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September 16, 2008

VIA HAND-DELIVERY

Fairfax County Circuit Court
ATTENTION: Robin Brooks
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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
September 16, 2008
Page 3


Dear Ms. Brooks:

I am enclosing for filing in the above-styled case an original, The CANA Congregations' Reply Brief on Voting Issues, 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

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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

THE CANA CONGREGATIONS' REPLY BRIEF ON VOTING ISSUES

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 reply brief on the voting issues identified by the Court at the August 22, 2008, Hearing.

1. Which party bears the burden of proof and production related to the voting issues in the § 57-9 actions and what is the standard of proof?

The parties appear to be in agreement on this issue.

2. What factors should the Court examine in determining whether the votes taken by the CANA Congregations filing Va. Code § 57-9 Petitions were “fairly taken”?

There appears to be agreement concerning most of the standards that govern whether a vote was “fairly taken.” Still, the Church insists that “whether the eligibility standards used for the disaffiliation votes were generally consistent with the pre-existing eligibility standards for congregational votes set forth in [their] canons” should “*not* be a part of the analysis of whether the votes were fairly taken.” Opp. 2. This view is hard to square with *Reid*’s concern with post-division changes in voter eligibility (*see* 229 Va. at 190-91), and with the fact that the definitions of “members” advanced by the Church are themselves based on its rules. *See* Br. 7. The only question is whether the Church will be allowed to “cherry pick” from among those definitions, ignoring those that are relevant to congregational voting. It should not be able to do so.

3. How should the Court construe the term “members” in Va. Code § 57-9(A)?

A. The Church’s reading of the phrase “members of [the] congregation” is foreclosed by its plain text and common sense.

1. The Church offers a half-hearted defense of its assertion that the “plain meaning” of “members” “may in fact encompass” those with “no current connection to the congregation.” Br. 5. But as we have shown, this reading divorces “members” from the phrase “of [the] congregation”—those who regularly assemble for worship. Opening Br. 4-5; Resp. Br. 3. ECUSA’s internal documents acknowledge as much: Canon I.17.1(a) defines “members” of “this Church,” and the parochial report instructions state that “[a] person’s baptism, when duly recorded in the Register . . . of the recording congregation, is his/her record of membership *in the Episcopal Church.*” Opening Br., Exh. A at 1 (emphasis added). The Church is thus confusing being

“members” of the Episcopal Church as a whole with being “members of [the] congregation” at issue. The statute, however, requires a connection sufficient to support the latter determination.¹

2. The Church says not a *word* in response to the practical consequences of its reading of the statute. That reading presumes that the General Assembly intended to grant control over the congregation’s property to many who never attend services; who are in fact active members in other churches (Episcopal or otherwise); who are unreachable; who have never expressed any desire to become members; or who do not want to be considered members. But as we have shown, those who never “congregate” cannot be considered part of the “congregation.”

The Church’s reading is also inconsistent with § 57-9(A)’s requirement that those who vote be “over 18 years of age”—*i.e.*, *adult* members of the congregation. This requirement does not merely indicate that those who vote should be old enough to make an informed choice as to which “branch” to join; it confirms that whether people are “members of [the] congregation” should be based on whether they have participated as “members” *as adults*.

In short, the Church’s reading would give many who have made no conscious decision to be a member, let alone as an adult, a voice in the most important of congregational votes—a vote on denominational affiliation and property ownership. And when combined with their reading of “whole number,” the Church’s reading would give all such people automatic votes *against* disaffiliation. That “absurd result” cannot be the law, let alone the “plain meaning” of the (undefined)

¹ ECUSA and the Diocese dismiss *Brown v. Virginia Advent Christian Conference*, reasoning that it “merely held that certain individuals lacked standing to sue a group of trustees at law for the demolition of a particular church where ‘it was neither alleged nor proven that [the plaintiffs] constituted the congregation.’” Br. 5 n.3 (quoting 194 Va. 909, 912 (1953)). But that is exactly why *Brown* is relevant. In holding that the plaintiffs did not “constitute[] the congregation,” the Court focused on the fact that they “had not attended services there for years.” *Id.* *Brown* thus confirms that people cannot stop attending a church yet claim to be “members.”

phrase “members of [the] congregation.” See *Andrews v. Browne*, 276 Va. 141, 153 (2008).²

3. Unable to answer the textual and practical difficulties with their reading of “members of [the] congregation,” it comes as little surprise that ECUSA and the Diocese would now back away from it. They now say that “in accordance with the ordinary meaning of the term ‘member,’ the Church’s rules, and the Congregations’ own understandings, it should . . . be interpreted to mean *either* (a) ‘a person baptized or enrolled in a church,’ *or* (b) active baptized persons.” Br. 7 (emphasis added; citations omitted). The “active baptized member” standard is far more plausible than the position that a “member of the congregation” is anyone ever baptized there who has not died or been transferred. But it makes far more sense to look to the participation level ordinarily used to determine eligibility for congregational votes. ECUSA and the Diocese have acknowledged that only “communicants in good standing” are “eligible to vote at ordinary congregational meetings.” Br. 6-7. Indeed, in contrast to the term “communicant in good standing,” the term “active baptized member” is not defined in their canons. Thus, application of the “communicant in good standing” standard is the least arbitrary way of defining the level of activity required to obtain (or maintain) the status of a “member of [the] congregation.”³

² Presumably that is also why ECUSA’s own parochial report instructions state that “[f]or statistical purposes the Episcopal Church counts only *active baptized members*” (Opening Br. Exh. A at 1), and why ECUSA’s own website answers the question “What constitutes membership in the Episcopal Church?” by reference to the definitions of “communicants” and “communicants in good standing.” See CANA Responsive Br. 8, Exh G. It is anomalous for the Church to advocate a definition of “member of the congregation” that is far broader than its own ordinary usage.

³ ECUSA and the Diocese suggest that membership extends even to those who have never been formally added to the congregation’s membership rolls: “[I]f the touchstone of ‘membership’ is to be active participation in the congregation,” they say, “each of the Congregations has additional numbers of such people who were not permitted to vote because they were not formally registered on the parish’s rolls.” Br. 6. But this reading of the statute would *presume* that someone wants to be a “member” without any express indicia of such intent. And in fact many who look like “members” to one looking at attendance might have serious doubt about the congregation’s faith or otherwise prefer not to be formally associated with it—just as many who frequently vote “Republican” or “Democrat” wish to remain “independent.” Thus, while it may be

ECUSA and the Diocese suggest that there is an inconsistency between our position that “division” and “branch” should be defined without reference to church rules and our position on the phrase “members of [the] congregation.” Br. 4 n.1. The issue in both cases, however, is what the General Assembly intended. As to the meaning of “division” and “branch,” both the historical and contemporary understanding showed that those terms refer to an organized group of congregations separating from their mother church (the “division”) to form a new polity (the “branch”); reading those terms by the light of ECUSA’s canons, by contrast, would have limited the statute to situations in which the “division” and “branch” were consensual, thus rendering the statute “a nullity.” April 3 Op. 81. Here, the General Assembly granted voting rights to adult “members of [the] congregation,” and it would be both textually unsupportable and absurd as a practical matter to read the statute as granting voting rights to those with no current connection to the congregation. At the same time, the very idea of “membership” involves satisfying an association’s internal standards, and there is no reason to think the General Assembly would have wanted courts to ignore such standards. Indeed, *both* sides here advocate definitions of “members” based on either church canons or other church documents. The question, therefore, is *which* internal rules most closely approximate the General Assembly’s intent.⁴

appropriate to look to attendance as an indication that people want to maintain membership in a group that they have formally asked to join, defining membership solely by attendance is inconsistent with the idea that membership must be based on an adult’s conscious choice. In short, the fact that participation is required to remain a member does not make it sufficient to become one.

⁴ Citing 2005 parochial reports that show an “‘active membership’ . . . that exceeds their reported number of ‘communicants in good standing,’” the Church claims that the CANA Congregations “implicitly admit” that active members over 18 “were not permitted to vote.” Br. 5-6. But voter eligibility must be determined as of the votes, which took place roughly a year after the period that these reports covered. As a practical matter, in light of the careful attention given to the vote, the CANA Congregations’ rolls and records were likely to be particularly reliable at the time of the votes. But in any event, the existence of a delta between the number of “communicants in good standing” and the number of “active baptized members” is unlikely to be dispositive. Indeed, were the Court to read the phrase “majority of the whole number” to require a

B. ECUSA and the Diocese are estopped from challenging the “communicants in good standing” standard for voter eligibility.

Contrary to the Church’s suggestion, we are not contending that the Protocol constitutes a “binding contract,” or that it guaranteed a negotiated resolution of the parties’ differences over property ownership. Br. 8-9. The evidence at trial will show, however, that the CANA Congregations reasonably relied upon the Protocol’s provision concerning voter eligibility.

1. The Church first says that there can be no estoppel here because *ECUSA* “never approved the ‘Protocol.’” Br. 9. But even setting aside the fact that the Diocese holds itself out as an arm of *ECUSA*—the “Protestant Episcopal Church in the Diocese of Virginia”—this argument is unpersuasive. *ECUSA* Canon I.14.1 provides that issues such as “the qualifications of voters” in congregational votes “shall be such as the State or Diocesan law may permit or require.” *ECUSA* has thereby delegated the subject of voter eligibility to the Diocese, and the Protocol precisely tracks the standard in the Diocese’s own canons. Compare Diocese Canon 11, § 5, with CANA Exh. 67 at 2; see also Tr. 500-501 (property issues were generally resolved at the Diocesan level). Thus, *ECUSA*’s approval was not required.

Further, the evidence will show that *ECUSA* knew of the Protocol and Va. Code § 57-9 before the vote, yet did nothing to question the “communicants in good standing” standard.

2. *ECUSA* and the Diocese next argue that the Protocol does not preclude them from urging different voter eligibility rules now because it “does not mention § 57-9.” Br. 9. But that does not mean that the Diocese was unaware of the statute—or of the possibility that it might be invoked—when the Protocol was being negotiated. To the contrary, the evidence at trial will show that well before the vote, the Diocese was aware of both § 57-9 and the risk that the CANA

showing of a majority of all eligible votes, the exclusion of any eligible voters would simply count as “no” votes, and thus would not prejudice *ECUSA* and the Diocese.

Congregations would invoke it. Representatives of the Congregations met with representatives of the Diocese in September 2006 (well before the Protocol was finalized), informing them that their position was supported by “Va. Code § 57-9,” under which, “if a court approves a congregation’s vote to affiliate with a particular branch of a denomination, that ruling is *conclusive* as to all property ownership.” Exh. A. The CANA Congregations later reached a “standstill agreement” with both ECUSA *and* the Diocese providing that the Congregations would file their § 57-9 petitions but would stay them upon request during settlement discussions. Exh. B.

The evidence will show that while the CANA Congregations wished to avoid litigation, both sides were aware that negotiations might break down, as they did when Bishop Schori pulled the plug on them in January 2007. Tr. 500-01. Despite their knowledge of § 57-9 and these risks, at no point did representatives of the Church state that the CANA Congregations’ eligibility standards were unfair or that those who were eligible to vote were not “members.” Rather, for months after the votes, the Diocese referred to those voters as “members.” Responsive Br. 8-10. Thus, it was reasonable for the CANA Congregations to rely on the Protocol.

3. The Church says that the Protocol “is not a Diocesan ‘representation,’” and that the CANA Congregations knew as much. Br. 10. But the Protocol need not have been sanctioned by Diocesan Committees to support reasonable reliance. It was drafted and signed by Chancellor Palmore, a Diocesan officer appointed by Bishop Lee to chair the Special Committee. Exh. C. The parties had many meetings to discuss how things were proceeding pursuant to the Protocol. Even when concerns were raised about the Protocol on December 1, 2006—ten days before the vote—Bishop Lee described it as “a useful way forward, which I support.” ECUSA Br. 11.

In response to Bishop Lee’s December 1, 2006, letter, representatives of the CANA Congregations informed him that they had “proceeded with complete transparency in reliance upon

the Protocol and your assurances concerning that Protocol.” Exh. D. But even if one interprets Bishop Lee’s letter in a manner favorable to the Diocese, it provides no hint that the manner in which the Congregations were conducting their votes was invalid. The only provisions cast in doubt were those pertaining to “a negotiated settlement.” TEC-Diocese Exh. 66 at 1-2.

4. Recognizing these difficulties, the Church resorts to arguing that “[t]he Congregations have waived their equitable estoppel argument.” Br. 12-13. The CANA Congregations’ petitions, however, allege that they relied on the Protocol. *E.g.*, Truro Report ¶ 46. And it is only now, at the voting stage, that whether ECUSA and the Diocese are estopped from challenging the Congregations’ eligibility standards is relevant. Indeed, that the Church would assert waiver suggests that they misunderstand the scope of our estoppel argument. We are not invoking the Protocol’s provisions as a whole; we are asserting only that the Diocese’s efforts to persuade the CANA Congregations to use the “communicants in good standing” standard preclude it from changing its tune now. The CANA Congregations are entitled to present this evidence at trial.

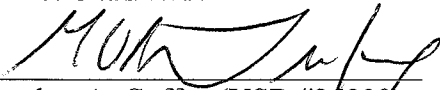
4. How should the Court construe the phrase “by a vote of a majority of the whole number,” in Va. Code § 57-9(A)?

The Court may not need to resolve whether § 57-9(A) requires a majority of those voting or a majority of eligible voters, assuming it rejects the argument that “members” should be defined to include those who never attend the church—persons who may now be adherents to another faith (or no faith), residents of another state, unreachable, or even dead. It is inconceivable that the General Assembly intended to give an automatic vote against disaffiliation to persons with no real stake in the congregation’s denominational affiliation or the ownership of its property. Nor could such a reading be reconciled with the idea of a vote “fairly taken.” But that would be the result of adopting the Church’s reading of “whole number” with its reading of the phrase “member of [the] congregation.” This Court should decline that invitation.

Dated: September 16, 2008

Respectfully submitted,

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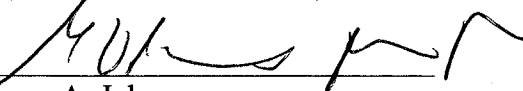
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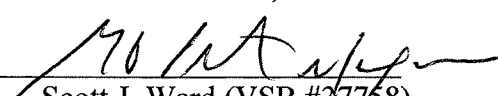
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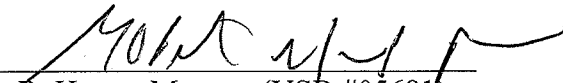
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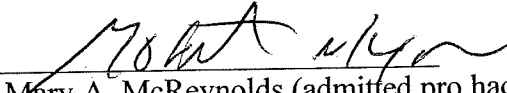
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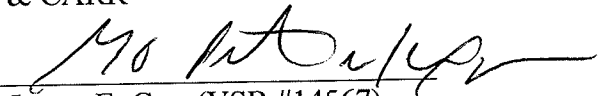
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of September, 2008, a copy of the foregoing CANA Congregations' Reply Brief on Voting Issues was sent by electronic mail and first-class mail, postage prepaid, to:

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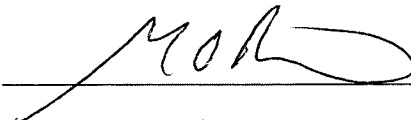
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George O. Peterson



Ch
2/2/06

**The Congregations Are The Legal and Beneficial Owners Of Their Properties,
And Any Adverse Claim By The Diocese Or TEC Would Be Legally Unfounded.**

- **The Importance of Complete Information to Amicable, Christ-like Negotiations.** All of us want to resolve any property-related issues between us in a fair, amicable, and Christ-like manner. This depends, however, upon both sides having accurate information about the relative strengths and weaknesses of their positions. Unless both sides are operating from the same information base—a sober and comprehensive legal appraisal of the situation—we cannot expect to negotiate a good-faith resolution of the issue.
- **Trust Doctrine in Virginia.** Virginia law does not recognize an *express* trust, let alone an *implied* trust, in favor of denominations such as TEC. Church property law is a state-by-state issue, and the Supreme Court of Virginia has repeatedly made clear that “[a]s express trusts for supercongregational churches are invalid under Virginia law, no implied trusts for such denominations may be upheld.” For this reason, “Virginia has never adopted the implied trust doctrine to resolve church property disputes.” Given this plain rule of law, the Diocese has no serious claim to ownership of the Virginia congregations’ property under a theory of express or implied trust. Thus, even if the Dennis Canon supported denominational claims to property in other states (and there are serious questions about the validity of its adoption), it cannot have any application in Virginia. The same is true of the diocesan property canons.
- **The Deeds.** Even if Virginia law did recognize express trusts in favor of religious denominations, none of the deeds at issue (other than those of mission parishes) creates such a trust. For example, the Falls Church deed of 1746—which predates TEC, the Diocese, and the Commonwealth itself—conveys property to the *vestry* of the parish to be used as the *vestry* deems proper. Only one deed (of many) of the two largest churches’ property mentions the Diocese at all, and even that deed conveys property to trustees for the *local congregation*, not the Diocese. In short, the grantors of these deeds expressly intended to benefit these congregations, not the Diocese. The same is true of the deeds of other non-mission congregations.
- **Equitable Considerations.** It would be especially inequitable to strip *these* congregations of their long-held property. Congregations such as The Falls Church and Truro Church were *founders* of the Diocese, and some of their deeds predate the Diocese and TEC, let alone their property canons. Historically, except for mission parishes, the flow of financial support has generally run from congregations to the Diocese and TEC, not the other way around. And those who gave their property to the congregations did so against the backdrop of Virginia law, which has never recognized denominational trust interests in congregational property. Thus, it would violate their wishes to award such property to TEC or the Diocese.
- **The Virginia “Division” Statute.** The Virginia congregations’ position is further supported by the “division statute,” Va. Code § 57-9, which sets forth neutral principles for resolving property disputes when a diocese or denomination experiences division. Under § 57-9, if a court approves a congregation’s vote to affiliate with a particular branch of a denomination, that ruling is *conclusive* as to all property ownership. The case for application of the statute could hardly be stronger. The Archbishop, the Windsor Report, and the Primates have recognized the division within the Anglican Communion. Even before GC 2006, 15 of 37 Provinces within the Communion, 10 dioceses, and hundreds of parishes had announced that they were not in communion with TEC. ECUSA has even adopted a new name—TEC. The Virginia reconciliation committee recognized that the divide within the Diocese is of the deepest and most serious nature. Since GC 2006, many more congregations have parted with TEC and more than 20 percent of this Diocese is participating in a discernment period, after which the participating congregations may decide whether to join another branch of Anglicanism. Should they do so, either collectively or individually, Virginia law would protect their property interests against any claim by the Diocese. The congregations would not be a renegade body but rather part of a large and existing community within the Anglican Communion that has divided from TEC.

EDV 1067

Confidential

September 19, 2006

TERMS OF STANDSTILL AGREEMENT
APPROVED BY THE STANDING COMMITTEE AND EXECUTIVE BOARD
OF THE DIOCESE OF VIRGINIA ON
DECEMBER 18, 2006

1. The Diocese of Virginia ("Diocese") and The Episcopal Church ("TEC"):
 - a. will not initiate any attempt to take possession of the congregations' property.
 - b. will not initiate any canonical or ecclesiastical actions against the congregations or their clergy or vestries.
 - c. will not initiate any civil legal action against the congregations, their clergy, their vestries, or their trustees.
 - d. will permit the congregations' clergy and staff to continue to pay premiums and receive benefits under the Diocesan health care plan until at least January 31, 2007.
2. The congregations:
 - a. will not initiate any transfer or conveyance of their property.
 - b. will not initiate any civil legal action against The Diocese/TEC, but may report their congregational determinations by filing a petition/report with the relevant VA Circuit Courts pursuant to Va. Code 57-9 without violating the agreement. The congregations' Va. Code 57-9 filings will state that notice has been provided to The Diocese/TEC. The congregations will not take any further steps to bring the Va. Code 57-9 filings to judgment. Upon the Diocese's request, the congregations will seek a stay of their Va. Code 57-9 filings. If the Diocese seeks to intervene in the Va. Code 57-9 filings, the congregations will not oppose such intervention and upon the Diocese's request will jointly with the Diocese move to stay the filings. In not opposing this intervention, the congregations of course reserve the right to contest the Diocese/TEC's alleged interest in their property.
3. The Diocese/TEC and each of the congregations:
 - a. will seek in good faith to negotiate with each other an amicable resolution of their differences concerning property and clergy status.
 - b. may terminate their agreement by giving 7 days notice to all other parties, but this shall not affect the agreement between any remaining parties unless they independently invoke their right to terminate. This Agreement shall terminate on January 18, 2007 unless renewed by mutual agreement.

FRXLIB-456221.1-RMDILLIN



The Right Reverend Peter James Lee
The Bishop of Virginia

October 21, 2005

The Rev. John Yates
The Falls Church
115 E Fairfax St.
Falls Church, VA 22046

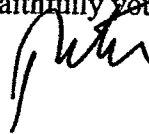
Dear John,

After consulting with the Standing Committee, I am prepared to appoint a special committee to explore options that may be available to enable churches in continuing distress over the actions of General Convention 2003 to focus on their mission in as close a union as possible with the other churches of the Diocese of Virginia.

Russel V. Palmore, Jr., the chancellor of the diocese, has agreed to chair this special group. I ask you to consult with whomever you wish and to nominate three persons whom I might ask to serve on this group. I will expect them to be active, supportive communicants of churches in the Diocese of Virginia if they are laity, and if clergy that they be canonically resident in Virginia.

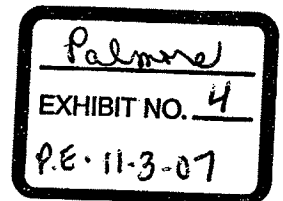
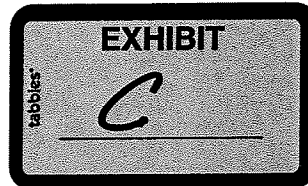
My prayer is that such a group might offer to the distressed churches and to the diocese as a whole a graceful way forward.

Faithfully yours,



Peter James Lee

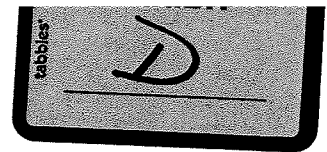
PJL: wlp





THE FALLS CHURCH

Making Christ King in Our Lives and in the Lives of Others



PERSONAL AND CONFIDENTIAL

December 2, 2006

The Rt. Rev. Peter James Lee
The Diocese of Virginia
10 West Franklin Street
Richmond, VA 23220

-- VIA FACSIMILE --
AND U.S. MAIL

Dear Bishop Lee,

We are profoundly grieved that we must send this letter. We feel compelled, however, to respond to your letter of December 1, 2006, in which you set forth your position on certain canonical and legal issues associated with the current situation. We are writing to you as the senior wardens of The Falls Church and Truro Church.

We respectfully request that you reflect on why it is that we all find ourselves in the current predicament. The Episcopal Church has departed from the basic tenets of historic Christianity, including the authority of the Holy Scriptures and the uniqueness of Jesus Christ as the only Lord and Savior of humankind. The actions of the Episcopal Church at its 2003 and 2006 General Conventions and the resulting division are simply the most visible symptoms of these grievous errors in doctrine.

When the New Hampshire election of a practicing homosexual bishop was to be a possibility, and to be presented to the 2003 General Convention for confirmation, each of the four Instruments of Unity of the Anglican Communion—namely, the Archbishop of Canterbury, the Primates Meeting, the Anglican Consultative Council, and the Lambeth Conference by its Resolution 1:10—had warned that serious damage would occur.

The 2003 General Convention approved the election. You and a majority of the Virginia deputation to the House of Deputies concurred in that decision, notwithstanding clear diocesan policy to the contrary. Moreover, you personally were a leading proponent of Resolution 051, which stated “that local faith communities are operating within the bounds of our common life as they explore and experience liturgies celebrating and blessing same-sex unions.”

In the wake of these decisions, the Archbishop of Canterbury called an emergency meeting of the Primates at Lambeth Palace. The Primates’ unanimous decision in October 2003 stated that if the consecration went forward, it would “tear the fabric of the Communion at its deepest level, and may lead to further division.” The then-Presidenting Bishop of the Episcopal Church signed this unanimous decree. Shortly thereafter, he returned to the United States and, along with a large number of American bishops, proceeded with the consecration. That action,

Established 1732
An Episcopal Church in the Diocese of Virginia

which you supported, inflicted the serious consequences and damages predicted by the Primates. Indeed, 22 of 38 Provinces ultimately declared broken or impaired communion with the Episcopal Church, creating an acknowledged division within the Communion. As the Global South Primates observed, the Episcopal Church "cut themselves adrift and broke[] the sacramental fellowship of the Communion." As others have observed, the Episcopal Church violated the ancient church maxim: "What concerns all should be decided by all."

The Primates' resolution also called for a commission, which produced the Windsor Report in October 2004. The Windsor Report advised that Lambeth Resolution 1:10 (which you supported) was the official position of the Communion, and it admonished the Episcopal Church to reconsider its position. The Windsor Report also recommended that the Episcopal Church take specific steps to express its "desire ... to remain within the Communion," explaining that "[s]hould the call to halt ... not be heeded, then we shall have to begin to learn to walk apart." In 2005, the Primates and the Anglican Consultative Council endorsed those recommendations of The Windsor Report and called for the Episcopal Church to comply with those recommendations at its 2006 General Convention.

Notwithstanding that admonition, the Episcopal Church chose to "walk apart" from the rest of the Communion. The 2006 General Convention did not change the Episcopal Church's earlier position. The feeble response of the 2006 General Convention has been tried in the balance of Communion opinion, and has been found wanting. As the Archbishop of Canterbury put it with characteristic understatement: "The recent resolutions of the General Convention have not produced a complete response to the challenges of the Windsor Report."

Bishops in the Anglican Communion undertake the solemn responsibility to strive "with all faithful diligence to banish and drive away from the Church all erroneous and strange doctrine contrary to God's word; and both privately and openly to call upon and encourage others to do the same." 1928 Book of Common Prayer, p. 555. Until 1979, this solemn oath was a part of the Ordinal in our Book of Common Prayer. Although this oath was removed, to the distress of many orthodox believers, American bishops at their consecration are welcomed into the governance of the whole Church and charged to guard its unity.

This unity derives from a shared commitment to and teaching of Biblical theology, which has been codified by the early Church in the three Creeds (Apostles', Nicene, and Athanasian) included in our own Book of Common Prayer. The Anglican tradition also stands upon the teaching of the 39 Articles of Religion (also found in the Book of Common Prayer), which state that "it is not lawful for the Church to ordain any thing that is contrary to God's Word written." Article XX.

Notably, your letter contains more than 15 references to constitutional and canonical provisions, by which you seek to intimidate and control our vestries and congregations. By contrast, your letter contains no reference whatsoever to the Bible, which is the true and foundational basis for our existence as part of the Church of Jesus Christ. The Apostle Paul wrote that "[a]ll Scripture is breathed out by God and profitable for teaching, for reproof, for correction, and for training in righteousness." 2 *Timothy* 3:16. And Jesus said that "[w]hoever

then annuls one of the least of these commandments, and so teaches others, shall be called least in the kingdom of heaven." *Matthew 5:19.*

The damage and disarray within the Episcopal Church and the Anglican Communion is clearly laid at the doorstep of those bishops who have failed in their duty to uphold this unity and the teaching of the Church. Historically, schism is usually caused by bishops of the Church (as well as theologians and others) teaching and promulgating heresy. We wrote to you directly about this concern in the letter from The Falls Church vestry, dated October 4, 2005. It grieves us that you have chosen not to heed this letter.

Recognizing the division in the Communion, in the denomination, and in our own Diocese, the 209th Annual Council of the Diocese in 2004 recognized that "profound differences have arisen over issues addressed at the 74th General Convention" of the Episcopal Church and established a Reconciliation Commission to address them. In January 2005, the Commission declared: "[W]e cannot avoid the difficult question: 'Can we continue to live together?' We understand from some of those among us that the answer may ultimately be 'No,' and that in this case there must be provision for an amicable divorce."

In January 2006, further recognizing the division among us, you announced formation of a Special Committee and charged it with "helping congregations continuing in conflict over the decisions of the 2003 General Convention get on with their mission in as close a union as possible with the diocese." That committee included the former president of the Standing Committee (now a candidate for Bishop Coadjutor) and the chairman of the Reconciliation Commission. The Special Committee was chaired by the Chancellor of the Diocese.

In September 2006, after nine months of intense meetings, the Special Committee issued a unanimous report drafted by the Chancellor of the Diocese. The Report explained that the Special Committee was appointed "to help reconcile the divisions within our diocese," and it expressed the hope that "[n]otwithstanding the division which may cause some to 'walk apart', we shall always share in our own way our devotion to spreading the Good News." At the same time, however, the Report concluded that "for some members of the Diocese, separation from the Diocese and the Episcopal Church is increasingly likely." Thus, the Report offered a "Protocol for Departing Congregation[s]" that included a discernment period and vestry and congregational votes on whether to sever ties with TEC and the Diocese.

You have repeatedly endorsed the Special Committee Report Protocol as "a useful way forward," including in our meeting with you on October 16, 2006. In addition, on your recommendation it was received—as presented and without amendment, after discussion and requests for changes—by votes of the Standing Committee and Executive Board of the Diocese. We understand that there were no dissenting votes. In any event, our congregation has undertaken a 40-day period of discernment to consider this issue in reliance upon these actions.

The Protocol for Departing Congregations in the Special Committee Report recognizes, among other things, that our congregations have the right to carry out a congregational vote governing the question whether to dissociate from the Episcopal Church and the Diocese. We

have proceeded with complete transparency in reliance upon the Protocol and your assurances concerning that Protocol. At every step in our discernment and our voting process, we have notified the Diocese about what we are doing. The Diocese has been invited to participate in our discernment process and has in fact done so. Indeed, such diocesan participation is scheduled to continue tomorrow, when the Chancellor of the Diocese or members of the Standing Committee will be speaking to our congregations. We have acted in a manner consistent with the Protocol. Acting on the advice of counsel, we have also met every enforceable canonical and civil law obligation.

As to your suggestion that, if our vestry members continue to act in reliance upon these assurances, they may have acted in "bad faith" or engaged in "willful misconduct," we have acted in good faith, and with clean hands, in reliance upon the representations of you and the Diocese. We have also relied on public pronouncements of the then-Presiding Bishop Frank Griswold that property matters are to be resolved at the diocesan level. And, of course, our counsel have advised us that the canons are subject to Virginia law. We have previously provided your chancellor with a summary of that law, which notes that Virginia law does not recognize an express trust, let alone an implied trust, in favor of denominations such as the Episcopal Church. Given this plain rule of law, it is our position that the Diocese does not have a valid claim to ownership of our property under a theory of express or implied trust.

In any event, we must ask that you not purport to instruct our vestry and clergy on civil law. (Your letter has a section entitled "Potential Personal Liability," in which you discuss civil court decisions, and at several other points in the letter you reference purported civil law obligations.) As you have known for some time, they are represented by counsel and any discussion of these legal obligations should be directed to Winston & Strawn, 1700 K Street, N.W., Washington, D.C. 20006; Attn: Steffen N. Johnson; and to our chancellors, A. Hugo Blankingship, Jr. (The Falls Church) and Robert M. Dilling (Truro Church). Any attempt by the Episcopal Church or the Diocese to interfere with our interests, including any further attempt to interfere with our discernment process or our congregational vote, will be met with the strongest possible response, including legal defense.

The Diocese of Virginia has always been known as a place where Christian charity and normal civility guide the relationships among its members. These attributes led to the All Saints' Dale City settlement and the unanimous report of the Special Committee. To suggest to us now that the Standing Committee and the Executive Board may not endorse the report of the Special Committee, especially its Protocol for Departing Congregations, as well as the suggestion that the Executive Council and other authorities of the General Church, may seek to inject themselves into the affairs of this Diocese and to interfere with carefully constructed, orderly ways forward clearly places your integrity, and the integrity of the Diocese, in grave jeopardy. We reject that interference and urge you to do so as well. For you to suggest that our vestries may be subject to civil liability for conforming their conduct to the Protocol shocks the conscience. This portion of your letter constitutes a flagrant disregard of the Protocol's "urg[ing] that the parties be guided by principles of fairness, equity and Christian charity."

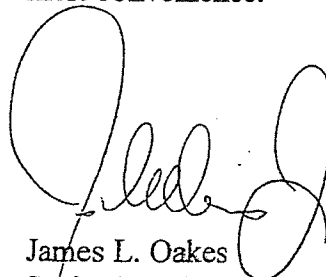
We cannot imagine a worse witness, as we try to celebrate 400 years of Anglican worship in Virginia, than to have a number of our churches, including the historic churches, involved in adversarial litigation with the Diocese that could have been avoided had you and the Diocese returned to the posture of Christian charity and civility we once shared. There is one ray of hope in your letter to us, namely that we might still be able to "reach a resolution to the issues where we differ that takes into account the promises we have made, our obligations of respect and care for one another, and most of all expresses our obedience to Christ."

We regret that you saw fit to publish your letter to us. We are not making this letter public at this time. We urge you to meet with us at your earliest convenience.

In Christ,



Thomas E. Wilson
Senior Warden, The Falls Church



James L. Oakes
Senior Warden, Truro Church

cc: Russell V. Palmore, Esq., Chancellor, The Diocese of Virginia
Steffen N. Johnson, Esq.
A. Hugo Blankingship Jr., Esq., Chancellor, The Falls Church
Robert M. Dilling, Esq., Chancellor, Truro Church

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

THE CANA CONGREGATIONS' REPLY BRIEF ON VOTING ISSUES

This acts as a one-page cover sheet reference pleading to the complete CANA Congregations' Reply Brief on Voting Issues, and filed in CL 2007-248724 (the omnibus case file), on September 16, 2008. The CANA Congregations' Reply Brief on Voting Issues, 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' Reply Brief on Voting Issues, please see the omnibus case file, CL 2007 – 248724.

Dated: September 16, 2008

Respectfully submitted,

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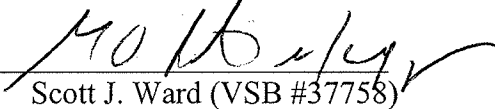
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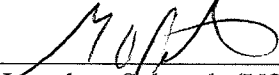
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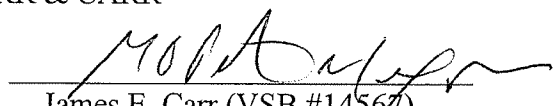
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of September, 2008 a copy of the foregoing one-page Cover Sheet for CANA Congregations' Reply Brief on Voting Issues, was sent by electronic mail and first-class mail, postage prepaid, to:

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Richmond, Virginia 23219

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

Sara G. Silverman
Law Clerk to the Honorable Randy I. Bellows
4110 Chain Bridge Road
Fifth Floor Judges' Chambers
Fairfax, VA 22030



George O. Peterson