

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

IN RE: MULTI-CIRCUIT CHURCH
PROPERTY LITIGATION

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.

CHURCH OF OUR SAVIOUR AT OATLANDS' SUPPLEMENTAL BRIEF
IN OPPOSITION TO THE BRIEF ON CONSTITUTIONAL ISSUES
FILED ON APRIL 23, 2008 BY THE EPISCOPAL CHURCH
AND EPISCOPAL DIOCESE OF VIRGINIA

COMES NOW, the Congregation of the Church of Our Saviour at Oatlands, by and through its counsel, and hereby supplements the collective CANA Opposition brief filed contemporaneously herewith, stating as follows:

In their brief of April 23, 2008, the Episcopal Church and the Episcopal Diocese of Virginia argue their state and federal Constitutional rights may be affected by this Court's application of Virginia Code § 57-9. In fact, their rights have not, and will not be compromised by the April 3, 2008 ruling of this Court. In truth, it is the constitutional rights of the CANA

Congregations and their members which would be compromised by the proposed course that the Episcopal Church and Virginia Diocese insist the Court should follow in this case. That course would require preference to ecclesiastical doctrine, and create an invidiously discriminatory judicial exemption from neutral principles of Virginia law.

The United States Supreme Court has held "That action of state courts and judicial officers in their official capacities is to be regarded as action of the State within meaning of the Fourteenth Amendment" and that, contrary to the demands of the Episcopal Church and Virginia Diocese in this case, "The Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals." It would appear clear that the power of a State to create and enforce property interests must be exercised within the boundaries defined by the Fourteenth Amendment..." *Shelley v. Kraemer*, 334 U.S. 1, 3 ALR2d 441, 460, 465 (1948).

The Virginia Bill of Rights, Article I, Section 11, provides, in part, "...that the right to be free from any governmental discrimination upon the basis of religious conviction...shall not be abridged..." Section 16 further provides that "...No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever..."

We submit the duty of a Court of this Commonwealth is to balance the Constitutional rights of all parties, and the only effective way not to prejudice or invidiously discriminate against a party is by strictly adhering to previously existing neutral principles of Virginia property law. *Jones v. Wolf*, 443 U.S. 595, 602-606 (1978); *Norfolk Presbytery v. Bollinger*, 214 Va. 500, 505-507 (1974).

Simply because a state statute, such as § 57-9, is aimed at the orderly resolution of conflicts over property involving only religious organizations does not put that statute in conflict

with the First Amendment, so long as its primary effect is not to advance or inhibit religion and so long as that statute does not foster excessive government entanglement in religion. See, *Corporation of Presiding Bishops v. Amos*, 483 U.S. 327, 338-39 (1987). An application of § 57-9 that adheres strictly to the neutral principles approach keeps that statute entirely within Constitutional bounds.

By contrast, the approach argued by the Episcopal Church and Virginia Diocese would burden and inhibit the members of the CANA Congregations in their First and Fourteenth Amendment rights and their rights under the Virginia Bill of Rights by granting the Episcopal Church and Virginia Diocese the power to exempt themselves from § 57-9, and other secular law. The Episcopal Church and Virginia Diocese demand this Court accept their claims to CANA Congregational property, based entirely on their denominational constitution and canons, and without basis under (and in fact contrary to) Virginia property law. *Jones v. Wolf*, supra, 443 U.S. 595, 607-608, does not permit, let alone require, such deference. In *Jones*, the Supreme Court held that a State was entitled to rule that the local church was presumptively represented by the majority of its members, provided that it established “*any method*” by which that majority rule could be overcome. That method does not compel a State to permit a church constitution to override secular state law: “Indeed, the State may adopt any method of overcoming the majority 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.” *Id.* (italics added).

A church canon or constitution is, *ipso facto*, a religious instrument and cannot be permitted to override preexisting neutral State law, particularly where, as here, such an application would have a discriminatory effect. We have found no case subscribing to the peculiar notion that a church constitution must trump State law where State law, as here,

complies with the aforesaid requirements of *Jones v. Wolf*. At page 74 of its opinion of April 3, 2008, this Court quoted the ruling of the Virginia Supreme Court In *Norfolk Presbytery v. Bollinger*, supra, 214 Va. 500, 507, that the trial court was to consider “the language of the deeds and the constitution of the general church...**in the application of neutral principles of law**, with [the general church] having the burden of proving that [the trustees of the local church] have violated either the express language of the deeds or a contractual obligation to the general church.” (emphasis added). What is essential in the present case is the application of neutral principles of law. The church constitution is to be considered, not as independently establishing an ownership interest in violation of neutral state law, but in determining to what extent a particular denomination may be either congregational or hierarchical in structure ... a determination necessary to establish what section of the Virginia Code may be applicable to the property dispute in question. See also, *Green v. Lewis*, 221 Va. 547, 553-554 (1980), applying the principles of *Norfolk Presbytery*, supra, where the deciding factor under neutral State law was the finding that the original conveyance of the local church property was to trustees **for the denomination**, for the express benefit **of the denomination**.

The neutral principles approach that we urge to be applied here has no discriminatory effect – on either side. However, if The Episcopal Church and Virginia Diocese were able to use a judicially-created exemption from State law to seize the property of the Congregation of the Church of Our Saviour at Oatlands, and apply that property to the support of their religious doctrine and practices, an inordinately heavy, unjustifiable and discriminatory burden would be imposed upon the Congregation of the Church of Our Saviour at Oatlands. For The Episcopal Church and Virginia Diocese to be required to follow neutral principles of Virginia property law in order to hold property imposes no significant, much less discriminatory, burden upon them.

The Episcopal Church and the Virginia Diocese had 141 years in which they could have acted under the provisions of Virginia law to legally secure title to any property in which they now contend (without the benefit of title), to have interest. They chose not to do so. The CANA Congregations had notice of that same law, and have relied upon it. Indeed, the members of the Congregation of the Church of Our Saviour at Oatlands relied upon the language in their original 1875 deed of conveyance when accepting delivery of this deed, and have continued to rely upon it. That deed expressly states: "...this conveyance upon trust nevertheless for the use and benefit of [the Congregation].... for such uses and purposes as are in accordance with and permitted by the laws of Virginia now in force in such cases made and provided for and none other."

It would be improper for this Court to now determine (as The Episcopal Church and Virginia Diocese would have it) that a unilateral and internal ecclesiastical pronouncement (i.e. the Dennis Canon), without more, can serve to void the content of the original 1875 deed to the Church of Our Saviour at Oatlands, as to which the denomination is a non-party and total stranger, and in the process invalidate well established principles of Virginia property law. The Episcopal Church and Virginia Diocese can demonstrate no compelling government interest that would justify the impairment of the Constitutional rights of this Congregation and its members (or for that matter, any other Congregation in similar situation) that would result from the award of such extraordinary relief.

The arguments made by the Episcopal Church and Diocese are simply without merit and the relief they request should be denied.

WHEREFORE the Church of Our Saviour at Oatlands prays that the constitutional arguments of the Episcopal Church and the Episcopal Diocese of Virginia be dismissed, and they take nothing thereby.

Dated: May 9, 2008

Respectfully submitted,

CHURCH OF OUR SAVIOUR AT OATLANDS
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of May, 2008, he caused all counsel to be served with copies of the foregoing Church of Our Saviour at Oatlands' Supplemental Brief in Opposition to the Brief on Constitutional Issues filed on April 23, 2008 by the Episcopal Church and Episcopal Diocese of Virginia, postage prepaid, to:

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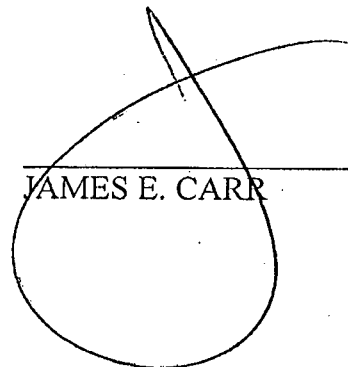
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