association with other Episcopal churches in the Diocese under shared clergy include PX-COM-083-040 and -043; PX-COM-089-050 and -076; PX-COM-092-111; PX-COM-093-052 and -131; PX-COM-096-005, -068; PX-COM-104-036; PX-TRU-505-172 - 174 (describing the sharing of clergy for over thirty years beginning in 1872); PX-COM-112-023, -137 - 138 (1875); PX-COM-114-158 - 159 (1877); PX-COM-116-169 - 170 (1879); PX-COM-118-013, -172 - 173 (1881); PX-COM-120-012, -183 - 184 (1883); TRU145.041 (1884) (TFC pays 1/3 of salary); PX-COM-122-165 - 166 (1885); PX-COM-124-010 and -158 (1887); TRU145.048 (1890) (discussing deacon’s services and arrangements with TFC); TRU145.052 (1892) (Vestry of Trinity Church, Manassas agreed to a joint call to the Rev. W.R. Savage and pledged \$150 “and such sum as the Diocesan Missionary Society may contribute (heretofore \$150) to his support”); PX-COM-134-066 - 067 and -087 (1897); TRU145.067 (1899) (Episcopal church at Vienna agreed “to unite with us in a call to a minister” and stated that “they would pledge \$225 for services every Sunday”); PX-COM-140-075 (1902); PX-COM-143-004 and -076 (1905); TRU145.0124 (1923); PX-TRU-396 (stating that by 1953 Truro’s rector no longer served any other church).

Truro ended its association with the Church of the Holy Comforter in Vienna in the 1930’s, but only after consultation with the Diocesan Bishop and with his approval. *See* TRU146.095, .096. It was also with the Bishop’s permission that Truro’s Rector ceased his services at the Church of the Good Shepherd in Burke in 1953. TRU149.010.

Finally, Truro, like other Episcopal churches in the Diocese, has had the opportunity to obtain Diocesan grants for missions and other church work and has actually obtained such grants. *See, e.g.*, TRU167.004, .006, .014 (1971: a Diocesan grant for a pastoral counseling center); PX-TRU-229 (1990); PX-TRU-232 (1992); PX-TRU-475 (2002) (mission voucher applications); PX-TRU-241 through PX-TRU-245 (2005) (youth mission vouchers).

Since its beginning in 1843, Truro has been served by Episcopal clergy. Tr. 973; *see, e.g.*, PX-TRU-157 (1976: acceptance of a letter dimissory for the Rev. John Howe). As noted above, Truro shared Episcopal clergy with other churches in the Diocese for many years. In fact, two Episcopal bishops served as Truro rectors, and two others were the sons of Truro rectors. *See* Tr. 974; PX-TRU-186-009; PX-TRU-395-004; PX-TRU-402-004.

When Truro lacked a rector, the Diocesan Bishop assigned or approved a deacon or priest-in-charge. *See, e.g.*, Tr. 979; PX-TRU-505-171 (the Rev. W.A. Alrich); TRU145.029 (the Rev. Frank Page); *id.* at .046-047 (resolving “to make application to the Bishop ... for the appointment of a Deacon to our Church”), .049 (1891: requesting the Diocesan Standing Committee to “recommen[d] J. Cleveland Hall, Candidate for priest orders, now in charge of this Parish as Lay Reader, to the Bishop of the Diocese, for as speedy ordination to the Diaconate as may in his judgment seem best ... in consideration of the urgent needs of the parish now without a Rector for more than a year”); PX-COM-130-191 (1893: Thomas Lewis ordained and “sent to Fairfax Courthouse and Manassas”); PX-TRU-154 (1975: the Rev. Rodney Brown “met with Bishop Hall ... and now ha[s] his permission and assignment to work as an Assistant at Truro Parish”); TRU179.015 (1989: a newly-ordained deacon “has been assigned to Truro by Bishop Lee”); PX-TRU-169 (2006 license for the Rev. Martyn Minns as priest-in-charge).

When it needed to hire clergy, Truro obtained recommendations and guidance from the

Diocese, used the resources of the Diocese and TEC, sought the Bishop's consent, and called on the Diocese in times of crisis. *See* TRU145.045 (1889: Wardens "requested to confer with the Bishop & to take such steps as may be necessary to keep the Church open until a Minister is called"); TRU145.053 (1893: committee to determine whether "the Church at Manassas ... are willing to unite with us in securing a Rector.... And if they are so inclined to unite with us in a request to the Bishop, to have [a member] of the graduating class at the Seminary, assigned ..."); *id.* at .054; *id.* at .059 (1896: committee of one "appointed to inform the Bishop that Manassas had withdrawn from us, & to explain that we can pay to a minister \$350.00 per year & furnish the Rectory at \$100.00 per year additional, & to ascertain whether we can secure \$150.00 from the Diocesan Missionary Society for the Church of Good Shepherd, & to ask for a student from the Theological Seminary for one year"); *id.* at .060 ("Judge Chichester reported that he had seen the Bishop ... & that the Bishop had informed him that he can send Mr. Pendleton.... resolved that the Register be instructed to write to the Bishop ... & make formal application for one of the students ..."); TRU145.091 (1910: Vestry agreed on a candidate, R.A. Castleman, and "the Vienna Vestry were ready to call him"; but the Vestry decided not to take action until a later meeting when "Bishop Lloyd would be here ... and that the Bishop be requested to attend and give the vestry the benefit of his knowledge of Mr. Castleman and any other Minister that he may know"); *id.* at .091 (Register to "notify the Bishop that we desire to call Mr. Castleman and ask his consent to the same"); *id.* at .092 - .093 (1911: "Register requested to write to Bishop Gibson in regard to calling Rev. John T. Crowe of Bramwell, W. Va.... The Wardens were asked to formally notify Bishop Gibson of the call and acceptance of Mr. Page"); *id.* at .124 (1923: recording a plan to call a new rector with "Bishop Brown having given his consent"); TRU146.115 (1942: telegrams "to Bishop Tucker and Bishop Goodwin asking their permission

to call the Rev. Mr. Jackson”; Wardens directed, “if and when approval is received from the Bishops, to extend a formal call”); TRU147.025 (1948: “Mr. Robey talked to Bishop Goodwin on the telephone while the Vestry was in session, and Bishop Goodwin recommended three ministers”); TRU159.001 (1963: Rector’s prospective assistant would be employed “year to year ... at the discretion of the Bishop” because “he is past the mandatory retirement age”); TRU171.003 (1975: approving the hiring of an assistant rector who “was recommended by the Bishop”); *id.* at .004 (discussing procedures described by Bishop Baden); *id.* at .019 (Priest-in-Charge to ask Bishop to write a letter for Truro bulletin describing “the 3 systems of leadership outlined ... in his first meeting with the Search Committee”); PX-TRU-152 and PX-TRU-153 (letters from Search Committee Chairman seeking Diocesan approval of requests for clergy information from TEC); TRU171.037 (1975: “Canon Charles Perry of the Washington Cathedral” briefed Search Committee members on visiting procedures used in the search process); TRU172.001 - 002 (1976: “[t]he call must be made by the Vestry and approved by the Bishops before it is issued”); *id.* at .025 (Rector asked that assistant rector selection not be announced “pending formal approval of Bishop Hall”); PX-TRU-162-001 - 002 (1983: the Rev. Bill Reardon had consented to join Truro “contingent upon the Bishop’s agreement,” and Bishop Lewis had been asked and had “advised that [the Rector] should go ahead and extend the call”); TRU179.021 (1989) (“there is a process and format set by the Episcopal Church, required by Bishop Lee and our Diocese, and ... the [Search] Committee is committed to following that procedure ...”); *id.* at .004 (Interim Rector to send monthly reports to Bishop Lee); *id.* at .007 (Diocesan Canon Clayton Matthews joined the vestry to outline the search process); *id.* at .019 - .020 (minutes of a meeting of Bishop Lee, Vestry and Search Committee); *id.* at .029 (rector candidates “will be asked to supply their national church profile.... subcommittee’s goal is to

cut the list to ten, send it to Bishop Lee and then start interviews”); TRU180.001 (1990) (profile “sent to Bishop Lee for his comments” and approved; committee “interpreting and sorting the personnel data from the National data base”); *id.* at .003 (“A list of Bishop Lee’s candidates has been received”); *id.* at .005 (“the National Church data bank” used); *id.* at .007 (11 candidates, “including three names recommended by Bishop Lee”); PX-TRU-166 (1998 offer to assistant rector: “I have contacted Bishop Lee and have received his consent to issue this call”).

The Bishop also has assigned and subsidized the costs of deacons and licensed clergy to assist Truro’s Rectors. *See* PX-TRU-164 and PX-TRU-165-002 (1993); TRU184.005 (1994); TRU188.008 and PX-TRU-236-001 (1998). Students and professors from Virginia Theological Seminary, and occasionally other Episcopal clergy, also have helped ensure the continuation of services at Truro. *See, e.g.*, PX-COM-109-154 (1872: Seminary students and Piedmont Convocation ministers); PX-COM-127-267 and PX-COM-128-275 (Evangelist of the Diocese reporting six visits in 1890 and again in 1891); TRU145.044 (1889), .052 (1892), .125 (1923); PX-TRU-505-170, -173 (VTS professors provided services from 1851-55 and students in 1892-93); TRU146.113 (1942) (“it was decided to use a seminary student each Sunday in order to keep the Church open”); TRU150.010 (1954) (Seminary student to assist for the summer); TRU156.025 (1960) (seminarian employed during the last four months of the year); *see also* TRU146.097, .098 (1940) (two Vestry members received recommendations for a minister from the Seminary and the Vestry voted to extend a call to the recommended person).

The mid-1970s brought one of Truro’s most significant clergy employment crises and illustrate Diocesan authority and assistance. Truro’s long-time Rector, the Rev. Raymond Davis, experienced serious medical problems. When the Rev. Davis declined long-term care, and after meetings with the Bishops, the Vestry petitioned the Bishop to dissolve the pastoral relationship.

See TRU170.015 - 016, .026 (“Bishops Hall and Baden orally appointed the Senior Warden to assume the administrative-executive functions of the Rector, and concurred in his appointment of the Rev. Stephen F. Noll, priest in charge, to carry out the priestly functions of the Rector”), .030, .033 (resolution petitioning for dissolution of the pastoral relation “in accordance with the Canons of the Protestant Episcopal Church of the United States of America”), .035, .037 (Senior Warden explained to parishioners that “[b]y this action, the Vestry put the church and the rector in the hands of the Bishop” and that “[t]he decision on the Rector’s relationship with the parish now belongs at a higher level; for this reason the Bishop is acting as pastor to the parish”).

Ultimately, the Church Pension Fund’s qualification of the Rev. Davis for a disability retirement allowed the crisis to be resolved with his resignation. *See* TRU170.040 (minutes of a “Vestry meeting” with the Bishops and about 150 members of the congregation, recording approval of a motion to accept the Rev. Davis’s resignation because “[a]ccording to the canons [*sic*] the Rector cannot vacate his office without approval of the Vestry”). The Bishop’s canonical power to dissolve the pastoral relationship is an excellent example of how a rector and vestry have considerable delegated powers, but the hierarchical church – specifically, the Bishop as Ecclesiastical Authority – remains the resource that decides serious conflicts and the only authority capable of involuntarily changing local church leadership. *See generally* PX-COM-003-035 (Canon 28: neither the Vestry nor the Rector can unilaterally discharge a Rector, and they are to submit any such significant problem to the Bishop); PX-COM-003-020, -036 (Canons 10.6 and 28.6: powers of the Diocese, including to convert a church into a mission).

Ever since the first visits in 1844 and 1845, bishops of the Diocese have regularly visited Truro. Tr. 976; *see, e.g.*, PX-COM-081-005 (recording Bishop Meade’s July 1844 visit and confirmation of six persons at Fairfax Courthouse and noting that “the new Church was nearly

completed”); PX-TRU-115 (1981: asking for two visits by Diocesan Bishops in the coming year and describing visitation practices for the last several years); Exhibit B.

Bishops of the Diocese have consecrated Truro buildings on four separate occasions. *See supra* at 81 (describing 1845 and 1934); PX-COM-112-031 (on December 6, 1874, Diocesan Bishop Johns “consecrated Zion Church, Fairfax county, preached, and confirmed one”); *infra* describing the second Instrument of Donation and 1974. *See also* TRU182.003 - 004 (Bishop to dedicate two properties on May 24, 1992); TRU149.027 (1953 Vestry minutes’ “Historical Notes” stating that Diocesan Bishop Goodwin officiated at the dedication of the new parish hall); TRU146.042 (1933: “Mr. Donovan was instructed to arrange for the Laying of the Cornerstone to the new Church ... the date depending upon which day the Bishop could be present”).

The visits by Diocesan Bishops have included rites for which a bishop is required (such as consecrations, institutions of a rector, and confirmations), meetings with the vestry and clergy, and participation in parish events. *See, e.g.*, PX-TRU-014-002 - 003 (confirmations and receptions are performed by the Bishop); TRU145.114 (1917: describing Bishop Coadjutor’s visit to “Parish Day” and presiding at services); PX-TRU-368-002 (Bishop Baden instituted the Rev. John Howe as Rector); PX-TRU-120 (1985); TRU177.029 - .031 (1987); PX-TRU-126 (1997 letter from a Truro member describing Bishop’s visit as “a wonderful experience” and referring to “1994 when [Bishop Lee] led Truro’s annual parish retreat at Shrine Mont”); PX-TRU-130-001; PX-TRU-131-001 (2001 *Truro Family News* welcoming Bishop Gray of the Diocese, “who was our Shrine Mont 2000 speaker,” to preach, preside, and confirm).

When Truro wanted other bishops to visit, it obtained the Diocese’s permission. *See, e.g.*, PX-TRU-102 and PX-TRU-103 (permission for Episcopal Bishop A. Hugo Blankingship to visit and confirm his grandson in 1972); PX-TRU-110-002 (1976: asking the Diocese “to

officially invite Bishop Burt” of Ohio for an ordination); PX-TRU-112 (asking to “clear” two visits by other Episcopal Bishops in 1979); PX-TRU-116 (1981: asking Diocesan Bishops for “blessing and any suggestions” in regard to an African bishop’s visit to preach and to ask whether they want “to extend an official invitation ... to make this visit into the Diocese of Virginia”); PX-TRU-117 (1982: asking Diocesan Bishop Hall if he would share a service with a bishop temporarily in residence at VTS and “consider allowing [that bishop] to pinch-hit” if Bishop Hall cannot make his scheduled visit); PX-TRU-119 (1983: asking Diocesan Bishop “to extend an official Episcopal invitation to [a bishop from Singapore] to visit within the Diocese of Virginia”); PX-TRU-129 (2000: “With your approval, Bishop Josiah [of Nigeria] will be coming to the Diocese of Virginia April 6-10” and speaking at Truro); PX-TRU-134 (2003: Bishop Lee writing to welcome a bishop from England to officiate at a wedding and to preach).

TEC’s Presiding Bishops also have visited Truro, live and via radio. *See* TRU178.030 (Presiding Bishop Browning to visit Truro on December 11, 1988, and preach at all services); TRU147.022 (radio address by the Presiding Bishop in 1948); TRU147.055 (same in 1950).

Truro has participated in the Diocese’s clergy ordination process for well over a century. *See, e.g.*, TRU145.056 (1894); TRU153.010 (1957); TRU158.006 (1962); TRU167.008 (1971); TRU168.001, .008, .035 (1972); TRU172.035 and PX-TRU-158 (1976); TRU174.003 (1984); TRU176.008 (1986); TRU177.001 - .002 (1987); TRU178.028 (1988); TRU183.006 (1993); TRU184.013 - .014 (1994); TRU185.037 (1995); TRU189.004 and PX-TRU-095 (1999); TRU190.026 (2000); TRU191.016 (2001); PX-TRU-167 (2003); PX-TRU-168-002 (2004); *see also* PX-TRU-026 (establishing Vestry Ordination Committee “pursuant to the Canons of the Diocese of Virginia and ‘The Process Toward Ordination’ as authorized by the Bishop”).

Truro has admitted that “clergy of Truro Church generally conducted religious services in

accordance with the Book of Common Prayer.” PX-TRU-009-005. Other documents confirm that the BCP has long directed worship at Truro and that Truro also has long used the Episcopal Hymnal (which is not mandatory). *See, e.g.*, PX-TRU-490-010 - 012, -057 - 060 (photographs showing BCPs and hymnals in pews at Truro’s chapel and sanctuary); PX-TRU-084-004 (1998: “Wedding services at Truro, including the vows, follow the liturgy in the Book of Common Prayer...”); PX-TRU-106 (1974); TRU145.0128 (1924: purchasing hymnals and prayer books), .0148 (1928) (approving motion to purchase 80 copies of “the new Prayer Book ... and that the old Books shall be removed from the pews”); TRU151.025 (1955: hymnals); TRU153.024 (1957: “additional hymnals and Prayer Books”); TRU155.006 (1959: same).

The record also reflects some of the spiritual benefits that Truro derived from its affiliation with the Church and the Diocese. *See, e.g.*, PX-TRU-122 (request to Bishop Lee to allow a past Diocese Bishop’s episcopal symbols to be given to a bishop from Tanzania, which Bishop Lee approved in part, *see* TRU177.029); TRU145.0138 (1927: “Resolved: That this Vestry learns, with distress, of the death [of Diocesan Bishop William C. Brown] ... and deplores the loss sustained by the diocese and all of the churches, including our own, which he had so ably and faithfully served during his episcopate”); TRU147.053 (1950: “Mr. Keith reported on his recent visit to Richmond at which 30 laymen of the Diocese were trained by one of the 16 laymen who had been selected by the Headquarters of the church” and “[o]n February 7 the Vestry met at the home of Mr. Kirkpatrick to hear ... one of the trained laymen of the diocese, explain the mission of the church”); TRU151.0001 (1955: meeting with “Canon West of the Diocese of New York” regarding facilities planning); TRU174.0009 (1984: Region 7 supporting Diocesan mission work in Tanzania); TRU178.027 (1988: Vestry viewed an “uplifting and inspiring” Diocesan videotape describing the ministries of the Diocese and its people); PX-TRU-

234 (1995: thanking Bishop Lee “for arranging the clergy retreat and for inviting Bishop Gray to be our retreat leader” and reporting that Truro’s clergy “were nourished and challenged by our time at Shrinemont and came back refreshed”); TRU188.018 (1998: “The clergy and staff participated ... in an overnight Parish Development meeting in Richmond sponsored by the Diocese.... Martyn considered the meeting to be a blessing for the Truro staff”); PX-TRU-067 (1974: Rector’s letter expressing thanks for consecration of the new church by the Bishop and stating, “I think the whole day was a very great one and that our parish was strengthened and refreshed by the events of the day”); PX-TRU-236-001 (1998: Bishop Matthews’ “gracious confirmation visit ... was a wonderful blessing and encouragement ...”).

Throughout its existence, Truro has submitted the canonically-required parochial reports to the Diocese. *See, e.g.*, Tr. 974; PX-COM-082-038 (1846); PX-COM-138-066 (1900); PX-COM-159-109 (1921); TRU145.0151 (1929); PX-COM-181-098 (1942); TRU224 through TRU226 (1949-69); PX-COM-222-136 (1983); TRU227 through TRU240 (1992-2005); *see also* PX-TRU-309-001 (1956: “Each year we are required by the law of the church to submit an annual report known [sic] as the ‘Parochial Report’ to the Bishop of the Diocese”).

Truro has sent delegates to the Annual Council of the Diocese throughout its existence. *See, e.g.*, Tr. 973-74; PX-COM-086-005 (1850 Journal)³⁰; PX-TRU-009-006 (admitting that Truro was represented at Annual Council from 1960 – 2006); Exhibit A.

Truro members have served as Diocesan deputies or alternates to the General Convention of the Church. *See, e.g.*, PX-COM-145-013 (1907: Rector E.L. Goodwin); PX-COM-221-003 (1982: Hugo Blankingship); PX-COM-234-113 (1994: Harry Strong, alternate); PX-COM-240-

³⁰ For many years, including 1850, the Diocese’s Constitution provided that sending a lay delegate to Annual Council signified acceptance of the rules of the Church. *See supra* at 18.

163 (2000: Martyn Minns and Diane Knippers, alternates). Indeed, Truro parishioner Hugo Blankingship was a delegate to the 1979 General Convention, when the Dennis Canon was adopted. PX-COM-218-033.³¹ And people from Truro attended General Convention even when they were not Diocesan representatives. *See, e.g.*, TRU181.006 (1991: “[t]he Vestry approved having Ed Prichard be Truro’s representative at the upcoming General Convention”); PX-TRU-186-010 (“In October 1970, Dr. Davis attended the General Convention at Houston, Texas”).

Truro viewed its delegates to Annual Councils of the Diocese as representatives of the church and occasionally gave them instructions. *See* TRU145.025 - .026, .030, .034, .041, .085 (1908: “our delegate and alternate be and are now instructed to use their best efforts to bring about the election of Rev. E.L. Goodwin as Assist Bishop”), .0102 (1913: delegate “instructed to vote against any effort to change the name of the church”); TRU156.003 (1960: Vestry voted not to give Annual Council delegates any instructions regarding the election of a Suffragan Bishop); TRU165.017 (1969: requesting that delegates support a resolution against restricted pledging and taking positions on several other resolutions to be presented at Council); TRU183.008 (1993: “Delegates to the Annual Council will be asked to continue serving as representatives for Truro to the Diocese of Virginia”); PX-TRU-044-002 (2003: same).

Truro was well informed about matters at Annual Council; and its leaders and delegates often discussed issues addressed at Council, both before and after Council. *See* PX-DEP-023-060 (Rule 4:5(b)(6) testimony that Truro routinely received the Council Journal and advance notice of Council business); TRU145.043 (1889) (“vestry unanimously endorsed the action of

³¹ Truro’s vestry minutes between 1977 and 1983 are missing, with the exception of one meeting in 1980 (see Truro’s exhibit list between TRU172 and TRU174). Thus the major potential source of evidence that Truro adhered to its clear record of awareness and involvement with respect to the 1979 General Convention and the 1983 Annual Council is unavailable.

our last Diocesan Council in approving Amendments to Articles II & X of the Constitution”); TRU145.0144 (1928: “A letter from Mr. Brydon, relative to a proposed change in Sec. (a) Art II of the Constitution, was read”); TRU147.069 (1950); TRU149.015 (1953); TRU151.017 (1955); TRU152.024 (1956) (reports to be made to congregation); TRU167.002 (1971); TRU168.004 (1972); TRU169.001, .004 (1973); PX-TRU-015-010 - 012 (policy and principles adopted in 1978, stating that Truro’s delegates should “commit themselves to attending pre-Council briefing sessions and to familiarize themselves with the pre-Council journal”); TRU183.004 (1993); TRU188.022 (1998); TRU189.003 (1999); TRU190.005 (2000); TRU191.003 (2001).

Truro also was concerned with and well informed about General Convention. *See id.*; TRU163.017 (1967); TRU166.024, .030 (1970); TRU172.030 (1976); TRU175.020 - .021 (1985); TRU181.004 (both clergy and Senior Warden Mike Woodruff, a lawyer, to “address the congregation ... on the upcoming General Convention”), .019 (1991); TRU183.001 (1993); TRU184.004, .005, .010 (1994); TRU185.033 (1995: new Senior Warden’s goal was “[t]o seek new ways for Truro to have influence at General Convention”); TRU190.039 - .040 (2000).

Truro participated actively in Diocesan governance, both through service on committees and in proposing resolutions. *See, e.g.*, TRU147.0107 (1951); PX-TRU-258-002 (1969); TRU166.001 (1970); TRU173.001 (1980); TRU174.002, .005, .030 (1984); TRU175.001 - .002, .006, .022 (1985 Special Diocesan Council, held at Truro, was “a marvelous success”); TRU176.002 (1986); PX-TRU-218-002, -004 (1990); PX-TRU-219-003 (1996); TRU187.001 (1997: reporting, after attending a Pre-Council Diocesan Preparation Meeting, that “[t]here will be thirteen resolutions presented at the Diocesan Council meeting and Truro is behind half of them”); *id.* at .022; TRU188.003 (1998). In fact, Truro chose its delegates to maximize its influence and participation in church governance. *See, e.g.* PX-TRU-015-010 - 012 (1978 policy

and principles); TRU147.0052 (1950).

Truro's clergy and laity have served in numerous leadership capacities. Perhaps most notable for purposes of this litigation is Hugo Blankingship, who not only was a delegate to the 1979 General Convention (as previously noted) but also was a member of the committee that proposed Diocesan Canon 15 and parliamentarian of Annual Council in 1983. *See* PX-COM-222-070, -069. Blankingship also served for several years as Chancellor of the Diocese, "the highest position that a layman can be appointed or elected to in any diocese." PX-TRU-206 (congratulatory letter from Bishop Baden); *see also* PX-TRU-207 (Rector Howe's response that "We, as a parish, and I, personally, take great pleasure and pride in Hugo's appointment").

But Truro's record of involvement in the Diocese extends throughout its history – more than can be adequately summarized here. It includes Truro's sponsorship of various resolutions, Rector Goodwin's service on a Committee on Revision of the Canons in 1905 (PX-COM-143-013) and in various other capacities (*see* PX-COM-162-047), James Keith's service on the Committee on Canons in the 1950s (PX-COM-195-027), Michael Woodruff's service on the Constitution and Canons committee in 1995 (PX-COM-235-076, -084 - 085), Truro clergy's and lay members' service as Deans and President of Region 7 (*see infra*), Rector Howe's service on the Resolutions Committee (*see* PX-TRU-210) and chairmanship of the Diocese's Budget Committee (*see* PX-TRU-213; PX-TRU-214-001), Truro members' selections as deputies and alternates to General Convention, and much more. For just one recent year (1993), *see* PX-COM-232-109 - 110 (Truro lay member and two clergy on Commission on Church Planting), -112 (Diocesan Compensation Commission), -123 (Commission on Ministry).

Truro has participated in regional organizations of the Diocese, from the Piedmont Convocation to Region 7. *See, e.g.*, TRU146.101 (1940), .151 (1945); TRU159.010 (1963);

TRU167.030 (1971); TRU171.023 (1975); TRU186.020 (1996). Both clergy and lay members from Truro have led Region 7. *See* PX-COM-212-003 (1973: Rector Davis was Dean of Region); TRU183.004 (1993: Vestry member Gene Goodell President of Region).

Truro has made financial contributions to the Diocese throughout its history. Tr. 974; *see, e.g.*, TRU293 (charting amounts pledged by Truro from 1953-2006); TRU145.038 - 039 (1927); TRU146.011 (1930); TRU176.032 (1986: voting, after considering “Principles of giving, of authority, of obedience, and other foundational questions,” to pledge to the Diocese and resolving to “become more involved with the Diocesan administration of its mission efforts (as is appropriate for all churches in the Diocese) to foster the growing unity in the church and specifically our awareness that we and the Diocese are one”).³² Truro contributed to the Diocese in the same way its parishioners contributed to Truro – not because a lack of contribution would bring punishment but because contributing was a responsibility and a part of participation in the life of the Church. *See, e.g.*, TRU168.030 (1972: “parishioners are asked to give their first fruits, and the vestry owes the same to the diocese”); TRU172.006 (1976: “there is a chain of responsibility from individual parishioners up to the national church”).

Truro also has made special contributions to Episcopal missions. *See* TRU154.021

³² After 2003, Truro contributed to Diocesan institutions (such as Shrine Mont) and missions (Tr. 4481-82), apparently viewing that as a way to “support the work of the Episcopate.” PX-TRU-040-002; *see* PX-COM-003-019 (Canon 10.1: churches are to share “in the support of the Episcopate”); PX-TRU-090-001 (January 2005 letter from Truro’s Senior Warden: “we want to participate as fully in the life and ministry of the diocese as our consciences will allow. We want to remain in compliance with the canons”). Truro’s Vestry expressed a desire to cover “the full costs of any services that we use from the diocese” and concern that not giving at all might make it “uncertain whether we could rent from Shrine Mont for our parish retreat weekend.” PX-TRU-043-003. To be sure, Truro also used former pledge money for another “mission.” *See* PX-TRU-041-001 (2003: “Funding for Legal Consultation ... The Falls Church and Truro have entered into an agreement with [attorney] Mike Woodruff to look at property and other issues,” funded in part by “\$5,000 ... that was to go to the Diocesan Pledge”).

(Presiding Bishop's Fund for Overseas Relief); TRU171.017 (Presiding Bishop's Fund for Famine Relief and "Bishop Wood's work in Africa"); PX-TRU-160 (Venture in Mission).

Truro has used Diocesan facilities, particularly for retreats at Shrine Mont. *See, e.g.*, Tr. 3471-73; TRU149.025 (1953 Vestry retreat at the Virginia Theological Seminary); TRU174.006, .012 (550 persons attended 1984 parish retreat at Shrine Mont, with another 50 coming for day sessions); TRU175.013 (519 persons attended 1985 Family Retreat at Shrine Mont); TRU176.009 (600 persons housed at Shrine Mont for 1986 family retreat and 700 attended); TRU177.003 (1985 vestry/staff retreat); TRU179.009 (1989); TRU180.009 (1990); TRU181.012 (1991 Family Retreat); TRU183.010, .015 (1993); TRU184.004 (1994 "Shrinemont children's program"); TRU186.003 (1996 Vestry retreat); TRU187.009 (1997 Vestry retreat); TRU189.004, .011 (1999); TRU190.028 (2000); PX-TRU-073-001 (2003).

Truro has admitted that its "vestrymen on the Vestry as of December 9, 2006 ... took some type of vestry oath similar in form and substance to" the declaration in the Diocesan Canons. PX-TRU-009-003; *see, e.g.*, PX-COM-003-022 (2005 Diocesan Canons). Indeed, Truro's Vestry subscribed to the canonical declaration – explicitly expressing their "hearty assent and approbation" of the discipline of TEC – as recently as May 2006, months after incorporating and hiring counsel for this very litigation and a mere six months before voting to leave. PX-TRU-035-001 ("All Vestry Members signed the required oath and were thereby, certified as the Vestry"); PX-DEP-036-023 - 024 (Rule 4:5(b)(6) testimony that such minutes reflect taking the canonical oath); *see* TRU290 (January 26, 2006, Articles of Incorporation); PX-APOST-101-001 - 002, -004 (February 2006 Joint Defense Agreement).³³

³³ Truro's Vestry took the oath in May 2006 after receiving legal advice about it from Truro's Chancellor, the contents of which have been ruled privileged. *See* Order (March 11, 2011).

(footnote continued)

The record reflects that Truro's Vestry has recognized that the canons required such a declaration and has taken it since 1872, the period for which Truro's records exist. *See* Tr. 975-76 (Dr. Bond, describing historical records), 1564 (Truro witness Tom Yates: "new members of the vestry were always asked to sign a vestry oath, actually all members of the vestry"); PX-DEP-036-024 - 026 (Mr. Yates, Truro's Rule 4:5(b)(6) designee, stating that he had reviewed several sets of minutes and that "every year that I looked at, it was taken"); TRU145.031 (1881), .040 (1884), .042 (1888), .043 (1889), .050 (1892), .053 (1893), .061 (1897), .064 (1899), .068 (1901), .079 (1908), .085 (1909), .0104 (1914), .0106 (1915), .0110 (1916), .0112, .0113 (1917), .0153 (1926-28; *see* references at TRU145.0137, .0140), .0154 (signatures dated 1884 and 1887); TRU146.0105 (1940), .0147 (1945); TRU147.007 (1947), .026 (1948); TRU148.008 (1952); TRU161.013 (1965); TRU163.011, .013 (1967); TRU164.014, .015 (1968); TRU165.010 (1969); TRU166.019 (1970); TRU169.017 (1973); TRU178.019 (1988); TRU183.016 (1993); TRU185.030 (1995); TRU186.019 and PX-TRU-480-002 (1996); TRU188.0012 and PX-TRU-481 (1998); PX-TRU-482 (2001). Many of the cited minutes refer to the canonical declaration by such terms as "the required oath," "the usual oath," "the prescribed oath," "the oath of office," or "the obligation required by the Canons."³⁴

Indeed, even after Truro left the Diocese, it recognized the importance of the Vestry

Bishop Lee also had reminded the Vestry of the oath well before his detailed letter of December 1, 2006 (PX-TRU-036). *See* PX-TRU-032 (August 18, 2004, letter to Truro's Senior Warden).

³⁴ In years where the records do not clearly reflect the taking of the canonical vestry oath, they do say vestry members were installed and suggest that installation included taking the oath. *See, e.g.,* TRU167.017 ("the new members of the Vestry were installed by Dr. Davis"), .022 (two more members "installed as vestrymen"), .027 (member "sworn as a vestryman ..."); TRU168.018-19 ("Newly elected members of the vestry ... were installed by Mr. Noll," and a member "who had arrived at the meeting after the installation ... was sworn as vestryman"). *See also* TRU170.004 (1974 parish meeting: "Mr. Blankingship read the Declaration and Promise from The Canons that each newly elected vestryman must make").

declaration. *See* PX-TRU-037-004 (April 2007 Vestry minutes noting that “[p]rior to the December 2006 decision ... newly elected Vestry members would subscribe the Vestry oath as set forth in Section 8 of Canon 11 of the Diocese of Virginia Canons,” explaining that no such oath had been adopted by CANA or the ADV, and unanimously approving a new oath).

Clergy also are required to take a similar declaration as part of ordination, and Truro admits that its Rector serving as of December 2006 “was required to take the above-reference[d] declaration” and in fact “took the oath above-referenced declaration [*sic*].” PX-TRU-009-004 (responses to Requests 4 and 5). Other Truro clergy did as well. *See, e.g.*, PX-TRU-097 (declaration by Clancy Nixon, later Truro’s assistant rector, PX-TRU-099).

Truro has obtained licenses for lay leaders. *See, e.g.*, TRU167.0018 (1971: three men to be licensed by the Bishop to administer the chalice); TRU168.0033 (1972: two additional); PX-TRU-046-032 (Lay Eucharistic Minister applications, containing clergy certification that the person is qualified under the canons and the person’s agreement to conform).

After passage of a canon making the Diocesan health insurance program mandatory (Tr. 665-66), Truro began to use that plan. PX-DEP-023-049, -052 (the Diocesan plan “was the plan we made available” to eligible staff). Prior to that time, Truro had other insurance that met applicable Diocesan mandates. *E.g.*, TRU167.002 (1971: “the new mandatory life and medical insurance plan for clergy in the Diocese of Virginia.... is already authorized in the budget”). The record from Truro’s initial use of the Diocesan plan reflects typical gripes about insurance. *See, e.g.*, PX-TRU-194 (unpaid expenses). The Diocese paid 80% of several out-of-pocket expenses not covered, and the Diocese worked with Truro to implement a pilot program, retaining the Diocesan plan but also meeting Truro’s concerns. *See* Tr. 667-68; PX-TRU-196-001; PX-TRU-197; PX-TRU-198; PX-TRU-200. Later health insurance changes did not seem to

result in similar issues. *See* TRU189.014 (1999: “the medical insurance provider for the staff was changed because of a proposed huge rate increase. The policy is now with Cigna, which is the provider for the rest of the Diocese. Martyn said the change seems to be ok with the staff”).

Truro obtained other types of insurance from the Church Insurance Company, which offers insurance to Episcopal churches. PX-DEP-023-094 - 095; PX-TRU-381; PX-TRU-382; PX-TRU-383; PX-TRU-370; PX-TRU-371; *see also* PX-TRU-384-002 (Truro Episcopal Day School commercial property policy excerpt showing the Diocese as an additional insured). Records show Truro’s use of Church Insurance for decades. *See* TRU149.016 (1953); TRU166.025 (1970: Church Insurance property policy allowed “increased coverage ... at a reduced premium”); TRU172.010 (1976). After Truro’s congregation voted to leave, it ceased using Church Insurance. *See, e.g.*, PX-TRU-201.

Throughout its history prior to December 10, 2006, Truro was consistently known both to its members and to the community as an Episcopal church. Tr. 977. It has used Episcopal flags, symbols, and signage, for example, for decades. *See, e.g.*, TRU155.008 (1959 minutes approving a motion to “purchase four National Episcopal Church signs immediately for placement on access roads in nearby communities”); TRU167.007 (1971: gift of an Episcopal Church flag for the chapel); TRU168.007, .013 (1972: “Episcopal Church sign” ordered and erected on Main Street). It is true that in the years leading up to its vote to disaffiliate Truro has hidden some such things. For example, Truro ceased using “Truro Episcopal Church” letterhead, as it had done for at least forty years (*see* PX-TRU-091 (1965); PX-TRU-090 (2005)). Truro took down the 1974 Sentence of Consecration by a Diocesan Bishop that references “members and friends of the Protestant Episcopal Church.” PX-TRU-490-028. Yet other markers remain. *See* PX-TRU-490-001 (“Truro Episcopal Church” sign on street), -030 - 031 (Episcopal Church

shield in brick and stone on the outside of sanctuary building), -050 - 051 (1845 dedication prayer by Bishop Meade, which continues to hang outside the sanctuary); Tr. 1154-57.

Truro repeatedly referenced its Episcopal nature in financial and legal paperwork. *See, e.g.*, TRU145.033 (“Trustees of Zion Protestant Episcopal Church at Fairfax Court House”); TRU147.089 (1950 petition by “The Vestry of Truro Episcopal Church”); TRU147.094 (1950 resolution advising bank of the election of a new “Treasurer of Truro Episcopal Church, Fairfax, Virginia”); TRU205.001 (1908 petition of “Zion Protestant Episcopal Church”); TRU198.004 (1911 petition by “members of the congregation of Zion Episcopal Church”); TRU206.001 (1913 petition by trustees of “Zion Protestant Episcopal Church”); TRU199.001 (1928 order “In the matter of the appointment of Trustees for Zion Episcopal Church”); TRU200.001 - 002 (1936); TRU207.001 (1939); TRU208.001 (1957); TRU209.03 (1958); TRU202.001 (1963); TRU215.001 (1965); TRU216.001 (1974); TRU223.001 (2002). Indeed, this Court long ago entered an order declaring “Episcopal” part of Truro’s “legal description and name.” *See* TRU200.002 (1936: “it further appearing to the Court that the said Church was formerly known as Zion Episcopal Church, but that by proceedings strictly in accordance with the Church law the said Church has been consecrated under the name of TRURO EPISCOPAL CHURCH ... upon consideration whereof the legal description and name of the said Church is now declared to be TRURO EPISCOPAL CHURCH”).

Further, Truro has specifically relied on the Canons of the Church, even in recent years, in communications with financial institutions. TRU194.025 - 026 (2004 certification to bank, “[p]ursuant to the Canons of the Diocese of Virginia and the Bylaws of Truro Episcopal Church,” that resolutions “are in conformance with actions permitted to be taken by Truro Episcopal Church pursuant to the Constitution and Canons of the Protestant Episcopal Church in

the Virginia Diocese”); PX-TRU-350-001 (May 2000 letter to bank enclosing excerpts from canons showing “the authority of Truro’s Vestry to seek a loan and incur indebtedness”).

In sum, Truro was known and recognized as an Episcopal church throughout its history.

In 2008, the parties stipulated to the ten deeds that grant title to the property at issue. *See* PX-TRU-001-002 - 003. Truro clearly had a church building prior to the Civil War, but the earliest deed is dated December 3, 1874. *See* Tr. 1636-38. That deed, TRU001, is to “Trustees of the Zion Protestant Episcopal Church,” pursuant to the following habendum clause³⁵:

To have & to hold to the said parties of the second part & their successors forever but upon the following purposes, uses, trusts & conditions & none other -- that is to say, for the use of the members & congregation of the Protestant Episcopal Church of the Diocese of Va. worshipping & to worship in the building on said lot known as & called ‘Zion Church,’ subject to the Constitution, canons & regulations of the Protestant Episcopal Church of the Diocese of Va.

Id. at .002. Thus, the 1874 deed explicitly provided that it was for a congregation in the Diocese and made being “subject to” the Diocese’s governing documents a condition of the grant.

The December 1, 1882, deed is to “trustees of Zion Protestant Episcopal Church In trust nevertheless to be held by [the trustees] for the sole use and benefit of the said Zion Protestant Episcopal Church.” TRU002.001 (transcribed in TRU002a, filed July 28, 2011).

Later deeds lack a habendum clause: seven other deeds range from 1952 to 2001, and are all to trustees of or for “Truro Episcopal Church,” without material elaboration. TRU006 - TRU012.

The last deed is actually a pair from December 2006, in which the trustees of a mission in the Diocese, Christ the Redeemer Episcopal Church (discussed *supra* in this section), conveyed undeveloped land to Truro, initially to “Truro Church ... a church incorporated ...” (PX-TRU-

³⁵ A “habendum clause” is “[t]he part of an instrument, such as a deed ... that defines the extent of the interest being granted and any conditions affecting the grant. The introductory words to the clause are ordinarily *to have and to hold*.” BLACK’S LAW DICT. 778 (9th ed. 2009); *accord Culpeper Nat’l Bank v. Wrenn*, 115 Va. 55, 58, 78 S.E. 620, 621 (1913) (“the purpose of the habendum is to define the estate which the grantee is to take”).

515) but corrected to Truro “by its trustees.” TRU015.001.

Instruments of Donation (including Argument)

When new church buildings were consecrated by Bishops of the Diocese in 1934 and 1974, Truro executed and delivered to the Bishops “Instrument[s] of Donation.”³⁶ PX-TRU-003-001; PX-TRU-004-001. Such instruments were optional. *See* Tr. 959; TEC-37-311. The two Instruments, which are substantively identical, (i) “appropriate and devote [the buildings] to the worship and service of Almighty God ... according to the provisions of the Protestant Episcopal Church in the United States of America, in its Ministry, Doctrine, Discipline, Liturgy, Rites and Usages, and by a Congregation in communion with said Church, and in union with the Convention thereof in the Diocese of Virginia”; (ii) request that the Bishop “take the said building under his spiritual jurisdiction”; (iii) “relinquish all claim to any right of disposing of said building, or allowing of the use of it in any way inconsistent with the terms and true meaning of this Instrument of Donation, and with the consecration”; and (iv) “certify ... that said building and ground are secured from danger of alienation from those who profess the Doctrine, Discipline and Worship of the said Church, except as provided by laws and canons in such case applicable.” Both Instruments are signed by the Rector and Register of the Vestry.

Virginia law has long held that an instrument need not be recorded to be effective between the parties. Title passes on delivery, “and, as between [the parties], is not affected by

³⁶ During trial, the Court asked whether the instruments actually had been given to the Bishop. Truro’s counsel stipulated that the 1934 Instrument was in the Diocese’s records. Tr. 961. The 1974 one was as well. *See* PX-TRU-004-001 (an “EDV” Bates number indicating production by the Diocese). That alone would likely be enough, but documents further state or suggest that the Instruments were delivered during the service. *See* PX-TRU-516-015 (1934: “As part of this ceremony the wardens presented the Bishop with the instrument of donation”); PX-TRU-065 and PX-TRU-066-002 (1974: letters from Truro’s Rector and its Senior Warden, Hugo Blankingship, regarding the consecration service and delivery of the Instrument).

the fact that the deed was not recorded.” *Brewer v. Brewer*, 199 Va. 753, 765, 102 S.E.2d 303, 311 (1958); *see, e.g., Hunton v. Wood*, 101 Va. 54, 58, 43 S.E. 186, 187 (1903) (“a deed is good between the parties, and, if not duly admitted to record, is void only as to creditors and subsequent purchasers”). Va. Code § 55-51 further provides that a deed which “fail[s] to take effect” because of non-compliance with Title 55, Chapter 4 (the chapter regulating the “Form and Effect of Deeds and Covenants”) “shall, nevertheless, be as valid and effectual and as binding upon the parties thereto, so far as the rules of law and equity will permit, as if this chapter had not been enacted.”

In the Instruments of Donation, Truro certified that the building and ground would never be alienated from “those who profess and practice the Doctrine, Discipline and Worship” of the Episcopal Church. Truro “relinquish[ed] all claim to any right of disposing of the said building, or allowing of the use of it in any way inconsistent with” that covenant. In so doing, Truro gifted a property interest or a use restriction.³⁷ It cannot be disputed that, by their own vigorous condemnations and vote to “sever ... denominational ties,” Truro’s current occupants have made clear that they do not profess the “discipline” of the Episcopal Church and that they are no longer “in union” with the Diocese, and the Diocese may enforce the instruments.

Even if the Instruments of Donation are not independently enforceable, they show that Truro accepted that its property must be used for the mission and ministry of the Episcopal Church and the Diocese. Thus the Instruments strongly support the Diocese’s claims of proprietary and contractual rights.

³⁷ Such a gift is consistent with Truro continuing to use the property and pay the mortgage (*see* Tr. 963-64) because the canons provide that local Episcopal leadership, as agents of the Church, have responsibility for the day-to-day use and maintenance of property. *See, e.g.,* PX-COM-003-024 - 025 (Diocese Canon 10.6, 10.7); PX-COM-001-084 (TEC Canon III.9.5(a)(2)).

Truro has argued that the Instruments of Donation are “entirely spiritual.” Tr. 969. As the Court recognized, however, their language is not entirely spiritual. Tr. 966. Notably, Truro’s 1974 Vestry spoke in secular terms when adopting the Instruments. *See* TRU170.008 (“It is necessary that a legal description of the church property be obtained. This *legal document* is to go to the Bishop stating it, is free of debt. At which time the Consecration of the Church can take place”) (emphasis added), .011 (“Mr. Blankingship had received the ‘Instrument of Donation’ papers. The vestry was asked to adopt these papers. This motion was made and carried”). The Instruments can be accorded legal weight.³⁸

St. Paul’s Episcopal Church (St. Paul’s)

In the early 1800s, the building that is now the sanctuary of St. Paul’s was the district courthouse for Fairfax, Fauquier, Loudoun, and Prince William counties. PX-STPAUL-596. William Skinker, Jr. purchased the property in 1822. *Id.*; Tr. 983. The Rev. Parson Steele, an Episcopal minister, held services in the old courthouse and “labored earnestly for eight years organizing an Episcopal congregation.” PX-STPAUL-596. In 1830, Mr. Skinker deeded the property to the Episcopal Church in memory of his wife, Harriet Keith Skinker. *Id.*; *see* PX-STPAUL-108-003 (1996 parish profile: the church building “was deeded to the Episcopal church in 1830 and became St. Paul’s three years later”); DSTP-306-4350 (a petition by “trustees of the religious congregation of St. Paul’s Episcopal Church” under Va. Code § 57-17, which

³⁸ The Instruments have some religious language and context, to be sure. Were this Court asked to interpret those terms, it could not do so. *See Board of Mgrs. v. Church of the Holy Comforter*, 628 N.Y.S.2d 471, 475 (N.Y. Sup. Ct. 1993), *aff’d mem.*, 623 N.Y.S.2d 146 (App. Div. 1995) (“the phrase ‘in communion with’ is an ecclesiastical and religious term and has no legal or secular meaning”). But this Court need not do that. All it needs to do is accept Truro’s word: first, as stated in the Instruments, that the property would not be alienated from those who were part of the Church and the Diocese; and second, that the current occupants have left the Church and the Diocese. *Cf. Buhrman*, 5 Va. Cir. at 507-08.

allows conveyances where there is “no deed of record,” reciting possession since 1830). That deed was lost (*see id.*), but a plaque at the entry commemorates the gift. PX-STPAUL-759-002.

In 1833, Diocesan Bishop William Meade visited Haymarket twice. Tr. 983. On his second visit, he offered to consecrate the courthouse as an Episcopal church if the people “would convert the house into a becoming place of worship.” PX-COM-071-595; *see* Tr. 983. They did; and the Bishop kept his promise, returning in 1834 and consecrating the building as St. Paul’s Episcopal Church. *Id.*; *see* PX-COM-071-611. It has been used ever since as an Episcopal church, except for a period during the Civil War when it was used as a Confederate hospital or occupied by federal troops. PX-STPAUL-005-016; PX-STPAUL-596; Tr. 984-85.

Prior to the Civil War, St. Paul’s enjoyed relative stability under the Rev. John Towles, a long-term rector. *See* Tr. 989; PX-STPAUL-106-009. The church building was damaged during the Civil War. *Id.*; PX-STPAUL-596. The Civil War had a fairly devastating effect on the stability that St. Paul’s had enjoyed before the war. Tr. 989-90. The Bishop of the Diocese assigned a deacon, the Rev. William A. Alrich, to take charge of St. Paul’s (as well as Truro, then known as Zion) in 1867. Tr. 979-80, 990. With assistance from the Piedmont Convocation and others, including for the building’s repair (*see infra*), services began again that year under the Rev. Alrich. *See id.*; PX-COM-257-011; PX-STPAUL-596.

In August 1984, St. Paul’s celebrated its 150th anniversary as an Episcopal church. PX-STPAUL-106-001 (a booklet prepared by St. Paul’s, entitled “St. Paul’s Episcopal Church: The Historic Church of Haymarket Parish”). The Presiding Bishop, John M. Allin, sent greetings. *Id.* at -004. The 150th anniversary booklet lists and profiles St. Paul’s Rectors, including the Rev. Towles, who is described as “a Virginia Seminary man, ordained in 1836.” *Id.* at -009. The profile of the Rev. Alrich (1867-68), also “ordained at the Virginia Seminary near

Alexandria in 1866,” describes his efforts to secure contributions to repair St. Paul’s after the Civil War. *Id.* at -010. The Rev. John Ambler (1875-81) was the first Rector to commence regular church services at nearby Grace Ewell Chapel and built a congregation there. *Id.* at -011. Under the Rev. Arthur Gray’s tenure as Rector (1881-88), there was “some improvement in the church buildings,” and Grace Ewell Chapel was purchased, repaired, improved and later consecrated as “Grace Episcopal Chapel-of-Ease” by Bishop Alfred Randolph. *Id.* at -012. The Rev. Carey Gamble (1905-09), who was married to the daughter of the Bishop of West Virginia, made considerable additions to the Rectory, largely at his own expense. *Id.* at -013. The Rev. Andrew Grinnan (1910-12) was Rector when the Parish House was built, and his health broke down with all of the long rides to Church of the Savior in Fauquier “where our rectors then preached.” *Id.* The Rev. Grinnan was one of a number of clergy that St. Paul’s shared with other Episcopal churches in the Diocese. *See, e.g.,* Tr. 988.

St. Paul’s has provided Episcopal ministry to a wide swath of northern Virginia. An October 1, 1987, letter from Rector Richard O’Driscoll to Bishop Lee encloses a brochure stating: “St. Paul’s is a renewed parish of the Diocese of Virginia (Bishop Peter James Lee), serving Haymarket, Gainesville, Buckland, Catharpin, Waterfall, Hickory Grove, Thoroughfare, and surrounding communities within historic Haymarket Parish (1832).” PX-STPAUL-107-003. St. Paul’s 1996 parish profile begins its description of St. Paul’s by describing the Diocese. *See* PX-STPAUL-108-005. The profile also describes the Episcopal liturgy in use, stating that services are based on Rites I and II (of the Book of Common Prayer). *Id.* at -006. A letter dated August 27, 1990, from the Diocese to St. Paul’s Senior Warden certifies to Post Office officials in connection with St. Paul’s bulk mailing permit “that St. Paul’s has been an established church and parish of the Diocese of Virginia (Episcopal) since 1833.” PX-STPAUL-115.

There are five deeds relating to St. Paul's. *See* PX-STPAUL-001-002. One is the 1993 deed from a special commissioner to "Trustees of St. Paul's Episcopal Church of Haymarket, Virginia" that replaced the lost 1830 deed. *See id.* at -013 (also DSTP-294). Three other deeds use essentially identical language. *See id.* at -020 (1998, also DSTP-295); *id.* at -024 (1999, also DSTP-296); *id.* at -009 (1904, also DSTP-293, transcribed in DSTP-293A-4308A). The only varied language is in a 1900 deed conveying to certain individuals, "trustees, to be held as a Rectory for the use and benefit of St. Paul's P.E. Church, Haymarket, Virginia." *Id.* at 27 (also DSTP-295; transcribed at DSTP-297A-4321A).³⁹

St. Paul's has repeatedly complied with canonical requirements relating to property. In 1961, for example, St. Paul's requested and received permission from the Diocese under Canon XXI to incur indebtedness in the amount of \$21,000 to build a parish house. *See* PX-STPAUL-012a-001 - 005; PX-STPAUL-012-011 - 012. Diocesan permission was contingent on St. Paul's submitting a definite plan of amortization, which it did. *See id.* at -012; PX-STPAUL-012a-006.

On October 10, 1968, the Vestry again voted to petition the Bishop, this time for approval of increased indebtedness related to the Rectory. PX-STPAUL-013-001 - 002. St. Paul's recognized that doing so was "required by Canon XXI of the Diocese." PX-STPAUL-015-001. The Diocese again approved. PX-STPAUL-016-005; PX-STPAUL-018-003.

By the 1970s, Grace Chapel had fallen into disrepair and become a safety hazard. Over several years, St. Paul's consulted with the Diocese regarding title to Grace Chapel and to obtain the Diocese's approval to deconsecrate it and tear it down. *See* PX-STPAUL-019; PX-STPAUL-021 (report from the Suffragan Bishop); PX-STPAUL-024 (approval of Standing Committee for the chapel to be deconsecrated and returned to the Ewell estate). St. Paul's Rector performed the

³⁹ The deed later spells out the "P" (Protestant), and the "E" stands for Episcopal. *See* Tr. 2050.

service of deconsecration, on the Bishop's behalf. *See* PX-STPAUL-028; PX-STPAUL-030.

In 1990, St. Paul's sought the Diocese's permission in connection with land acquisition plans. PX-STPAUL-032. Bishop Lee responded encouragingly and described Canon 14's requirements for approval of indebtedness. PX-STPAUL-033.

The records of St. Paul's Vestry reflect subscription to the canonically required Vestry oath by all members of the Vestry. *See, e.g.*, Tr. 987; PX-STPAUL-007-055 (Vestry minutes, April 1901: "new members of the Vestry signed Section 8 of the Canons, as required by the Constitution"); *id.* at -146 (Vestry minutes, May 1908, setting out the text of the Canon and including signatures of Vestry indicating adherence); PX-STPAUL-009-018 (Vestry minutes, February 1942: "those present ha[d] taken the oath of office at morning service"); PX-STPAUL-646 (copy of Vestry oath signed on February 8, 1959); PX-STPAUL-652 (Vestry oath dated 1963); PX-STPAUL-665 (Vestry oath dated January 20, 1970). Indeed, St. Paul's Vestry took the oath as recently as May 2006. PX-STPAUL-723.

St. Paul's was always served by Episcopal clergy. *E.g.*, Tr. 985. Its clergy took oaths of conformity to the doctrine, discipline, and worship of the Episcopal Church, as all Episcopal clergy are required to do. *E.g.*, PX-STPAUL-010.

Vestry minutes and other records reflect awareness of and adherence to canonical requirements over St. Paul's lengthy history as an Episcopal Church. *See, e.g.*, PX-STPAUL-007-021 (April 1896: vestry voted by ballot because of canonical requirement); *id.* at -037 ("Read from the Constitution the duties of various officers of the vestry"); *id.* at -102 ("The Rector read, for the information of the Vestry, Special Canons that were printed and sent by the Bishop, for the benefit of the churches in the Diocese"); *id.* at -116 (Vestry reminded Warden of Canon requiring that the Bishop be notified of Rector's acceptance of call); *id.* at -048 (1900); *id.*

at -072 (1902: Vestry referred to Canon for rule on quorum); PX-STPAUL-008-124 (Vestry minutes, July 1917, discussing “a violation of one of the Church Canons ... in the election of our Senior Warden”); *id.* at -166 (Vestry minutes, March 1919: Rector advised Vestry to fill vacancies as they occurred, “according to Church law as prescribed in the Canons of the Virginia Diocese”); PX-STPAUL-663 (1969: Vestry approved a motion stating that the Congregation should be informed that the Vestry supports the canons “regarding the membership in good standing as interpreted by our Rector”); PX-STPAUL-667 (voting members of congregation assumed to meet “the canonical requirements of being ‘a communicant in good standing’”); PX-STPAUL-675 (1958 minutes reflecting that Canons 18, 19, and 21 concerning responsibility of Vestry, Officers and Rector reviewed); PX-STPAUL-002 and PX-STPAUL-003 (Bylaws of Vestry referencing Constitutions and Canons); PX-STPAUL-004-002 (1986/1987 Vestry handbook: “The responsibilities of the Wardens are those as set forth by the Canons of the Episcopal Church”). *See also* PX-STPAUL-108-010 (1996 parish profile, stating: “We also support the doctrines, disciplines and traditions of the Episcopal Church”); PX-STPAUL-606 (1996 Letter of Agreement with the Rev. David N. Jones, stating in the opening paragraph that the Rector shall be “informed at all times ... by the Constitutions and Canons of the General Convention and our Diocese”).

Vestry minutes show careful compliance for over a century with canonical requirements for annual congregational meetings, vestry elections, and vestry votes on officers (such as Senior and Junior Wardens and Treasurer). PX-STPAUL-007-002, -008 - 009, -016 - 017, -046, -055, -075, -077, -124, -126, -145; PX-STPAUL-008-017; PX-STPAUL-699; Tr. 2009.

Insurance records reflect that St. Paul’s complied with Diocesan canons requiring that the Diocese be a named insured. PX-STPAUL-109-001. The annual audits required by Diocesan

Canons and other financial reporting were the subject of frequent communication between the Diocese and St. Paul's. *See, e.g.*, PX-STPAUL-194 (Executive Board letter, June 6, 1996, reminding that the 1994 audit had not been received and suggesting that Diocesan staff assist); PX-STPAUL-155 (1997 letter from Diocese regarding audit); PX-STPAUL-157 (1993 letter from Diocese regarding audit); PX-STPAUL-618 (Audit Committee Certification dated January 1, 2002); PX-STPAUL-682 (Cash Report of Revenue and Expenditures According to Canon I.6, 7 for Fiscal Year December 31, 1995); PX-STPAUL-0703 (April 1999 Vestry minutes reflecting that audit report will be sent to the Diocese); Tr. 2023-25 (Rector Jones: "There were some missing audits. It was not every year.... They did their best").

St. Paul's regularly submitted the canonically required annual parochial reports. Tr. 986; DSTP-315 through DSTP-353 (1967-2005 reports). *See also* PX-STPAUL-008-018 (Minutes dated May 5, 1909, stating that a committee was formed to "revise the list of communicants to be reported at Council").

St. Paul's used the Book of Common Prayer and the Episcopal Hymnal. *E.g.*, PX-DEP-020-44, 45, 104.

St. Paul's has participated in the Diocesan health insurance program, as required by Diocesan Canon 31. Tr. 2001. Dozens of trial exhibits reflect its payments for Diocesan health insurance for its Rectors and lay employees. *See, e.g.*, PX-STPAUL-284; PX-STPAUL-299.

The record is replete with exhibits reflecting consultation and oversight by the Bishop and the Diocese. St. Paul's October 1892 Vestry minutes, for example, reflect discussion of a request for permission "for the use of your house of worship the Second Sunday night of each month in which to have preaching by pastors of other denominations." PX-STPAUL-007-005. The Vestry was concerned that such use might "go in opposition to the Canons, or the wishes of

our Bishop.” *Id.* Bishop Whittle was consulted and responded by letter:

Under certain circumstances it has always been a pleasure to me to see our church building loaned for temporary use to our brethren of other folds. But sometimes our courtesy has been abused – the property being infused, and even a claim to a right to use it being set up. In this case not knowing the exact circumstances and not being on the ground I had rather leave it to the better judgment of the vestry and not express an opinion of my own. If you do lend the church, I would have it very clearly understood upon what terms you do so.

Id. at -006. In July 1905, Bishop Gibson attended a Vestry meeting which convened for the purpose of obtaining consultation and advice for the selection of a new Rector. *Id.* at -109. The Bishop counseled the Vestry on an appropriate salary and “urged the necessity of constant efforts on the part of the Vestry to keep up and increase the resources of the church stating that the machinery of a parish was like that of a clock and needed winding up regularly.” *Id.* at -110. Numerous other instances of the Vestry consulting with Bishops of the Diocese are reflected in the record: *see, e.g., id.* at -043 (1899: Rector to consult with the Bishop regarding sharing a Rector with Church of Our Saviour); PX-STPAUL-008-091 (1915: Vestry assembled to hear from Bishop Coadjutor, who talked about “his own past experience of life, and the great opportunities that lie before all the Members of our Church for ‘doing good’ generally” and “told us that Bishop Gibson had a particular affection for this Parish”); *id.* at -109 - 114 (1917 Vestry minutes reflecting consideration of submitting a contested matter for decision by the Bishop); PX-STPAUL-009-013 (1940: “resolved that this Church accept custody of two old chairs and the old bible from former Dumfries Church, if approved by the Bishop of the Diocese”); PX-STPAUL-685 (Bishop Baden a guest at August 1974 Vestry meeting to advise on restoration of the Church); PX-STPAUL-111 (1988: letter from Rector to Bishop Lee requesting permission to conduct a conference with two other area Episcopal Churches and to use an outside speaker); PX-STPAUL-118 (1991: letter from “Rector’s Warden” to Bishop Lee requesting permission to share a petition with the larger Episcopal Church); PX-STPAUL-119 (1992: letter from Bishop

Lee to Rector indicating willingness to meet with Vestry to discuss issues of concern).

St. Paul's has sent delegates to Annual Councils of the Diocese since 1843 and including every year from 1926-2006. *See* Tr. 985; Exhibit A.

Controversial matters to be discussed at Annual Council were regularly taken up by St. Paul's Vestry or congregation, and delegates sometimes were given instructions on voting: PX-STPAUL-007-009 (annual congregational meeting, March 1894: "it was decided to instruct the Delegate to the Council to meet next May, to affirm a resolution changing the canon which now limits the election of vestrymen to persons having attained the age of twenty-one years"); *id.* at -040 (Vestry minutes, May "199" [*sic* – 1899]: Delegate instructed to vote to give laity equal rights with clergy in selection and voting for Bishop); *id.* at -077 (Vestry minutes, May 1903: "[a] motion was made and unanimously carried requesting our delegate to the Annual Council to vote against changing the name of the Protestant Episcopal Church, should that question be made"); *id.* at -095 (Vestry minutes, May 1904: discussion of proposed change of date of Annual Council; delegate requested to vote according to Rector's instructions).

Vestry minutes frequently refer to participation in regional organizations of the Diocese. At its regular Vestry meeting on July 8, 1919, for example, "the Rector read a letter from the Secretary of the Piedmont Convocation for a meeting at The Plains on July 10" in connection with The Episcopal Church's "Nation Wide Campaign," and the Vestry selected a lay delegate to attend the meeting along with the Rector. PX-STPAUL-008-188. *See also, e.g.,* PX-STPAUL-697 (October 1983 Vestry minutes reflecting report on regional meeting); PX-STPAUL-621; PX-STPAUL-622. The Piedmont Convocation met in Haymarket in October 1877 (PX-COM-258-058) and its minutes reflect a series of associations in Haymarket. *See* PX-COM-258-040 (scheduling association for September 1875); *id.* at -051 (scheduling association for August

1876); *id.* at -053 (“Mr. Ambler Reported a very successful association at Haymarket last Summer”); *id.* at -055 (association scheduled for August 1877); *id.* at -067 (association scheduled for August 1878).

There are ample records, dating back to the earliest Vestry minutes, showing contributions by St. Paul’s to the Diocese. *See, e.g.*, Tr. 986; PX-STPAUL-007-11 (1894); *id.* at -014 (1895); *id.* at -026 (1896). The record is replete with correspondence to and from St. Paul’s relating to its Diocesan pledge. *See, e.g.*, PX-STPAUL-153; PX-STPAUL-496. Similarly, there are frequent references throughout St. Paul’s history to contributions to the DMS. *See, e.g.*, PX-STPAUL-007-022; PX-STPAUL-613. The church consistently pledged to the Diocese, at least until recent years. *See, e.g.*, PX-STPAUL-153; PX-STPAUL-496. St. Paul’s has relied on the Diocesan Trustees of the Funds for management of financial holdings and investments. *See* PX-STPAUL-529, 530, 539. In 1999, St. Paul’s invested \$30,000 in the Diocesan Missionary Society. PX-STPAUL-708. In 2003, the year that St. Paul’s withdrew its investments from Trustees of the Funds, the rate of return for investments through Trustees of the Funds was 20.3%. Tr. at 694-95.

The record shows decades of Diocese assistance in decisions relating to calling of clergy. *See* PX-STPAUL-007-109 (Vestry minutes, July 1905: Bishop attended and named several candidates whom “he thought would be acceptable to this Church”); PX-STPAUL-008-019 - 020 (Vestry minutes, June 1909: voting to call a new Rector to be paid salary of \$1000 per year “provided this action meets with the approval of our Bishop”); *id.* at -028 (Vestry minutes, September 1909, reflecting the need to “write a letter to Bishop Gibson” for the purpose of “getting his permission to call a minister”) and *id.* at -030 (Bishop’s response, stating that the call was “quite satisfactory to him (the Bishop)”); *id.* at -062 (November 1912: Vestry accepts

Rector's resignation; Bishop Gibson would be written to ascertain what accommodations could be made for his family); *id.* at -088 - 089 (Vestry minutes, April 1915, noting resignation of Rector and letter from Bishop Gibson with recommendations); *id.* at -122 (Vestry minutes, July 1917: "the Register read the replies received from Dr. Green of the Seminary, Bishop Gibson and Bishop Brown relative to the three clergymen whose names were proposed at the meeting of April 19th as prospective Rectors for our Parish"); PX-STPAUL-009-003 (October 1922: Vestry voted to call a Rector candidate "subject to the approval of Bishop Brown and telegram sent to him for his approval"); PX-STPAUL-074 (letter from Bishop Lee suggesting supply priest relationship with the Rev. Ken MacGowan); PX-STPAUL-075 (letter dated September 6, 1985, enclosing approved parish profile); PX-STPAUL-079 (July 14, 1986, letter from Bishop Lee stating that calling of the Rev. Richard O'Driscoll "has my full support"); PX-STPAUL-080 to PX-STPAUL-101 (multiple communications relating to clergy).

St. Paul's obtained the services of Seminary students to assist in preaching during Rector absences and outreach missions. *See, e.g.*, PX-STPAUL-007-063 (Vestry minutes, May 1902: vote to invite Mr. Berkeley from Seminary to hold services during July); PX-STPAUL-007-063, -067, -086, -007 - 102, -126; PX-STPAUL-008-020.

Bishops of the Diocese regularly visited St. Paul's and preached and/or confirmed, received, reaffirmed, and baptized one or more persons over the entire course of its history – beginning of course with the 1830s visits by Bishop Meade, consecrating St. Paul's and establishing it as an Episcopal church in the Diocese. *See*, Tr. 987, 2020; Exhibit B.

The record is replete with interaction between the Diocese and St. Paul's relating to other matters, such as subscriptions to the *Virginia Episcopalian* (*e.g.*, PX-STPAUL-151; PX-STPAUL-423; PX-STPAUL-518), clergy compensation and lay employee guidelines (*e.g.*, PX-

STPAUL-154; PX-STPAUL-717), Diocesan mailings containing flyers and descriptions of Diocesan events (PX-STPAUL-257; PX-STPAUL-258), clergy housing allowance (PX-STPAUL-269; PX-STPAUL-714), and Annual Council registration, attendance and agendas (*e.g.*, PX-STPAUL-148; PX-STPAUL-721).

St. Paul's used Shrine Mont for congregational retreats, and its Rectors and staff attended conferences, retreats, and other events at Roslyn Retreat and Conference Center. *See, e.g.*, PX-STPAUL-167; PX-STPAUL-217; PX-STPAUL-621; PX-STPAUL-622; PX-STPAUL-705.

St. Paul's benefitted from the financial support of the Diocese, both with respect to clergy and property. *See* Tr. 988, 990-91.

The Piedmont Convocation supported St. Paul's and its clergy after the Civil War. *See* PX-COM-257-008 (1867: "Mr. Alrich" secured "as a Missionary in Fairfax and Prince William at an appropriation of \$400 from the Convocation"); *id.* at -017 (1870: \$240 appropriated "to Haymarket"); *id.* at -019 (1870: \$125 appropriated "to Haymarket and Manassas"); *id.* at -021 (1871: appropriating \$200 "to Fairfax, Centerville & Haymarket"); *id.* at -022, -023, -025 (additional appropriations to St. Paul's, Haymarket); PX-COM-258-008, -019, -028, -039, -044 (same); PX-COM-258-049, -055, -065, -079 (appropriations to the work of the Rev. Ambler, who had taken charge of Haymarket in October 1875, *see id.* at -043); PX-COM-259-002, -005, -008, -011, -014 (additional appropriations to Haymarket in 1872, 1873, 1874, 1875, and 1876).

In 1912, when St. Paul's Rector, the Rev. Andrew Grinnan, became ill, he asked the DMS "for aid in securing an assistant," and money was appropriated. PX-FALLS-811-169; *see also id.* at -175 (letter of thanks from the Rev. Grinnan read). In 1919, "the Bishop" urged the Vestry to call on the DMS if supplementation of Rector salaries became necessary. PX-STPAUL-008-148. In 1939, Bishop Coadjutor Frederick Goodwin wrote to St. Paul's offering

DMS assistance in increasing the Rector's salary (from \$750 to \$1,000 per year). PX-STPAUL-009-007. The Vestry then applied to the DMS for \$200 per annum "to supplement salary of Rector." *Id.* at -012. Salary assistance continued for two years, until St. Paul's receipts increased and the Vestry voted not to ask for help from the Diocese for 1942. *Id.* at -017, -018.

For aid regarding property, *see* PX-COM-257-008 - 009 (1867 Piedmont Convocation minutes, listing under "Repairs of churches" \$400 raised for church "at Haymarket"); PX-COM-260-039 (1892 Bruce Fund grant "To build vestry room at St. P. Haymarket"); PX-STPAUL-649 (\$1,000 grant from the Diocese to St. Paul's in 1961 to assist with the building of the Parish Hall); PX-STPAUL-657 (Vestry minutes, May 1966, reflecting that \$1500 was received from the Diocese for the furnace fund); PX-STPAUL-598 (Vestry minutes, December 1996: "\$500.00 is due to arrive by mail by year's end from the Diocese" and there was additional "money transmitted from the Diocese (\$3,329.00 interest from loan)").

St. Paul's used lay readers licensed by the Bishop to conduct Sunday services when the Church was without a Rector. *See, e.g.*, PX-COM-130-031 (Robert H. Tyler licensed for St. Paul's); PX-STPAUL-008-150. St. Paul's applied for and received licenses from the Diocese for its lay eucharistic ministers and readers. Tr. 2022; *e.g.*, PX-STPAUL-111; PX-STPAUL-670.

The Bishop reviewed ministry with the Rector of St. Paul's and provided pastoral oversight on matters such as approval of marriage after divorce. Tr. 2005, 2022, 2025-26.

St. Paul's has been known and recognized from its earliest days as an Episcopal church. In addition to everything above, many trial exhibits reflect St. Paul's self-identification as an "Episcopal" church, such as newspaper advertisements (*e.g.*, PX-STPAUL-037-002) and decades of letterhead. *E.g.*, PX-STPAUL-012a (1961); PX-STPAUL-053 (1987). Prayer books in the sanctuary of St. Paul's are imprinted with "St. Paul's Episcopal Church." Tr. 1978. A

historical plaque on the front of the sanctuary states that the “building of St. Paul’s Episcopal Church has been placed on the U.S. National Register of Historic Places.” Tr. 2035; PX-STPAUL-759-003. St. Paul’s displayed traditional Episcopal Church signage on nearby highways stating “The Episcopal Church Welcomes You” and indicating affiliation with the Episcopal Church. Tr. 2136-38; PX-STPAUL-622.

St. Stephen’s Episcopal Church (St. Stephen’s)

St. Stephen’s is not the colonial era St. Stephen’s Parish, which was formed in 1698. The colonial St. Stephen’s Parish declined, and by the early 1800s there was no active Episcopal church or parish in the Heathsville (courthouse) area of Northumberland County. *See* Tr. 993; PX-COM-074-007, 1838 Council Journal, reporting that Wicomico church was the only Episcopal church remaining in Northumberland and “few Episcopal families are now to be found in this county.” Efforts to revive the Church in Northumberland County continued, however. *See* Tr. 993-94. Diocesan Bishops visited Heathsville from time to time (except during the Civil War), and the Rector of Christ Church Parish in Lancaster County held “missionary” services on fifth Sundays. Tr. 993-94; PX-COM-094-022, -095; PX-COM-095-089; PX-COM-096-027, -079; PX-COM-097-024, -133; PX-COM-104-104; PX-COM-106-148; PX-COM-108-151; PX-COM-110-035.

St. Stephen’s Church dates from 1874, when “[a] renewed interest in an Episcopal Church for Northumberland prompted the purchase of land in 1874 for the purpose of ‘erecting a house of divine worship’” which initially was known as Emmanuel Church. PX-SSH-149-005 (National Register of Historic Places nomination⁴⁰); *accord* Tr. 994; PX-SSH-148-011 (*Lavished*

⁴⁰ The pages of the National Register nomination are out of order in the document production and exhibit. Counsel have agreed that they should be rearranged in the following order (by Bates
(footnote continued)

*with God's Grace*⁴¹). See Tr. 994. Diocesan Bishop Francis M. Whittle confirmed two in the Methodist Church in Heathsville on December 8, 1876 (PX-COM-114-036) and held services at Emmanuel Church on April 5-6, 1879 (PX-COM-116-035). On April 30, 1881, Bishop Whittle consecrated the building as St. Stephen's Church. PX-COM-118-047, -051; PX-SSH-002-026. See Tr. 994-96; see also Tr. 899-900, 994-95; TEC-039-001. St. Stephen's has experienced periods of inactivity, however. See, e.g., PX-COM-145-033 (Diocesan Archdeacon's Report to 1907 Annual Council that he had held "missions" in Heathsville and Reedville, Northumberland County; toured the County; and "visited every member of the Church," many of whom "had not received a call from a clergyman of their Church for many years").

St. Stephen's has admitted that "at certain times prior to December 10, 2006," the Diocesan Bishop "or another bishop acting with his knowledge and concurrence or as his representative" visited St. Stephen's and performed "certain Episcopal acts." PX-SSH-481-006. The record shows that Bishops of the Diocese have visited St. Stephen's (except as noted below) regularly and preached and/or confirmed, received, reaffirmed, and/or baptized one or more persons in many years, including 1894 (confirmations at Wicomico Church), 1956 (confirmations at Wicomico Church), 1958 (confirmations at St. Mary's Church, Fleeton), 1959 (confirmations at Wicomico Church), 1972 (confirmation at Mayo Memorial House in Richmond), 2005 (receptions at All Souls' Church, Atlee), and 2006 (regional confirmation

numbers): STS001618, STS001623, STS001621, STS001622, STS001630, STS001620, STS001629, STS001619, and ST5001624-28.

⁴¹ *Lavished with God's Grace: The Historical ABCs of St. Stephen's Church and Parish, Northumberland County, Virginia, 1664-2005*, PX-SSH-148, was written sometime in 2006 (see page 60, PX-SSH-148-035), apparently before the vote to secede from the Diocese and the Episcopal Church, mostly by members of the congregation. St. Stephen's Rector, the Rev. Jeffrey O. Cerar, wrote the chapter covering the period 1996-2005. *Id.* at -033.

service at Grace Church, Kilmarnock).⁴² See Exhibit B. References in St. Stephen's records to visitations by Bishops of the Diocese are numerous and include PX-SSH-088-002 (planning a luncheon to honor the Bishop on his visit) and PX-SSH-167-002 - 003 ("One of the special days in the life of a congregation is when the Bishop pays an annual visitation"). See also Tr. 748; PX-DEP-008-026 - 028.

St. Stephen's has few records for periods before approximately 1965; but its records demonstrate that throughout its history, to the extent that records are available, the church and its leaders were aware of the national and Diocesan Constitutions and Canons (*see, e.g.*, St. Stephen's By-Laws, as amended through November 17, 2005, PX-SSH-004-001; PX-SSH-077-002 (Senior Warden "pointed out that he had received the 1995 edition of the 'Constitution and Canons'"); PX-SSH-291 (1947 Diocesan Constitution and Canons); PX-SSH-286 (St. Stephen's "CANONICAL Parish Register COMPILED WITH REFERENCE TO The Canons of the Church in the United States of America" (page -001); Tr. 806 ("Mr. Cerar [the Rector] was very clear ... that [the Constitution and Canons] was the governing document of the Episcopal Church")) and that the church and its leaders were careful to adhere to the requirements of those documents. That care manifested itself in numerous ways, including:

- Compliance with canons governing incurring debt and encumbering property. See PX-SSH-414-001; Tr. 3677-78. St. Stephen's also recognized the potential application of those Canons on other occasions. See PX-SSH-279-003; Tr. 3638 (Rector Cerar). See also PX-EPIPH-049-001 (St. Stephen's Rector, Mr. Cerar, was Church of the Epiphany's Diocesan Standing Committee liaison for its expansion program and application for permission to borrow

⁴² It is counsel's understanding that for some period of years, the Bishop's annual visitations alternated between St. Stephen's and St. Mary's churches. See, e.g., PX-SSH-109-001. The specific locations often are not reflected in the Annual Council Journals cited in Exhibit B.

up to \$5,900,000).

- Meticulous obedience to canonical rules governing qualifications, elections, tenure, and duties of vestries, vestry members, wardens, and other officers; qualifications of voters; vestry meetings, including special meetings; annual congregational meetings; and other related provisions of Episcopal canon law. *E.g.*, PX-SSH-136-001 - 002; PX-SSH-143; PX-SSH-159-001; PX-SSH-165; PX-SSH-166-004; PX-SSH-167-002; PX-SSH-172-001; PX-SSH-178-002, -004, -005; PX-SSH-181-001; PX-SSH-270-001 - 002; PX-SSH-271-001, -002 ; PX-SSH-274-001; PX-SSH-335; PX-DEP-009-105. *See also* PX-SSH-294-004 (Church Cemetery Endowment Trust Fund); PX-SSH-255 (Finance Committee created “in accordance with the canons of the Episcopal Church and the by-laws of St. Stephen’s”); PX-SSH-277 (Finance Committee “Guidelines and Requirements”); Tr. 3638, 3780 (Cerar).

- Purposeful compliance with canonical rules governing the duties and prerogatives of rectors. *E.g.*, PX-SSH-183-001, -003; PX-SSH-184-001, -003; PX-SSH-188-001, -002; PX-SSH-094-003; PX-SSH-100-001; PX-SSH-132-004 (Rector Cerar “outlined the nature of a conflict he had with [Episcopal Church Women] leaders regarding his authority to approve or disapprove of E.C.W. educational programs” and “informed the E.C.W., as well as the vestry, that, according to church canons and the E.C.W. constitution, the E.C.W. exists to support the work of the church, and the rector has the final say in theological issues”); Tr. 3779-80.

- And conscious attention to a miscellany of other canonical requirements and authorities. *E.g.*, PX-SSH-070-002 (“Father Joe asked that each vestry member read St. Mary’s By-Laws very carefully and next month we will consider adoption and use of these By-Laws for St. Stephen’s. Canons of the Episcopal Church or of the Diocese of Virginia must be adhered to”); PX-SSH-281 and PX-SSH-072-002 (documenting inquiry to Diocese regarding use of land

earmarked for future grave sites for a parking lot); PX-SSH-089-002, PX-SSH-121-001 and Tr. 3780-81 (audits); PX-SSH-187-006 (cancellation provision of a deacon's Letter of Agreement, requiring compliance with applicable canons). *See also* PX-SSH-334-010 (Rector Cerar's prepared remarks for 2003 Annual Meeting: "Given the canons of the Episcopal Church and the Diocese of Virginia, we cannot just change our sign and no longer be Episcopalians"); Tr. 3769 (same).

St. Stephen's records demonstrate further that the church not only followed national and Diocesan Canons but also complied with TEC's and the Diocese's policies and instructions. *See* PX-SSH-148-031 (*Lavished with God's Grace*) ("In preparation for a new rector, St. Stephen's and St. Mary's decided to reunite. The Diocese had instituted pay scales for ministers that neither church could fund alone"); Tr. 762 (St. Stephen's practice was to follow Diocesan salary guidelines); PX-SSH-190-003 (Interim Rector Agreement providing "that The Rev. Mr. Jones will not be a candidate for Rector of St. Stephen's Episcopal Church-Heathsville in accordance with Diocesan policy"); PX-SSH-280 (Policy Governing use of parish house, incorporating "Episcopal Church Policy on Service of Alcoholic Beverages at a Local Parish" and requiring parish house users to sign a form stating, "If alcoholic beverages are to be served, I have read and will comply with the Episcopal Church policy and St. Stephens policy ..."); PX-SSH-331 (memorandum stating, "An employee of the Thrift Shop is an employee of St. Stephen's, and under Diocesan policies, we are obliged to offer membership in our health care plan to any employee who works for a congregation 20 hours per week or more. We are not obliged to pay for that person's health care insurance"); Tr. 3766 (St. Stephen's complied with that Diocesan policy); PX-SSH-130-001 ("A letter has been received from the Bishop's office reminding congregations that Criminal Background checks are required of all Church employees. George

will look into initiating checks for Leslie, Dixie, and the Nursery Staff”); Tr. 3778-79 (Rector Cerar) (confirming that the Senior Warden “would do as told by the bishop’s office to do”); PX-SSH-254 (Senior Warden’s Annual Report 2004, containing a lengthy denunciation of the actions of the 2003 General Convention, page -001, but nevertheless including the following “significant action”: “Two person control over church collections was instituted in compliance with National Church guidelines,” page -002).

St. Stephen’s has received financial assistance from the Diocese and the DMS. *See, e.g.*, PX-FALLS-810-110 (1900); PX-FALLS-811-068, -095, -111, -132, -196, -234 (1907-09, 1911, 1913-14); PX-FALLS-812-109, -133, -149, -173 (1918-20); PX-COM-158-127 (1920); PX-COM-268-022, -048, -053, -166, -187, -212, -225, -286, -339 (1921-23, 1927-31, 1933); PX-SSH-313 (church budget for 1937: “‘Rector’s Salary’ ... has been changed to include what the Diocesan Missionary Society has been paying for this Church plus what this Church has been paying itself.... St. Stephen’s has been paying \$360.00 a year, and the D.M.S. \$300.00”); PX-SSH-266, PX-SSH-266a, PX-SSH-267-002, and PX-SSH-267a-002 (ledgers reporting income to Assistant Rector’s Discretionary Account from Diocesan Bishop Peter Lee); Tr. 994, 998, 999-1001; Tr. 3677 (parish house remodeling); Tr. 3686 (parish hall construction and/or new roof for “the old church”); Tr. 3702-03, 3704 (Diocese’s contribution to deacon’s salary in 2001); Tr. 3702 and PX-SSH-489 (medical expenses for Rector’s wife). *See also* PX-SSH-326-001 (budget, c. 1939, stating, “In former years ... we ... got back from D.M.S. to aid on rector’s salary \$400.00.... The D.M.S. now does not give us anything”); PX-SSH-085-001 (discussing expected Diocesan contribution to a deacon’s salary in 1997); PX-SSH-106-001 (discussing availability of loan from Diocese for Assistant Rector to buy a house); Tr. 3763-64 (same).

St. Stephen’s records also document various other aspects of the close and enduring

relationship between the church and the Diocese, such as St. Stephen's repeated requests to the Diocese for assistance in locating and employing a new rector or other clergy; the Diocese's responses to those requests; and St. Stephen's adherence to related Diocesan rules and policies, including obtaining the Bishop's permission to hire new clergy. *See, e.g.*, PX-SSH-148-026 (*Lavished with God's Grace*); PX-SSH-017; PX-SSH-020; PX-SSH-021; PX-SSH-031; PX-SSH-078-001; PX-SSH-079; PX-SSH-080-001; PX-SSH-081-002 (“[Bishop Suffragan] Clay Matthews has been invaluable in his help with finding a Priest-in-Charge and advising of options connected with this process, as well as providing supply priests before the Priest-in-Charge could take over”); PX-SSH-105-002; PX-SSH-124-001; PX-SSH-183-001; PX-SSH-192-002; PX-SSH-202-001 - 021; PX-SSH-202a; PX-SSH-202b; PX-SSH-263-001; PX-SSH-264-001; PX-SSH-317; PX-SSH-318; PX-SSH-319; PX-SSH-320; PX-SSH-321; PX-SSH-322; PX-DEP-008-019, -046 - 047. *See also* PX-SSH-016 (discussing a request for diocesan assistance in mediating some apparent “reports, rumors, misunderstandings [*sic*], etc.” between Rector and Vestry and/or Congregation); Tr. 3746-48 (Bishop's consent to make priest-in-charge the Rector a year ahead of schedule); PX-DEP-009-165 - 166 (consultation with Bishop regarding separation of St. Stephen's from St. Mary's). In fact, St. Stephen's only clergy for a number of years in the early 20th Century was a “General Missioner” of the Diocese, the Rev. Nelson Dame. *See* PX-SSH-148-015; PX-COM-154-159 - 160; PX-COM-155-019, -079 - 080, -136; PX-COM-156-007, -018; PX-COM-164-005, -083, -149.

Bishops or their delegates installed St. Stephen's rectors. *See* PX-SSH-295 (providing that the “Institutor” “Shall ... receive the Incumbent” within the rails of the Altar; present him “the Bible, Book of Common Prayer, and Books of Canons of the General and Diocesan Convention”; and instruct him to “let them be the rule of thy conduct” (page -002)); PX-

SSH-194 (a “Letter of Institution” from Diocesan Bishop Robert F. Gibson to the Rev. Arthur Hume Cox, “giv[ing] and grant[ing] ... our License and Authority to perform the Office of a Priest in / St. Stephen’s Church”); PX-SSH-346; PX-DEP-008-024 - 025. And St. Stephen’s obtained letters dimissory, as required by Episcopal polity, when it sought to hire clergy who were canonically resident in other Dioceses, *see* PX-COM-204-055 (the Rev. Lloyd A. Clarke); PX-COM-207-064 (the Rev. A. Hume Cox); PX-COM-213-068 (the Rev. Edmund Berkeley).

Other examples of the relationship between St. Stephen’s and the Diocese include visits from Diocesan Bishops or staff to meet with the Vestry or congregation and/or to speak or preach at Sunday services (*e.g.*, PX-SSH-015; PX-SSH-022-001; PX-SSH-061; PX-SSH-067-001; PX-SSH-068-002; PX-SSH-122-003 (Vestry Retreat)); PX-COM-146-025 - 026 (Diocesan support for revival of the Church in Northumberland County in 1906-07, including half of a deacon’s salary); mission services conducted by a Diocesan Archdeacon (PX-COM-145-033; PX-COM-144-029); support for St. Stephen’s effort to become independent of Wicomico Church (PX-SSH-017); support for organization of an Episcopal Youth Ministry (PX-SSH-062); St. Stephen’s participation in a “listening event sponsored by the Nominating Committee for the election of the Bishop Coadjutor” (PX-SSH-262); St. Stephen’s own “Expectations of Vestry Members,” including “[t]o develop interest and knowledge about the Episcopal Church and the Anglican Communion, and about the place of our congregation in the affairs of the Church” (PX-SSH-178-005); and the church’s explicit expectation that its clergy be “active in Diocesan affairs” and “in the national church” (PX-SSH-198-002; PX-SSH-199-002; Tr. 3765).

St. Stephen’s used the Church’s Book of Common Prayer, the Episcopal Hymnal and other music, and Episcopal literature in its Sunday Schools, and it recognized its relevant obligations under canon law. *See, e.g.*, PX-SSH-054-001, -002 (Vestry minutes, November

1979: voting to petition the Bishop “for permission to continue to use the 1928 prayer book” and to purchase 1979 Prayer Books); PX-SSH-0055 (minutes of annual congregational meeting, December 1979, at which “it was decided to petition the Bishop for permission to use the Lectionary in the 1928 book of common prayer on all but the 1st Sunday”); PX-SSH-058-001; PX-SSH-208; PX-SSH-209; PX-SSH-210; PX-SSH-212; PX-SSH-213; PX-SSH-214; PX-SSH-215; PX-SSH-216; PX-SSH-217; PX-SSH-218; PX-SSH-219; PX-SSH-220; PX-SSH-225; PX-SSH-233-001; PX-SSH-235; PX-SSH-247-001; PX-DEP-008-020; and PX-SSH-251-001 (use of BCP continued in 2007); Tr. 746, 3699, 3700, 3764.

St. Stephen’s recognition of the authority of the canons of the Church is demonstrated dramatically by its “adamant” objections to the 1979 Book of Common Prayer (*Lavished with God’s Grace*, PX-SSH-148-029) and its eventual acceptance of the mandate to use that BCP in its services. At the Annual Council of the Diocese in 1975, for example, St. Stephen’s presented a resolution stating that it was “opposed to any change to the Standard Book of Common Prayer” and asking for “help in making the use of any changes to the Prayer Book optional.” PX-COM-214-062. At the 1978 Annual Council, St. Stephen’s Vestry again presented a resolution regarding the BCP. PX-COM-217-042. That resolution, which is quoted in *Lavished with God’s Grace*, PX-SSH-148-029, stated, in part, that “[t]he congregation, vestry and rector of St. Stephen’s Church, Heathsville, Virginia share an emphatic preference for the 1928 Book of Common Prayer and vigorously oppose having use of the proposed Book of Common Prayer imposed upon us” and referred to “the potential replacement of the Book Common Prayer by the proposed Book of Common Prayer as a capitulation to mediocrity.” *Lavished with God’s Grace* continues, at PX-SSH-148-030:

... Later that year [1979] the General Convention voted that the 1979 prayer book was to be the only one used. The vestry reluctantly agreed to

purchase 30 new books [*see* Vestry minutes, October 1979, PX-SSH-053- 002].... Mr. Parke [the Rector] summarized the liturgical anxiety of the church with this report:

No liturgical changes have taken place during the current year, but in response to the General Convention approval of the 1979 Book of Common Prayer, our vestry has ordered copies of the new books for use by the congregation on the first Sunday of each month in the new year. They have requested, however, that on all other Sundays we be permitted to use the 1928 edition, and permission for this has been granted by Bishop Hall. On the first Sundays we shall use Rite I of the new book, which is only slightly changed from that with which we have been familiar. [Quoting PX-SSH-222-001.]

But perhaps the most telling viewpoint was articulated by one vestryman who stated that "... he didn't like to be pushed into anything and expressed the hope that the 1979 book could be phased in gradually, preferably after he was dead." [Quoting PX-SSH-056-004.]

....

The vestry ended up calling the Rev. Wayne Johnston, who began his tenure in late 1986 He apparently stopped the regular use of the 1928 prayer book. Mr. Johnston served two years. His tenure marked the culmination of many sweeping changes required by the Diocese, although implementing these changes at St. Stephen's proved difficult and stressful.

St. Stephen's Rector, the Rev. Jeffrey O. Cerar, a former lawyer (Tr. 3636), clearly understood the hierarchical authority of the Diocese and the national Church over local churches, and he repeatedly made the nature of that authority clear to his congregation. *See, e.g.*, PX-SSH-334-003 (describing the General Convention as "our national governing body"; *see also* Tr. 3768-69); PX-SSH-287-001 (General Convention meets every three years "to do the business and enact the laws of the Episcopal Church USA"; *see also* Tr. 3769-70); PX-SSH-174 ("The General Convention of the Episcopal Church USA is the legislative body of our denomination.... Legislation affects the canon laws, the Constitution of the Episcopal Church and other resolutions"; *see also* Tr. 3766-67); PX-SSH-173-002 (General Convention's "legislative function"); PX-SSH-285-002 ("This vote should be seen strictly as a vote on whether you want

to be under the continuing authority of ECUSA or not”). And the February 2002 “Jeffrey’s Journal,” PX-SSH-175-001, says:

The “legislature” of a diocese is the annual Diocesan Council. It is at annual council where the decisions entrusted to the people by the Constitution and Canons of the Episcopal Church are made. The annual council elects people to fill positions on committees and commissions in the Diocese, and we make decisions on amending the Constitution and Canons themselves, as well as on resolutions about moral or social issues, or issues of the life of the Diocese

See also Tr. 3766-67 (same); PX-SSH-271-001 (“[i]f the resolution fails, St. Stephen’s will remain in The Episcopal Church. St. Stephen’s would be under the authority of the Bishop of Virginia ...”); PX-SSH-184-001 (Letter of Agreement providing that Rector Cerar shall be “under the authority of the Bishop of Virginia”); PX-SSH-336 (“St. Stephen’s is a member of the Episcopal Church USA (‘ECUSA’) and the Diocese of Virginia, under the leadership of Bishop Peter James Lee”); Tr. 3773 (same).

PX-SSH-288, prepared by Rector Cerar in the fall 2006 “discernment process,” states that if the vote is to “stay in TEC as a dissenting congregation working for renewal” (page -001), “[t]he diocesan bishop will have the ability to use canon law to discipline the congregation and the clergy for perceived disloyalty” and “Matters of changes in clergy will be opportunities for a revisionist bishop to impose his or her will” (page -002). Mr. Cerar acknowledged at trial that those statements describe the situation that existed prior to the congregation’s separation from the Episcopal Church. Tr. 3775. PX-SSH-288 also states that if the decision is “to separate from TEC and become an independent church,” “Our pastor would not answer to any higher earthly authority than himself” and “Our congregation would answer to no higher earthly authority than the pastor” (page -002). At trial, Mr. Cerar agreed that prior to separation, St. Stephen’s did answer to higher earthly authority, namely the Diocesan Bishop, the Annual Council, and the National Church. Tr. 3776.

PX-SSH-147-002 is page 2 of unattributed “Notes for the November 2006 vestry meeting.” It includes contingency plans for use in the event that 70% of the congregation did not vote to disaffiliate, including resignation of the rector and vestry and organization of a new church. It also includes the following, which demonstrates St. Stephen’s recognition of the interest of the Diocese in the church and its property:

Have our “books” ready to hand over to bishop
Financial information
Minutes
Parish Register

St. Stephen’s was represented by one or more lay or clerical delegates or alternates at the Annual Council in many years, including each year from 1967-2010. *See* Exhibit A. *See also*, *e.g.*, PX-DEP-008-034; Tr. 755 (lay delegates attended and reported to the Vestry following Annual Councils); Tr. 996; PX-SSH-169-001 - 002 (“Jeffrey’s Journal” in church newsletter, February 1998, describing Annual Council); PX-SSH-348 (alternate delegate’s report on 2006 Annual Council). Clergy and members of St. Stephen’s frequently participated in Diocesan and national Church activities. Rector Cerar, for example, served on the Diocese’s Standing Committee, Committee on Constitution and Canons, and Commission on Ministry (*e.g.*, PX-COM-237-089, -144; Tr. 3750-53), and he was a clerical deputy from the Diocese to TEC’s General Convention in 2003 (PX-COM-242-186; Tr. 3706). Judge E. Hugh Smith, who served St. Stephen’s for many years as a vestryman and warden (*see, e.g.*, PX-SSH-148-020; PX-COM-154-159), also was a delegate to Annual Council for many years (*see, e.g.*, PX-COM-160-010 (1922); PX-COM-162-011 (1924); Tr. 996-97) and served on numerous Diocesan committees (*see, e.g.*, PX-COM-163-019; PX-COM-164-018; PX-COM-176-021; PX-COM-182-003; PX-COM-186-034), including the Committee on Canons (or Constitution and Canons) from 1928 (PX-COM-166-018) to 1935 (PX-COM-174-018), from 1939 (PX-COM-178-018) to 1946 (PX-

COM-185-027), and from 1948 (PX-COM-187-027) to 1955 (PX-COM-194-026) – including when the Annual Council enacted what are now (with amendments) Canon 14, requiring Diocesan consent to incur indebtedness, and Canon 15.2, requiring Diocesan consent to alienate or encumber any consecrated property. *See* PX-COM-179-034 - 035, -036.

St. Stephen’s has admitted that “current members” of its vestry who were elected prior to the congregation’s vote to disaffiliate “made some type of vestry declaration similar in form and substance” to the declaration required by Diocesan Canon 12.8 (quoted below). St. Stephen’s records show that the members of its Vestry consistently subscribed to the Vestry oath (or “Declaration & Promise”) prescribed by Diocesan Canons, which at all times included a pledge of fidelity to the “discipline” of the Episcopal Church. *See* PX-SSH-006-001 (1965); PX-SSH-013 (1966) (“the Oath as provided by Cannon [*sic*] XVIII, Section 8”); PX-SSH-018 (1967); PX-SSH-028 (1970); PX-SSH-029⁴³ and PX-SSH-030 (1973); PX-SSH-039-001 (1977); PX-SSH-049-001 (1978) (“the oath of office”); PX-SSH-059-001 and PX-SSH-060-001 (1992) (“the declaration and vestry oath of qualification”); PX-SSH-063 (1992) (“the vestry oath”); PX-SSH-113-002 (1999); PX-SSH-122-003 (2000); PX-SSH-132-043 (2004); PX-SSH-203a and PX-SSH-203b (vestry oaths, each captioned Qualification of Vestry Member According to Canon 11.8 of the Diocese of Virginia, dated between December 1996 and December 2005). Indeed, one of the “Expectations of Vestry Members of St. Stephen’s Church” was “To know and fulfill the duties of Vestry members according to the Canons of the Diocese of Virginia and to

⁴³ PX-SSH-029 states, in part:

The rector ... stated that the legality of the action taken at the December meeting in electing the officers of the Vestry for 1973 had been questioned, as the new Vestrymen present had not signed the Vestrymen’s Pledge. Dr. Hundley made a motion, seconded by Charles Cowart, that the 1973 Vestry ratify the action taken at the December meeting in electing the officers for 1973. This motion was passed unanimously, by the quorum present.

subscribe to the Vestry Declaration and Promise as stated therein (Canon 11, Sec. 8, of the Diocese of Virginia, 2003).” PX-SSH-178-005 (quoting the oath in full, italicized). Any doubt that the Vestry did not fully understand the meaning or significance of the oath is dispelled by the minutes of its meeting in February 2005:

Jeffrey [Cerar, the Rector] addressed questions that had been raised about the oath Vestry members take when they come on the Vestry. That qualification paper reads as follows:

I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God and to contain all things necessary to salvation; and I do yield my hearty assent and approbation to the doctrines, worship and discipline of The Episcopal Church and I promise that I will faithfully execute the office of Vestry Member of St. Stephen’s Episcopal Church, Heathsville, in Region II, in the County of Northumberland, according to my best knowledge and skill.

A member has raised the question whether the Vestry violated that oath by reducing its pledge to the Diocese of Virginia. *Jeffrey explained the term “doctrines and disciplines” of the Episcopal Church. “Discipline” refers to the Constitution and canons of the Episcopal Church and the Diocese of Virginia, by which we are bound as a member of ECUSA. We are not in violation, because under the “Virginia Plan,” reaffirmed at the 2005 Diocesan Council, our pledge to the Diocese is voluntary....*

PX-SSH-137-002 (bold in original, italics added). *See also* Tr. 749-51, 3785.

St. Stephen’s has admitted that “at his ordination, current congregation clergy made a declaration similar in form and substance” to the following: “I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.” PX-SSH-481-003 - 004.

Diocesan Council Journals and other records show that St. Stephen’s regularly submitted parochial reports to the Diocese, at least in years when it was served by a Rector and sometimes when it was not. *See, e.g.,* PX-COM-114-201 (1877); PX-COM-120-228 - 229 (1883); PX-COM-138-083 (1900); PX-COM-148-132 (1910); PX-COM-158-127 (1920); PX-COM-168-163

- 164 (1930); PX-COM-178-121 - 122 (1940); PX-COM-189-100 (1950); PX-COM-199-154 (1960); PX-COM-209-128 (1970); and 1987 through 2005 (DSTS-019 - DSTS-037). *See also* Tr. 997. Vestry minutes occasionally record approval of parochial reports. *E.g.*, PX-SSH-132-006; PX-SSH-134-001 - 002.

St. Stephen's shared a rector (or a deacon (or "student") or priest in charge) with one or more other Episcopal churches in many years, including: in 1876; from approximately 1878 to 1880; from approximately 1882 to 1898;⁴⁴ in 1902; from September 1907 to approximately 1919; from approximately 1920 to 1928; from approximately 1929 to 1941; from approximately 1944 to 1967; and from approximately 1991 to March 2003. *See, e.g.*, PX-COM-113-197; PX-COM-117-187; PX-COM-118-199 - 200; PX-COM-120-213, -228; PX-COM-121-011; PX-COM-123-033; PX-COM-125-194, -211; PX-COM-130-169; PX-COM-131-044; PX-COM-133-091, -094; PX-COM-134-085, -092; PX-COM-136-089; PX-COM-137-090; PX-COM-141-100, -103; PX-COM-146-133; PX-COM-148-006, -132; PX-COM-152-140; PX-COM-154-159 - 160; PX-COM-155-136; PX-COM-156-094 - 095; PX-COM-157-112; PX-COM-158-127; PX-COM-159-139; PX-COM-160-149; PX-COM-161-153; PX-COM-163-165; PX-COM-164-149 - 150; PX-COM-165-148; PX-COM-166-154; PX-COM-168-163; PX-COM-169-006; PX-COM-171-141 - 142; PX-COM-172-091; PX-COM-173-006; PX-COM-174-104 - 105; PX-COM-175-006; PX-COM-176-007; PX-COM-177-006; PX-COM-178-006; PX-COM-179-006; PX-COM-180-007; PX-COM-181-006; PX-COM-184-011; PX-COM-185-010; PX-COM-186-106; PX-COM-187-007; PX-COM-188-007; PX-COM-189-006; PX-COM-190-006; PX-COM-

⁴⁴ In a number of years in the late 1800s and early 1900s, St. Stephen's was inactive, its rectorate was vacant, and it submitted no parochial reports. *See, e.g.*, PX-COM-140-094; PX-COM-151-148. *See also* PX-SSH-148-013 - 015. In all or most years for which there is no indication of a shared rectorate, the rectorate was vacant.

191-013; PX-COM-192-011; PX-COM-193-010; PX-COM-194-010; PX-COM-195-118; PX-COM-196-012; PX-COM-197-013; PX-COM-198-012; PX-COM-199-154; PX-COM-200-151; PX-COM-201-147; PX-COM-202-144; PX-COM-203-156; PX-COM-204-143; PX-COM-205-010; PX-COM-206-010; PX-COM-232-028; PX-COM-233-028; PX-COM-234-053, -054; PX-COM-235-032; PX-COM-236-021; PX-COM-237-019; PX-COM-238-020; PX-COM-239-020; PX-COM-240-022, -023; PX-COM-241-021; PX-COM-242A-041, -059; Tr. 752, 758, 998-99.

St. Stephen's made frequent use of Diocesan conference facilities at Roslyn and conference and camp facilities at Shrine Mont. For Roslyn, *see, e.g.*, PX-SSH-026; PX-SSH-084-001; PX-SSH-087-001; PX-SSH-090-002; PX-SSH-123-001; PX-SSH-132-002; PX-SSH-135-001; PX-SSH-169-006; PX-SSH-227-001; PX-SSH-264-001; Tr. 753, 3762-63; PX-DEP-038-018 – 019. For Shrine Mont, *see, e.g.*, PX-SSH-097-001; PX-SSH-125-001; PX-SSH-168-003; PX-SSH-173-005; PX-SSH-176-006; PX-SSH-177-007; PX-SSH-179-005; PX-SSH-232-002; PX-SSH-239; PX-SSH-240-002 (“Over half of our congregation attended our annual retreat to Shrine Mont”); PX-SSH-243; PX-SSH-264-002; Tr. 751-52, 3762; PX-DEP-038-017 - 018. *See also* PX-SSH-391 (Application for Scholarship Aid for Shrine Mont camp in 2001, endorsed by Rector Cerar); Tr. 751-53, 3702, 3762.

St. Stephen's used the Diocesan life and health insurance programs for its clergy and employees. *See* PX-SSH-331 and Tr. 3766, *supra*; PX-SSH-187-005; PX-SSH-201; PX-SSH-330; PX-DEP-008-037 - 042; Tr. 760. It obtained worker's compensation insurance coverage through the Church Pension Group, an Episcopal entity. PX-SSH-328; Tr. 3761.

St. Stephen's has relied on the Diocesan Trustees of the Funds to manage financial investments. *See* PX-SSH-205 (1946); PX-SSH-008 (1965); Tr. 3679-80.

Throughout its history, prior to December 10, 2006, St. Stephen's was known both to its

members and to the community at large as an Episcopal church. *See, e.g.*, Tr. 764 (Episcopal Church flag); Tr. 777, 785 (Episcopal Church signs); PX-SSH-344 (Order, July 6, 2004, appointing Jane B. Wrightson a “trustee of St. Stephen’s Episcopal Church”); Tr. 3754-55 (Rector Cerar: St. Stephen’s was known to the community as an Episcopal church and designated itself as such by signs, letterheads, and other documentation).

Financial contributions by St. Stephen’s to the Diocese from 1987 through 2005 are listed at DSTS Ex. 57A. Financial contributions in earlier years are documented by Annual Council Journals, including at PX-COM-194-071; PX-COM-195-074; PX-COM-196-077; PX-COM-197-082; PX-COM-198-080; PX-COM-199-108; PX-COM-200-104; PX-COM-201-101; PX-COM-202-099; PX-COM-203-112; PX-COM-204-096; PX-COM-205-096; PX-COM-206-104; PX-COM-207-088; PX-COM-208-105; PX-COM-209-085; PX-COM-210-093; PX-COM-211-087; PX-COM-212-096; PX-COM-213-091; PX-COM-214-104; PX-COM-216-121; PX-COM-219-150; PX-COM-220-132; PX-COM-222-139; and PX-COM-223-136.⁴⁵ Direct financial contributions by St. Stephen’s to TEC are documented at PX-SSH-205 (1946: “Diocese and General Church Program”); PX-SSH-206 (1958: “Diocese & general church”); and PX-SSH-065, PX-SSH-075, PX-SSH-084-002, PX-SSH-093-001, PX-SSH-219, PX-SSH-249, and PX-SSH-250 (Presiding Bishop’s Fund for World Relief).

St. Stephen’s participated in events and activities of the Diocese’s Region 2. *See, e.g.*, Tr. 753-54; PX-SSH-033-001 - 002; PX-SSH-043; PX-SSH-045; PX-SSH-112; PX-SSH-223; PX-SSH-224-001 - 002; PX-SSH-252; PX-SSH-382; PX-SSH-383; PX-SSH-384; PX-COM-213-004, -023 (Region President Donald W. Stoner); PX-DEP-008-037; PX-DEP-038-014 - 016. St. Stephen’s also contributed financially to Region 2. *See, e.g., id.*; PX-SSH-040-001; PX-SSH-

⁴⁵ Some Annual Council Journals do not report receipts from churches.

058-002; PX-SSH-091-002; PX-SSH-098-002; PX-SSH-257; PX-SSH-258; PX-SSH-260; PX-SSH-375-001; PX-SSH-377.

The earliest St. Stephen's deed, dated November 20, 1874, was to nine named individuals "In trust nevertheless and for the sole use and benefit of the religious society and congregation known as the Protestant Episcopal Church for the purpose of erecting a house for divine worship and such other houses as said congregation may need" and provided that "said church or house for divine worship when so built shall be used and enjoyed by said religious society or congregation according to the laws and canons of said church not inconsistent with the laws and constitution of Virginia." DSTS-013-063. The remaining deeds were to named and unnamed Trustees of (1) "Saint Stephens Parish of the Protestant Episcopal Church, Northumberland County, Virginia, for the use and benefit of Saint Stephen's Protestant Episcopal Church of Heathsville, Virginia"; (2) "Saint Stephens Parish of the Protestant Episcopal Church of [Northumberland County, Virginia], for the use and benefit of Saint Stephen's Protestant Episcopal Church of Heathsville, Virginia"; (3) "St. Stephens Parish of the Protestant Episcopal Church, Northumberland County, Virginia, for the use and benefit of St. Stephens Protestant Episcopal Church of Heathsville, Virginia"; (4) "Saint Stephen's Parish of the Protestant Episcopal Churches of Northumberland County, Virginia"; (5) "St. Stephens Protestant Episcopal Church, Heathsville, Virginia"; (6) "Saint Stephens Parish of the Protestant Episcopal Church"; and (7) "St. Stephen's Episcopal Church." *Id.* at -071, -074, -077, -080, -083, -089.

St. Margaret's Episcopal Church (St. Margaret's)

St. Margaret's Episcopal Church grew out of the Diocese's "program for church planting" in the early 1960s. PX-STMARG-1119-004 (a "Brief History" of St. Margaret's, dated "Advent [*i.e.*, late fall] 2006"). "In September 1963, the Diocese inquired of the Woodbridge

members of St. Martin's Episcopal Church in Triangle and Pohick Episcopal Church in Fairfax if there was interest in starting a new parish in Woodbridge. During the first week in October a small group met with [Suffragan] Bishop [Samuel] Chilton in a furniture store” *Id.*

“On October 6, 1963, St. Margaret's held its first service as an organized mission of the Diocese of Virginia in the Fred M. Lynn Sch. The Venerable W. Leigh Ribble, Archdeacon of the Diocese ... was conducting the Eucharist” PX-STMARG-285-001. *See also* PX-STMARG-1119-004, *supra*. Bishop Chilton provided “a very small, two-octave organ.... Other parishes donated prayer books and hymnals.” *Id.*

St. Margaret's Vestry (or Vestry Committee) held its organizational meeting on January 6, 1964, with the assistance of “Mr. Bernie Johnson from the Department of Missions in Richmond.” PX-STMARG-003-001.⁴⁶ The minutes of that meeting state that “Mr. Weber [the Vicar] distributed copies of the Constitution and Canons of the Diocese of Virginia.” PX-STMARG-003-003. Vestry minutes, February 3, 1964, state, “In keeping with a previously

⁴⁶ Mr. Johnson was a frequent guest at meetings of St. Margaret's Vestry and provided a great deal of assistance in its early years. *See* PX-STMARG-012-001 (November 2, 1964); PX-STMARG-013-001 (November 16, 1964); PX-STMARG-020-001 (January 1966); PX-STMARG-023-001 - 002 (April 17, 1966, “following the announcement to the Congregation at Morning Worship of the resignation of Father Frederick Weber as Priest in Charge of St. Margaret's Mission Church”); PX-STMARG-053-001 (November 1968); PX-STMARG-064-001 (March 1970); PX-STMARG-065-001, -002 (December 1970); PX-STMARG-074-001 (November 1972); PX-STMARG-105-001, -002 (October 1975). *See also* PX-STMARG-407 (June 1965 letter from Mr. Johnson and Archdeacon W. Leigh Ribble to the Rev. Weber); PX-STMARG-408 (December 1965 letter from Mr. Johnson to the Rev. Weber); PX-STMARG-455 (November 1971 letter from Mr. Johnson to the Senior Warden); PX-STMARG-484 (February 1973 letter to Mr. Johnson from a member of St. Margaret's Vestry who was Chairman of its Building Plans Subcommittee); PX-STMARG-080-001 (March 1973 Vestry minutes reporting that Mr. Johnson met with the Building Plans Subcommittee); PX-STMARG-488 (October 1973 letter from Mr. Johnson to a member of the Building Plans Subcommittee; and followup message at PX-STMARG-489); PX-STMARG-493 (May 1974 letter to Mr. Johnson from St. Margaret's Senior Warden); PX-STMARG-104-002 (October 1975 Vestry minutes stating that “Betsy Cogburn has met with Bernie Johnson” regarding a “Church Extension Proposal”).

expressed and approved desire of Mr. Weber, the first portion of each regular vestry meeting shall consist of a period of instruction and discussion on the Constitution and Canons of our Church,” followed by this discussion of Episcopal polity:

The order, government, and discipline of the Church are vested in the Bishop and the Council of the Diocese. The Council which meets annually is composed of two orders; the clerical order, comprised of the Bishop or Bishops and all ordained ministers in the Diocese, and the lay order comprised of the duly elected delegates from the vestry of the individual parishes, congregations, and mission churches. Representation is apportioned on a total communicant basis with a maximum of three representatives per unit.

Probably the most significant factor put forth was that although the Bishop along with the Council is responsible for the order, government, and discipline of the Church, his (the Bishop’s) powers are granted by the Council and governed by the Constitution.

PX-STMARG-004-001. Numerous later references to distribution of and instruction regarding Episcopal or Diocesan Constitution and Canons are found in St. Margaret’s records at PX-STMARG-420-001; PX-STMARG-504; PX-STMARG-514; and PX-STMARG-272-001. *See also* Tr. 413 (vestry review of Constitution and Canons). In addition, numerous copies of Constitutions and Canons of the Diocese were found in St. Margaret’s files, including PX-STMARG-1058 (1981 Constitution and Canons); PX-STMARG-1059 (1995 Constitution and Canons); PX-STMARG-1060 (2003 Constitution and Canons); and PX-STMARG-1061 (2005 Constitution and Canons). Excerpts from national and Diocesan Constitutions and Canons also are found in St. Margaret’s files at PX-STMARG-716; PX-STMARG-1062; PX-STMARG-1062a; and PX-STMARG-1062b (two pages of Diocesan canons, including Canon 15, “Church Property,” whose caption is circled).

Indeed, it is entirely clear, from St. Margaret’s own files, that St. Margaret’s was acutely aware of the “trust” provisions of Diocesan Canon 15. *See* PX-STMARG-299-002, PX-STMARG-335-004, and PX-STMARG-336-007 (church newsletters quoting Canon 15 trust

provisions); PX-STMARG-575-001 (Canon 15, typed and formatted); PX-STMARG-576-001, PX-STMARG-577-001, PX-STMARG-591-001 (separate copies of same). *See also* Tr. 4063 (“Dennis Canon” was “common knowledge”); Tr. 4218, 4686 (churches are required to conform to Canons); Vestry minutes, May 2003, PX-STMARG-261-002 (recording the appointment of individuals “to serve as trustees of St. Margaret’s Episcopal Church, in accordance with the Constitution and Canons of the Protestant Episcopal Church in the United States of America and the Constitution of St. Margaret’s Episcopal Church”).

Consistent with Canon 15 and the corresponding national church canon, numerous official records of the church recognize the Diocese’s ownership interest in the property at issue in this case. *See* Deed of Easement, March 14, 1983, PX-STMARG-546-001, -003 (referring collectively to St. Margaret’s Rector, Trustees, and Senior Warden *and the Diocesan Bishop* as “St. Margaret’s Episcopal Church” and “Grantors”; and “[t]he Grantors warrant[ed] that they [we]re the true and lawful owners of the premises described herein to the extent set out in this Deed ...”) (emphasis added); application for waiver of provisions of County Design and Construction Standards Manual, May 1, 1987, PX-STMARG-583-001 (stating “Owner’s Name” as “Episcopal Diocese of Virginia, Department of Missions / (Trustees of St. Margaret’s Episcopal Church)” and the owner’s address as 110 West Franklin Street, Richmond, Virginia 23219, which is Diocesan headquarters); Special Use Permit, PX-STMARG-596-001, approved by County Supervisors April 19, 1988 (*see* PX-STMARG-595) (listing “Applicant” as “St. Margaret’s Episcopal Church” and “Owner” as “Episcopal Diocese of Virginia – Department of Missions”); PXSTMARG-670-015 (a church profile prepared in or about 2003, after the consecration of the Rt. Rev. Gene Robinson as Bishop of the Diocese of New Hampshire, *see id.* at -013) (“Three trustees hold title to St. Margaret’s property in the name of the diocese”);

Tr. 593-94 (same). *See also* Tr. 4239; insurance policy endorsement, effective November 5, 1997, PX-STMARG-648 (naming the Diocese as an Additional Insured “as respects Section I, Property Coverage Only”); policy changes effective November 5, 1998, PX-STMARG-657 (same); Tr. 411-12, 3947-48 (trustees subject to Constitution and Canons).

On March 20, 2004, St. Margaret’s Vestry agreed to “ask Bishop Lee to meet with us ... to discuss our options from the diocesan view with regards to our property and our future.” PX-STMARG-264-002. At that meeting a Vestry member “asked the Bishop if he would take an action item to ask the Standing Committee to examine the option of foregoing any diocesan interest in the new church. Bishop Lee said flatly ‘No.’ He cited his fiduciary responsibility, and again stated the belief that the issues are spiritual, not legal or financial.” The Vestry “thanked Bp. Lee for his generous support of St. M’s over the years and for coming to see us.” PX-STMARG-265-002.

St. Margaret’s records further demonstrate that the church was not only aware of the national and Diocesan Constitutions and Canons, it was careful to adhere to the requirements of those documents. That care manifested itself in numerous ways, including:

- Scrupulous observance of canonical rules governing sale or encumbrance of property, including those rules which require consents of the Diocesan Bishop and Standing Committee. *E.g.*, PX-STMARG-039-002; PX-STMARG-350-007; PX- STMARG-460; PX-STMARG-466-001; PX-STMARG-468-004; PX-STMARG-470-001; PX-STMARG-076; PX-STMARG-473;⁴⁷ PX-STMARG-483-001; PX-STMARG-495; PX-STMARG-530-002; PX-STMARG-578-002; PX-STMARG-580-002 - 003; PX-STMARG-589; PX-STMARG-592. *See also* PX-STMARG-

⁴⁷ *See also* PX-STMARG-474, PX-STMARG-475, and PX-COM-213-068, -072 (Bishop’s and Standing Committee’s consent); Tr. 419-20, 4231-32.

593 (Bishop's consent).

- Meticulous obedience to canonical rules governing vestry meetings, including special meetings; annual congregational meetings; qualifications, elections, and duties of vestries, vestry members, and wardens; qualifications of voters; and other related provisions of Episcopal canon law. *E.g.*, PX-STMARG-006-002; PX-STMARG-014-003; PX-STMARG-030-002; PX-STMARG-031-001; PX-STMARG-066-001; PX-STMARG-069-003; PX-STMARG-071; PX-STMARG-093-002; PX-STMARG-096; PX-STMARG-201-001 and PX-DEP-003-048 - 049; PX-STMARG-202-001; PX-STMARG-237-004; PX-STMARG-268-004; PX-STMARG-278-001; PX-STMARG-297-005; PX-STMARG-318-001; PX-STMARG-321-006; PX-STMARG-328-001; PX-STMARG-442-001; PX-STMARG-449; PX-STMARG-463; PX-STMARG-476-001; PX-STMARG-496; PX-STMARG-525-013; PX-STMARG-532; PX-STMARG-533; PX-STMARG-600; PX-STMARG-617-002; Tr. 4229-30. *See also* PX-STMARG-687 (voting procedures) (December 2, 2006); PX-STMARG-686-002 (same).
- Conscious conformity to church rules governing church membership. *E.g.*, PX-STMARG-287-011; PX-STMARG-569; PX-STMARG-675; Tr. 4228-29.
- Purposeful compliance with canonical rules governing duties and prerogatives of rectors. *E.g.*, PX-STMARG-026-002; PX-STMARG-464-001, -004 - 005; PX-STMARG-079-001 and PX-STMARG-477; PX-STMARG-502-001; PX-STMARG-534; PX-STMARG-537; PX-STMARG-538-001; PX-STMARG-552-001; PX-STMARG-556-001; PX-STMARG-611-001.
- And careful attention to a miscellany of other canonical requirements. *E.g.*, PX-STMARG-540-003 (Diocesan Canon XVI, Business Methods in the Church); PX-STMARG-183-003, PX-STMARG-632, and Tr. 4230 (audits); PX-STMARG-192 (investments); PX-STMARG-685-002 (Financial Management Procedures, approved August 19, 2006, *id.* at -008).

See also PX-STMARG-581-002 and PX-STMARG-601-002 (“No action of the Stewardship Commission shall be authorized if it does not conform with National and Diocesan Canons”); PX-STMARG-599-001 (church Finance Commission is responsible for “following all applicable Canonical and Diocesan requirements”); PX-STMARG-582-001 (same); PX-STMARG-642 (“A Time for Vision / A Stewardship Handbook for St. Margaret’s Vestry,” prepared by the national church and “Adapted by the Stewardship Committee, St. Margaret’s Church,” citing and quoting numerous Canons); PX-STMARG-677-005 (Notes to Financial Statements, stating: “St. Margaret’s Episcopal Church is guided and directed by the Constitution and Canons of the Protestant Episcopal Church of the Diocese of Virginia”); PX-DEP-004-106 - 107 (parish register). *See generally* Tr. 399-403.

St. Margaret’s records demonstrate further that the church not only followed national and Diocesan Canons but also complied with TEC’s and the Diocese’s policies and instructions. *See* PX-STMARG-434 (special offering taken “in accordance with the directive resulting from the Special General Convention II”); PX-STMARG-439-001 (offering for the Bishop’s Emergency Fund “[i]n accord with a Diocesan Council Resolution and long custom”); PX-STMARG-517 (reading and posting of a “Pastoral” (letter) from the Bishops of the Episcopal Church); PX-STMARG-159-001 (alcohol use policy); PX-STMARG-641 (part time employee benefits); PX-STMARG-233-003 (Policy and Procedures on Sexual Misconduct in Pastoral Care); PX-STMARG-837-002 (same); PX-STMARG-351-001 (“Diocesan-mandated Safety training”).

The Diocese, the Diocesan Bishop, and the DMS assisted St. Margaret’s financially in its early years, with series of both grants and loans. *See, e.g.*, PX-STMARG-003-002, -004; PX-STMARG-094; PX-STMARG-106-002; PX-STMARG-111-001, -002; PX-STMARG-120-001; PX-STMARG-211-003 (item 10.a); PX-STMARG-432; PX-STMARG-453; PX-STMARG-454;

PX-STMARG-457; PX-STMARG-915 through PX-STMARG-924; PX-STMARG-951; PX-STMARG-959-001; PX-STMARG-961-001; PX-STMARG-967; PX-STMARG-969; PX-STMARG-970; PX-STMARG-971-001, -002; PX-STMARG-972-001; PX-STMARG-974-001; PX-COM-205-070; PX-COM-206-071, -109, -112 - 013; PX-COM-207-047, -096 - 097; PX-COM-208-039, -113 - 114; PX-COM-209-088, -091; PX-COM-210-096; PX-COM-211-100; PX-DEP-010-006 - 010, -012, -017 - 019; Tr. 681. *See also* PX-STMARG-897-001 (1998); PX-STMARG-321-004 (1999); Tr. 671-73 (clergy's extraordinary medical expenses).

St. Margaret's also received startup gifts from several other Episcopal churches. *See* PX-STMARG-005-001 - 002; PX-STMARG-004-001, -002; PX-STMARG-394; PX-STMARG-009-001; PX-STMARG-010; PX-STMARG-012-002; PX-STMARG-015-001; PX-STMARG-028-001; PX-COM-0204-064 - 065; and PX-STMARG-1119-004, -005.⁴⁸

St. Margaret's records also document various other aspects of the close relationship between the church and the Diocese, which is perhaps demonstrated most clearly by the assistance and cooperation that the Diocese always provided when St. Margaret's needed to locate and employ a new rector (or priest in charge) and by St. Margaret's adherence to Diocesan rules and policies governing the rector search. *See, e.g.*, PX-STMARG-023-001 - 002; PX-STMARG-057-001; PX-STMARG-058-001; PX-STMARG-173; PX-STMARG-193-001; PX-STMARG-0201-001; PX-STMARG-259-002; PX-STMARG-260-002; PX-STMARG-267-001 - 002; PX-STMARG-273-001; PX-STMARG-274-002; PX-STMARG-292-003; PX-STMARG-350-003; PX-STMARG-412; PX-STMARG-447; PX-STMARG-448; PX-STMARG-518; PX-

⁴⁸ Gifts from St. Margaret's to other Episcopal (all or mostly mission) churches are described or mentioned at PX-STMARG-014-001; PX-STMARG-396; PX-STMARG-398; PX-STMARG-152-001; PX-STMARG-153-001; PX-STMARG-207-002; PX-STMARG-211-001; PX-STMARG-1015-001; and PX-STMARG-313-004.

STMARG-520-001; PX-STMARG-521-001 - 002; PX-STMARG-523-001, -003, -012, -013, -017, -018; PX-STMARG-525-012; PX-STMARG-527; PX-STMARG-528; PX-STMARG-529 (noting Bishop's consent to rector's call); PX-STMARG-603; PX-STMARG-604-005; PX-STMARG-605; PX-STMARG-673; PX-STMARG-1104; Tr. 406-10, 703, 3945-46 (Bishop's assistance in rector search process "[a]bsolutely" was helpful), 3984-87, 4671-72 (Bishop Lee approved the Rev. Sara Chandler's call and installed her as Rector). Bishops of the Diocese visited St. Margaret's and installed its rectors, as provided by the Church's Book of Common Prayer, TEC-38-556 - 557 (1979), TEC-37-313 - 314 (1928). *See* PX-STMARG-1101-011; PX-STMARG-137-002; PX-STMARG-531; PX-STMARG-203-002; PX-STMARG-680-001; PX-COM-246A-238; PX-STMARG-681; PX-DEP-003-036; Tr. 417-18, 4672.

Other examples of the relationship between St. Margaret's and the Diocese include Diocesan support when the church had no active clergy (*see* Tr. 420-23); advice and encouragement regarding a purchase of property (Tr. 3943-44, 4684-85); Bishop Lee's assistance in the church's capital campaigns (*see* PX-STMARG-571-002, PX-STMARG-572 and PX-STMARG-572a; PX-STMARG-332-003, PX-STMARG-331-001, -003, and PX-STMARG-1063-001; Tr. 4236); Bishop David Jones' frequent assistance and advice ("his knowledge and advice carry considerable weight," PX-STMARG-684-002); Diocesan advice regarding capacity of a new church facility (PX-STMARG-587-005); and the Diocese's payroll management for the church (*see* PX-STMARG-730-015 and PX-STMARG-731).

St. Margaret's Rectors and wardens have written letters expressing their appreciation for the support and assistance provided by Bishops and other Diocesan personnel. *See* PX-STMARG-462 (July 1972 letter from Rector to Diocesan Bishop Robert A. Gibson, "[o]n behalf of the vestry and congregation of St. Margaret's ... express[ing] ... sincere thanks for the years of

concerned effort and many thousands of dollars invested in this parish”); PX-STMARG-472 (January 1973 letter to departing Suffragan Bishop Philip A. Smith) and PX-STMARG-070-002 (Vestry minute regarding letter to Bishop Smith). *See also* PX-STMARG-243-001 (Vestry minutes noting member’s prayer of thanksgiving “for the help she received from diocesan personnel relative to trustee information”); PX-STMARG-566 (letter of appreciation to the Episcopal Church Building Fund). A long-time former Rector of St. Margaret’s testified that Bishop Lee “was always there when I needed anything at St. Margaret's ... [and] for me personally as a pastor” and that “he loved St. Margaret’s” Tr. 4673, 4675.

St. Margaret’s records contain explicit documentation of some of the spiritual benefits that it received from its association with the Diocese and the Church. *See, e.g.*, Vestry minutes, June 1982, PX-STMARG-143 (“Ed Campbell from the Diocesan Stewardship Committee” led “six hours of a workshop and learning experience to find out where we stand on our own stewardship”); Vestry minutes, November 1994, PX-STMARG-219-004 - 005 (“Last Sunday, Bishop Clay Matthews touched people in a profound way. It was a day of major celebration, perhaps the best confirmation service ever at St. Margaret’s”); Vestry minutes, February 1996, PX-STMARG-229-003 (Senior Warden “asked the Vestry to take advantage of many programs the diocese has to offer such as The Clergy and Vestry Conference and the Parish Leadership Training”); Vestry minutes, June 1996, PX-STMARG-231-002 (Vestry advised “a guest on behalf of the Bishop” that “the most helpful contribution ... received from the bishops, staff or program of the Diocese in the last five years” was “great help and support in our search to find a new Rector, pastoral care to the ministry, the open forum with a question and answer session conducted by Bishop Lee during his last visit, the responsiveness and approachable leadership, the accessibility to quality facilities like Shrine Mont for the parish weekend and for the Shrine

Mont programs for kids, the Roslyn Conference Center and its excellent staff, the Parish Leadership training and the resources available to the church, and the LEVAS II music” and that the Diocese’s “[r]esponsiveness has been very good”); church newsletter, August 8, 2000, PX-STMARG-327-001 (“Bp. Jones was an incredible resource for us as we set out on the next step that is to begin to formulate a new vision statement for St. Margaret’s [at Vestry retreat]. He was able to take all our newsprint scribblings and point us to the real heart of the matter as we prayerfully continue to discern God’s will for St. Margaret’s”); church newsletter, September 5, 2001, PX-STMARG-330-004 (“We were encouraged by the time we spent recently with Boyd Spencer, Director of Development and Planned Giving for the Diocese.... We are blessed to have the resources of the Diocese behind us and our ministries”). *See also* Tr. 4676-78.

St. Margaret’s parish profiles, prepared for use in rector recruitment, recognize the church’s position within the Diocese and the Episcopal Church. *See* PX-STMARG-522-022 (1981) (“the Rector must support the doctrines, disciplines and traditions of the Episcopal Church”); PX-STMARG-610-027 (1990) (“St. Margaret’s takes its full part in the life of the Diocese of Virginia”);⁴⁹ PX-STMARG-670-013 (2003) (“The Bishops serve the Diocese well and work with congregations in their ministry helping them to pursue the Diocesan priorities of mission which are: to strengthen existing churches, to reach out to neighbors in need, to expand youth ministries, to enhance our conference centers, and to build new churches”).

St. Margaret’s used the Church’s Book of Common Prayer, the Episcopal Hymnal and other music, and Episcopal literature in its Sunday Schools. PX-STMARG-522-009, -015; PX-STMARG-679-001; PX-STMARG-060-001; PX-STMARG-438-003; PX-STMARG-622-001;

⁴⁹ A Search Committee Report in Vestry minutes, October 13, 1990, states “that Bishop Lee has approved the Profile with only a few minor changes.” PX-STMARG-200-001.

PX-STMARG-629-001; PX-STMARG-637-002; PX-STMARG-665-001; PX-STMARG-666-001; PX-STMARG-339-001; PX-STMARG-683; PX-STMARG-1132-005; PX-DEP-003-051; Tr. 4208-09, 4679.

St. Margaret's submitted parochial reports to the Diocese in each year from 1966 through 2005, as required by canon law. DSTM-093 - DSTM-132; TEC-24-039; Tr. 581-83.

A series of letters of agreement with St. Margaret's rectors and other clergy incorporate provisions of TEC's and the Diocese's canons and in several cases specifically require clergy participation in Diocesan activities. *See, e.g.*, PX-STMARG-541-001, -004; PX-STMARG-543-001, -004; PX-STMARG-604-002, -004, -005; PX-STMARG-633-003, -005; PX-STMARG-639-003, -005; PX-STMARG-679-001, -002, -004.

In January 1965, the Annual Council of the Diocese voted to admit St. Margaret's as a Mission Church. PX-COM-204-033. On November 10, 1970, St. Margaret's petitioned the Diocese "for separate congregation status within Dettingen Parish in accordance with Canons IX and XI of the Constitution and Canons of the Protestant Episcopal Church in the Diocese of Virginia." PX-STMARG-451. The Annual Council of the Diocese granted that petition in January 1971. PX-COM-210-063. *See also* PX-STMARG-452.

On January 17, 1967, St. Margaret's Vestry approved a motion to instruct its delegate to the Annual Council of the Diocese "to vote against any change in Canon XVIII Sec. 2 which would permit women to serve on Vestries." PX-STMARG-030-001. But at St. Margaret's Annual Meeting, 12 days later, "Special mention was made that by action of the 172 Council of the Diocese [*sic*] of Virginia, women could now serve on Vestries." PX-STMARG-031-001.

"Quick Facts about the Vote today," prepared by and/or for St. Margaret's, in December 2006, states, in part:

If the resolution fails, St. Margaret's Church will remain in the Episcopal Church. St. Margaret's would be under the authority of the Bishop of Virginia and would be expected to fully re-engage with the Diocese. This would include seeking Bishop Lee's support (or that of his successor) for all future candidates for Rector of St. Margaret's when Neal leaves, provision of regular financial support for the diocesan budget (of about ten percent of our gross income) and welcoming Bishop Lee or his representative for confirmation, baptism, preaching and celebration of Holy Communion.

PX-STMARG-686-001.

The first page of St. Margaret's First Annual Report to the Parishioners, dated 9/30/80, says, "In 1980 the Vestry approved a constitution delineating purpose, organization, responsibility, and leadership of the church, under the authority of the Constitution and Canons of the Protestant Episcopal Church in the Diocese of Virginia...." PX-STMARG-516-001. St. Margaret's had a church Constitution until November 2006. Versions of its Constitution are found at PX-STMARG-710 (1980), PX-STMARG-689 (1982), PX-STMARG-694 (1986), PX-STMARG-701 (1995), PX-STMARG-700 (1999), and PX-STMARG-698 (2003). The first paragraph of each St. Margaret's church Constitution, "Authority," states:

St. Margaret's Episcopal Church in Woodbridge, Virginia is guided and directed by the Constitution and Canons of the Protestant Episcopal Church in the Diocese of Virginia....

Except as noted otherwise, each St. Margaret's Constitution also contains each of the following provisions (with some variations in formatting):

III. PARISH ORGANIZATION

....

A. The Rector shall:

1. Be elected by the Vestry.
2. Control the worship and spiritual affairs [or "spiritual jurisdiction"] of the church.

....

4. Preside at all meetings of the Vestry except as provided for in Diocesan Canons.

....

B. The Vestry, as a body, shall:

....

2. Elect a Rector.

3. Elect from within its ranks a Senior Warden, Junior Warden and Register.
[Set out in more detail in the 1980, 1982, and 1986 Constitutions]

....

8. Ensure that an annual audit is conducted on the financial records of the church [or “Annually cause to be audited the accounts of the treasurer or other custodian of the funds or securities of the church”].

....

All of the quoted provisions of the church Constitution implement provisions of national or Diocesan canons. The 1995, 1999, and 2003 church Constitutions also describe the purpose of “Parish Organization” as “[t]o comply with the Constitution and Canons of the Protestant Episcopal Church in the Diocese of Virginia ...” and provide, further, that “[n]o amendment contrary to canon law will be permitted to take effect.” PX-STMARG-701-001, -006; PX-STMARG-700-001, -003; and PX-STMARG-698-001, -004.

St. Margaret’s also has had written Policies and Procedures, which serve or served as “the repository of acts and orders which serve the purpose of clarifying in detail the Constitution of St. Margaret’s as it pertains to the leadership and operating procedures of St. Margaret’s” (PX-STMARG-718-001; PX-STMARG-719-001; PX-STMARG-724-001), since at least January 1981. Various iterations of those Policies and Procedures are found at PX-STMARG-718 (1981), PX-STMARG-719 (1982), and PX-STMARG-724 (1990). The first paragraph of each Policies and Procedures states: “No policy, procedure or amendment thereto may be adopted which conflicts with St. Margaret’s Constitution, the Constitution and Canons of this Diocese, or the Constitution and Canons of the Episcopal Church.” Other provisions of the Policies and Procedures cite as authority either “Canon XIX, Section 1” or “CANON 16, Section[s] 1 [and

2]” (regarding the parish register and parochial report). The Policies and Procedures also quote the canonical vestry oath, “[i]n accordance with Diocesan Canons,” and state, “No person shall act as Vestry member until he has subscribed this declaration and promise” (or “until this declaration and promise have been subscribed to”). *See also* PX-STMARG-563 (St. Margaret’s “Organization and Policies,” stating that “St. Margaret’s Episcopal Church of Woodbridge is guided and directed by the Constitution and Canons of the Protestant Episcopal Church in the Diocese of Virginia,” with numerous citations to National and Diocesan Canons); PX-STMARG-270-003 (Vestry minutes, September 2004, confirming “that we are still under the authority of the Diocese of Virginia regardless of any affiliation”).

In a similar fashion, the By-Laws of St. Margaret’s Day School, approved by the Vestry on June 20, 1966 (PX-STMARG-027-001 - 003), stated, *inter alia*, “St. Margaret’s Day School is an integral part of St. Margaret’s Episcopal Church of Woodbridge, Virginia, and shall be bound by all of the laws, constitution and canons [*sic*] of the Dioceses [*sic*] of Virginia and the Protestant Episcopal Church of the United States.” PX-STMARG-414-001.⁵⁰

St. Margaret’s contributed to and participated in activities of Region 6 of the Diocese and its predecessor, the Potomac Convocation. *See, e.g.*, PX-STMARG-052-002; PX-STMARG-072; PX-STMARG-077-001; PX-STMARG-107-001, -002; PX-STMARG-116-002; PX-STMARG-189-002; PX-STMARG-336-007; PX-STMARG-845; PX-STMARG-852; PX-STMARG-855a-001; PX-STMARG-860; PX-STMARG-862-001; Tr. 619. *See also* Tr. 616-18 (regional training provided by Diocese).

St. Margaret’s contributed financially to the Diocese. *See* DSTM-070; Tr. 3978. St.

⁵⁰ St. Margaret’s Vestry approved the establishment of a day school on May 15, 1966, “contingent upon approval by the Diocese of Virginia.” PX-STMARG-025.

Margaret's also contributed directly to the Episcopal Church. PX-STMARG-112-001 (Presiding Bishop's Fund for Hunger), PX-STMARG-905 (East Africa Famine Relief), PX-STMARG-906 (Domestic & Foreign Missionary Society), and PX-STMARG-907 (Fund for World Relief). *See also* PX-STMARG-670-012 ("Nationally, St. Margaret's gives a portion of funds through the Diocese of Virginia to aid in causes supported by the national church").

St. Margaret's used Diocesan conference facilities at Roslyn and conference and camp facilities at Shrine Mont. PX-DEP-003-049 - 050. For Roslyn, *see, e.g.*, PX-STMARG-029-003; PX-STMARG-032-001; PX-STMARG-066-002; PX-STMARG-125; PX-STMARG-1045-001; PX-STMARG-867-002; PX-STMARG-1047-002; PX-STMARG-209-001; PX-STMARG-221-001, -002; PX-STMARG-228-001; PX-STMARG-250-002, -005; PX-STMARG-1054-001; PX-STMARG-272-001; PX-STMARG-279-001; PX-STMARG-225-001; PX-STMARG-1053-001; PX-STMARG-730-006; Tr. 586-87, 3949. For Shrine Mont, *see, e.g.*, PX-STMARG-046-001; PX-STMARG-213-004; PX-STMARG-221-002; PX-STMARG-230-001, -002; PX-STMARG-246-004; PX-STMARG-250-004; PX-STMARG-253-003; PX-STMARG-298-002; PX-STMARG-301-005; PX-STMARG-316-007; PX-STMARG-317-002; PX-STMARG-324-002; PX-STMARG-325-004; PX-STMARG-331-007; PX-STMARG-334-001; PX-STMARG-361-002; PX-STMARG-1041; Tr. 586, 4677.

St. Margaret's (or Dettingen Parish, of which it was a part) was represented by one or more lay or clerical delegates at Annual Council in each year from 1964- 2010. *See* Exhibit A. Council delegates typically reported back to the Vestry. Tr. 404-05, 584-85, 4013.

St. Margaret's has admitted that "at certain times prior to December 10, 2006," the Diocesan Bishop "or another bishop acting with his knowledge and concurrence or as his representative" visited St. Margaret's and performed "certain Episcopal acts." PX-STMARG-

1132-006. The record shows that in each year from 1963 through 2006, a Bishop of the Diocese visited St. Margaret's and preached and/or confirmed, received, reaffirmed, and/or baptized one or more persons, ordained a member of the church as a deacon, or installed a Rector. *See* Exhibit B. A Bishop's visit was always "a pretty special occasion." Tr. 4683.

St. Margaret's has admitted that "current members" of its vestry who were elected prior to the congregation's vote to disaffiliate "made some type of vestry declaration similar in form and substance" to the following, as required by Diocesan Canon 12.8:

"I do believe the Holy Scriptures of the Old and New Testament to be the Word of God, and to contain all things necessary to salvation; and I do yield my hearty assent and approbation to the doctrines, worship and discipline of The Episcopal Church; and I promise that I will faithfully execute the office of Vestry member of _____ Church, in Region _____, in the County (or City) of _____, according to my best knowledge and skill."

PX-STMARG-1132-001 - 002. St. Margaret's records show that the members of its Vestry subscribed to the oath (or "declaration") prescribed by Diocesan Canons, which at all times included a pledge of fidelity to the "discipline" of the Episcopal Church, in at least each of the following years: 1964 (PX-STMARG-004-002; PX-STMARG-371); 1965 (PX-STMARG-016-001; PX-STMARG-405); 1966 (PX-STMARG-021; PX-STMARG-411); 1967 (PX-STMARG-032-001 ("Statement as required by Canons")); PX-STMARG-032-005); 1968 (PX-STMARG-763-001); 1969 (PX-STMARG-372) (*see, e.g.*, Vestry minutes, May 1969, at PX-STMARG-057-001, for identification of the vestry members subscribing to the cited oath); 1971 (PX-STMARG-374; PX-STMARG-066-001; PX-STMARG-373); 1973 (PX-STMARG-080-001); 1974 (PX-STMARG-085-001 ("The Statement of Belief was read to the new vestry members who then signed the same as required by Canon Law")); 1981 (PX-STMARG-132-001 ("The statement of assent and approbation")); 1987 (PX-STMARG-375); 1988 (PX-STMARG-176-003 ("the declaration and promise required by Canon 11, Section 8")); PX-STMARG-376); 1989

(PX-STMARG-377); 1990 (PX-STMARG-378); 1991 (PX-STMARG-379); 1992 (PX-STMARG-380); 1993 (PX-STMARG-381; PX-STMARG-209-005 (“The Statement of Declaration and Promise required by Section 8, Canon II, The Diocese of Virginia...”)); 1994 (PX-STMARG-383); 1995 (PX-STMARG-384); 1997 (PX-STMARG-385); 2004 (PX-STMARG-387); 2005 (PX-STMARG-388). The twelve members of St. Margaret’s Vestry all subscribed to the canonical vestry oath, once again, on January 29, 2006, and thereby “promise[d]: ‘... I do yield my hearty assent and approbation to the doctrines, worship and discipline of The Episcopal Church; and ... that I will faithfully execute the office of Vestry member of St. Margaret’s Episcopal Church, in Region VI, in the County of Prince William, according to my best knowledge and skill.’” PX-STMARG-389.⁵¹

At a Vestry meeting on February 28, 2004, with all members present, “Rick Veit [Interim Rector] questioned whether there was anyone on the vestry who could not live by the agreement they signed before coming on vestry. Discussion. He asked again. ~~There was a motion made to dismiss and table the discussion of the Canons by Bill Harding, seconded by Bob Boyd, agreed by majority.~~” PX-STMARG-263-001. The strikeout is by hand and is explained in the minutes for March 20, 2004: “There was one change to the Minutes of Feb. 28, 04. That was to remove

⁵¹ See also, e.g., Check List for Vestry Nominees, PX-STMARG-450 (including “subscribe to the canonically required vestry declaration”); “Canonical Requirements and Additional Criteria for Vestry Service,” PX-STMARG-597 (stating Canonical Requirements, quoting Diocesan Canon 11.4; Duties of the Vestry, quoting Diocesan Canon 12.2, 3, 4, and 6; quoting the canonical vestry oath; and stating, “No person shall act as a Vestry member until this declaration and promise have been subscribed to”); Vestry minutes, February 1990, PX-STMARG-193-002; Vestry Operations Policy, October 1999, PX-STMARG-662-001; church newsletter, November 8, 2004, PX-STMARG-337-001 (calling for vestry nominations and reciting applicable canons substantially in full, including Canon 11.8, which contains the oath); “A Call for Vestry Nominations” in approximately December 2005, PX-STMARG-682 (including “Agreeing to sign the following pledge ...” (the canonical vestry oath, which is quoted in full, in italics) among “the **qualifications** for a candidate” and listing “**Responsibilities** of the vestry (according to Church Law)”).

from the record the following: ‘There was a motion made to dismiss and table the discussion of the Canons agreed by majority.’ This motion had been dropped.” PX-STMARG-264-002.

St. Margaret’s has admitted in this litigation that “at his ordination, current congregation clergy made a declaration similar in form and substance” to the following: “I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.” PX-STMARG-1132-003 - 004.

St. Margaret’s has relied on the Diocesan Trustees of the Funds for management of financial holdings and investments. *See* PX-STMARG-246-002. *See also* PX-STMARG-238-002, PX-STMARG-659, and PX-STMARG-660.

St. Margaret’s participated in the Diocese’s Form group income tax exemption. *See* PX-STMARG-732; PX-STMARG-733.

St. Margaret’s participated in the Diocesan health insurance plan, *See, e.g.*, PX-STMARG-213-002; PX-STMARG-541-003; PX-STMARG-737; Tr. 415-16, 4679. St. Margaret’s also used other forms of Church-related insurance. *See, e.g.*, PX-STMARG-123-001; PX-STMARG-745; PX-STMARG-747; PX-STMARG-748-001; PX-STMARG-750; PX-STMARG-751; and PX-STMARG-756.

Throughout its history, prior to December 10, 2006, St. Margaret’s was known both to its members and to the community at large as an Episcopal church. *See, e.g.*, in addition to the various parish records cited throughout this brief, “St. Margaret’s Episcopal Church” letterheads at PX-STMARG-395a (1964), PX-STMARG-412 (1966), PX-STMARG-982 (1967), PX-STMARG-1104 (1969), PX-STMARG-466-001 (1972), PX-STMARG-486 (1973); PX-STMARG-1110 (1975), PX-STMARG-500 (1975 (typed letterhead)), PX-STMARG-1100

(1977), PX-STMARG-518 (1980), PX-STMARG-530 (1981), PX-STMARG-398 (1982), PX-STMARG-590 (1984), PX-STMARG-566 (1985), PX-STMARG-598 (1989), PX-STMARG-519-001 (1990), PX-STMARG-910 (1991), PX-STMARG-860 (1992), PX-STMARG-638 (1993), PX-STMARG-644 (1997), PX-STMARG-1093 (2001), and PX-STMARG-687 (December 2, 2006); Tr. 392, 394, 576-77 (name of church); Tr. 394, 625 (sign stating “The Episcopal Church Welcomes You” and naming “St. Margaret’s Episcopal Church”); Tr. 577-78 (Episcopal Church flag); Tr. 4233-34.

The properties at issue in this case were deeded to (1) (named) “Trustees of St. Margaret’s Church, Dettingen Parish, Prince William County, Woodbridge, Virginia” and to (2) “St. Margaret’s Episcopal Church by its [named] Trustees.” DSTM-042-323 , -330.

Church of the Apostles (Episcopal) (“Apostles”)

Church of the Apostles was formed as a mission of the Diocese in 1968, through planning and coordination between the Diocese and Truro Episcopal Church and after receiving the requisite approvals from the Diocese’s Board of Missions and leadership of existing Episcopal churches in the area. *See* PX-APOST-0295 through PX-APOST-0298 (correspondence between initial Apostles Senior Warden Pete Buck and Archdeacon W. Leigh Ribble); PX-APOST-0290; TRU164.002; Apostles_Ex_013.007. Apostles’ first service was held on March 3, 1968, at Fairhill Elementary School in Fairfax. *E.g.*, Apostles_Ex_013.007. Apostles’ initial group of members came from Truro. *E.g.*, *id*; Tr. 3080-81.

From the beginning, Apostles has carefully followed the canons of the Church and the Diocese. *See, e.g.*, Tr. 3081-82; 2007 Tr. 703-04 (Vestry member David Allison testifying that the Vestry consulted the Constitution and Canons with respect to property matters and followed them “to the best of our ability”); Apostles_Ex_016.012 (“the canons and tradition of the

Episcopal Church give us wide discretion to express our faith ‘decently and in order’ within the safety of liturgical and ecclesiastical boundaries”); and further discussion and citations *infra*.

Even before Apostles began, its organizers and the Diocese had in mind a particular parcel of approximately four acres on Pickett Road in Fairfax that the Diocese had acquired in 1958. *See* PX-APOST-0289-002 - 003 (February 1968 minutes of a meeting of the Diocese’s Board of Missions, at which Mr. Buck was present). Apostles decided that it wanted the parcel even before deciding to build on it. *See* PX-APOST-310; PX-APOST-311. Apostles also decided that it wished “to reimburse [the Diocese] for the money they had invested in the Pickett Road property.” PX-APOST-306-002. The Diocese agreed to transfer the property to local trustees at the appropriate time, and Apostles did reimburse the Diocese (totaling just under \$12,000). *See* PX-APOST-319A-001 – 002; PX-APOST-320; PX-APOST-321. Regarding the Truro money, *see* TRU164.010 (¶ 11); Tr. 3064; PX-APOST-290; PX-APOST-312-007. As Apostles recognized, and as the Diocese’s Chancellor explicitly told Apostles, the appropriate time for a transfer to locally-appointed trustees was after achieving parish status. *See* PX-APOST-311-002 (“The phrase ‘within the legal provisions of Cannon [*sic*] law’ was used to authorize having legal title remain in the Dioceses Missionary Society [*sic*] until the Church of the Apostles can attain a status permitting us to name our own trustees”); PX-APOST-307-002 - 003; Tr. 3082. That time came after Apostles was granted parish (or “separate congregation”) status at the 1970 Annual Council. PX-COM-209-038; PX-APOST-197-002. Accordingly, the DMS transferred the parcel to Apostles’ trustees in April 1971. Apostles_Ex_033.001 - 004.

On November 25, 1979, construction began on a building on Picketts Road known as “The Meeting Place.” Apostles_Ex_0013.030. “On November 25 our beloved Bishop Baden walked in his clerical robes over the bare earth of our newly made clearing and participated in

the ground breaking at the exact location where our altar would eventually be standing.” *Id.* In 1980, construction of the Meeting Place was complete, but attendance at services quickly outgrew the building. *Id.* at .083; Apostles_Ex_016.025. In October 1981, Apostles began meeting at Fairfax High School. *Id.* Attendance at Apostles’ services began to decline in 1983, and in January 1989, Apostles resumed services at a renovated Meeting Place.

Apostles_Ex_013.086, .084. In 1999 and 2001, Apostles purchased a total of 42 acres on Braddock Road for a total of \$2.9 million. PX-APOST-109-012.

The 1971 deed for the Pickett Road property conveys the property to trustees for “Church of the Apostles.” Apostles_Ex_033.001. The deeds for both properties on Braddock Road identify the grantees as trustees for/of “Church of the Apostles (Episcopal),” and the trustees signed the Deeds of Trust by identifying themselves as such. Apostles_Ex_034.001; Apostles_Ex_035.001; PX-APOST-341-001, -006 - 007; Apostles_Ex_049.002, .017, .019.

Apostles’ first clergyman was the Rev. Kenneth Sowers, who served part-time while working at a secular job. Apostles_Ex_013.007. The Rev. Sowers had been working in the Diocese as a supply priest and came to Apostles as such at the suggestion of Bishop Chilton, but his stay at Apostles grew. *See* PX-APOST-397-001; PX-APOST-0295-001. During his time at Apostles, he acted under the direction and with the assistance of the Bishops of the Diocese. *See id.*; PX-APOST-396; Apostles_Ex_013.007 (“Suffragan Bishop Sam Chilton of the Diocese of Virginia was extremely supportive”). The Rev. Alex Methven, who was from Australia and transferred to TEC, then served from approximately January 1972 to December 1975. *See id.* at .013; PX-APOST-398; PX-APOST-399. After he left, the Bishop asked Apostles to “go through the usual Diocesan procedures for finding a new rector,” including writing a profile and interviewing candidates, and Apostles complied. *See* Apostles_Ex_013.014.

In 1985, Apostles called the Rev. David Harper, a priest in New Zealand. *See* PX-APOST-417. Bishop Lee met with Harper before the call, a very positive experience for both. *See* PX-APOST-415 and PX-APOST-416. A stumbling block arose, however, because TEC's Canons did not allow a minister from outside the Episcopal Church to become rector of an Episcopal parish until he had resided for one year in this country after his religious credentials were accepted by the Bishop. *See* PX-APOST-419-001. Bishop Lee came up with a solution that allowed Harper to begin serving at Apostles immediately while complying with the canons, *see id.*, and the Vestry and Bishop signed a formal agreement to that effect. *See* PX-APOST-421. After guiding Harper through the constitutional and canonical requirements (*see* PX-APOST-420 and PX-APOST-424), Bishop Lee accepted a letter dimissory for him, issued a formal call to him "subject to the requirements of the Canons of The Episcopal Church," and installed him as Rector on January 17, 1986. PX-APOST-163; *see* PX-APOST-425; Tr. 3144-45; Apostles_Ex_013.084 (timeline entry).

Rector Harper acknowledged the Diocese's ownership of the property, stating that "[p]arishes hold title to their buildings in trust for the diocese, which is the real owner. Should a parish violate the canons in a way that brings it into conflict with the diocese ... the diocese might very well claim its rights to own, occupy and use the property, including the church's assets, by suing the church." PX-APOST-033-002 ("Submitted Questions and Rector's responses" for a congregational meeting in February 2004). The Rev. Harper acknowledged at other times that church buildings were held "in trust for the diocese." Tr. 3221-26; PX-APOST-051-001 - 003 (1998 email responding to concern about "investing in property and buildings that we hold in trust for the diocese" and arguing that Apostles should move forward in purchasing property, similar to The Falls Church, which was "at least aware as we are about the canonical

dimensions of property ownership”); PX-APOST-055-004 (1998 email stating, “All church property in the diocese is owned by the parish, but held in trust for the Diocese. This means that, in the event that a congregation should opt to leave ECUSA, the diocese might try and claim the right to that church’s property”). These documents show that Apostles’ eyes were wide open to Canon 15 and to the rule that all church property is held in trust for the Diocese when Apostles considered the purchase of the Braddock Road properties. Tr. 3223-24; PX-APOST-474-001.

Apostles’ Vestry members also were aware that the Diocese was the owner of church property. Tr. 3224-25; PX-APOST-056-001 (2004 email stating, “this land belongs to the bishop, and ... we are acting in ways to attempt to wrest this property for ourselves from the owner, the bishop”); PX-APOST-057-001 (2004 email stating, “[t]he properties that we hold in trust for the diocese are likely to continue to appreciate” and suggesting a “compromise with the diocese to title the land that we need in COA’s name v. the current trust arrangement”).

The leaders and members of Apostles also were well aware that Diocesan approval was needed for any significant transactions regarding real property and repeatedly sought Diocesan permission, as required by the canons:

- In 1988, permission for a bike path through the Picketts Road property was approved “pending approval by the Diocese.” PX-APOST-070-001.
- Also in 1988, the Rev. Harper asked Bishop Lee for Diocesan approval for Apostles to establish a line of credit using The Meeting Place as security. PX-APOST-062-002.
- In 1998, Apostles sought Diocesan approval to sell property. *See* PX-APOST-0334 (the Rector and Senior Warden, writing: “Pursuant to Canon 15.2, we need your approval and that of

the Standing Committee in order to sell our property on Pickett Road”).⁵²

- In April 1999, Mr. Blankingship advised the U.S. Postal Service that Apostles was taking “necessary canonical steps” to have a sale of property approved. PX-APOST-490-001.
- March 2003 Vestry minutes include discussion of whether proposed refinancing for Braddock Road property meets canonical requirements for borrowing (“David Pugh questioned whether this action meets canonical requirements, and was told that we are allowed to borrow up to 150% of our annual revenues (which would be about \$2.7M)”). PX-APOST-223-002. A January 2004 letter from an Apostles Warden to its attorney acknowledges that the Diocese “requires parishes borrowing money to obtain Diocesan approval if the amount borrowed exceeds 1.5 times the average operating budget of the parish over the last three years.” PX-APOST-072-001.
- The Vestry understood that “we are going to need to get Diocesan approval prior to selling the land, and David Harper said that he would contact the Diocese to start that process.” PX-APOST-061-003 (February 2005). *See also* PX-APOST-071-001 (March 2005 letter from the Rev. Harper to Bishop Lee to “bring before” the Bishop the matter of selling part of the property on Braddock Road).
- Apostles also recognized that the Canons required congregational permission to grant easements on property. *See, e.g.,* PX-APOST-224-004 (June 2002 letter from Senior Warden to

⁵² Apostles did so with its eyes open, having sought and received legal advice on church property. *See* PX-APOST-488-001 - 002 (letter from attorney A. Hugo Blankingship, Jr., providing Canon 15, with an arrow to § 2 and § 1 marked “N.B.,” and advising that “[i]n order to sell our present site, we need the consent of the congregation, the consent of the Bishop, the consent of the Standing Committee and a court Order”); PX-APOST-489 (a brief from Blankingship to Apostles on church property law which describes the Church as hierarchical, says that the canons provide for “[g]overnance of Episcopal churches,” and in a section entitled “With Respect to Leaving the Episcopal Church” [at -003] attaches “copies of two decisions from the Virginia Supreme Court which give rise to concern”); Tr. 3128-29, 3133, 3216-19.

church members: “According to canon and state law, before the trustees can grant such an easement [for utilities], permission of the congregation must be given”).

- Apostles followed canon law regarding encumbering property. PX-APOST-063-002 (September 2000 Vestry minutes, resolving that wardens seek court approval of encumbering property with purchase money deed of trust “in compliance with state and canon laws”).

From its beginning, Apostles was “a very loyal Episcopal church” and was careful to refer to and follow the canons. *See, e.g.*, Tr. 3081-82. Apostles purchased copies of the Canons. PX-APOST-222-001 - 007. From 1985 through 2006, when the Rev. Harper was Rector (Tr. 3094), he always had a copy of the Canons. Tr. 3161. Apostles acknowledged the authority and requirement to obey the Canons in numerous ways (in addition to those described *supra*):

- The Vestry referred to the Canons to determine the permitted length of service of a vestry member (PX-APOST-030-001), whether the position of Register could be rotated among members (PX-APOST-225-003), how much notice must be given for congregational meetings (PX-APOST-226a-001), how to conduct Vestry elections (PX-APOST-228-001), and whether the Senior Warden must be a member of the Vestry (PX-APOST-254-001). *See also* Apostles_Ex_142.003 (the Rev. Harper acknowledging at a parish meeting in 2004 that “we must elect our vestry in conformity to diocesan and national canons”).

- When the Vestry decided to make all major decisions by reaching consensus with the entire congregation, it confirmed with the Diocese that doing so was acceptable under the canons. *See* Apostles_Ex_013.011 (“The Diocesan Bishop could not find anything canonically wrong with this process as long as a quorum of vestry members were present during the decision-making process”).

- The Vestry Facilities Development Commission Charter stated that the commission

would operate in accordance with the Canons and would make use “of Diocesan publications and guidance pertaining to facilities construction and development.” PX-APOST-104-001, -002.

- Apostles’ Vestry handbook and organizational documents verified that the Vestry would follow the Canons. Tr. 3162-66; PX-APOST-213-008 (1982); PX-APOST-235-008 (1984); PX-APOST-231-001 (1987); PX-APOST-236-002, -011, -012 (1988); PX-APOST-214-001, -002 (1994); PX-APOST-257-004, -006 - 009 (1996); PX-APOST-005-002 (1998); PX-APOST-242-002, -006 (2001); PX-APOST-244-003 - 005 (2002); PX-APOST-217-002 (2005).

- Apostles followed canonical procedures for appointment of Trustees. *See, e.g.*, PX-APOST-106-003.

- Apostles adhered to canonical processes for transfers of members between churches. *See* PX-APOST-221.

- Apostles recognized that rectors are “responsible to God and our bishops” and that this authority could be shared “within canonical limits” with the vestry and other lay leaders.

Apostles_Ex_016.028. A rector had to “exercise his canonical authority” by acting in consensus with other leaders and could delegate his duties only “within canonical limits.”

Apostles_Ex_016.037.

Apostles complied with other requirements, too. It submitted parochial reports to the Diocese annually, including in every year from 1987-2005 (although records lack the report filed in 1988). *See* PX-APOST-172 (2005); PX-APOST-170 (2004); PX-APOST-174 through PX-APOST-180; PX-APOST-181a; PX-APOST-182 through PX-APOST-194. It did so recognizing that such reports were required. Tr. 3359. Members of Apostles completed an Adult Sexual Misconduct Prevention workshop because it was required by the Diocese. PX-APOST-229-001; PX-APOST-229a-001; PX-APOST-229b-001; PX-APOST-229c-001 - 002.

Apostles donated money to the Diocese every year from 1968-2003, although there is no record for 1975, 1978 or 1981. Apostles_Ex_089A.001; Apostles_Ex_089.001, .005 - 009; Apostles_Ex_016.027. *See also* Apostles_Ex_016.027 (Apostles donated “seed money” for new churches in the Diocese). From 2004 to 2006, Apostles donated to the Bishop’s Discretionary Fund and church plants. Apostles_Ex_089.001. Apostles donated to the Diocese because Apostles had a “responsibility to tithe to the next higher authority.” Apostles_Ex_013.012.

Although Apostles has been fortunate enough to be able to pay its bills on its own from the beginning, it has received assistance, guidance, and other benefits from the Diocese. Apostles staff attended seminars hosted by the Diocese. *See, e.g.*, PX-APOST-263-002 (“the Management Commission attended a seminar, the Bishop’s Coffee, on April 30th [2002], hosted by the Diocese of Virginia. Its purpose was to inform vestry members of basic issues necessary for a vestry to function most effectively. They found it informative and encouraging ...”). The Diocese also assisted with Apostles’ fundraising efforts. *See, e.g.*, PX-APOST-265-001 (April 1999 Facilities Commission Report to Vestry: “Funding committee met last Wednesday with Boyd Spencer of the Diocese ... Discussed our preliminary plan and received input from Boyd. Boyd is an employee of the diocese who helps churches with fund raising and setting up endowments”); PX-APOST-267-001 - 002 (December 2001 letter from Bishop Lee to the Rev. Harper with name of potential donors who “might be interested in investing in the vision of the Church of the Apostles”). The Diocese supported the use of Diocesan facilities at Roslyn for groups in which the Rev. Harper was involved. PX-APOST-275-001 (October 1998 letter from the Rev. Harper to Bishop Lee expressing “deep appreciation for your generous support of the SOMA National Directors’ retreat at Roslyn ... Getting away from Northern Virginia into the beautiful surroundings at Roslyn provided a beneficial sense of detachment which enabled God

to work powerfully within the group”). In addition to other assistance discussed herein, *see, e.g.*, PX-APOST-273 and PX-APOST-274 (a memorial contribution from the Diocese to Apostles); PX-APOST-158-001 (July 1986 letter offering the use of the Diocese’s Mission Development Service and its secretary regarding acquisition of a site for Apostles’ “Manassas Mission”).

Apostles participated in the Diocesan health insurance plan from 1994-2006. *See, e.g.*, Apostles_Ex_089.002 – 005; PX-APOST-173; PX-DEP-030-017 – 018, -021 – 022, -024. It did so recognizing that the Diocese required Apostles to participate. *See* Tr. 3375-76.

Apostles also used the Episcopal Church’s tax exempt status with the IRS. *See, e.g.*, PX-APOST-269-001, 005.

Vestry members at Apostles subscribed to the oath (or “declaration”) required by Diocesan Canon 11.8, including “assent and approbation to the doctrines, worship and discipline of The Episcopal Church.” *See, e.g.*, PX-APOST-021-001, -002; PX-APOST-025-001 to -009; PX-APOST-022-001; PX-DEP-024-031 - 32 (MacGowan); 2007 Tr. 701-03 (Allison). In so doing, they understood that they were “submit[ting] to the authority of the Church.” PX-APOST-217 at 217a-003 - 004 & n.5 (2005 Apostles Vestry handbook); PX-APOST-005-010 (1998 Vestry handbook: same); PX-APOST-006-012 (undated ministry handbook: same); *accord* PX-DEP-024-034 - 035 (“We are pledging our support to our bishop to the order of the church, if you will, upholding the Canons, upholding the faith of the church”). The Vestry all signed the oath as recently as March 2006. PX-APOST-024-001.

Apostles recognized that “only the ordained Episcopal priests may perform certain pastoral and sacramental functions within the framework of the Episcopal church.”

Apostles_Ex_016.030. Members of Apostles sought to express themselves in “an orderly manner and by methods prescribed by the Episcopal Church.” Apostles_Ex_016.029. At

Apostles, members tried to resolve differences among themselves about issues such as whether to baptize infants by “understand[ing] such differences ... while clearly maintaining the doctrine, discipline and worship of the Episcopal Church.” Apostles_Ex_016.030. The Rev. Harper corresponded with Bishop Lee regarding how to conduct the liturgy, including changes to the Eucharistic portion of the liturgy and confirming that Apostles prayed for the Bishops at their liturgical services. PX-DEP-017 -082 - 084.

Apostles participated in the Bishop’s Clergy/Lay Professional Conference every year from 1993-2003 and in 2005. PX-APOST-211-001 - 006; PX-APOST-211a-q. Apostles was active in Region 7 of the Diocese, and the Rev. Harper served as Dean of the Region. Tr. 3150-52. The Rev. Harper attended the Diocese Annual Council, and delegates from Apostles attended every year from 1969-2006. Tr. 3168-69, 3360; Exhibit A.

Bishops of the Diocese visited Apostles more than 50 times to preach, perform confirmations, and/or meet with the vestry. *See* Exhibit B; PX-APOST-148-002 - 003 (1999); PX-APOST-151-001; PX-APOST-151(a-j) (1978-2001); PX-APOST-263-001; PX-APOST-475-001 – 003. Such visits were “significant events for our congregation.” PX-APOST-0373-001. Apostles sought permission from the Diocesan Bishop for other bishops to officiate. *E.g.*, PX-APOST-071-001; Tr. 3159.

As discussed above, the Diocese provided assistance and guidance when Apostles sought to hire a new rector or preacher. *See also* Tr. 3090-92 (Apostles discussed candidates for rector with the Bishop and sought the Bishop’s consent for the person selected); PX-APOST-159-002 (“Last night I phoned Bishop Lewis to indicate that the Vestry of Church of The Apostles had endorsed, in unanimity, its Search Committee recommendation to call the Reverend David Harper as Rector. Bishop Lewis heartily concurred and requested that we seek Bishop Lee’s

concurrence. Bishop Lee joyously concurred this morning”); PX-APOST-161-001 (July 1990) (Rector Harper has written to Bishop Lee about offering twelve-month staff position to the Rev. John Obokech); PX-APOST-155-001 (February 2002 letter from the Rev. Harper asking Bishop Lee to license a lay preacher and if there is anything else the Rev. Harper should know “from a diocesan standpoint” before the preacher arrives). The Diocese licensed priests to perform priestly functions in the Diocese. PX-APOST-164-001 - 002.

Apostles also used the Diocesan clergy ordination process. *See, e.g.*, PX-APOST-168-001 (April 1989) (Junior Warden attended Diocesan Commission on Ministry orientation meeting and “was impressed by the Diocese’s desire to facilitate the ordination process”); PX-APOST-165-001 - 002 (October 1991 Report to the Vestry by Vestry Ordination Committee, noting that a church member had appeared before the Commission on Ministry and was notified that the Commission did not affirm his call at that time); PX-APOST-166-001 (April 1988 letter from Bishop Lee admitting a church member as a Postulant for Holy Orders under Canon 2.5); PX-APOST-167-001 - 002; Apostles_Ex_013.0082 (listing members who have been ordained).

Apostles obtained the necessary licenses from the Diocese for laypersons who participated in liturgies by distributing communion, preaching and reading. *E.g.*, PX-APOST-027-003 - 004 (one of multiple applications and licenses in that exhibit); PX-APOST-212a-002 - 003 (same); PX-APOST-028-001 - 003 (same).

Apostles started a mission in the Diocese. PX-DEP-024-040 - 041 (MacGowan); *see, e.g.*, PX-APOST-158-001 (July 1986 letter from Bishop Lee to the Rev. Harper consenting to the appointment of the Rev. Ken MacGowan as Vicar); Apostles_Ex_013.056 (“Services began at Church of the Word, Episcopal, in Manassas in mid-September”); PX-APOST-153-001.

Apostles used the Book of Common Prayer. *E.g.*, PX-DEP-017-078 - 079 (Harper); PX-

DEP-024-045 (MacGowan: “during your time at Apostles, did Apostles use the Book of Common Prayer as well? A: Yeah. We were an Episcopal church. We might have done things a bit differently. We might have wanted to be experimental, but we were an Episcopal church”).

Until 2007, Apostles was known to the community to be an Episcopal church in the Diocese of Virginia. Tr. 3146. Apostles used the names, customs and policies of the Diocese, and it posted signs indicating that it was an Episcopal church. *Id.*; *see also* PX-APOST-077-003 (making plans to cover a sign that said “Episcopal” in 2008). Apostles used the word “Episcopal” as part of its name in land records and contracts. *See, e.g.*, PX-APOST-131-005 - 006, -011 -012, -015; PX-APOST-133-001, -013. Agreements for the sale and loan of real property refer to “Church of the Apostles [Episcopal]” or “Trustees for Church of the Apostles (Episcopal).” PX-APOST-131-005 - 006, -011 - 012, -015; PX-APOST-133-001, -013. Property insurance documents name the Diocese as a participant (PX-APOST-207, PX-APOST-207a - 207c) or as the insured (PX-APOST-208, PX-APOST-208a-g). Fairfax County tax assessments for the Braddock Road property were addressed to “Church Episcopal of the Apostles Trs of.” PX-APOST-125-001 - 003. Apostles identified itself as an Episcopal church in its Parish profiles and letterhead. *E.g.*, Apostles_Ex_16.001 (name), .008 (“We are an innovative Episcopal church”); PX-APOST-038-001 (1979); PX-APOST-026-001 (2003). Both internally and externally, Apostles acted and was known as an Episcopal church.

Church of the Epiphany (Episcopal) (“Epiphany”)

The Church of the Epiphany began worshipping on February 2, 1986. PX-EPIPH-001-001; PX-EPIPH-165-001. Its initial parishioners came from Truro Episcopal Church, its “founding church.” *Id.*; Tr. 816. Epiphany’s Vestry held its first meeting on May 18, 1986. DCOE-043-00361. Its first clergy person was the Rev. Bill Clifton Reardon. *See, e.g.*, PX-

COM-227-123; PX-EIPPH-165-001.

Epiphany began through the efforts of the Diocese and Truro. *See, e.g., id.*; Tr. 815-16; PX-EIPPH-007-001 - 002 (letter from Truro Rector John Howe, stating: “We at Truro are enthusiastic at this new opportunity and gladly accept all responsibilities described in the Canons and the Diocesan ‘Policy on New Church Startup’”). According to the Rev. Howe, Epiphany’s beginning brought into reality something that “Bishop [David] Lewis, the Committee on Mission Outreach and Churches Under Supervision of the Bishop (MOCUS) and the Diocesan Council ha[d] dreamed and planned” for years: a “Mission in the Route 50 corridor in western Fairfax County.” PX-EIPPH-007-001; *see also* PX-EIPPH-164 (October 1986 *Virginia Episcopalian* excerpt describing the Diocese’s focus on missions, discussed at Tr. 821-22); PX-EIPPH-161 (July 1985 meeting between MOCUS and Truro). Bishop Lee’s “support was enthusiastic” (PX-EIPPH-007-001; *see also* PX-EIPPH-163 and -163a), and Bishops Lee and Lewis and the Diocesan staff worked with Truro to get Epiphany off the ground. *See, e.g.,* PX-EIPPH-007-001 (planning a meeting “to determine financial procedures”); PX-COM-227-123 (after Annual Council approved Epiphany’s petition for church status, the Rev. Reardon “particularly” thanked Suffragan Bishop Lewis, who “worked with the congregation during the past year in their dream and hope to become a church and to petition this particular Council for that action”).

In September 1986, Epiphany’s vestry approved a motion to apply to become a parish or church in the Diocese. PX-EIPPH-008-001. Later that year, Epiphany “petition[ed]” Annual Council “for admission as Church under Canon 10, Sections 1 and 2 of the Constitution and Canons of the Protestant Episcopal Church in the Diocese of Virginia,” with the enthusiastic support of Truro Episcopal Church. PX-EIPPH-001-001 - 002, -006. The petition stated that the congregation was “a group of people which acknowledge and accept the doctrine, worship, and

discipline of the Protestant Episcopal Church and the jurisdiction of the Bishop or Ecclesiastical Authority of the Diocese of Virginia.” *Id.* at -001.⁵³ The Executive Board of the Diocese certified its approval on December 15, 1986. PX-EIPPH-012. The 1987 Annual Council approved Epiphany’s petition “by acclamation” and “rose with vigorous applause.” PX-COM-227-122; *accord*, PX-EIPPH-013-001 (“The Rector reported on the Diocesan Council. He said Epiphany was accepted as Parish by the Council with unanimous vote and standing ovation”); *see also* PX-EIPPH-039-006.⁵⁴

Attaining church status cleared the way for the Rev. Reardon to become Epiphany’s first Rector. *See, e.g.*, PX-COM-227-123. Indeed, Bishop Lee visited Epiphany on February 1, 1987, the day after the Annual Council, and performed the service of installation for the Rev. Reardon as well as confirmations. *See* PX-EIPPH-081-001 - 004; PX-EIPPH-082 (letter of thanks from the Rev. Reardon stating that “We rejoice in your leadership and friendship”). The Rev. Reardon served as Epiphany’s Rector until his retirement at the end of 1995. *See* PX-EIPPH-124; PX-EIPPH-272-001 (announcing retirement as of December 31, 1995).

Epiphany initially met in the Franklin Middle (or Intermediate) School. *E.g.*, PX-EIPPH-165-001; PX-EIPPH-039-005; PX-EIPPH-082 (Epiphany letterhead, noting the school location at the bottom); Tr. 818-19. During that time, the Rev. Reardon and his wife, Marilyn, hosted many Vestry and other meetings in their home. *E.g.*, Tr. 819; PX-EIPPH-165-001.

⁵³ In 1986 and at all times through the vote to disaffiliate in January 2007, Article XVII of the Constitution of the Diocese stated explicitly that “[e]very Congregation” was “bound by the Constitution and the Canons adopted in pursuance hereof.” *E.g.*, PX-COM-011-013 (1986); PX-COM-003-011 (2005-06). And in 1986 and at all times through January 2007, Diocesan Canons have made clear the Diocese’s control over and interest in property used and held by churches in the Diocese. *See supra* at pages 22-23.

⁵⁴ PX-EIPPH-039 is a detailed March 1988 application for loan financing, which contains information about the early history of Epiphany. It was presented to the Diocese and to two lenders. *See* PX-EIPPH-040-001 (last paragraph on the page).

In early 1987, Glebe Properties, a corporation of certain prominent Northern Virginia Episcopalians, decided to give Epiphany a 5.2 acre site in an excellent location for a new church building. *See* PX-EIPPH-216-001; PX-EIPPH-217-001 (“We have the strong support of our Bishop and our founding Church. Most importantly five acres of land was given to us located in the heart of a large residential community where our Church will be a beacon and hopefully a magnet to the many people who will pass it each day”); *see also* DCOE-520-2796; DCOE-055-387 (May 1987 Vestry minutes, noting that a deed to Glebe Properties had been recorded and that the land would then be deeded to church trustees). Trustees of Epiphany were appointed by this Court at approximately the same time. *See* DCOE-453-2286 (April 15, 1987, Order). In August 1987, the property was deeded from Glebe Properties to “HENRY A. LONG, MARJORIE BELL, and DAVID SCHREINER, TRUSTEES OF THE CHURCH OF THE EPIPHANY (Episcopal).” PX-EIPPH-004-008. That remains the operative deed.

Throughout 1987 and 1988, a building program took place. *See, e.g.*, PX-EIPPH-039 (March 1988 application for financing); DCOE-056-388 (August 1987 Vestry minutes containing a report on the Building Committee’s work); PX-EIPPH-212-001 (April 1987 letter reporting on the effort). In early 1988, Epiphany sought and received financial assistance from the Diocese. *See* PX-COM-230-261 (DMS loan); DCOE-509; DCOE-510; PX-EIPPH-039-007; *see also* PX-EIPPH-222 and -223 (June 1989 letters seeking and conveying support); PX-EIPPH-224 and -225 (February 1990 letters conveying additional support); PX-EIPPH-220-001. The land was acquired “at no cost to the parish.” PX-EIPPH-039-003. Epiphany also received substantial financial assistance from Truro Episcopal Church. *E.g., id.*

Ground-breaking occurred on March 27, 1988. *See* DCOE-458-2296. At his December 1988 episcopal visitation, Bishop Lee visited the building site. *See* DCOE-061-398. He returned

to dedicate and consecrate the church on April 23, 1989, “shortly after the completion of construction.” PX-EIPPH-003-003 (Interrogatory 5); *see* PX-EIPPH-086 (consecration service).

Since its beginning, Epiphany has been aware of and adhered to the Constitution and Canons of the Diocese. *See, e.g.*, PX-EIPPH-009-001 (1986: the Rev. Reardon, Epiphany’s Vicar, “gave a copy of the Episcopal Church Canons to the Senior Warden” and “read the requirements from the Canons pertaining to our petition to the Diocese to become a parish”); PX-EIPPH-073-001 (1994: “The Rector explained for the benefit of new members that he is the Chairman of the Vestry and that the Vestry’s responsibilities are defined by Canon Law.... We will talk more about the Vestry’s responsibilities at the retreat and the Rector stated he would have copies of Canon Law for vestry members”); PX-EIPPH-035-002 (1998: “Mary Howell distributed copy of the Duties of the Vestry from the Cannons [*sic*] to all newly elected Vestry members”); PX-EIPPH-015-002 (2001: “Bill White presented the Draft By-Laws and provided supporting handouts containing relevant excerpts from,” *inter alia*, “the Episcopal Constitution and Canons for both USA and Virginia”). Indeed, a document signed by the Rev. Reardon sometime during his tenure states that “[t]he Bylaws of The Church of the Epiphany (a non-profit organization), are the Constitution and Canons of the Episcopal Church in the U.S.A. and the Constitution and Canons of the Diocese of Virginia.” PX-EIPPH-014-001.

In 2001, Epiphany replaced the Constitutions and Canons as bylaws with locally-drafted and tailored bylaws. *See* PX-EIPPH-002-001; Tr. 2325-26; PX-COM-003-022 (Canon 11.10: “The Vestry may adopt by-laws not inconsistent with Diocesan or National Canons”).

Epiphany’s 2001 bylaws were drafted by its “parliamentarian” and Senior Warden, Ken Bracy, and Junior Warden Bill White. *See* Tr. 2322; DCOE-521-2805; PX-EIPPH-017-002. Epiphany’s Rector, the Rev. Robert (“Robin”) Rauh, has given contradictory testimony about

whether he was involved in the drafting too. *See* Tr. 2320-21. What is clear is that after the Vestry unanimously approved the bylaws in May 2001 (PX-EIPPH-016-002), the Rev. Rauh joined the Vestry in publicizing the new bylaws to the congregation. *See* DCOE-521-2797 (“We will have two Parish Meetings ... to introduce and explain a set of proposed By-Laws.... It’s important at every step of this process of growth, that everyone be heard and have a chance to participate. So please mark your calendars and plan to attend”); *id.* at -2805 (noting two “very important” parish meetings, at least one of which would have a “particular focus” on the bylaws and Vestry members “present to answer your questions or get the answers for you”).

At the parish meeting, Junior Warden White led an “article-by-article discussion” of the bylaws. PX-EIPPH-017-001. The bylaws were adopted by “unanimous voice vote,” and “[t]he parishioners applauded” White for preparing and presenting the bylaws. *Id.* at -002.

Section 1.02 of the bylaws states that Epiphany “is a constituent part of the Diocese of Virginia of [the Episcopal Church] and is subject to the Canons of the Protestant Episcopal Church in the Diocese of Virginia.” PX-EIPPH-002-003.

Article VIII of the bylaws concerns “Parish Property.” It provides:

8.01 ***Ownership and Use:*** *All Parish property assets and funds shall be owned and held by the Parish in trust for the uses purposes and the benefit of the Diocese of Virginia of the Protestant Episcopal Church in the United States of America.*

....

8.04 ***Dissolution:*** *In the event of dissolution of the Parish, all property assets and funds of the Parish and Parish corporation shall be distributed exclusively for exempt purposes to the Diocese of Virginia of the Protestant Episcopal Church in the United States of America.*

PX-EIPPH-002-012 (italics added). Neither the Vestry nor the congregation objected to or

sought to amend either of these sections. *See* PX-EIPPH-016-002; PX-EIPPH-017-001 - 002.⁵⁵

The 2001 bylaws were amended in 2002 and 2004 (without changes to the above) and remained in effect at the start of the January 2007 vote. PX-EIPPH-002-001; Tr. 2323-24.⁵⁶

For years then, Epiphany explicitly, in writing, and by unanimous vote of both the leadership and congregation, recognized the Diocese's interests in all assets and funds used by the congregation. Much less is required for the Diocese to prevail under Virginia law.

Epiphany has followed and assented to the Diocesan property canons in action too.

- In 1987, as Canon 15.1 directs churches in the Diocese to do, Epiphany had trustees appointed to hold property after seeking and being granted church status. *See supra* at 176.
- In 1988, Epiphany's Vestry resolved to seek Diocesan approval for indebtedness to build the new church. PX-EIPPH-039-015. After meeting with Epiphany (*see* PX-EIPPH-040-001), the Standing Committee and the Bishop granted that canonically-required consent. PX-EIPPH-042-001; PX-EIPPH-043-001; *see* PX-COM-011-029 - 030 (Canon 14).
- In 2003, when Epiphany planned to build a new sanctuary and education building, Epiphany again recognized that Diocesan approval was required and sought such consent. *See* PX-EIPPH-048-002; *id.* at 024 (parish meeting resolution authorizing the indebtedness and

⁵⁵ Notably, Epiphany was thinking about facilities expansion at the time that these bylaws were adopted. *E.g.*, DCOE-521-2797 ("We will also be looking at our Strategic Plan and what it means for the future, as well as the development of a Building Committee to begin work on our facilities expansion"); Tr. 2332.

⁵⁶ Epiphany introduced bylaws dated January 12, 2007. *See* DCOE-526. That date was the Friday during the vote to disaffiliate (which took place from January 7-14, 2007, *see* DCOE-505-2758), and it was the day after the Epiphany corporation was created (Tr. 2288). The Vestry minutes from January 9, 2007, reflect that the bylaws were not yet complete and that there was a rush (at counsel's advice) to finish them and circulate them to the congregation. *See* DCOE-266-994. Although the Rev. Rauh initially said he did not think that Epiphany had adopted bylaws in January 2007, he then reversed himself. Tr. 2288. His testimony appears to be the only evidence that DCOE-526 was adopted in January 2007.

submissions “to lenders, diocesan authorities, and other applicable parties”); PX-EIPPH-207-002 (Vestry minutes noting that “Approval by the Diocese will be needed before a plan can be implemented for financing”); PX-EIPPH-049-001 (Standing Committee minutes reflecting that an Epiphany delegation “made a presentation on their expansion program and asked permission to incur up to \$5,900,000,” which was granted); PX-EIPPH-050-002 - 003 (December 2003 congregational meeting minutes reaffirming the resolution and recording “Larry” [probably Senior Warden Larry Pantzer, *see* PX-EIPPH-269-002] informing the congregation that “there are no guarantees that we would have control of the facilities if we act in discord with the Episcopal Church”); PX-EIPPH-051-001 - 002 (again reaffirming the resolution).

In fact, Epiphany’s financial statement from the time – which was attached to Epiphany’s request for the Diocese’s permission for the indebtedness – recognizes the Diocese’s interests. The notes to Epiphany’s December 31, 2002, financial statement state: “the Church is a constituent part of the Episcopal Church, U.S.A. and the Episcopal Diocese of Virginia. The canons of the Episcopal Church U.S.A and the Diocese of Virginia require the real property of all Episcopal parishes to be held in trust for the national church and the Diocese even though the individual churches hold legal title for all other purposes.” PX-EIPPH-048-040.

- In March 2004, Epiphany’s counsel, Michael J. Woodruff, wrote to Diocesan Chancellor Russ Palmore. PX-EIPPH-052-001. Woodruff requested Bishop Lee’s approval of Epiphany’s construction loan, noting that such approval was necessary under the canons. “At the request of the lenders counsel,” Woodruff further asked if Bishop Lee would “confirm that consent to Epiphany’s loan by the Episcopal Church USA is not necessary? He might helpfully indicate that ECUSA, as a declared trust beneficiary under national canons, need not consent to such secured transactions in Virginia as matter of canonical practice or requirement.” *Id.* Bishop Lee

wrote back, granting consent and stating, as requested, that the Diocesan consents were sufficient under the Canons of the Church and the Diocese. PX-EIPPH-053-001.

Epiphany also adhered to denominational rules about matters other than property:

- Epiphany obeyed canonical rules governing annual meetings; qualification, elections, and duties of vestries, vestry members, and wardens; qualifications of voters; and other related provisions of Episcopal canon law. Tr. 2314; PX-EIPPH-019-002 (August 2005 Vestry nomination handbook citing the Canons for qualifications and stating that Vestry members are expected “[t]o know and fulfill the duties of Vestry members according to the Canons of the Diocese of Virginia and to subscribe to the Vestry Declaration and promise as stated therein”); DCOE-387-2135 (2003 Handbook: same); PX-EIPPH-002-005 - 006 (bylaws §3.01: “The Vestry shall have the responsibilities set forth in Canon 12 of the Diocesan Canons and such other responsibilities not inconsistent therewith as may be assigned by the Rector. Except as otherwise provided by the law of the State of Virginia and the authority of the Diocesan Bishop, the Vestry shall be authorized to act for the Parish in all matters concerning its property funds and assets”; §3.02: “Members of the Vestry shall serve for terms of three years and shall have the qualifications set forth in Canon 11 of the Diocesan Canons”; §3.04(b): “Parish officers shall have the duties set forth in the Diocesan Canons”); PX-EIPPH-002-008 (§5.02(a): “Vestry members shall be elected at Annual Meetings of the Parish in accordance with Canon 11 of the Diocesan Canons”); PX-EIPPH-002-009 (§5.02(c): when a vestry nomination is seconded, “the presiding officer shall inquire of the nominee if he or she has consented to be nominated and to fulfill the obligations of the Diocesan Canons”); PX-EIPPH-068-001 (“Eligibility for election to the Vestry is defined by Canon Law”); PX-EIPPH-078-001 (2001 congregational meeting minutes: “Father Robin opened the nominations from the floor after providing some guidance on

how it would be done including the canonical requirements”).

- Epiphany followed canonical rules governing vestry meetings. Indeed, since the Rev. Rauh came to Epiphany, meeting agendas consistently have referred to the canons. PX-EIPPH-067-001 (“Canon Law requires that the Rector be contacted ahead of time if unable to attend a Vestry Meeting”); PX-EIPPH-067-001-001 through PX-EIPPH-067-057-001 (57 other agendas with same or similar wording).

- Epiphany followed denominational rules regarding church membership. *See, e.g.*, PX-EIPPH-249-001 (“Senior Warden’s Notes,” observing that TEC requires parishes to maintain certain records and asking members of Epiphany to help complete such records); PX-EIPPH-256 (Epiphany’s “Canonical Parish Register”); PX-EIPPH-241-001 - 002 (transfer request from another church and an acceptance signed by the Rev. Rauh “pursuant to the provisions of the Canon ‘Of Regulations Respecting the Laity’”); PX-EIPPH-240-002 (another Epiphany request); PX-EIPPH-247-002 (another acceptance signed by the Rev. Rauh pursuant to canon); PX-EIPPH-248-001 (same); PX-EIPPH-246-001 (a letter of transfer signed by the Rev. Reardon pursuant to canon).

- Pursuant to the polity of the Episcopal Church and the Diocese, Epiphany sought Diocesan consents where required and also exercised discretion where discretion is given to local leaders in the Church. *See, e.g.*, Tr. 2309, 2312-13.

- Epiphany acknowledged canonical requirements for parish audits and submitted them to the Diocese. *See, e.g.*, PX-EIPPH-177-001 (1990 minutes recording the Rector’s statement that “[i]n compliance with the procedures set forth in the Diocesan audit program for audit committees, the financial records of the Church were audited” and the Vestry’s vote to accept the audit report); PX-EIPPH-178 (1990 report from Epiphany’s “Audit Committee,” which recites

its compliance with Diocesan requirements and reflects use of Diocesan publications, *see* pages -001, -003); PX-EIPPH-180-006 (Vestry responses to audit recommendations referring to canonical requirements); PX-EIPPH-181-001 (submitting 1991 audit to the Diocese); PX-EIPPH-184-001 (submitting 1994 audit to the Diocese and noting that Epiphany would begin getting outside audits the following year), -002 (acknowledging the canonical requirement and noting use of a Diocesan publication), -010 (Vestry response “concur[ring] with the audit recommendation that it would be beneficial for the Vestry the Finance Committee and the Treasurer to obtain formal training and awareness of Diocesan practices rules and responsibilities”); PX-EIPPH-076-003; PX-COM-245A-413; Tr. 2119.

- Even in expressions of dissent from prevailing views in the Church (before its preparations for secession), Epiphany was careful to obey the Canons. PX-EIPPH-079-001 (2004 Vestry minutes recording consideration of whether joining a dissenting group within TEC “is unacceptable by canons [*sic*] or other church requirements” and noting that “no known canons or church law exist that would dictate against” that).

Epiphany followed denominational policies and procedures and sought the Diocese’s guidance about matters both serious and trivial. *See, e.g.*, PX-EIPPH-074-001 (Rector writing Bishop Lee “to inform you that I have complied with the Disciplinary Rubrics (BCP 409) in requesting [name omitted] to refrain from the Communion”) and PX-EIPPH-075-001 (Bishop Lee’s response letter); PX-EIPPH-182-001 (seeking “Episcopal Counsel” on the color of clerical robes) and PX-EIPPH-183-001 (Bishop Lee’s response). Epiphany acknowledged the Diocesan requirement of sexual abuse training and made use of training and resources from the Diocese. *See, e.g.*, PX-EIPPH-185-002 (November 1994 Vestry minutes containing Rector’s report that “Every person who has any relationship with children (church school teachers excluded) must

undergo the sexual abuse training that is being offered by the Diocese”); PX-EIPPH-265-004 (1994 minutes noting that “Region 7 is having a special workshop on child abuse as part of the Diocesan program” and that attendance is required).

Epiphany has received financial assistance from the Diocese. In addition to property loan and interest support, Epiphany on occasion has sought and received Diocesan grants for personnel or church mission matters. *See* PX-EIPPH-228 and PX-EIPPH-229 (providing, as requested, half of the cost of an assistant rector for February 1992); PX-EIPPH-226-001 (November 1990 thank you letter for a grant from the Diocesan Fund for Human Need to FACETS, a local charity that Epiphany supports). And as noted above, Epiphany received assistance from Truro Episcopal Church as well.

Epiphany has admitted “that certain of the clergy employed by the congregation prior to December 10, 2006 were ordained by the Protestant Episcopal Church USA.” PX-EIPPH-003-014. In fact, Epiphany has had only two Rectors, and both were Episcopal priests. The first was the Rev. Reardon. *See, e.g.*, Tr. 813. In 1997, the Rev. Rauh came to Epiphany, succeeding the Rev. Reardon. The Rev. Rauh also was an Episcopal priest. *E.g.*, Tr. 2302-03; PX-EIPPH-277-005 - 006; PX-EIPPH-281-003. Bishop Lee accepted Rauh into the Diocese and installed him during a visit to Epiphany. *E.g.*, PX-EIPPH-077-001; Tr. 2305-06; *see* PX-EIPPH-136-001 (letter from Rauh requesting canonical residency and installation, “an important event for the Epiphany family, and also my own family,” and looking forward to upcoming clergy conferences); PX-EIPPH-135-001 (letter dimissory from the Episcopal Bishop of Alabama); PX-EIPPH-277-007 (letter of institution). The Rev. Rauh served at Epiphany until 2007, when he was inhibited and removed by Diocesan authorities. *See* PX-COM-253; PX-COM-254; PX-COM-274; PX-COM-275; PX-EIPPH-232-002. Assisting clergy at Epiphany also were

Episcopal clergy. *See, e.g.*, PX-EIPPH-282-004; PX-EIPPH-071-001.

As all Episcopal clergy have long done, Epiphany has admitted in this litigation that “at their ordination, current congregation clergy made a declaration similar in form and substance” to this: “I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.” PX-EIPPH-003-012 - 013.

The evidence shows that the Epiphany involved the Diocese in clergy searches and adhered to Diocesan rules and policies. *See* Tr. 2105-08 (Epiphany witness Murray Black); PX-EIPPH-069-001 (the Rev. Reardon writing to Bishop Lee in April 1991 “[i]n compliance with the appropriate Diocesan and National Church Canons ... to inform you of my intention to issue a Call to the Rev. Elizabeth Persis Bryan as Assistant Rector”); PX-EIPPH-070-001 (response from Bishop Lee consenting and suggesting based on experience that the call include a provision addressing notice of termination); PX-EIPPH-071-001 (letter of call, noting that “[t]he Bishop of Virginia has concurred” and “has recommended that the question of termination be addressed” and including such a notice provision); PX-EIPPH-119 (1989 letter from the Rev. Reardon to Bishop Lee, stating: “In compliance with Title III, Canon 14, Sec. I(b) (Canons of the Episcopal Church) I have, with the approval of the Vestry of the Church of the Epiphany, selected the Rev. Roger Hearn to become Assistant to the Rector of this Congregation. An appropriate Call will be extended to Mr. Hearn upon receipt of your response”).

In the rector search process, the evidence shows that Epiphany secured Diocesan approval of a parish profile, sought and conformed to Diocesan salary recommendations, reaped the benefits of Diocesan experience, and obtained candidates’ names from the Diocese and from the Episcopal Church’s clergy database. *See* PX-EIPPH-124 (letter from the Senior Warden to

Bishop Lee requesting “a visit with you to learn about the manner and timing of the entire process”); PX-EIPPH-125-001 (December 1995 letter from the Rev. Reardon to the Bishops, reporting on a parish breakfast and meeting at which a member of the Diocesan staff spoke, “answered questions ... in a most helpful way,” gave an “outstanding” presentation, and “shar[ed] an extremely positive spirit in which this whole effort should be carried out”); PX-EIPPH-168-002 (April 1996 letter from the Senior Warden to Bishop Jones, stating: “You helped get us off to good start on our new search for an interim rector and after hearing from our search committee you gave us good advice on that process”); PX-EIPPH-126-001 (May 1996 Vestry minutes recording that “[t]he draft Parish Profile had been distributed” and that after comments the search committee would prepare the final draft, submit it to the Vestry for approval, and then send it “to the Diocesan Offices for comment and approval”); PX-EIPPH-128-001 (June 1996 minutes recording approval of a motion “that we forward the Parish Profile to the Bishops office for comment and approval”); PX-EIPPH-273-001 (July 1996 minutes showing a visit from Diocese’s Executive Director of Communications to discuss the profile); PX-EIPPH-130-001 (August 1996 minutes recording that “a letter was received from the Bishop’s office on July 16th with praise for our Parish Profile and only few minor comments,” which “are being addressed,” and that “if the Diocese stated that the salary package should be adjusted,” then Epiphany “would work ... to make the necessary adjustments”); PX-EIPPH-131-001 - 002 (September 1996 minutes recording that the Diocese recommended “more than a 5% change” in the salary range for the new rector and the Vestry’s approval of the higher numbers); PX-EIPPH-132-001 (October 1996 minutes recording that the Search Committee “has received names from the computer listing at the National Church and from Bishop Lee’s office”); PX-EIPPH-133-001 (letter from Bishop Lee identifying candidates).

Epiphany also endorsed and sponsored individuals seeking to become Episcopal priests. *See, e.g.*, PX-EIPPH-121, PX-EIPPH-122, and PX-EIPPH-123 (endorsements of Dennis Ackerson, who was then called, with the blessing of the Bishops, to be Assistant Rector); PX-COM-233-190 (Ackerson's ordination); PX-EIPPH-138, PX-EIPPH-138a, and PX-EIPPH-139 (endorsements and documents regarding Joseph Murphy's ordination); PX-EIPPH-221-002 (the Rev. Rauh "reported concerning Richard Fichter's status in becoming a Postulate [*sic*] for Holy Orders"). Those persons went on to serve as Episcopal clergy in the Diocese. *E.g.*, PX-EIPPH-257-054; Tr. 841. As recently as October 2005, the Diocese accepted a candidate for holy orders from Epiphany. PX-COM-246A-219.

Epiphany based its worship on the Episcopal Church's 1979 Book of Common Prayer. *E.g.*, PX-EIPPH-072-002 (November 1991 Epiphany newsletter noting its move "from our Worship Booklets into our Prayer Books" and explaining "We use the Prayer Book because we are Episcopalians and are so required by Canon Law. In the past, when we were in temporary quarters, the Bishop allowed us to reproduce parts of the Prayer Book since we could not store books. We now have the richness of all the Book for our various Services"). Although at trial the Rev. Rauh disagreed with his predecessor about whether using the BCP was required, Rauh admitted both that Epiphany did use the BCP and that the Senior Warden's 1997 letter to the congregation accurately conveyed Rauh's endorsement of the BCP as "the resource for the structure and content of worship." Tr. 2292, 2308; *see* PX-EIPPH-077-002.

Epiphany obtained Diocesan licenses for its lay ministers. Tr. 2312; *see* Tr. 850-53; PX-EIPPH-036a. On each application, the Rector certifies "train[ing] in accordance with the Canons and the Diocesan Guidelines," and the person "agree[s] to conform to the Canons, the Diocesan Guidelines, and the direction of the Bishop" and Rector. *E.g.*, *id.* at -011.

Epiphany used the Episcopal Hymnal, a resource that local Episcopal churches are not required to use but that has long been produced by the Church for their benefit. Tr. 2291, 2308; *see* PX-EPIPH-277-010 - 011 (a copy of the 1940 Hymnal found at Epiphany), -116 - 17 (pictures of 1982 Hymnals in Epiphany's sanctuary).

Epiphany has obtained business methods manuals and other publications from the Church and the Diocese. *See, e.g.*, in addition to the other references herein, PX-EPIPH-076-001 and - 003 (the new Epiphany treasurer, reporting to the Vestry in April 1995 that he had "obtained the Manual of Business Methods in Church Affairs from the General Convention of The Episcopal Church and will report back to the Vestry on significant topics," that he "will have at least one extra copy of this manual made and available in the Church library or other appropriate place," and that he had "contacted the office of the Treasurer for the Diocese of Virginia and have requested literature ... in order to assess how we are doing things in relation to other Episcopal Churches in Virginia"); PX-EPIPH-180-007 - 008 (1992 Vestry response to audit, agreeing to check that Epiphany has the latest financial materials from the Diocese and to "call upon the specialists and consultants of the Diocese as desired and needed"); PX-EPIPH-213 (an Episcopal Church Building Fund publication in Epiphany's files); PX-EPIPH-277-024 - 036 (pictures of Diocesan and Church publications in Epiphany's parish office). Epiphany's members have been sent the *Virginia Episcopalian* newspaper. *See, e.g.*, PX-EPIPH-275-001.

Many places in this summary reflect benefits, including spiritual ones, that accrued to Epiphany from its membership in the Diocese. *See also, e.g.*, PX-EPIPH-208-003 - 004 ("Robin Rauh reported on the Region VII Prayer Ministry for the clergy in the region.... The prayer support is great gift for our priests"); PX-EPIPH-263-001 (a 1998 letter by the Vestry, stating: "We join with you in affirming the importance of the Diocese for the ongoing building of the

Kingdom of God here in Virginia. The episcopacy is the place of unity in the Church and we seek that unity by supporting our bishop”). The best summary may be the concluding words of Senior Warden Murray Black, writing to Bishop Jones in April 1996: “You are truly family here at Epiphany. You and all the Bishops have been so kind and gracious to us during our short life as a Body of Christ in western Fairfax. You all have ministered mightily in the name of our Lord and Savior here at Epiphany. I think that our people have a new view of what the diocese means to our Church.” PX-EIPPH-168-003.

Between 1986 and 2005, Epiphany submitted annual parochial reports to the Diocese, as required by canon. *See* DCOE-267 through DCOE-286. After the January 2007 vote, Epiphany did not submit a report for 2006. The continuing Episcopal congregation has submitted reports for 2007-10. *See* DCOE-516 through DCOE-519. Epiphany knew that the parochial reports were the basis of its representation at Annual Council. *See, e.g.*, PX-EIPPH-189 (Epiphany’s certification form regarding Council representation, and a letter from the Diocese regarding same); PX-EIPPH-190 through PX-EIPPH-194 (same).

Epiphany has been represented at every Annual Council since 1986. *See, e.g.*, PX-COM-226-024; PX-COM-227-025 and -069; Tr. 2309; Exhibit A. The continuing Episcopal congregation of Epiphany has continued to be part of the Annual Council of the Diocese since 2007. *See id.*; DCOE-516 through DCOE-519. Epiphany viewed its delegate as a representative of the church. *E.g.*, PX-EIPPH-206-001 (a job description drafted by Vestry members after September 2000 meeting, *see* PX-EIPPH-205-003).

The Vestry received reports from Epiphany’s members of Council, and on occasion Council matters were publicized to the church. *See, e.g.*, PX-EIPPH-198-002 (“Rita Starks reported on the Diocesan Council Meeting”); PX-EIPPH-201-003 (“Mike Glor, delegate to

Diocesan Council, distributed copy of a motion being considered”); PX-EIPPH-210-003 (“Robin reported that the Diocesan council went very well”); PX-EIPPH-199-001, -005 (January 1995 newsletter, reporting on upcoming Council and election of a Suffragan Bishop).

Epiphany’s delegates were not potted plants at Annual Council. They understood that Council governed the Diocese, and they participated in Diocesan governance. *See, e.g.*, PX-COM-228-067 (the Rev. Reardon served on the Resolutions Committee); PX-EIPPH-078a-001 (the second page of PX-EIPPH-078, noting the Vestry’s vote to have Epiphany co-sponsor an Annual Council resolution); PX-COM-231-133, PX-COM-232-118, PX-COM-233-139, PX-COM-234-116, and PX-COM-235-135 (service on Committee on Evangelism); PX-COM-232-110 and PX-COM-233-130 (service on Commission on Church Planting); PX-COM-237-143; PX-COM-238-094, -142 (service on, and chair of, the Commission on Lay Ministry); PX-COM-242A-197 (the Rev. Rauh nominating a candidate for the Provincial Synod).

Since its beginning, Epiphany has participated in regional organizations of the Diocese. Indeed, in late 1986, Epiphany sought and received the approval of the Region 7 Council before petitioning the Annual Council for church status. PX-EIPPH-010-002 - 003. Even before Epiphany’s beginning, Region 7 consented to Epiphany’s start as a mission of a founding church under Diocesan Canon 10.9. *See* PX-EIPPH-011-001 (“The Vicar reported that Region VII has endorsed parish status for the Church of the Epiphany. The application for parish status will be presented to the Executive Board of the Diocese on Monday, 11 December 1986 and to the Diocesene [*sic*] Council in January 1987”). Epiphany’s participation continued in later years. *See, e.g.*, PX-EIPPH-018-002 (2002 Vestry minutes recording the Rev. Rauh’s report on Region 7 meetings, including discussion of the Region’s Habitat for Humanity project); PX-EIPPH-209-002 (December 2003 letter from the Rev. Rauh, as Dean of the Region). Indeed,

both of Epiphany's rectors have served as Dean of Region 7. Tr. 823, 2310; PX-COM-235-131.⁵⁷ A layperson from Epiphany also served as President of Region 7 in 2003. PX-COM-243A-332; PX-EPIPH-260-016.

Epiphany's leaders also attended Diocesan conferences and events and, where necessary, requested permission to be excused. *See, e.g.*, PX-EPIPH-018-002; PX-EPIPH-188-001; PX-EPIPH-268-001; PX-EPIPH-197-003 ("The Rector and the Assistant Rector will be gone May 3, 4 & 5 to the clergy/spouse conference at Shrinemont").

Epiphany made financial contributions to the Diocese throughout its existence. DCOE-041-359 (aggregating data from other exhibits); DCOE-524-2838. After 2003, Epiphany continued to recognize an obligation to contribute to the Diocese and did so. *See id.*; Tr. 2297; PX-EPIPH-269-002. Epiphany also participated on occasion in other Episcopal Church or Diocesan special collections. *See, e.g.*, PX-EPIPH-196-001 (recording Vestry approval "that Advent Calendar/Love boxes for the Presiding Bishop's Fund be purchased for distribution to Parish families"); Tr. 2297 (Epiphany gave loose plate when Bishops visited).

Epiphany used Diocesan and Episcopal facilities for events until the Rev. Rauh began discouraging that practice in approximately mid-2004. *See* DCOE-289-1368 (2003 women's retreat at Roslyn); Tr. 824 (witness attended events at Shrine Mont); PX-EPIPH-034-001 (February 1997 vestry retreat held "at the College of Preachers and Cardinals on the grounds of the Washington Cathedral"); PX-EPIPH-200-003 (March 1995 Vestry retreat, same location); PX-EPIPH-262-001 (a 1997 youth retreat at Buckeystown, "a Maryland Diocesan Center for the Episcopal Church"); PX-EPIPH-234-002 (June 2004 minutes: "Robin believes we need to not

⁵⁷ As Epiphany's 2002 Annual Report stated, "[t]he Dean acts for and represents the Bishop in Regional Councils, in the pastoral care of the clergy and congregations, in contact with vacant cures, and serves as pastoral liaison for the Bishop in regional matters." PX-EPIPH-259-016.

use Diocesan facilities if we are not supporting them. The issue needs to be raised with those who are planning events and have reserved diocesan facilities”).

Epiphany has admitted that “at certain times prior to December 10, 2006 the Bishop of the Diocese or another bishop acting with his knowledge and concurrence or as his representative visited the congregation and performed certain Episcopal acts.” PX-EIPPH-003-015. Indeed, the record reflects regular visits by Bishops of the Diocese throughout Epiphany’s history. *See, e.g.*, Exhibit B; PX-EIPPH-092-001, -004 (letter from Bishop Lee announcing the 1994 visitation schedule and listing Epiphany); PX-EIPPH-093-001 (the program from that scheduled service welcoming Bishop Lee); PX-EIPPH-114 and PX-EIPPH-113 (documenting Bishop Jones’ April 6, 2005, visitation); PX-EIPPH-278-001 (a picture of Bishop Lee and Epiphany parishioners, *see* Tr. 829).

When Epiphany asked to have a non-Virginia bishop perform Episcopal services, Bishop Lee had the right to refuse and on one occasion did so. Tr. 2295-96. Both before and after any theological disagreement developed, however, Bishop Lee was willing to invite another bishop in his stead. *See* PX-EIPPH-088-001 and PX-EIPPH-089 (a 1990 request by the Rev. Reardon and Bishop Lee’s agreement and invitation); PX-EIPPH-090-001 (Vestry minutes recording the visit); Tr. 2296 (the Rev. Rauh: after the summer of 2003, “the retired archbishop of Canterbury, Lord Carey, was given permission by Bishop Lee to conduct a joint confirmation service at which Epiphany joined in”).

Other Diocesan officials also have spoken at Epiphany. *See, e.g.*, DCOE-156-673 (the Director of Roslyn was the speaker at Epiphany’s 1997 parish retreat); PX-EIPPH-185-001 (at a Vestry meeting, an Episcopal rector, the “member of the Executive Board of the Annual Council from Region 7,” “spoke on the ministry and programs of the Diocese for 1995” and “distributed

a brochure outlining the programs”); PX-EIPPH-264-001 (similar visit to discuss Region mission efforts and seek input on Diocesan programs).

Epiphany has admitted that “current members” of its vestry who were elected prior to the congregation’s January 2007 vote to disaffiliate “made some type of vestry declaration similar in form and substance” to that required by Diocesan Canon 12.8. PX-EIPPH-003-010 - 012; *see* PX-COM-003-022. In fact, Epiphany’s records contain copies of the declaration required by the Diocesan Canons signed by the members of Epiphany’s vestry beginning in the church’s inaugural year and continuing until 2006. *See* PX-EIPPH-021 (undated but contained in 1986-87 records); PX-EIPPH-022 through -032; PX-EIPPH-033 (dated 2006); Tr. 832-33, 2387. Even in years for which no such document is in evidence, the vestry declaration was likely taken, and Epiphany’s records show that the declaration was taken before the congregation as a whole on at least some occasions. *See* PX-EIPPH-034-002 (Vestry minutes from January 1997, a year for which no signed document is in evidence, stating “All vestry members were reminded to attend one of the services on 26 January to sign the vestry declaration in front of the congregation”); Tr. 2118-19 (signing the oath was “a ceremonial occasion” which “occurred in a regular Sunday service ...”). At all times, the oaths or declarations signed by Epiphany’s vestry included explicit “assent and approbation” to, *inter alia*, the “discipline of The Episcopal Church.”

The Rev. Rauh admitted that he participated in the Diocesan health insurance plans and that other employees also had Diocesan health insurance. Tr. 2311. When an interim rector died in 1996, the Diocese and Epiphany shared in the expense of continuing to provide health benefits to his widow, and Diocesan staff assisted her with insurance and administrative matters. *See, e.g.*, PX-EIPPH-127-001; PX-EIPPH-168-001; PX-EIPPH-170-001 - 002; Tr. 2116-18.

As provided in Diocesan Canon 13.5, Epiphany obtained property insurance and named

the Diocese as an additional insured. PX-EIPPH-172-002; PX-EIPPH-171-001; PX-EIPPH-167-001. At times, Epiphany obtained insurance from Church Insurance Company. *See, e.g.*, PX-EIPPH-173 and PX-EIPPH-174. When an automobile accident occurred involving Epiphany's policy and a parishioner's personal policy, the parties sought and obtained analysis and advice from the Diocesan Treasurer, Mike Kerr. *See* PX-EIPPH-175; Tr. 684-87.

Epiphany has been known and recognized internally and to the community as an Episcopal Church. For example, Epiphany has consistently used the word "Episcopal" as part of its name in land records and contracts. *See, e.g.*, PX-EIPPH-046-001 (March 29, 1988, Order of this Court); PX-EIPPH-057-001; PX-EIPPH-058-001; PX-EIPPH-059-001; PX-EIPPH-060-001; PX-EIPPH-061-001; PX-EIPPH-062-001; PX-EIPPH-063-002; PX-EIPPH-064-002. Epiphany also used the word "Episcopal" on letterhead, signs, and other materials until after the vote to disaffiliate, when its leaders and counsel sought to effectuate "the expeditious removal of references to the name and symbols of the Episcopal Church from signage, letterhead, etc" as part of efforts "to protect our property." PX-EIPPH-251-001; *see, e.g.*, Tr. 854-55 (Episcopal signage); PX-EIPPH-276-001 and DCOE-398 through DCOE-415 (letterhead examples from various years). Epiphany displayed the Episcopal Church flag in its sanctuary. Tr. 830. Epiphany has described itself as an Episcopal church in media advertisements. *See* PX-EIPPH-261-001. And finally, Epiphany acted fully as an Episcopal church would act throughout its history (prior to preparations for secession), as shown throughout this summary.

CONCLUSION

The Diocese is entitled to a judgment in its favor, affirming its contractual, proprietary, and trust interests in each and all of the real and personal properties at issue in these cases; directing and requiring the Trustee defendants to convey and transfer the legal title to such

properties to the Bishop of the Diocese; ordering each defendant Congregation to account for their use of all such property since the dates of their secession from the Diocese and the Episcopal Church; and dismissing the Congregations' counterclaims with prejudice.

Respectfully submitted,

Dated: August 5, 2011

THE PROTESTANT EPISCOPAL CHURCH
IN THE DIOCESE OF VIRGINIA

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CERTIFICATE OF SERVICE

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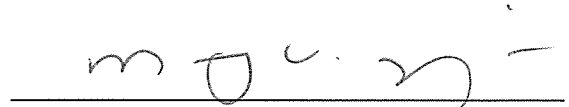
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A handwritten signature in black ink, appearing to read "m e kostel", is positioned above a solid horizontal line.

Annual Council representation summary – Table 1 (1785 – 1960)

Each column contains the trial exhibit page number(s), without leading zeros, showing representation. A blank indicates no evidence in the Journal of representation at that Council. “n/a” shows years in which a church did not exist.

Year	Ex. #	TFC	Truro	St. S	St. P
1785	PX-COM-071	296	n/a	n/a	n/a
1786	PX-COM-071	305	n/a	n/a	n/a
1787	PX-COM-071	311	n/a	n/a	n/a
1835	PX-COM-071		n/a	n/a	
1836	PX-COM-072	8	n/a	n/a	
1837	PX-COM-073		n/a	n/a	2
1838	PX-COM-074	3	n/a	n/a	2
1839	PX-COM-075	3	n/a	n/a	4, 17
1840	PX-COM-076	3	n/a	n/a	
1841	PX-COM-077	4	n/a	n/a	4, 16
1842	PX-COM-078		n/a	n/a	9, 18
1843	PX-COM-079	2, 4, 28		n/a	3, 4, 21
1844	PX-COM-080			n/a	4, 25
1845	PX-COM-081			n/a	3, 33
1846	PX-COM-082	3	2, 45	n/a	3, 39
1847	PX-COM-083	2, 40	2, 40	n/a	3, 15, 37
1848	PX-COM-084	5, 30	5, 34	n/a	5, 32
1849	PX-COM-085	4, 28	4, 33	n/a	4, 31
1850	PX-COM-086	3, 5	3, 5	n/a	5, 8, 42
1851	PX-COM-088	4, 6, 10		n/a	5, 9, 65
1852	PX-COM-089	4, 11, 50	4, 11, 50	n/a	

Year	Ex. #	TFC	Truro	St. S	St. P
1853	PX-COM-090			n/a	
1854	PX-COM-091	9		n/a	16, 83
1855	PX-COM-092			n/a	20, 88
1856	PX-COM-093	7, 22, 86	7, 86	n/a	10, 20, 113
1857	PX-COM-094	5, 20, 83	5, 20, 84	n/a	44, 108
1858	PX-COM-095	5, 16, 130	16, 130	n/a	11, 104
1859	PX-COM-096	5, 16, 68	5, 16, 68	n/a	9, 17, 91
1860	PX-COM-097	5, 17	5, 17	n/a	
1861	PX-COM-098	9, 21	9, 21	n/a	
1867	PX-COM-104		9, 18, 93	n/a	9, 18, 111
1868	PX-COM-105		14, 95	n/a	9
1869	PX-COM-106			n/a	17
1870	PX-COM-107		8, 132	n/a	8, 167
1871	PX-COM-108		7, 19, 132	n/a	19, 163
1872	PX-COM-109		10, 15	n/a	8, 187
1873	PX-COM-110		8, 13	n/a	12
1874	PX-COM-111		8, 12		
1875	PX-COM-112		12, 16		9
1876	PX-COM-113	20, 30	16	14, 197	13, 202

Annual Council representation summary – Table 1 (1785 – 1960)

Year	Ex. #	TFC	Truro	St. S	St. P
1877	PX-COM-114	21	13, 21	10, 201-02	10
1878	PX-COM-115	12, 15, 179	12, 16		9
1879	PX-COM-116	17	12, 13, 16		10, 16
1880	PX-COM-117	13, 16	13, 18		9
1881	PX-COM-118	13, 173	13, 18, 172		10, 16, 224
1882	PX-COM-119	13, 20	10, 13, 159-60	9, 13	7
1883	PX-COM-120	12, 16	12, 16, 183-84	7, 15, 228-29	9, 14
1884	PX-COM-121	13, 24, 150	10, 12, 150	11	7, 14
1885	PX-COM-0122	11, 14, 23, 166	11, 16		9
1886	PX-COM-0123	14, 22, 174	11, 14		9, 14
1887	PX-COM-124	10, 14, 21, 158	10, 13		8, 13
1888	PX-COM-125	12, 14, 22, 169	12, 16	9, 211	10, 219
1889	PX-COM-126	14	11, 16		12, 229
1890	PX-COM-127	15	16		12, 16, 250
1891	PX-COM-128	15	15		13, 255-56
1892	PX-COM-129	20, 26, 202	12		15

Year	Ex. #	TFC	Truro	St. S	St. P
1893	PX-COM-130	6, 11, 24, 141	11	6, 169	
1894	PX-COM-131	26, 32, 38	28, 31	26, 185	30
1895	PX-COM-132	8, 14, 26	12	8, 178	10
1896	PX-COM-133	5, 6, 10	6	4, 94	5, 6
1897	PX-COM-134	5, 6, 28	5, 6	4, 85	5, 7
1898	PX-COM-136	5, 12	5, 6	4, 89	5, 6
1899	PX-COM-137	5, 7, 17	5, 6	4, 90	5, 6
1900	PX-COM-138	5, 6	5, 6, 66		6
1901	PX-COM-139	5, 7	5, 6		4, 6
1902	PX-COM-140	5, 6, 12	5, 6		4, 6
1903	PX-COM-141	4, 5	5		4, 5
1904	PX-COM-142	5, 7	6		4, 7
1905	PX-COM-143		4, 6		4, 6
1906	PX-COM-144	5, 7	4, 6		4, 7, 126
1907	PX-COM-145	7	5, 7		5, 6
1908	PX-COM-146	7, 92	5, 7	5, 133	5, 6
1909	PX-COM-147	15, 18, 24	16, 20	18, 26	16, 18
1910	PX-COM-148	6, 8	6, 10	6	9
1911	PX-COM-149	14, 16	18		4, 15, 17
1912	PX-COM-150	5	6, 7		8
1913	PX-COM-151	7	6, 7		8
1914	PX-COM-152	6, 8	6, 8	7, 140	6, 9

Annual Council representation summary – Table 1 (1785 – 1960)

Year	Ex. #	TFC	Truro	St. S	St. P
1915	PX-COM-153	6, 8	6, 8	10	7, 10
1916	PX-COM-154	6	7, 9		8, 10
1917	PX-COM-155	9	7, 9	10	8
1918	PX-COM-156	6, 9	9		11
1919	PX-COM-157	5, 8	8	9	10
1920	PX-COM-158	5, 8	7, 8	9	5, 10
1921	PX-COM-159	6, 9	7, 9	6, 10	
1922	PX-COM-160	5, 9	7, 9	10	5, 10
1923	PX-COM-161	5, 8		9	
1924	PX-COM-162	6, 9	6, 9	11	11
1925	PX-COM-163	5, 8	6, 8	10	
1926	PX-COM-164	5, 8	6, 8	10	10
1927	PX-COM-165	6, 10	7, 10	11	8, 11
1928	PX-COM-166	5, 9	6, 9	10	7, 10
1929	PX-COM-167	5	6, 8	10	5
1930	PX-COM-168	5, 8	8	10	5, 10
1931	PX-COM-169	5	6	10	5, 10
1932	PX-COM-171	6, 9	6, 9	6, 10	5, 10
1933	PX-COM-172	8a	6, 8a	7, 10	6, 10
1934	PX-COM-173	6, 8	5, 8	10	5, 10
1935	PX-COM-174	7, 8	5	10	5, 10
1936	PX-COM-175	7, 9	5, 9	10	5, 10
1937	PX-COM-176	8, 10	6, 10	11	6
1938	PX-COM-177	7, 9	5, 9		5, 10
1939	PX-COM-178	7, 8	5, 8	10	5, 10
1940	PX-COM-179	7, 9	9	10	5, 10
1941	PX-COM-180	8, 10	8, 10	11	6, 11
1942	PX-COM-181	7, 9	9	11	5, 11
1943	PX-COM-182	7, 9	8, 9	11	5

Year	Ex. #	TFC	Truro	St. S	St. P
1944	PX-COM-183	7, 10	6, 10	11	5, 11
1945	PX-COM-184	13	9, 13	15	8
1946	PX-COM-185	9, 13	9, 13	14	8, 14
1947	PX-COM-186	9, 13	9, 13	15	8, 15
1948	PX-COM-187	9, 13	9, 13, 98	15	8, 15
1949	PX-COM-188	9, 13	8, 13	14	8, 14
1950	PX-COM-189	8, 13	7, 13	15	7, 15, 101
1951	PX-COM-190	8, 13	7, 13	15	10, 15
1952	PX-COM-191	11, 16	10, 16	18	14, 19
1953	PX-COM-192	9, 13, 15	8, 15	17	12, 17
1954	PX-COM-193	8, 15	7, 15	10, 17	11, 17
1955	PX-COM-194	8, 14	7, 12, 14	16	10, 16
1956	PX-COM-195	8, 13, 15	7, 13, 15	11, 17	11, 17
1957	PX-COM-196	7, 10, 13, 16	8, 13, 16	12, 18	11, 18
1958	PX-COM-197	8, 10, 17	9, 14, 17	13	12, 19
1959	PX-COM-198	7, 16	7, 8, 9, 16	18	12, 18, 129
1960	PX-COM-199	7, 12, 16	8, 16	12, 19	8, 19

“St. S” = St. Stephen’s

“St. P” = St. Paul’s

Annual Council representation summary – Table 2 (1961 – 2010)

Each column contains the trial exhibit page number(s), without leading zeros, showing representation or participation. A blank indicates no such evidence in the Journal for that Council. “n/a” shows years in which a church did not exist.

Year	Ex. #	TFC	Truro	St. Stephen’s	St. Paul’s	St. Margaret’s	Apostles	Epiphany
1961	PX-COM-200	8, 13, 16	9, 12, 16	19, 20	18	n/a	n/a	n/a
1962	PX-COM-201	7, 12	8, 13, 16	10, 12, 18	18	n/a	n/a	n/a
1963	PX-COM-202	7, 12, 17	9, 17, 20	11, 13, 19	19	n/a	n/a	n/a
1964	PX-COM-203	8, 12, 17	9, 17	13, 19	19	14, 20	n/a	n/a
1965	PX-COM-204	9, 11, 19	11, 18	10, 21, 32	15, 21	16, 23	n/a	n/a
1966	PX-COM-205	8, 19	10, 18, 22	10, 21, 23	21	15, 23	n/a	n/a
1967	PX-COM-206	8, 12, 19	10, 16, 19	10, 22, 23	21	9, 22, 54	n/a	n/a
1968	PX-COM-207	8, 12, 19	10, 16, 19	10, 19, 31, 22	19	8, 21	n/a	n/a
1969	PX-COM-208	7, 17	14, 16	9, 19, 20	19	8, 21	13	n/a
1970	PX-COM-209	7, 9, 17	9, 16	9, 19	19	15, 21	13, 16	n/a
1971	PX-COM-210	8, 18	18	9, 21	10, 18	9, 22	18	n/a
1972	PX-COM-211	8, 13, 18	9, 13, 18	9, 21	9, 21	9, 21	18	n/a
1973	PX-COM-212	15, 23	11, 15, 22	11, 20	19	10, 22	18, 22	n/a
1974	PX-COM-213	18, 26	13, 17, 25	11, 23	12	25	25	n/a
1975	PX-COM-214	11, 15, 18, 27, 28	17, 27	12, 25	13, 30	13, 27	17, 22, 27	n/a
1976	PX-COM-215	13, 16, 20, 36	36	13, 22, 33	14, 38	14, 35	35	n/a
1977	PX-COM-216	4, 7, 11, 32	8, 31	4, 29	34	5, 31	31	n/a
1978	PX-COM-217	8, 33	5, 9, 10	31	6, 35	6, 13, 33	13, 33	n/a
1979	PX-COM-0218	21, 51	10, 15, 51	17, 49, 76	11, 53	11, 19, 50	19, 51	n/a
1980	PX-COM-0219	29, 33, 43	22, 26-28, 42	40	23, 44	23, 42	31, 42	n/a
1981	PX-COM-0220	14, 18, 53	7, 12, 13, 53	51	8, 56	52	16, 53	n/a
1982	PX-COM-0221	18, 56	15, 16, 55	13, 53, 71	12, 58	16, 55	19, 55	n/a
1983	PX-COM-0222	10, 22, 60	14, 15, 60	12, 57	11, 62	16, 59	16, 19	n/a

Annual Council representation summary – Table 2 (1961-2010)

Year	Ex. #	TFC	Truro	St. Stephen's	St. Paul's	St. Margaret's	Apostles	Epiphany
1984	PX-COM-0223	14, 20, 27, 39	18, 19, 20, 38	16, 36	15, 41	20, 38	20, 23, 38	n/a
1985	PX-COM-0224	14, 18, 20, 26, 44	17, 18, 19, 23, 43	41	20, 46	16, 20, 43, 74	23, 43	n/a
1986	PX-COM-0226	14, 19, 20, 27, 45	17, 18, 19, 45	43	20, 22, 47	21, 44	17, 21, 24, 45	24
1987	PX-COM-0227	16, 29, 69	17, 20, 21, 22, 69	21, 67	24, 71	23, 68, 26	17, 20, 23, 25, 69, 72	16, 25, 69
1988	PX-COM-0228	16, 28, 62	16, 20, 21, 62	18, 67, 60	24, 64	22, 61, 26	17, 19, 23, 25, 61	16, 25, 61
1989	PX-COM-0229	16, 28, 62	16, 21, 27, 62	21, 60	24, 64	22, 26, 61	19, 62	25, 62
1990	PX-COM-0230	16, 27, 60	16, 21, 23, 27, 60	21, 58	23, 62	22, 60	17, 19, 60	24, 60
1991	PX-COM-0231	16, 28, 63	21, 23, 27, 63	16, 61	24, 65	62	17, 19, 20, 63	24, 63
1992	PX-COM-0232	16, 18, 20, 29, 61	14, 21, 23, 28, 61	28, 59	24, 63	17, 60	19, 20, 61	25, 61
1993	PX-COM-0233	16, 18, 20, 29, 65	15, 22, 23, 28, 64	28, 62	24, 66	17, 64	15, 19, 20, 64	25, 64
1994	PX-COM-0234	20, 22, 28, 65	18, 22, 23, 65	63	23, 67	17, 64	15, 19, 64	14, 24, 65
1995	PX-COM-0235	24, 26, 33, 76	23, 27, 32, 76	32, 73	79	21, 75	19, 24, 75	18, 29, 76
1996	PX-COM-0236	24, 26, 33, 76	27, 28, 32, 33, 76	21, 73	23, 79	21, 75	19, 24, 76	23, 76
1997	PX-COM-0237	25, 34, 82	21, 26, 32, 33, 82	19, 79	24, 85	19, 81	17, 22, 81	21, 82
1998	PX-COM-0238	24, 27, 32, 37, 81	23, 28, 29, 30, 36, 80	20, 78	26, 83	20, 80	18, 24, 80	81

Annual Council representation summary – Table 2 (1961-2010)

Year	Ex. #	TFC	Truro	St. Stephen's	St. Paul's	St. Margaret's	Apostles	Epiphany
1999	PX-COM-0239	24, 27, 32, 37, 79	21, 28, 29, 78	20, 76	26, 81	20, 78	24, 78	27, 31, 78
2000	PX-COM-0240	25, 28, 33, 37, 87	23, 30, 31, 36, 87	22, 23, 84	27, 90	22, 86	26, 86	28, 32, 87
2001	PX-COM-0241	28, 37, 86	21, 22, 29, 35, 86	21, 83	26, 89	21, 85	20, 25, 85	28, 32, 86
2002	PX-COM-0242A	55, 73, 74, 179	40, 42, 57, 58, 70, 178	41, 59, 172	52, 185	41, 177	40, 49, 177	55, 64, 178
2003	PX-COM-0243A	56, 75, 194	41, 44, 58, 59, 71, 195	43, 193	54, 191	71, 189	41, 50, 180	56, 65, 180
2004	PX-COM-0244A	48, 58, 78, 200	42, 44, 60, 61, 65, 201	43, 199	55, 197	196	42, 51, 186	58, 67, 186
2005	PX-COM-0245A	53, 63, 84, 197	46, 49, 65, 66, 198	47, 197, 210	60, 195	194, 207	46, 56, 186	72, 188
2006	PX-COM-0246A	12, 13, 16, 18	11, 13, 26	25	13	23	11, 12, 16	14, 18
2007	PX-COM-0247A	24		23, 74, 522		21, 74		11
2008	PX-COM-0248A	11, 15		39-40, 72, 110		18, 72		10, 15
2009	PX-COM-0249A	12, 16		12, 22, 436		20, 97		11, 16
2010	PX-COM-0276A	12, 16		12, 22, 361		20		11, 16

Bishops visitations summary

The following blocks of citations show visitations by Bishops to the churches at issue.¹

TFC

1837: PX-COM-0074-009 and PX-FALLS-0053-153; **1840:** PX-COM-077-005; **1843:** PX-COM-080-009 and PX-FALLS-053-163; **1845:** PX-COM-082-005; **1846:** PX-COM-083-010; **1848:** PX-COM-084-007; **1850:** PX-COM-088-028; **1855:** PX-COM-092-029; **1857:** PX-COM-095-033; **1858:** PX-COM-096-027; **1860:** PX-COM-098-043; **1872:** PX-COM-110-036; **1875:** PX-COM-113-044; **1877:** PX-COM-115-038, -043; **1879:** PX-COM-117-030; **1880:** PX-COM-118-041; **1882:** PX-COM-120-030; **1884:** PX-COM-122-029; **1885:** PX-COM-123-039; **1887:** PX-COM-125-034; **1889:** PX-COM-127-048; **1891:** PX-COM-128-035 and PX-COM-129-043; **1894:** PX-COM-132-042; **1896:** PX-COM-133-016; **1897:** PX-COM-134-023; **1898 -99:** PX-COM-137-020; **1900:** PX-COM-139-019; **1902:** PX-COM-140-023; **1904:** PX-COM-142-027; **1905:** PX-COM-144-023; **1906:** PX-COM-145-023; **1909-10:** PX-COM-148-017, -027 and PX-COM-149-059; **1911:** PX-COM-150-041; **1912:** PX-COM-151-046; **1914:** PX-COM-152-050; **1915:** PX-COM-154-042; **1916:** PX-COM-155-048; **1918:** PX-COM-157-049; **1919:** PX-COM-158-046, -047; **1920:** PX-COM-159-051; **1921:** PX-COM-160-054; **1923:** PX-COM-162-049; **1924:** PX-COM-163-053; **1925:** PX-COM-164-044; **1926:** PX-COM-165-042; **1927:** PX-COM-166-047; **1928:** PX-COM-167-040; **1929:** PX-COM-168-049; **1930:** PX-COM-169-041; **1931:** PX-COM-171-041; **1932:** PX-COM-172-071; **1934:** PX-COM-174-043; **1935:** PX-COM-175-037; **1936:** PX-COM-176-050; **1937:** PX-COM-177-044; **1938:** PX-COM-178-042; **1939:** PX-COM-179-047; **1940:** PX-COM-180-048; **1941:** PX-COM-181-055; **1942:** PX-COM-182-046; **1943:** PX-COM-183-047, -048; **1944:** PX-COM-184-054; **1945:** PX-COM-185-057; **1946:** PX-COM-186-051; **1947:** PX-COM-187-054; **1948:** PX-COM-188-059; **1949:** PX-COM-189-047; **1950:** PX-COM-190-042, -044; **1951:** PX-COM-191-049; **1952:** PX-COM-192-045, -046; **1953:** PX-COM-193-050, -051; **1954:** PX-COM-194-044, -045; **1955:** PX-COM-195-043; **1956:** PX-COM-196-046, -047; **1957:** PX-COM-197-047, -048; **1958:** PX-COM-198-043, -044; **1959:** PX-COM-199-059; **1960:** PX-COM-200-047, -048, -049; **1961:** PX-COM-201-048, -050; **1962:** PX-COM-202-055, -057; **1963:** PX-COM-203-061, -062, -063; **1964:** PX-COM-204-055, -057, -058; **1965:** PX-COM-205-056; **1966:** PX-COM-206-062; **1967:** PX-COM-207-065, -066; **1968:** PX-COM-208-082, -083, -084; **1969:** PX-COM-209-066; **1970:** PX-COM-210-070; **1971:** PX-COM-211-065; **1972:** PX-COM-212-078; **1973:** PX-COM-213-070; **1974:** PX-COM-214-071; **1975:** PX-COM-215-031; **1976:** PX-COM-216-107; **1977:** PX-COM-217-128; **1978:** PX-COM-218-157; **1979:** PX-COM-219-135 and DX-FALLS-225-245; **1980:** PX-COM-220-111 and PX-FALLS-223; **1981:** PX-COM-221-125; **1982:** PX-COM-222-132; **1983:** PX-COM-223-108;

¹ The Journals of the 1933, 1980, and 1983 Diocesan Councils – PX-COM-172, PX-COM-219, and PX-COM-222, respectively – provide parochial statistics, including confirmations, but do not identify the Bishops who administered the confirmations. Evidence at trial confirms that, in the Episcopal tradition, a Bishop is necessary for confirmation. Tr. 314, 3156, 4012. *See also* Tr. 2477.

Bishops visitations summary

1984: PX-COM-224-118, -119; **1985:** PX-COM-226-129, -131; **1986:** PX-COM-227-186; **1987:** PX-COM-228-194, -195;
1988: PX-COM-229-183, -184; **1989:** PX-COM-230-183 (2 visits); **1990:** PX-COM-231-200, -202; **1991:** PX-COM-232-191, -185;
1992: PX-COM-233-195; **1993:** PX-COM-234-171, -172, -174; **1994:** PX-COM-235-187, -189; **1995:** PX-COM-236-203, -204;
1996: PX-COM-237-196, -198; **1997:** PX-COM-238-195, -198; **1998:** PX-FALLS-410; **1999:** PX-COM-240-213;
2000: PX-COM-241-208; **2001:** PX-COM-242A-0445; **2002:** PX-COM-243A-430, -433; **2003:** PX-COM-244A-0437;
2004: PX-COM-245A-0440; **2005:** PX-COM-246A-0242

Truro

1844: PX-COM-081-005; **1845:** PX-COM-082-005; **1846:** PX-COM-083-010; **1847:** PX-COM-083-007;
1850: PX-COM-088-028; **1852:** PX-COM-089-016; **1854:** PX-COM-092-029; **1859:** PX-COM-097-022;
1868: PX-COM-106-044; **1872:** PX-COM-110-036; **1874:** PX-COM-112-031; **1875:** PX-COM-113-044;
1878: PX-COM-115-043; **1879:** PX-COM-117-034; **1881:** PX-COM-118-046; **1883:** PX-COM-120-034;
1885: PX-COM-122-032; **1891:** PX-COM-128-035; **1887:** PX-COM-125-034; **1889:** PX-COM-127-048;
1891: PX-COM-129-043; **1894:** PX-COM-132-042; **1896:** PX-COM-134-022; **1898:** PX-COM-137-020;
1900: PX-COM-139-018; **1901:** PX-COM-139-021; **1902:** PX-COM-140-024; **1903:** PX-COM-142-024;
1904-05: PX-COM-144-021 (two visits); **1906:** PX-COM-145-024; **1909:** PX-COM-147-030; **1910:** PX-COM-148-026, -054;
1912: PX-COM-151-048; **1914:** PX-COM-152-050; **1915:** PX-COM-153-054; **1916:** PX-COM-155-048 (two visits);
1917: PX-COM-156-042; **1920:** PX-COM-159-051; **1921:** PX-COM-160-054; **1924:** PX-COM-163-056;
1925: PX-COM-164-045; **1926:** PX-COM-165-043; **1927:** PX-COM-166-047; **1928:** PX-COM-167-041;
1929: PX-COM-168-049, -051; **1934:** PX-COM-174-043; **1936:** PX-COM-176-047, -048; **1937:** PX-COM-177-046;
1939: PX-COM-179-048; **1940:** PX-COM-180-048; **1941:** PX-COM-181-056; **1943:** PX-COM-183-048;
1944: PX-COM-184-054; **1945:** PX-COM-185-057; **1946:** PX-COM-186-051; **1947:** PX-COM-187-054;
1949: PX-COM-189-046 (two visits); **1951:** PX-COM-191-048; **1952:** PX-COM-192-045; **1953:** PX-COM-193-049;
1954: PX-COM-194-043, -044; **1955:** PX-COM-195-042; **1956:** PX-COM-196-046; **1957:** PX-COM-197-047;
1958: PX-COM-198-042; **1959:** PX-COM-199-058; **1960:** PX-COM-200-048; **1961:** PX-COM-201-049;
1962: PX-COM-202-057; **1963:** PX-COM-203-061; **1964:** PX-COM-204-057; **1965:** PX-COM-205-056;
1966: PX-COM-206-063; **1967:** PX-COM-207-065; **1968:** PX-COM-208-083; **1969:** PX-COM-209-066, -068;
1970: PX-COM-210-070; **1971:** PX-COM-211-065; **1972:** PX-COM-212-080; **1973:** PX-COM-213-070;
1974: PX-COM-214-068, -070; **1975:** PX-COM-211-031 (two visits); **1976:** PX-COM-216-107, -108;
1977: PX-COM-217-0128 (two visits); **1978:** PX-COM-218-0157 (two visits); **1980:** PX-COM-220-0112;
1981: PX-COM-221-0124, -125; **1983:** PX-COM-223-109; **1984:** PX-COM-224-0118; **1985:** PX-COM-226-0129, -130;

Bishops visitations summary

1986: PX-COM-227-186; **1987:** PX-COM-228-194; **1988:** PX-COM-229-183, -184; **1989:** PX-COM-230-183;
1990: PX-COM-231-200; **1991:** PX-COM-232-183; **1992:** PX-COM-233-195; **1993:** PX-COM-234-172;
1994: PX-COM-235-187; **1995:** PX-COM-236-203; **1996:** PX-COM-237-196, -198; **1997:** PX-COM-238-195;
1998: PX-COM-239-180, -182; **1999:** PX-COM-240-214, -215; **2000:** PX-COM-241-208, -209; **2001:** PX-COM-242-326, -328;
2002: PX-COM-243A-434, -435; **2003:** PX-COM-244A-440, -442; **2004:** PX-COM-245A-438, -440; **2005:** PX-COM-246-242

St. Paul's

1836: PX-COM-073-004; **1838:** PX-COM-075-007; **1842:** PX-COM-079-005; **1843:** PX-COM-080-009;
1846: PX-COM-083-010; **1850:** PX-COM-088-028; **1852:** PX-COM-089-016; **1855:** PX-COM-093-024, -043;
1858: PX-COM-096-028; **1859:** PX-COM-097-022; **1860:** PX-COM-098-043; **1867:** PX-COM-105-025;
1869: PX-COM-107-041; **1870:** PX-COM-108-034; **1872:** PX-COM-110-038; **1874:** PX-COM-112-041;
1876: PX-COM-114-034; **1878:** PX-COM-116-033; **1880:** PX-COM-118-042; **1883:** PX-COM-120-034;
1886: PX-COM-124-038; **1888:** PX-COM-126-039; **1890:** PX-COM-127-051; **1891:** PX-COM-129-036;
1894: PX-COM-132-044, -046; **1895:** PX-COM-133-015; **1896:** PX-COM-134-021; **1897:** PX-COM-136-017;
1898: PX-COM-137-029; **1899:** PX-COM-138-019; **1900:** PX-COM-139-015; **1901:** PX-COM-140-022;
1902: PX-COM-141-024; **1904:** PX-COM-143-020; **1905:** PX-COM-144-021; **1907:** PX-COM-146-014;
1910: PX-COM-149-058; **1911:** PX-COM-150-041; **1914:** PX-COM-153-054; **1915:** PX-COM-153-054;
1916: PX-COM-155-049; **1919:** PX-COM-158-045; **1920:** PX-COM-159-049; **1921:** PX-COM-160-053;
1923: PX-COM-162-053; **1924:** PX-COM-163-057; **1925:** PX-COM-164-046; **1927:** PX-COM-166-045;
1928: PX-COM-167-040; **1929:** PX-COM-168-049; **1930:** PX-COM-169-040; **1934:** PX-COM-174-044;
1935: PX-COM-175-037; **1936:** PX-COM-176-050; **1937:** PX-COM-177-044; **1939:** PX-COM-179-049;
1941: PX-COM-181-057; **1942:** PX-COM-182-046; **1943:** PX-COM-183-047; **1944:** PX-COM-184-055;
1945: PX-COM-185-056 (two visits); **1946:** PX-COM-186-052; **1947:** PX-COM-187-053; **1948:** PX-COM-188-060;
1949: PX-COM-189-047; **1952:** PX-COM-191-048; **1953:** PX-COM-193-049; **1954:** PX-COM-194-045;
1955: PX-COM-195-043; **1956:** PX-COM-196-048; **1957:** PX-COM-197-047; **1959:** PX-COM-199-059;
1960: PX-COM-200-048; **1961:** PX-COM-201-049; **1962:** PX-COM-202-058; **1963:** PX-COM-203-062;
1964: PX-COM-204-056; **1965:** PX-COM-205-057; **1966:** PX-COM-206-062; **1968:** PX-COM-208-082;
1969: PX-COM-209-066; **1971:** PX-COM-211-065; **1972:** PX-COM-212-081; **1972:** PX-COM-212-081;
1973: PX-COM-213-069; **1974:** PX-COM-214-070; **1975:** PX-COM-215-032; **1976:** PX-COM-216-108;
1976: PX-COM-216-107; **1977:** PX-COM-217-129; **1978:** PX-COM-218-157; **1978:** PX-COM-218-157;
1980: PX-COM-220-112; **1981:** PX-COM-221-124; **1983:** PX-COM-223-107; **1984:** PX-COM-224-118;

Bishops visitations summary

1986: PX-COM-227-186; **1987:** PX-COM-228-194; **1988:** PX-COM-229-185; **1989:** PX-COM-230-183;
1990: PX-COM-231-201; **1991:** PX-COM-232-183; **1992:** PX-COM-233-197; **1993:** PX-COM-234-173;
1994: PX-COM-235-187; **1995:** PX-COM-236-204; **1996:** PX-COM-237-196; **1997:** PX-COM-238-197;
1998: PX-COM-239-181; **1999:** PX-COM-240-213; **2000:** PX-COM-241-208; **2001:** PX-COM-242-329;
2002: PX-COM-243A-0431; **2003:** PX-COM-244A-0438;

St. Stephen's

1879: PX-COM-116-035; **1881:** PX-COM-118-047, -051; **1884:** PX-COM-122-042; **1886:** PX-COM-123-033;
1887: PX-COM-125-034; **1890:** PX-COM-127-052, -268; **1890-91:** PX-COM-128-275; **1896:** PX-COM-134-021;
1898: PX-COM-136-020; **1899:** PX-COM-137-033; **1902:** PX-COM-141-024; **1905:** PX-COM-143-024;
1906: PX-COM-145-024; **1914:** PX-COM-153-049; **1915:** PX-COM-154-043; **1916:** PX-COM-155-049, -050;
1917: PX-COM-156-043; **1920:** PX-COM-159-048; **1922:** PX-COM-161-053; **1924:** PX-COM-163-058; **1926:** PX-COM-165-042;
1928: PX-COM-167-040; **1931:** PX-COM-171-041; **1934:** PX-COM-174-044; **1935:** PX-COM-175-037; **1936:** PX-COM-176-050;
1937: PX-COM-177-044; **1938:** PX-COM-178-042; **1940:** PX-COM-180-048; **1941:** PX-COM-181-056; **1943:** PX-COM-183-047;
1945: PX-COM-185-056; **1948:** PX-COM-188-060; **1949:** PX-COM-189-047; **1950:** PX-COM-190-044; **1951:** PX-COM-191-050;
1953: PX-COM-193-049; **1956:** PX-COM-196-047; **1957:** PX-COM-197-046; **1958:** PX-COM-198-044; **1959:** PX-COM-199-058;
1960: PX-COM-200-049; **1962:** PX-COM-202-057; **1963:** PX-COM-203-062; **1964:** PX-COM-204-058;
1966: PX-COM-206-063; **1968:** PX-COM-208-083; **1969:** PX-COM-209-068; **1970:** PX-COM-210-069;
1971: PX-COM-211-066; **1972:** PX-COM-212-079; **1973:** PX-COM-213-069; **1975:** PX-COM-215-032; **1977:** PX-COM-217-127;
1978: PX-COM-218-157; **1979:** PX-COM-219-133; **1980:** PX-COM-220-112; **1982:** PX-COM-222-131;
1983: PX-COM-223-108; **1987:** PX-COM-228-195; **1988:** PX-COM-229-183; **1990:** PX-COM-231-201;
1991: PX-COM-232-184; **1992:** PX-COM-233-196; **1993:** PX-COM-234-172; **1994:** PX-COM-235-188;
1995: PX-COM-236-203; **1996:** PX-COM-237-197; **1997:** PX-COM-238-195; **1999:** PX-COM-240-215;
2000: PX-COM-241-209; **2001:** PX-COM-242A-449; **2002:** PX-COM-243A-437; **2003:** PX-COM-244A-435;
2004: PX-COM-245A-435; **2005:** PX-COM-246A-239; **2006:** PX-COM-247A-251

St. Margaret's

1963: PX-COM-203-062; **1964:** PX-COM-204-056; **1965:** PX-COM-205-055; **1966:** PX-COM-206-062, -063;
1967: PX-COM-207-066; **1968:** PX-COM-208-082; **1969:** PX-COM-209-067; **1970:** PX-COM-210-068;

Bishops visitations summary

1971: PX-COM-211-065; **1972:** PX-COM-212-079, 080; **1973:** PX-COM-213-069; **1974:** PX-COM-214-070;
1975: PX-COM-215-032; **1976:** PX-COM-216-107; **1977:** PX-COM-217-128; **1978:** PX-COM-218-157;
1979: PX-COM-219-135; **1980:** PX-COM-220-112; **1981:** PX-COM-221-124; **1982:** PX-COM-222-132;
1983: PX-COM-223-108; **1984:** PX-STMARG-559; **1985:** PX-COM-226-129; **1986:** PX-COM-227-187;
1987: PX-COM-228-194; **1988:** PX-COM-229-184; **1989:** PX-COM-230-182; **1990:** PX-COM-231-201;
1991: PX-COM-232-182; **1992:** PX-COM-233-196; **1993:** PX-COM-234-172; **1994:** PX-COM-235-189;
1995: PX-COM-236-203; **1996:** PX-COM-237-198; **1997:** PX-COM-238-195; **1998:** PX-COM-239-181;
1999: PX-COM-240-214; **2000:** PX-COM-241-209; **2001:** PX-COM-242A-445; **2002:** PX-COM-243A-435;
2003: PX-COM-244A-441; **2004:** PX-COM-245A-436; **2005:** PX-COM-246A-238; **2006:** PX-COM-247A-255

Apostles

1969: PX-COM-209-068; **1970:** PX-COM-210-069; **1972:** PX-COM-212-080; **1973:** PX-COM-213-070;
1974: PX-COM-214-071; **1976:** PX-COM-216-107; **1977:** PX-COM-217-128; **1978:** PX-COM-218-157;
1980: PX-COM-220-112; **1981:** PX-COM-221-126; **1983:** PX-COM-223-108; **1984:** PX-COM-224-117;
1985: PX-COM-226-129; **1986:** PX-COM-227-186; **1987:** PX-COM-228-195; **1988:** PX-COM-229-184;
1989: PX-COM-230-183; **1990:** PX-COM-231-200; **1991:** PX-COM-232-183 (two visits); **1992:** PX-COM-233-195, -197;
1993: PX-COM-234-172; **1994:** PX-COM-235-188; **1995:** PX-COM-236-203, -205; **1996:** PX-COM-237-198;
1997: PX-COM-238-195; **1999:** PX-COM-240-213, -215; **2000:** PX-COM-241-207; **2001:** PX-COM-242A-0449;
2002: PX-COM-243A-0431, -435; **2003:** PX-COM-244A-0437; **2006:** PX-COM-247A-0254

Epiphany

1987: PX-COM-228-194; **1988:** PX-COM-229-184; **1989:** PX-COM-230-183; **1990:** PX-COM-231-200;
1991: PX-COM-232-185; **1991:** PX-COM-232-185; **1992:** PX-COM-233-195; **1993:** PX-COM-234-174;
1994: PX-COM-235-188; **1995:** PX-COM-236-204; **1996:** PX-COM-237-197; **1997:** PX-COM-238-196;
1998: PX-COM-239-179, -181; **1999:** PX-COM-240-213, -214; **2000:** PX-COM-241-206; **2001:** PX-COM-242a-0448 (two visits);
2002: PX-COM-243a-0429; **2003:** PX-COM-244a-0437; **2005:** PX-COM-246a-0235