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June 23, 2008

VIA HAND-DELIVERY

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

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

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

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

In re: Church of the Word, Gainesville; (Circuit Court of Prince William County; CL73464) (Circuit Court of Fairfax County; CL 2007-11514);

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

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

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

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

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

In re: Church at the Falls, The Falls Church; (Circuit Court of Fairfax County; CL 2007-5249);

The Protestant Episcopal Church in the Diocese of Virginia v. The Church at The Falls – The Falls Church (Circuit Court of Arlington County Case No. 07-125)(Circuit Court of Fairfax County; CL 2007-5250);

The Protestant Episcopal Church in the Dioceses of Virginia v. Potomac Falls Church (Circuit Court of Loudoun County Case No. 44149)(Circuit Court of Fairfax County; CL 2007-5362);

In re: Church of Our Savior at Oatlands; (Circuit Court of Fairfax County; CL 2007-5363);

The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Saviour at Oatlands (Circuit Court of Loudoun County Case No. 44148)(Circuit Court of Fairfax County; CL 2007-5364);

In re: Church of the Epiphany; (Circuit Court of Fairfax County; CL 2007-556);

The Protestant Episcopal Church in the Diocese of Virginia v. St. Margaret's Church (Circuit Court of Prince William Case No. CL 73465)(Circuit Court of Fairfax County; CL 2007-5682);

The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket (Circuit Court of Prince William County Case No. CL 73466)(Circuit Court of Fairfax County; CL 2007-5683);

The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word (Circuit Court of Prince William County Case No. CL 73464)(Circuit Court of Fairfax County; CL 2007-5684);

In re: St. Margaret's Church; (Circuit Court of Fairfax County; CL 2007-5685);

In re: St. Paul's Church, Haymarket; (Circuit Court of Fairfax County; CL 2007-5686);

The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church (Circuit Court of Northumberland County Case No. CL 07-16)(Circuit Court of Fairfax County; CL 2007-5902); and

In re: St. Stephen's Church; (Circuit Court of Fairfax County; CL 2007-5903).

Letter to Clerk of the Court
June 23, 2008
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Dear Ms. Brooks:

I am enclosing for filing in the above-styled case an original, CANA Congregations' Responsive Brief Pursuant to the Court's June 6, 2008, Order, plus twenty-one (21) copies of the one-page cover sheets to be placed in the file for the above-styled cases.

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

Very truly yours,

SANDS ANDERSON MARKS & MILLER, PC

A handwritten signature in black ink, appearing to read "G. O. Peterson", with a stylized flourish at the end.

George O. Peterson

cc: Seana C. Cranston, Law Clerk to the Honorable Randy I. Bellows (via hand-delivery)
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VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

**In re:
Multi-Circuit Episcopal Church
Litigation**

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

**THE CANA CONGREGATIONS' RESPONSIVE BRIEF
PURSUANT TO THE COURT'S JUNE 6, 2008, ORDER**

The Falls Church, Truro Church, Church of Our Saviour at Oatlands, Church of the Apostles, Church of the Epiphany, Church of the Word, St. Margaret's Church, Christ the Redeemer Church, St. Stephen's Church, Potomac Falls Church, and St. Paul's Church (collectively, "CANA Congregations"), by their counsel, hereby file this brief in response to the opening brief of the Episcopal Church and the Diocese of Virginia, pursuant to the Court's June 6, 2008, Order.

1. **Did the Supreme Court of Virginia, in *Green v. Lewis*, hold that a trial court presiding over a 57-9(A) petition must consider the factors set out in *Green v. Lewis*, in addition to making the determinations actually set out in 57-9(A)? Does the holding of *Green v. Lewis* apply only to proceedings under 57-15, or does it apply to proceedings brought under 57-9 as well?**

The Episcopal Church and the Diocese (collectively, “the Church”) admit that *Green* “did not explicitly address the question whether the neutral principles analysis applies to cases under § 57-9(A).” Br. 1. Nonetheless, asserting that “both parties invoked § 57-9 in *Green* and § 57-15 was not at issue,” the Church says *Green* “applies to church property disputes regardless of which, if any, Code section(s) may be invoked.” Br. 1. These assertions are without merit.

1. Each party’s petition in *Green* referred in passing to § 57-9, but the case was never *decided*—at either the circuit or Supreme Court level—under § 57-9. The circuit court’s opinion and order never cited § 57-9. Nor did the congregation cite § 57-9 before the Supreme Court.

Moreover, the Court in *Green* extensively discussed § 57-15. Quoting *Norfolk Presbytery*, the Court explained its decision there as follows: “We held that in the case of a supercongregational church Code 57-15 requires a showing that the property conveyance is the wish of the constituted authorities of the general church.” 221 Va. at 553 (quotation omitted). As this Court has recognized (Op. 73), *Norfolk Presbytery* grounded its “proprietary interest” analysis in its “construction of Code § 57-15,” holding that the denomination had to establish such an interest as a prerequisite for invoking the statute. 214 Va. at 503-07. *Green* simply applied this holding, explaining that “[i]n determining whether the [denomination] has a proprietary interest in the [local church’s] property, we look to our own statutes, to the language of the deed conveying the property, to the constitution of the general church, and to the dealings between the parties.” 221 Va. at 555. The “neutral principles” analysis of *Green* was thus based directly on § 57-15.

By contrast, neither *Norfolk Presbytery* nor *Green* analyzed § 57-9(A). Each involved a single congregation that became “independent.” *Green*, 221 Va. at 549; *Norfolk Presbytery*, 214

Va. at 501. The lone citation to § 57-9 in each case was simply to support the statement that Virginia law “recognizes a distinction between an autonomous congregation and one which is part of a supercongregational or hierarchical denomination in providing for the determination of property rights upon a division.” *Norfolk Presbytery*, 214 Va. at 502; *Green*, 221 Va. at 555.

And indeed it does. But the authority for this statement was *Baber v. Caldwell*, 207 Va. 694 (1967), which observed that *Episcopal* churches are governed by the *first* sentence of § 57-9:

The first sentence of the section relates to churches, such as Episcopal and Presbyterian churches, that are subject to control by super-congregational bodies. The Legal Green Christian Church is excluded from this category because it is autonomous.

Id. at 698. The Church’s reading of these cases would obliterate § 57-9’s distinction between congregational and denominational churches by limiting its application to churches that are “entirely independent”—and thus governed by § 57-9(B). *See* CANA Opening Br. 4-6; Op. 80-81.

2. The Church next claims that § 57-9 and § 57-15 must be read *in pari materia*. Br. 10. But the principle that laws addressing the same subject must be read in light of each other does not permit courts to ignore their language, let alone to deprive a law of meaning. Section 57-15 governs (at most) property transfers by one congregation separating from a denomination in the absence of a division; § 57-9(B) governs “divisions” in “independent” congregations; and § 57-9(A) governs “divisions” in a broader “church or religious society” where a new “branch” forms. The Church’s approach would give meaning to only § 57-9(B) and § 57-15. But § 57-9(A) contains distinct requirements and applies in distinct circumstances, and it too must be given effect.

3. The Church’s citation of circuit court cases purportedly “brought under § 57-9” is no more convincing. Br. 5 (citing *Diocese of Southwestern Va. v. Buhrman*, 5 Va. Cir. 497 (Clifton Forge 1977); *Trustees of Cave Rock Brethren Church v. Church of the Brethren*, No. 1802 (Boteourt Co. June 30, 1976)). These cases pre-date *Green*, and are irrelevant to whether *Green* held that trial courts deciding § 57-9(A) cases must follow *Green*—the issue posed by this Court.

Moreover, the cases involved the disaffiliation of only one congregation claiming autonomy from any denomination. In *Cave Rock*, the disaffiliating church argued that it was “an independent, autonomous congregation and that, pursuant to Code § 57-9, when a division occurs *in such a church* the majority of its members entitled to vote may decide the [property issue].” Br., Exh. 2, at 7 (emphasis added). The congregation thus relied on what is now § 57-9(B); it did not invoke § 57-9(A). Similarly, as this Court has noted: “[*Buhrman*] involved a single congregation that broke away from the Episcopal Church in the Diocese of Southwestern Virginia to become independent. *Buhrman*, however, did not involve the application of 57-9.” Op. 74 n.77.

In none of the Church’s cases did the court (1) receive expert testimony concerning the 19th century events that preceded the adoption of § 57-9, (2) hear expert testimony, based on extensive documentary study, concerning the historical understanding of the terms “division” and “branch”; (3) have the benefit of reviewing some 29 judicial decisions applying the division statute in the first year after its adoption; (4) see statements from denominational officials admitting that their church had experienced a “division” and urging their members to vote against dividing from the denomination; or (5) address a situation in which an organized group of thousands of members, numerous congregations, and a host of clergy separated from its denomination to form a new polity. Rather, what *Green*, *Norfolk Presbytery*, *Buhrman*, and *Cave Rock* have in common is that—in contrast to this case—they involved a single church departing from its denomination to become independent. That common thread is what rendered § 57-9(A) inapplicable.

4. Having failed to show that *Green* governs § 57-9 cases, the Church argues that *Green* nonetheless allows it to attempt to show ownership under “alternative contractual arrangements.” Br. 7. In describing such “arrangements,” the Church dances around, but never uses, the word “waiver.” That is unsurprising, since neither ECUSA nor the Diocese pled waiver of § 57-9 as an affirmative defense—even after an entire trial devoted to the applicability of § 57-9. It is also

unsurprising because the Church cannot *show* waiver—both in light of the nature of § 57-9(A), which is designed to resolve ownership in the face of disputes over deed and trust language, and in light of Virginia law on waiver of civil statutory rights, which the Church nowhere mentions.

Section 57-9(A) provides a “conclusive” means of determining the ownership of congregational property in a division, and it contemplates that the meaning of the relevant deeds and the identity of beneficiaries under the relevant trusts will be hotly disputed. Moreover, as to every post-1867 “contractual arrangement” (TEC Br. 7), § 57-9 is effectively “incorporated with the contract,” “constitutes the law of the contract,” “and must govern it throughout.” *Ogden v. Saunders*, 25 U.S. 213, 264-65 (1827); *accord Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398, 429-30 (1934). In light of the policy served by § 57-9, which protects congregational rights in the difficult circumstance of a division, and the fact that post-1867 contracts are deemed to incorporate the statute’s terms, the Church would bear a heavy burden in claiming that the CANA Congregations waived their rights under § 57-9 (if those rights may be waived at all).¹

Virginia law sets a high bar for waiving civil statutory rights. In *Virginia Dynamics Co. v. Payne*, 244 Va. 314, 317 (1992), for example, the Court considered whether a landlord waived the right to invoke a claim-splitting statute providing that a landlord’s suit and recovery for having been unlawfully kept out of its property did not bar a later suit for other rents. Citing a mandatory acceleration provision in the lease stating that “the rent for the balance of the Lease term shall be immediately due” on certain delinquencies, the tenant claimed that the landlord “‘contracted away’ its right to split its cause of action for rent.” *Id.* at 316, 318. Citing its earlier decision in *McMerit Construction Co. v. Knightsbridge Development Co.*, 235 Va. 368, 374 (1988)

¹ Cf. *Tucker v. Beneficial Mortg. Co.*, 437 F. Supp. 2d 584, 587 (E.D. Va. 2006) (“[waiver] will not be allowed where it would thwart the legislative policy it was designed to effectuate”); *Wilson v. Collins*, 27 Va. App. 411, 421-422 (1998) (“[t]he intent of the parties or court to waive or vary this federal statutory right [to annuities under the Foreign Service Act] must be manifest from the ‘express’ terms of the agreement or decree.” (internal quotations omitted)).

—which held that “[i]n the absence of clear evidence to the contrary, it is presumed that one will not preclude himself from exercising a right granted by statute”—the Supreme Court held that “[a]ssuming, but not deciding, that such a right could be ‘contracted away,’ . . . the lessor’s statutorily created right to file a subsequent action for rent would have to be expressly waived.” *Id.* at 318. “[N]o such waiver appearing,” the Court concluded that there was “no merit” in the contention that the landlord had contracted away its right to bring two lawsuits. *Id.* at 318. *See also McMerit*, 235 Va. at 370, 373 (holding that “a waiver must be express, or, if it is to be implied, it must be established by clear and convincing evidence,” and that a construction company did not waive its statutory right to file a mechanic’s lien on past debts by signing “Contractor’s Affidavit[s]” “acknowledg[ing] receipt from [the developer-owner] of all sums due”; noting that the “affidavit nowhere states that it waives anything. It certainly does not say that it waives liens.”).

So too here. Even if the Church had pled waiver, there is no evidence that the Church obtained any express waiver of the CANA Congregations’ § 57-9 rights.² Indeed, there is not even any evidence of an implied waiver of those rights. The Church points to an “Instrument of Donation” executed by a congregation upon the consecration of a “house of public worship,” but this document contains no reference to § 57-9. “It certainly does not say that it waives [§ 57-9 rights].” *McMerit*, 235 Va. at 373. Moreover, the document was executed (if at all) before the division in the Church and before the CANA Congregations’ rights under § 57-9 were triggered. Thus, the document cannot amount to an “intentional relinquishment or abandonment of a known right or privilege.” *Baker v. Commonwealth*, 25 Va. App. 19, 24 (1997).

In addition, the Instrument of Donation is ecclesiastical in nature. TEC-Diocese Ex. 37 at 1. It is filled with religious terminology that is not enforceable by a secular court; it cites only the “spiritual jurisdiction” of the bishop; and it does not convey any specific interest in specifi-

² The CANA Congregations would oppose any attempt by the Church to amend their pleadings at this late stage of the § 57-9 litigation.

cally described property. The instrument no more conveys a legal interest in property than does giving an honored visitor a “key to the city.” See *Bjorkman v. Protestant Episcopal Church of Diocese of Lexington*, 759 S.W.2d 583, 586 (Ky. 1988) (finding a nearly identical Instrument of Donation to be an “unenforceable instrument,” not a “conveyance”); *Board of Managers of Diocesan Missionary v. Church of Holy Comforter*, 628 N.Y.S.2d 471, 475 (N.Y. Sup. 1993) (an Instrument of Donation is a “religious instrument which pertains to ecclesiastical and spiritual matters and can in no way be interpreted to be a conveyance of title to property”).

In short, ECUSA and the Diocese could not point to any waiver of § 57-9 rights by the CANA Congregations even if they had pled that theory. That is likely why neither of them listed waiver as an affirmative defense in their answers—and instead conducted an entire trial challenging the applicability of § 57-9 on the merits, without presenting evidence of waiver.³

³ The Church is thus left to cite cases that do not involve limiting statutory rights by contract. Br. 7-10. In *Mahoney v. Nationsbank*, 249 Va. 216 (Va. 1995), for example, the Court held that a party “does not breach the [UCC’s] obligation of good faith and fair dealing by exercising” the “rights” guaranteed by its “contract.” *Id.* at 221. Contrary to the Church’s assertion (at 8), *Mahoney* did not “decline[] to apply” the UCC’s obligation of good faith and fair dealing—as if the Virginia Supreme Court would enforce a contract to act in bad faith. Rather, it held that the obligation *is not* “breach[ed]” when a party simply exercises its contractual rights. Similarly, in *Pettus v. Hendricks*, the Court did not “enforce the terms of the contractual agreement in place of a contrary statutory provision” (Br. 7), but rather concluded that the “the statute . . . does not serve to add” the requirement that the appellants claimed. 113 Va. 326, 331 (1912).

There is a fundamental difference between holding that a party contractually waived a statutory right and holding that the statutory right was not implicated in the first place. The Church’s cases uniformly fall into the latter category. See *Board of Supervisors of Fairfax Co. v. Sampson*, 235 Va. 516, 521 (Va. 1988) (holding that statute permitting “new promise in writing” to extend statute of limitations also permitted a “new promise . . . governed by a shorter, private contractual period”); *Bayview Loan Servicing, LLC v. Simmons*, 275 Va. 114 (Va. 2008) (appellant “failed to fulfill the contractual condition precedent that would have given it” the statutory “right” it claimed); *Jampol v. Farmer*, 259 Va. 53, 58 (Va. 2000) (“hold[ing] that the language of § 6.1-125.6 does not mandate that a change in the terms of a [contract] must be made with a writing,” so no statutory rights were implicated); cf. *Chandler v. Fletcher*, 169 Va. 32, 36 (Va. 1937) (enforcing parties’ contract waiving jury trial where statute provided that “[a] trial by jury may be waived by consent of the parties”).

Because the issue here is no longer whether § 57-9 was properly invoked—that has been decided—the Church’s cases are irrelevant.

2. **Has the court in its April 3, 2008 opinion already resolved the issue described in Question 1 above, as asserted by the CANA Congregations?**

According to the Church, the Court's April 3 Opinion "discusses *Norfolk Presbytery*" and "cites briefly to *Green*," but "does not address the question whether *Green* or *Norfolk Presbytery* requires consideration of the 'neutral principles' factors in § 57-9 cases." Br. 12 (citations omitted). This argument, however, fails to account for the Court's holding that reading § 57-9(A) to require that divisions be approved by the general church would ignore "a key difference between 57-9 and 57-15": the fact that "[§ 57-15] originally required *only congregational approval* for a conveyance of property," but "was *affirmatively amended* to include the specific words: 'constituted authorities,' and 'governing body of any church diocese,'" whereas "57-9 contains absolutely no reference to the governing authorities of a church." Op. 73-74 & n.76 (footnote omitted). Although this Court has not yet determined whether *the Constitution* requires consideration of the "factors set out in *Green*" (June 6 Order at 2), this Court has concluded that it would make no sense *as a matter of statutory interpretation* to graft the requirements of § 57-15 onto § 57-9.

3. **What is the meaning of the phrase "if the determination be approved by the court" as that phrase is used in 57-9(A)? Specifically, once this court determines that 57-9(A) has been properly invoked, is the "approval" limited to a review of the vote taken or does it permit, or even require, as ECUSA and the Diocese assert, that the court examine various other considerations, including those set forth in *Green*?**

Citing a definition of "if," the Church argues that the Court's approval of a § 57-9(A) petition "is conditional" and requires more than "proof that a fair vote occurred after a division." Br. 13-14. We agree: A congregation must also satisfy the "branch," "church or society," "attached," and "trust" requirements—all found within the four corners of the statute. But that is a far cry from saying the outcome necessarily depends on whether a denomination would otherwise have a "proprietary interest" under § 57-15. The Church's approach would substitute for the elements of § 57-9(A) a set of factors intended to apply outside the context of a denominational division, thus rendering § 57-9(A) superfluous. This Court should reject that approach.

4. **What is the meaning of the phrase “shall be conclusive as to the title to and control” of the property in question, as that phrase is used in 57-9(A)?**

The Church admits that the phrase “shall be conclusive as to the title to and control” does “appear[] to indicate that . . . the court’s ‘approval’ and ‘entry’ of a congregation’s petition . . . will dispose entirely of potential or competing claims to either the ‘title’ or ‘control’ of ‘any property held in trust for such congregation.’” Br. 14-15. To that extent, the parties agree. The Church also maintains, however, that § 57-9(A) is “‘conclusive’ only as to the ‘title’ to or ‘control’ of ‘any property held in trust for such congregation,’” not “as to ‘any property *used* by such congregation.”” Br. 15 (emphasis added). Any other rule, the Church says, might “affect the title-holder’s use of the property” or “past contractual commitments.” Br. 15.

That is only partly true. For example, a congregation could not rely solely on prior “use” of church property as a basis for asserting ownership under § 57-9 where the “title-holder” to that property was the bishop. *Cf.* Va. Code § 57-16. At the same time, however, any post-enactment contracts would be subject to, and incorporate, applicable statutory law. *See supra* p. 4. And where the deeds confirm that congregational property is held by congregational trustees, the fact that another party might assert a competing trust claim to the property does not render the statute inapplicable. Indeed, the very purpose of the statute is to resolve such competing claims.

5. **What is the meaning of the phrase “congregation whose property is held by trustees,” as that phrase is used in 57-9(A)? Specifically, is Mr. Hurd correct when he asserted at oral argument on May 28, 2008 that the phrase “congregation whose property is held by trustees” is not simply a reference to the property that is the subject of the 57-9(A) petition but, rather, requires the Court to make an initial determination, prior to the Court’s consideration of the validity of the vote, as to “who” owns the property at issue?**

The Church’s position on Question #5 has little to do with the phrase “whose property is held by trustees.” Instead, citing the dissent in *Jones v. Wolf*, 443 U.S. 595 (1979), the Church offers a new reading of that case. According to the Church, *Jones* approves a defeasible presumption of majority rule to determine the identity of the local church, but *not* the property inter-

ests of the denomination. Br. 17-20. The latter must be adjudicated under a *distinct* set of principles—which ultimately require deference to church canons. This argument lacks merit.

First, it would make no sense to read *Jones* as *rejecting* deference to the denomination's rules when determining who constitutes the "true" church (as *Jones* did), while *requiring* deference to those rules when determining whether a trust interest is "embodied in some legally cognizable form" (as the Church urges here). 443 U.S. at 606, 607. If anything, this case is easier: the Court in *Jones* in effect *overruled* the denomination's "written ruling declaring that the minority faction constituted 'the true congregation.'" *Id.* at 598; *see id.* at 613 (Powell, J., dissenting). The presence of such a ruling certainly did not deter the Court in *Jones* from subjecting the denomination's "laws and regulations" to civil law. *Id.* at 609. Here, by contrast, there has been no ruling by a church tribunal that the Church has a cognizable trust interest in the property at issue. Thus, any intrusion into denominational affairs is less than that approved in *Jones*.

Second, although *Jones* held that majority rule was a neutral means of resolving a property dispute between the majority and minority factions of a congregation (*id.* at 607), nothing in *Jones* suggests that such a rule is any less "neutral" as applied to a dispute between the congregation and a denomination. Provided there is a reasonable means of avoiding majority control prospectively, there is no reason in principle why the First Amendment should require treating those situations differently. The practical effect of a judicial ruling is identical in each case: either the faction affiliated with the mother church is entitled to use of the property, or it is not.

Third, the Court's holding in Part IV of *Jones*—that "a presumptive rule of majority representation" is "consistent with both the neutral-principles analysis and the First Amendment (*id.* at 607)—simply applies the framework of Part III of the opinion, which holds that the Constitution is satisfied provided the application of neutral principles avoids doctrine and permits the parties to arrange for denominational ownership *before* a dispute erupts. *Id.* at 602-06. Parts III and

IV of the Court's opinion are thus identical in their reasoning.⁴ And there can be no question after *Jones* that any burden involved in avoiding § 57-9 is "minimal," not substantial. *Id.* at 606.

Fourth, even if *Jones* governed only disputes over which part of a congregation was entitled to the property, it would still govern here. Historically, Virginia law has not recognized denominational trust interests in congregational property (Opening Br. 13-14), so as a matter of law the question here is which part of the congregation has a better claim to the property. Moreover, the Church is not seeking to use the properties at issue for denominational activities; it has asserted the interests of "loyal" Episcopalians who voted against disaffiliation. (In one case (St. Stephens), such members are parties to the litigation.) That is consistent with the Church's canons, which do not assert outright ownership of congregational property, only a beneficial interest for congregational use. TEC-Diocese Exh. 1, Canon I.7.4 and II.6.4. Thus, the underlying dispute here is effectively between different factions of the congregations.


Under the Church's view, the First Amendment forbids a State to require that trust interests in church property be recorded on the deeds or in local articles of incorporation, since that approach would not give effect to the Church's canons. *Contra Jones*, 443 U.S. at 606, 603 n.3. Indeed, they believe the Constitution requires absolute deference to their canons' assertion of a trust interest. *See* May 28 Tr. 211. But not even the official reporters of the Church's constitution agree with such a narrow reading of *Jones*. *See* Opening Br. 8. Nor did Justice Powell. 443 U.S. at 618-19 (Powell, J., dissenting) ("*Until today*," the question "was where within the religious association the rules of polity . . . placed ultimate authority over the use of the church property" (emphasis added)). Neither should this Court.

⁴ *Compare* 443 U.S. at 608 ("the State may adopt any means of overcoming the majoritarian presumption, so long as the use of that method does not impair free-exercise rights or entangle the civil courts in matters of religious controversy"), *with id.* at 602 ("a State may adopt *any* one of various approaches for settling church property disputes, so long as it involves no consideration of doctrinal matters" (quotation omitted)).

Dated: June 23, 2008

Respectfully submitted,

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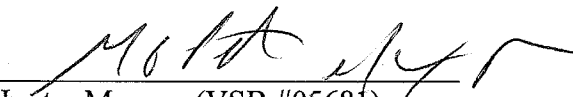
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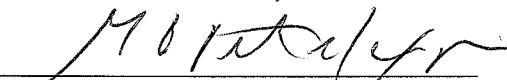
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I HEREBY CERTIFY that on this 23rd day of June, 2008 a copy of the foregoing CANA Congregations' Responsive Brief Pursuant to the Court's June 6, 2008, Order, was sent by electronic mail and first-class mail, postage prepaid, to:

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A handwritten signature in black ink, appearing to read "G. O. Peterson", written over a horizontal line.

George O. Peterson

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

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

**CANA CONGREGATIONS' RESPONSIVE BRIEF PURSUANT
TO THE COURT'S JUNE 6, 2008, ORDER**

This acts as a one-page cover sheet reference pleading to the complete CANA Congregations' Responsive Brief Pursuant to the Court's June 6, 2008, Order, and filed in CL 2007-248724 (the omnibus case file), on June 23, 2008. The CANA Congregations' Responsive Brief Pursuant to the Court's June 6, 2008, Order and this corresponding one-page reference pleading applies to the Omnibus case number: CL 2007 – 248724 and the following cases:

1. *In re: Truro Church*; (Circuit Court of Fairfax County; CL 2006-15792);
2. *In re: Church of the Apostles*; (Circuit Court of Fairfax County; CL 2006-15793)

3. *In re: Church of the Word, Gainesville;* (Circuit Court of Prince William County; CL73464) (Circuit Court of Fairfax County; CL 2007-11514);
4. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon* (Circuit Court of Fairfax County; CL 2007-1235);
5. *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church* (Circuit Court of Fairfax County; CL 2007-1236);
6. *The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church* (Circuit Court of Fairfax County; CL 2007-1237);
7. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles* (Circuit Court of Fairfax County; CL 2007-1238);
8. *The Episcopal Church v. Truro Church et al.* (Circuit Court of Fairfax County; CL 2007-1625);
9. *In re: Church at the Falls, The Falls Church;* (Circuit Court of Fairfax County; CL 2007-5249);
10. *The Protestant Episcopal Church in the Diocese of Virginia v. The Church at The Falls – The Falls Church* (Circuit Court of Arlington County Case No. 07-125)(Circuit Court of Fairfax County; CL 2007-5250);
11. *The Protestant Episcopal Church in the Dioceses of Virginia v. Potomac Falls Church* (Circuit Court of Loudoun County Case No. 44149)(Circuit Court of Fairfax County; CL 2007-5362);
12. *In re: Church of Our Savior at Oatlands;* (Circuit Court of Fairfax County; CL 2007-5363);
13. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Saviour at Oatlands* (Circuit Court of Loudoun County Case. No. 44148)(Circuit Court of Fairfax County; CL 2007-5364);
14. *In re: Church of the Epiphany;* (Circuit Court of Fairfax County; CL 2007-556);
15. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Margaret's Church* (Circuit Court of Prince William Case No. CL 73465)(Circuit Court of Fairfax County; CL 2007-5682);
16. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket* (Circuit Court of Prince William County Case No. CL 73466)(Circuit Court of Fairfax County; CL 2007-5683);

17. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word* (Circuit Court of Prince William County Case No. CL 73464)(Circuit Court of Fairfax County; CL 2007-5684);
18. *In re: St. Margaret's Church*; (Circuit Court of Fairfax County; CL 2007-5685);
19. *In re: St. Paul's Church, Haymarket*; (Circuit Court of Fairfax County; CL 2007-5686);
20. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church* (Circuit Court of Northumberland County Case No. CL 07-16)(Circuit Court of Fairfax County; CL 2007-5902); and
21. *In re: St. Stephen's Church*; (Circuit Court of Fairfax County; CL 2007-5903).

For the complete CANA Congregations' Responsive Brief Pursuant to the Court's June 6, 2008, Order, please see the omnibus case file, CL 2007 – 248724.

Dated: June 23, 2008

Respectfully submitted,

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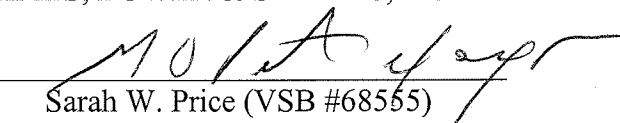
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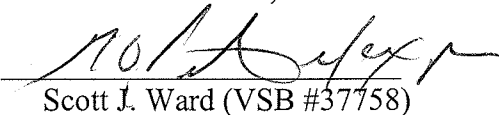
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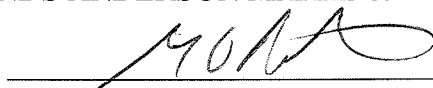
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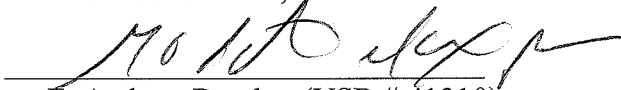
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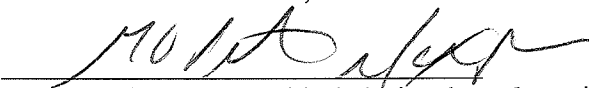
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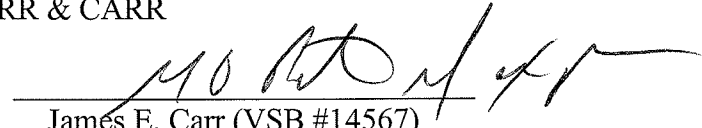
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