

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

|  |   |                   |                   |
|--|---|-------------------|-------------------|
| <b>In re:</b>                                    | ) | <b>Case Nos.:</b> | CL 2007-248724,   |
| <b>Multi-Circuit Episcopal Church Litigation</b> | ) |                   | 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 EPISCOPAL CHURCH'S AND THE DIOCESE OF VIRGINIA'S OPPOSITION  
BRIEF ON 57-9 VOTING ISSUES PURSUANT TO AUGUST 22, 2008, ORDER**

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**I. The CANA Congregations bear the burdens of proof and production of evidence that their petitions meet the statutory requirements and therefore may be approved.**

The Congregations “acknowledge that they have the burden of establishing that a congregational majority voted to sever ties with ECUSA and the Diocese and to affiliate instead with CANA and the Anglican District of Virginia.” The Congregations “further acknowledge that they have the burden of showing that the vote was fairly taken” and that they “bear the initial burden of production.” CANA Congregations’ Opening Brief on Voting Issues at 1. We agree.

The Congregations add that “to the extent that ECUSA and the Diocese allege that (1) particular votes were improperly counted or not counted (thus affecting the vote numerator), or (2) voters were improperly included in, or excluded from, the list of eligible voters (thus affecting the vote denominator), they bear the burden of production.” *Id.* We agree, subject to the qualification that the Episcopal Church and the Diocese bear only “the *initial* burden of production,” *id.* (emphasis added), as to such issues. The ultimate burden of proof – the burden of persuasion – remains on the Congregations at all times. *See, e.g., Brooks v. Worthington*, 206 Va. 352, 359, 143 S.E.2d 841, 847 (1965) (“the burden of proof is always on the plaintiff to establish his case”) and other cases cited in the Episcopal Church-Diocese Opening Brief on 57-9 Voting Issues at 2. The Congregations, in other words, have the ultimate burden of persuading the Court that their votes were taken fairly and in full compliance with the statute.

**II. The standard of proof is preponderance of the evidence.**

The parties agree that the standard of proof with respect to the issues discussed in the Episcopal Church-Diocese Opening Brief is preponderance of the evidence.

The Congregations’ Opening Brief (at 7-8) signals an intention to contend that the Court should rule in their favor on equitable estoppel grounds. They advance this new footing for their 57-9 actions notwithstanding allegations in their petitions that their votes were taken pursuant to

and in compliance with § 57-9(A), notwithstanding their petitions' complete failure to base their 57-9 actions on equitable estoppel grounds, and notwithstanding their heretofore-successful and repeated position that it is the statute that controls, not the rules of the Church. We respond to the substance of the Congregations' contentions below. With respect to the standard of proof, however, if the Court allows the Congregations' 57-9 actions to proceed on this new basis, the Court must judge their claims by the higher standard of proof repeatedly held applicable to such claims: "clear, precise, and unequivocal evidence." *E.g., Cowan v. Psychiatric Assoc., Ltd.*, 239 Va. 59, 63, 387 S.E.2d 747, 74 (1990) ("The elements necessary to establish equitable estoppel are (1) a representation, (2) reliance, (3) a change of position, and (4) detriment. Moreover, the party who relies upon equitable estoppel has the burden of proving each element by 'clear, precise and unequivocal evidence'") (citations omitted, quoting two prior cases for the standard of proof); *Smith v. McGregor*, 237 Va. 66, 74, 376 S.E.2d 60, 64 (1989) ("Each element [of equitable estoppel] must be proved by evidence which is clear, precise, and unequivocal").

### **III. Application of the requirement that the votes be "fairly taken"**

We agree for the most part with the Congregations' list of factors that the Court should consider in deciding whether the votes were fairly taken. That list is incomplete, however, to the extent that the Congregations overlook the primary Virginia authority addressing issues of fair congregational voting, *Reid v. Gholson*, 229 Va. 179, 327 S.E.2d 107 (1985) (discussed in our Opening Brief at 3-4), and do not include all of the factors identified in our Opening Brief.

The Congregations also add one factor that quite certainly should *not* be a part of the analysis of whether the votes were fairly taken: "whether the eligibility standards used for the disaffiliation vote were generally consistent with the pre-existing eligibility standards for congregational votes set forth in ECUSA's and the Diocese's canons." Congregations' Opening

Brief at 2. As discussed below, the statutory term “member” does not, either in common parlance or under the Church’s own rules, equal “communicant in standing entitled to vote in the Diocese of Virginia.” Moreover, this Court has consistently ruled – at the Congregations’ urging – that the terms of § 57-9(A) should be interpreted and applied without reference to the Church’s own procedures and rules. Whether the eligibility standards for the disaffiliation vote were consistent with canonical voting requirements is thus irrelevant under this Court’s approach to interpreting § 57-9(A). *See* Letter Opinion (April 3, 2008) at 48 (“in (B), the legislature defers completely to the independent church’s constitution, ordinary practice, or custom, whereas in (A), the legislature shows no such deference”). Such consistency, then, cannot be a requirement for a “fairly taken” vote under the statute.

**IV. The term “members” in § 57-9(A) is not limited to “voting members” or “communicants in good standing.”**

The Congregations state accurately that Title 57 does not define the term “members,” as used in § 57-9(A), and therefore that “the Court should rely on the ordinary meaning of the term.” Congregations’ Opening Brief at 3. Immediately after making those pronouncements, however, the Congregations proceed to disregard their own advice. Ignoring dictionary definitions of the term and their own demonstrated understanding and use of the term “member,” discussed in our Opening Brief at 8-9, they argue that “for purposes of this case,” member “should be defined as an ‘adult communicant in good standing,’ as determined by each CANA Congregation.” *Id.* That is inappropriate.

As discussed in our Opening Brief (quoting April 3, 2008, Letter Opinion at 47), the Court “is first required to consider the ‘plain meaning’ of the words as they are used in the statute” – as this Court has done, at the Congregations’ urging, with respect to all other terms of

§ 57-9(A).<sup>1</sup> The plain meaning of the term “member” involves simply a connection with or involvement in a particular group, including a church. The plain, “ordinary” meaning of the term “member” is *not* “adult communicant in good standing” or “person entitled to vote under an association’s rules.”<sup>2</sup> The Congregations do not even attempt to deny that in other contexts, and in accordance with the Church’s own definitions and practice, they too understand and use the term “member” to describe a larger group than the “communicants in good standing” or “those who are eligible to vote in a congregational meeting.” Nor, under ordinary principles of statutory interpretation, can the phrase “members of such congregation over 18 years of age” in § 57-9(A) be equated with the very different language of § 57-9(B): “the members of such congregation, *entitled to vote by its constitution* as existing at the time of the division, or where it has no written constitution, entitled to vote by its ordinary practice or custom” (emphasis added). *See* Episcopal Church-Diocese Opening Brief at 10-11.

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<sup>1</sup> The Congregations’ advocacy of a unique ecclesiastical definition of “member” contrasts sharply with the position the Court adopted (at their urging) concerning “division,” “branch,” and the like, which eschewed any recognition of the same canon laws that the Congregations now promote. *See, e.g.,* Letter Opinion (April 3, 2008) at 41 (“the CANA Congregations argue that the express text of the statute does not mandate that this Court ‘defer to denominational authorities in determining whether there has been a division,’ since ‘[t]he meaning of legislative enactments does not generally vary from dispute to dispute, and private parties rarely get to decide how a statute applies to them ....’” (quoting Plaintiffs’ Corrected Mem. in Opp’n to the Post Trial Opening Brief of the Episcopal Church and the Diocese (Jan. 16, 2008) at 18-19). *See also id.* at 79-81. What the Congregations once said “makes no sense as a matter of statutory interpretation” (Corrected Mem. in Opp’n at 3) is now what they ask the Court to do.

<sup>2</sup> The Congregations argue at length that the Church and the Diocese do not “extend voting rights to all ‘members’” in meetings and votes pursuant to the Church’s and the Diocese’s rules. Congregations’ Opening Brief at 5-7. The Church and the Diocese do not contest this. Indeed, that is a key reason that “members” cannot be and is not used as a synonym for “communicants in good standing entitled to vote under the Church’s rules.”

**A. “Communicants in good standing” excludes “members” who have a continuing connection to their congregations, as well as those who do not.**

The Congregations principally suggest that at least “for purposes of this case,” the Court cannot require a vote of the majority of the whole number of “members” over 18, as § 57-9(A) plainly requires, because under Episcopal Church Canon I.17 a congregation’s “members” include people whose baptisms are recorded in the parish but who have no current connection to the congregation. Congregations’ Opening Brief at 4-5. The fact is, the plain meaning of the term “member” may in fact encompass such people. See “Member,” Merriam-Webster’s Online Dictionary, at <http://www.merriam-webster.com/dictionary/member> (visited Sept. 2, 2008) (defining “member” as “a person baptized or enrolled in a church”).<sup>3</sup> In any event, the Court need not tackle this straw man.

The Congregations implicitly admit, and the evidence will show, that one or more of them had members over the age of 18, whose addresses were known and who had continuing connections to the congregation, who nevertheless were not permitted to vote under § 57-9(A) because they were not deemed to be “communicants in good standing” eligible to vote under the standards used by each Congregation. In accordance with current reporting requirements, for example, each of the Congregations reported to the Church and the Diocese annually their

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<sup>3</sup> The Congregations suggest that Virginia case law requires “some level of current participation” as a condition of “membership.” The two cases that the Congregations cite do not support that. *Brown v. Virginia Advent Christian Conference*, 194 Va. 909, 76 S.E.2d 240 (1953), did not purport to determine or define the “members” of any congregation or other group, but merely held that certain individuals lacked standing to sue a group of trustees at law for the demolition of a particular church building where “it was neither alleged nor proven that [the plaintiffs] constituted the congregation” of the demolished church. *Id.* at 912, 76 S.E.2d at 242. *Fowler v. Fairfax County Police Officers Retirement System*, 57 Va. Cir. 553, 555-56 (Fairfax Co. 2000), held only that the “members of the police department” for purposes of § 51-127.10 did not include persons who had formally retired from that organization. Neither case holds or even suggests that a person enrolled in a church or other organization cannot be deemed a “member” thereof without some form of current, active participation.

“active” members, described as “[a]ny person whose baptism is recorded in the Register of Church Membership and Rites (Parish Register) and contributes to or participates in the worship and communal life of the reporting congregation, regardless of how much or how little.” *See* Workbook & Instructions at 1 (attached as Ex. A to Congregations’ Opening Brief). This reporting requirement is specifically designed to *avoid* the reporting of those “who are not currently contributing to the corporate worship and communal life of the reporting congregation.” *Id.*; *see also, e.g.*, Episcopal Church-Diocese Opening Brief Ex. B (Parochial Report filed by Church of the Epiphany for 2005). Most of the congregations have been reporting an “active membership” pursuant to these instructions that exceeds their reported number of “communicants in good standing,” which is separately required and listed. *See, e.g.*, Ex. E (Parochial Report filed by Truro Episcopal Church for 2005, showing 2,462 “Total Active Baptized Members” and 2,316 “communicants in good standing”). At least one Congregation, noting that eligible voters who did not would count as “no” votes, actually invited active members to become “temporarily inactive” if they were going to be out of town or unable to participate in the actual vote, in an apparent effort to artificially reduce the number of votes required. *See* Ex. F (St. Paul’s Church Announcements (Nov. 26, 2006) at 5 [STP011077]).

In addition, if the touchstone of “membership” is to be active participation in the congregation, as the Congregations imply, 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. *See* Ex. E (Parochial Report filed by Truro Episcopal Church for 2005, identifying 710 persons “who are active whose baptisms are not recorded”).

This Court cannot decide as a matter of law exactly how many “members” each Congregation had or whether the number of such “members” in fact exceeds each

Congregation's number of "communicants in good standing." The Court also cannot decide as a matter of law whether any of the reported votes reflects a "majority of the whole number" of members over the age of 18, as § 57-9(A) requires. It can and should decide as a matter of law, however, that "members" in § 57-9(A) cannot be interpreted to mean "communicants in good standing" or "those whom the Congregations deemed eligible to vote" under various ecclesiastical criteria. *See* Congregations' Opening Brief at 3. In accordance with the ordinary meaning of the term "member," the Church's rules, and the Congregations' own understandings, it should instead be interpreted to mean either

(a) "a person baptized or enrolled in a church," Merriam-Webster's Online Dictionary at <http://www.merriam-webster.com/dictionary/member> (visited Sept. 2, 2008); *accord* Episcopal Church Canon I.17(1) (requiring baptism and recordation), or

(b) active baptized persons, *see* Congregations' Opening Brief Ex. A at 1 (parochial report instructions regarding "active baptized members"); Episcopal Church-Diocese Opening Brief Ex. B (Epiphany parochial report reporting such persons); Ex. E (Truro parochial report reporting such persons).

Consistent with the plain language of § 57-9 and this Court's prior rulings, however, the definitions the Congregations actually used, which are more restrictive than either of the above meanings of the term, and which denied voting rights under § 57-9(A) to some "members" of the Congregations over the age of 18, must be rejected.

**B. The Church and the Diocese are not estopped from challenging the Congregations' compliance with statutory voting requirements.**

The Congregations argue that the Church and the Diocese are now estopped from challenging their compliance with § 57-9(A)'s voting requirements because a "Protocol" contained in a report drafted by a committee whose members were selected by the Diocese and



the CANA Congregations stated that “[a]ll communicants in good standing ... shall be entitled to vote at the congregational meeting.” Congregations’ Opening Brief at 7-8. That contention has no merit.

**1. Neither the Church nor the Diocese took any position or made any representations about the application or implementation of § 57-9.**

At the outset, we note that the Congregations have the burden of demonstrating that they met the requirements of the statute and that their petitions should be approved. The Congregations did not file an action on the “Protocol,” claiming that it was a binding contract (which it was not) that the Diocese breached. They filed an action under Va. Code § 57-9, and their pleadings necessarily allege that their votes were “conducted in compliance with Va. Code § 57-9.” *E.g.*, The Falls Church Petition ¶ 16; Church of the Apostles Petition ¶ 14. On that ground alone, the “Protocol” is irrelevant. To prove their case, the Congregations must establish that they complied with the *statute*. The Church and the Diocese were never responsible for advising the Congregations with respect to the statute’s requirements, and neither ever did so. Indeed, the Court has already held, in its Constitutionality Letter Opinion (June 27, 2008), at 48, that: “57-9(A) did not parachute into this dispute from a clear blue sky. *Its existence cannot have been a surprise to any party to this litigation, each of whom is charged with knowledge of its contents and, more significantly, its import*” (emphasis added).

In any event, and in part for that reason, there is no basis for imposing equitable estoppel here. “The elements necessary to establish equitable estoppel are (1) a representation, (2) reliance, (3) a change of position, and (4) detriment.” *Cowan v. Psychiatric Assoc., Ltd.*, 239 Va. 59, 63, 387 S.E.2d 747, 74 (1990).<sup>4</sup> Under that standard, neither the Episcopal Church nor

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<sup>4</sup> “Moreover, the party who relies upon equitable estoppel has the burden of proving each element by ‘clear, precise and unequivocal evidence.’” *Id.*

the Diocese is estopped to challenge the Congregations' compliance with the statute.

First, as the Congregations' own briefing and evidence shows, the Episcopal Church had no role whatever in drafting the committee's report or the "Protocol" contained therein. The Church never approved the "Protocol" or encouraged the Congregations to make use of it in any way. The Congregations suggest no reason that the Church could now be estopped by the existence of the report, and there is none.

Second, the established facts do not permit a finding that the Diocese may be equitably estopped by the "Protocol." As indicated above, even the Congregations have not claimed that the "Protocol" was ever designed to implement or ensure compliance with § 57-9, and it was not. To the contrary, it does not mention § 57-9, and indeed its entire premise is flatly inconsistent with the statute. There is no hint in the "Protocol" that should the requisite vote be achieved, the majority faction of a voting Congregation may then file a petition in Circuit Court which shall be determinative of the use and control of parish property. Instead, according to the "Protocol," if the congregation voted to leave the Diocese and the Church, at that point "a second vote shall be taken" with regard to whether "the real and personal property of [the parish should] *be offered* to the departing congregation." See Plaintiffs' November 2007 Trial Ex. 126 at 2 ¶ f (emphasis added). If "the second vote passes by a 70% majority, *the amount of the payment to the Diocese* for its claim to the real and personal property ... shall be determined by agreement," which agreement "will require the further consent of the Bishop, Standing Committee, and Executive Board." *Id.* at 2-3 ¶¶ g and h (emphasis added). Nor does the "Protocol" reference or depend upon any of the other requirements of § 57-9(A), including "division," "branch," "attachment," or "church or religious society," or "vote of the whole number." The "Protocol" does not constitute any sort of "representation" on the part of the Diocese (let alone the Church) that a

particular vote or procedures would entitle the Congregations to avail themselves of § 57-9. Indeed, it would make more sense to conclude that the Congregations are estopped by the Protocol's very different premises from claiming any such right.

Third, even if the "Protocol" had been designed and drafted to implement § 57-9(A), it was a draft that was never agreed to or approved by the Diocese and therefore is not a Diocesan "representation" on which the Congregations either could have relied or did rely. All of the evidence at last year's trial was that the Report of the Special Committee was "received" by the Diocese's Standing Committee and Executive Board, as a committee report, but not approved.<sup>5</sup> Letter Opinion (April 3, 2008) at 32 ("At a joint meeting Nov. 9 of the Executive Board with the Standing Committee, both bodies voted to receive the report but did not endorse or approve the report") (quoting Congregations' Ex. 130 at 1). The Congregations' own witness acknowledged the lack of agreement to or approval of the "Protocol." Trial Tr. (Nov. 15, 2007) at 718-19 (David Allison, of the Anglican District of Virginia and Church of the Apostles). A member of the Diocese's Standing Committee also testified about the lack of agreement or approval. *Id.* at 767-68 (John Keith). A second trial on the same point is unnecessary and entirely unwarranted. If a second trial is held, the evidence will establish the same thing.

Fourth, the Congregations knew very well, before they voted, that the "Protocol" had not been agreed to or approved. *See, e.g.*, Trial Tr. (Nov. 15, 2007) at 718-19 (David Allison):

9 Q You understood that the Protocol was not  
10 fully accepted by the Diocese and the National Church  
11 when it was announced.  
12 A We did.

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<sup>5</sup> If a second trial is necessary on this issue, testimony and documentary evidence at the trial will confirm that the Standing Committee and Executive Board voted to "receive" the Protocol specifically *because* they were *not* willing to approve it and that several representatives of the CANA Congregations were present during the discussion and vote.

13 Q You understood that the Standing Committee  
14 of the Diocese never accepted the Protocol.

15 A We understood at the time that it was  
16 announced that it had not yet accepted it. We  
17 obviously hoped that it would accept it, but we  
18 understood that it had not yet been accepted.

19 Q And it was not accepted by the Standing  
20 Committee at any point prior to when the Church of the  
21 Apostles voted to disaffiliate?

22 A That is correct.

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1 Q And you understood that the Executive Board  
2 of the Diocese never accepted the Protocol.

3 A We did.

*See also* TEC-Diocese Ex. 66 (December 1, 2006, letter from Bishop Lee to the leadership of each Congregation) at 1-2:

While I believe the report [of the Special Committee] is a useful way forward, which I support, *neither the Executive Board nor the Standing Committee has endorsed or approved it* and it may not be the only way forward to a mutually acceptable outcome. *You should not assume the Episcopal Church will endorse or approve the steps outlined in that report....* I remind you that absent a negotiated settlement of property, an attempt to place your congregation and its real and personal property under the authority of any ecclesial body other than the Diocese of Virginia and the bodies authorized by its canons to hold church property will have repercussions and possible civil liability for individual vestry members. [Emphases added.]

TEC-Diocese Ex. 64 (October 3, 2006, letter to from Bishop Lee to each committee member, including the three selected by the Congregations, representing only that the report would be “share[d] ... in due course with the Standing Committee and the Executive Board,” the governing bodies of the Diocese). Thus, the Congregations could not have “relied” on the “Protocol” in conducting their votes, as equitable estoppel requires.

Fifth, the lack of reliance on the “Protocol” is further established by the fact that the Congregations did not even follow it. The “Protocol” provides that “[i]f the required voting percentage is achieved” in support of separation from the Episcopal Church and the Diocese, “a

second vote shall be taken” with regard to seizure of the property. Plaintiffs’ November 2007 Trial Ex. 126 at 2 (emphasis added). The Congregations did not take a second vote; they combined the separation vote with the property question on a single ballot.<sup>6</sup> Nor did the second question on that ballot conform to the “Protocol.” The “Protocol” states that on the second vote,

The question presented shall be, “Should the real and personal property of \_\_\_\_\_ (name of parish/mission) be offered to the departing congregation?”

Plaintiff’s November 2007 Trial Ex. 126 at 2. As the exhibits referenced in footnote 6 show, the Congregations did not use that formula but instead substituted the following:

**Resolved**, that if a majority of [name of church] severs its denominational ties with The Episcopal Church and The Diocese of Virginia, the real and personal property of [name of church] should be retained by the majority of the congregation.

The Congregations cannot expect the Court to enforce one particular aspect of the “Protocol,” limiting voting eligibility to adult communicants in good standing (contrary to the plain language of § 57-9(A)), when they themselves chose to disregard the “Protocol” in all other particulars, including most importantly the requirement that parish property be taken only pursuant to a negotiated settlement approved by the governing bodies of the Diocese and containing an appropriate and approved payment to the Diocese.

**2. The Congregations have waived their equitable estoppel argument.**

The Congregations, having spent months in an ultimately successful effort to defeat what they claimed was the introduction of a new phase or theory of the case (the “waiver” or “contracting around” the statute contention), now seek to introduce both in the form of waiver’s

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<sup>6</sup> See, e.g., Ex. 18 to Apostles’ Report of Congregational Determination (filed Dec. 18, 2006); Ex. 19 to The Falls Church’s Report (filed Dec. 18, 2006); Ex. 18 to Truro Church’s Report (filed Dec. 18, 2006).

kissing cousin: equitable estoppel. This litigation has been pending for approximately 21 months. It has been before this Court for about 16 months. Now, on the eve of the trial on the final issues not yet decided – primarily “whether the vote was ‘fairly taken’ in accordance with 57-9” and “the precise property subject to each 57-9 petition,” *see, e.g.*, Order (July 16, 2008) at 2 – the Congregations advance a new basis for their 57-9 actions. To be sure, the so-called “Protocol” has been discussed before in briefs, but one searches the 57-9 petitions, the Congregations’ previous briefs regarding 57-9, and the Court’s Orders in vain for any hint of an equitable estoppel theory or claim supporting approval of the Congregations’ 57-9 petitions. *See, e.g.*, August 11, 2008, Hr’g Tr. at 17-18, 21-23 (attached as Exhibit G). The Court’s observations about pleading and teeing up issues are true about the Congregations’ equitable estoppel claim. Indeed, that claim could easily and fairly be labeled an argument that the Church and the Diocese have “contracted around” the voting requirements of the statute.

**V. The phrase “majority of the whole number” in § 57-9(A) requires a majority vote of the whole number of “members” eligible to vote, whether they voted or not.**

Prior to their congregational votes, and again as recently as the hearing on August 22, 2008, the CANA Congregations concluded that under § 57-9(A), a majority vote of the “whole number” of *all* of their members (which they defined to mean “eligible voters”) is required. *See* Ex. F at 5 [STP011077]; Episcopal Church-Diocese Opening Brief at 12-13 & n.10 (citing congregational letters at The Falls Church and Epiphany, and counsel for the Congregations at the hearing). The Congregations’ own authority applying what is now § 57-9(A) applies and supports this interpretation. *Id.* at 13-14.

In their Opening Brief, however, the Congregations appear to equivocate, stating that *Baber v. Caldwell*, 207 Va. 694, 152 S.E.2d 23 (1967), “supports” a different interpretation, under which only a majority of the votes actually cast is required. It is true that in reversing and

remanding that § 57-9(B) case to the Circuit Court, the Court in *Abner* stated as follows:

If the defendants so request, the Circuit Court will direct the holding of a congregational meeting for the purposes of electing or reelecting Elders and Deacons and ratifying or repudiating the congregation's previous decision to sever all relationship with the Virginia Christian Missionary Society. The Court, upon being satisfied that the meeting was duly called and held, will approve the resolutions adopted by a majority of the members of the congregation who were present at the meeting and entitled to vote as provided in Code § 57-9 and, if requested by the majority, will enter an injunction...

207 Va. at 700, 152 S.E.2d at 28. Whether § 57-9(B) requires a majority vote of *all* eligible members or only those present and voting was not an issue in *Abner*, however, and the Court did not justify or explain this aspect of its remedial order. Nor does § 57-9(B) state, as § 57-9(A) does, that the congregation must vote by a “majority of the whole number” of those entitled to vote. It requires instead “a majority of the members of such congregation, entitled to vote by its constitution as existing at the time of the division, or where it has no written constitution, entitled to vote by its ordinary practice or custom.” Nothing in *Abner* discusses who was entitled to vote by the constitution or the ordinary practice or custom of the congregation involved in that case.

Therefore, *Abner* does not call into question either the Congregations' previously consistent position or prior authority under § 57-9(A).

The General Assembly has used the phrase “majority of the whole number” to refer to majorities of all eligible voters in other contexts, and when that “majority of the whole number” is limited only to those present at a meeting it has said so explicitly.<sup>7</sup> Courts and the Attorney

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<sup>7</sup> Compare, e.g., Va. Code § 23-103 (“no order to remove a professor shall be made without the concurrence therein of a majority of the whole number of [the Virginia Military Institute's board of] visitors”) with Va. Code § 28.2-1000 (“No action shall be taken by the [Atlantic States Marine Fisheries] Commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states *present at any meeting*”) (emphasis added).

General of this Commonwealth have relied on the presence or absence of such distinctions.<sup>8</sup>

This Court should too.

The Congregations were correct when they advised their members that “[n]ot voting is equivalent to voting to remain in the denomination,” *see* Episcopal Church-Diocese Opening Brief at 12 & Ex. C; *see also id.* Ex. D; Ex. F at 5, and their counsel was correct when he told this Court that the statute requires the votes of “a majority of the eligible voters,” “[w]hether they show up or not,” *see id.* at 13 n.10. Section 57-9(A) requires that a vote reflect the wishes of a majority of “the whole number” of members over the age of 18.

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<sup>8</sup> *See Smiley v. Commonwealth*, 116 Va. 979, 83 S.E. 406 (1914) (“the import of [the] plain and simple language” of a statute authorizing appointment of a county superintendent of roads by “the vote of a majority of all the supervisors of the county” was “that the office ... could only be filled by the affirmative vote of a majority of all the supervisors – that is, by affirmative votes cast by at least four of the six supervisors of the county”). *See also* 1997 Op. Atty Gen. Va. 37 (discussing differences in statutes requiring a vote by a majority of those “present and voting” versus a majority of the “members elected” to a governing body); 1983-1984 Op. Atty Gen. Va. 271 (statute providing that “[a] majority of the members of [a park] authority shall constitute a quorum and the vote of a majority of members shall be necessary for any action taken by the authority” construed as requiring a majority vote of all members, not just a majority of a quorum; “[h]ad the General Assembly intended that a majority of a quorum is sufficient for an authority to act, it could have stated as much in unambiguous terms”).





## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were sent by electronic mail to all counsel named below and by first-class mail to the lead counsel at each firm (indicated with an asterisk below), on this 12th day of September, 2008:

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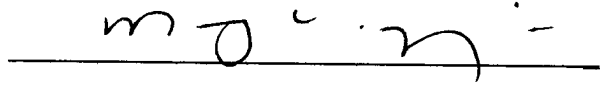
William E. Thro, Esquire (WThro@oag.state.va.us)

Office of the Attorney General

900 East Main Street

Richmond, Virginia 23219

*Counsel for the Commonwealth of Virginia ex. rel. Robert F. McDonnell, in his  
official capacity as Attorney General*

A handwritten signature in black ink, appearing to read "W. E. Thro", is written above a solid horizontal line.

1764770.5

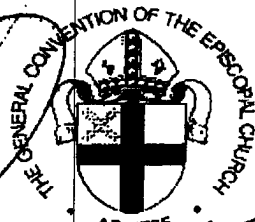
*Complete*

**THE 2005 REPORT OF EPISCOPAL CONGREGATIONS AND MISSIONS  
ACCORDING TO CANONS I.6, I.7, AND I.17  
(OTHERWISE KNOWN AS THE PAROCHIAL REPORT)**

*2678 8158  
6370*

# 33312

0707



|   |        |   |
|---|--------|---|
| Name of Congregation<br><b>Truro Church</b> |        | Diocese<br><b>Virginia</b>                                    |
| Street<br><b>10520 Main Street</b>          |        | City<br><b>Fairfax</b>  |
| State<br><b>VA</b>                          | County | Zip + 4<br><b>22030</b>                                       |
| Mailing Address<br><b>10520 Main Street</b> |        | City<br><b>Fairfax</b>  |
| State<br><b>VA</b>                          | County | Zip + 4<br><b>22030</b>                                       |
| Federal Tax ID #<br><b>54-0568400</b>       |        | Congregation's E-mail address<br><b>truro@trurochurch.org</b> |

**Report Preparation**

|  |  |
|--|--|
| Part 1. Prepared by (Print or type name):<br><b>Lisa Boggs</b>     | Daytime Phone<br><b>703.273.1300 xt. 115</b> |
| Part 2. Prepared by (Print or type name):<br><b>Ernest Wakeham</b> | Daytime Phone<br><b>703.273.1300 xt. 120</b> |

**Certified by the Clerk of the Vestry (following review/approval by the Vestry)**

|   |                        |
|---|------------------------|
| Certified by (Print or type name):<br><b>Mary C. Springmann</b> |                        |
| Signature   | Date<br><b>5/13/06</b> |

**Certified by Treasurer/Financial Officer**

|   |                        |
|---|------------------------|
| Certified by (Print or type name):<br><b>Ernest Wakeham</b> |                        |
| Signature   | Date<br><b>5/13/06</b> |

**Certified by Rector/Vicar/Person in Charge**

|   |                        |              |
|---|------------------------|--------------|
| Certified by (Print or type name):<br><b>Martyn Minns</b> |                        | Parish Phone |
| Signature   | Date<br><b>5/13/06</b> |              |

**Vestry Approval**

|   |                        |
|---|------------------------|
| Indicate date the Parochial Report was approved by the Vestry or Bishop's Committee (Canon I.6.1) | Date<br><b>5/13/06</b> |
|---|------------------------|

**Membership, Attendance and Services of the Reporting Congregation**

**Using Last Year's Report:**

Using the 2004 Parochial Report, record the Number of Baptized Members Reported as of December 31, 2004. (See your 2004 Parochial Report, Box D.)

Active Baptized Members of the Reporting Congregation Reported Last Year

Members Reported Last Year = M04. 2,418

**Using the Register of Church Membership and Rites:**

During the Report Year

1. Increases during year: All members added to the baptized members section of your congregation's Membership Register during 2005 by: baptism, confirmation/reception, or transfer; and those persons restored from inactive status, or not counted in last year's membership count.

Increases in Membership

Total Increases = 1. 95

Decreases in Membership

2. Decreases during year: All baptized members lost by death, transferred to another congregation, removed to inactive status in the Register of Church Membership and Rites, removed for other reasons, or not removed from last year's membership count.

Total Decreases = 2. 51

Active Baptized Members of the Reporting Congregation At Year-End

M05: Add the increases entered in Box 1 to Box M04. Then subtract the decreases entered in Box 2 for the total active membership as of December 31, 2005

Total Active Baptized Members (end of report year) = M05. 2,462

Communicants in Good Standing of the Reporting Congregation

3. All communicants in good standing: All baptized members of the reporting congregation, who, regardless of age, are faithful "in corporate worship, unless for good cause prevented", and "in working, giving and praying for the spread of the Kingdom of God."

All communicants (adults and youth) in good standing = 3. 2,316

Youth in Good Standing

4. Those communicants in good standing (counted on line 3) who are under

Communicants in good standing who are under 16 = 4. 463

Others Active

5. Others who are active whose baptisms are not recorded in the Parish Register, or in another Episcopal congregation.

Others = 5. 710

**Using the Service Register:**

Average Sunday Attendance for 2005

6. Sunday & Saturday Evening Attendance: Divide total Sunday attendance by number of Sundays.

Average Sunday Attendance = 6. 1,280

Easter Attendance in 2005

7. Easter

(7) 2,359

**Sacraments & Services:**

Number of Holy Eucharists Celebrated During 2005

8. Sunday & Saturday Evening Eucharists (8) 260

9. Weekday Eucharists (9) 52

10. Private Eucharists (10) 205

Daily Offices and Other Services Held During 2005

11. Daily Offices on Sunday (11) 0

12. Daily Offices on Weekdays (12) 338

13. Marriages (13) 12

14. Burials (14) 17

**Using the Register of Church Membership and Rites:**

Baptisms in 2005

15. Baptisms 16 years and older (15) 7

16. Baptisms under 16 years of age (16) 35

Confirmations in 2005

17. Confirmations 16 years and older (17) 20

18. Confirmations under 16 years of age (18) 25

Received in 2005

19. Received by a bishop (19) 1

**Education:**

Children and Youth Sta

20. Total Church School Students Enrolled (20) 380

Adult Education S

21. Do you have any regular Sunday or weekday adult education program(s)?

Yes  No

*Shelby*

**Stewardship and Financial Information of the Reporting Congregation**

**Giving Information for 2005:**

|                          |  |     |             |
|--------------------------|--|-----|-------------|
| Number of Pledges Stated | 1. Number of signed pledge cards for 2005 -report year | (1) | 508         |
| Total \$ Pledged Stated  | 2. Total dollar amount pledges for 2005-report year    | (2) | \$2,859,638 |

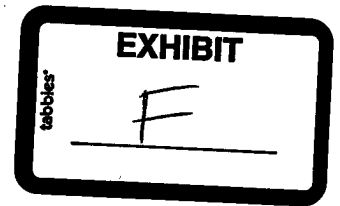
**Report of Revenues and Expenses for 2005:**

|   |   |      |                    |                    |
|---|---|------|--------------------|--------------------|
| Operating Revenues Stated                                 | 3. Plate offerings, pledge payments & regular support   | (3)  | \$3,342,947        |                    |
|   | 4. Available from operations from investments   | (4)  | \$2,682            |                    |
|   | 5. Other operating income, including unrestricted gifts & restricted gifts used for operations, & contributions from congregation's organizations | (5)  | \$640,231          |                    |
|   | 6. Unrestricted bequests used for operations  | (6)  | \$0                |                    |
|   | <b>Subtotal Normal Operating Income (3 + 4 + 5 + 6) = A</b>   |      |                    | <b>\$3,985,860</b> |
|   | 7. Assistance from diocese for operating budget   | (7)  | \$0                |                    |
|   | <b>Total Operating Revenues (A + 7) = B</b>   |      |                    | <b>\$3,985,860</b> |
| Non-Operating Revenues Stated                             | 8. Capital funds gifts & additions  | (8)  | \$153,452          |                    |
|   | 9. Additions to endowment & other investment funds  | (9)  | \$0                |                    |
|   | 10. Contributions & grants for congregation based outreach & mission programs   | (10) | \$331,612          |                    |
|   | 11. Funds for transmittal to other organizations  | (11) | \$213,417          |                    |
|   | <b>Subtotal Non-Operating Revenues (8 + 9 + 10 + 11) = C</b>  |      |                    | <b>\$698,481</b>   |
| <b>Total All Revenues (B + C) = D</b>                     |   |      | <b>\$4,684,341</b> |                    |
| Operating Expenses  | 12. To diocese for assessment, apportionment, or fair share   | (12) | \$136,250          |                    |
|   | 13. Outreach from operating budget  | (13) | \$864,898          |                    |
|   | 14. All other operating expenses  | (14) | \$2,981,645        |                    |
|   | <b>Subtotal Operating Expenses (12 + 13 + 14) = E</b>   |      |                    | <b>\$3,982,793</b> |
| Non-Operating Expenses                                    | 15. Major improvements & capital expenditures   | (15) | \$264,260          |                    |
|   | 16. Expense for congregation's outreach & mission   | (16) | \$331,612          |                    |
|   | 17. Funds transmitted to other organizations  | (17) | \$83,065           |                    |
| <b>Subtotal Non-Operating Expenses (15 + 16 + 17) = F</b> |   |      | <b>\$678,937</b>   |                    |
| <b>Total All Expenses (E + F) = G</b>                     |   |      | <b>\$4,661,730</b> |                    |

**At Year-End:**

|                         |  |      |           |
|-------------------------|--|------|-----------|
| As of December 31, 2005 | 18. Total cash in all checking & passbook savings accounts | (18) | \$307,076 |
|                         | 19. Total investment at market value                       | (19) | \$88,983  |

*Shelby*



**St. Paul's Church  
Haymarket, VA  
Announcements  
November 26, 2006**

*"Sharing Jesus' Love in the Power of the Holy Spirit"*

**Announcement (Second time)  
Of the Vestry's call of a Special Parish Meeting**

**St. Paul's Episcopal Church**

The Special Parish Meeting will begin on December 10<sup>th</sup> beginning at 8:45 AM in the Nave of St. Paul's Episcopal Church, 6760 Fayette Street, Haymarket, Virginia 20169. The meeting will continue through the morning so that those attending the 9:30 and the 10:30 services will be able to vote as well. The meeting will then be in recess until reconvened on Tuesday evening from 7-9 in the Nave so that voting may continue. The meeting is scheduled to conclude on Sunday, December 17<sup>th</sup>.

We urge all eligible voters to attend the meeting and the voting on Sunday morning, December 10<sup>th</sup>. We want as many people to participate as possible.



**December 3<sup>rd</sup> Congregational Luncheon**

**Important Time for St. Paul's**

At the Congregational Luncheon there will be a time to review our reflections during the 40 Days of Discernment and discuss what is ahead including information about voting. Please bring any questions you have. We will try to keep the meeting as brief as possible.

In the meantime, if you have any questions, please email Ray Bell at [bellx2@erols.com](mailto:bellx2@erols.com) or Joyce Hellems at [joyce.hellems@cox.net](mailto:joyce.hellems@cox.net)  
Or you may call the church office.

If you can assist our Fellowship Team, please call Pam Stutz at the church office at 703-754-7536.



## Children's Sunday Nursery and Children's Worship

**Happy Thanksgiving!**

*"Give Thanks to the Lord, for he is good; his love endures forever. (I  
Chronicles 16:34)*

We want to inform parents who have young children (ages 0-3) that our nursery hours are from 10:15am to 12:15pm each Sunday. Mrs. Kenny will be in the parish hall nursery during these times.

Welcome to all families interested in having their children, ages 4 and up, attend lessons in the parish hall. We will learn about God's Word by having Bible lessons, crafts and stories. As parents, teachers, and families, we pray that the Lord will help provide us the tools to teach our children to understand the Grace of God.

During this time of thanksgiving, the children discussed the people and things for which we are thankful. We also learned a Thanksgiving prayer we posted on our turkey crafts and learned that we can say a thanksgiving-like prayer at any time of the year.

Note: As cooler weather is upon us, please remember to leave you children's outerwear with them at the parish hall in the event we go outside or walk back to the church.

*Come worship and join the families at St. Paul's as we prepare for the upcoming season.*



### Advent Event

An Advent Event is planned for Dec. 3 at 3:00pm to ring in the upcoming season. We will learn about the course of events that lead up to the birth of our Lord Jesus Christ. Refreshments, stories, song and crafts are planned, and there may even be a surprise visit from St. Nicholas.

## Christmas Pageant

We had our first rehearsal last Sunday, November 19. One song we are singing is *Away in the Manger*. Feel free to practice the songs at home as repetition is key for memory.

You can still be a part of the pageant. Forms are in the narthex, or feel free to contact the office (703-754-7536). We would love to have a few older children that have the ability to remember phrases or short lines. Don't be shy- acting might be your thing. Thank you to those who have handed in sign-up sheets.

The next rehearsal date is **Nov. 26, 2:00pm at the church**. We are planning to continue a 2:00pm rehearsal timeframe each Sunday. If additional times are necessary, these will be communicated in the bulletin and directly to those participating.

If anyone has special talents such as sewing, baking, creative carpentry, please contact Judi or the Music Ministers- Beth and David Evans (bevans@acps.k12.va.us]. Your something special may be a wonderful contribution in preparing for the advent event and the pageant.

Judi McCauley  
Director of Children's Ministry  
[St.paulsce@comcast.net](mailto:St.paulsce@comcast.net)  
703-754-7536

## Home Fellowship Groups

*Regency at Dominion Valley Home Group Started* at the home of Hal and Libby Davidson, 15601 Alderbrook Drive on Monday, at 7:15pm. They will be studying the life of John using Beth Moore's series Beloved Disciple. The lesson materials will be approximately \$15.00. For further information contact Libby at 703-754-9717.

*Worship* at Jim and Sheila Todd's-1<sup>st</sup> and 3<sup>rd</sup> Fridays. Please call 703-754-0728 for information.

*Neighborhood Bible Study* at Todd's Tuesday, 10-12noon. Please contact Sheila at 703-754-0728.

*Piedmont Home Group* Mondays 7:15-8:45 p.m. Please call David at 703-754-3985

*Warrenton Home Group*

*Heritage Hunt Group* Our group meets Monday from 7-8:30 p.m.??'s Contact: Doris Leonberger 703.7432210 or Dennis Osborn 540.3471470

## Altar Flowers Chart for 2007

Individuals who donate the flowers in memorial or in thanksgiving supply the altar flowers. The cost of the flowers is \$23.00 and will be billed to your address. You may take the flowers home after the 10:30 a.m. service. To donate altar flowers for 2007, call the church office, 703-754-7536, or sign the 2007 Flower Chart on the Narthex wall.

### *November / December*

|                   |                |  |
|-------------------|----------------|--|
| Sunday, Nov 26    | -8:00a.m.      | Traditional Worship, Rite I  |
|                   | -9:20 a.m.     | Adult Christian Education (Parish Hall)  |
|                   | -9:30 a.m.     | Children's Worship Event and Family Time<br>(Children 3-8)                                       |
|                   | -10:30 a.m.    | Children's Church (Parish Hall) (4-9)  |
|                   | -10:30 a.m.    | Nursery (0-3) (Parish Hall)  |
|                   | -10:30 a.m.    | Contemporary & Traditional Worship   |
|                   | - 6:00 p.m.    | Newcomers Meeting (Old Rectory)  |
| Monday, Nov 27    |                | Home Groups Met  |
| Wednesday, Nov 29 | -6:30-8:45p.m. | Youth Group Meeting- <i>Aletheia</i>   |
| Sunday, Dec 3     | -8:00 a.m.     | Traditional Worship, Rite I  |
|                   | -9:20 a.m.     | Adult Christian Education (Parish Hall)  |
|                   | -9:30 a.m.     | Children's Worship Event and Family Time<br>(Children 3-8)                                       |
|                   | -10:30 a.m.    | Children's Church (Parish Hall) (4-9)  |
|                   | -10:30 a.m.    | Nursery (0-3) (Parish Hall)  |
|                   | -10:30 a.m.    | Contemporary & Traditional Worship<br><b>Congregational Luncheon following 10:30<br/>Service</b> |
|                   | -3:00-5:00p.m. | Advent Event In Parish Hall  |

**The List of Eligible Voters** (based on the Canonical requirements for “adult communicants in good standing” and the other requirements) has been posted once again on the bulletin board. Please check off your name if you are on the list. If you have any questions or concerns, please immediately call Pam Stutz at the church office.

**Please Note:** If you have been giving to St. Paul’s in the form of cash without using giving envelopes and wish to be a giver of record, please notify Pam immediately.

### **Concerning Voting**

**Please Note: Anyone on our List of Eligible Voters who does not vote in this Special Parish Meeting will be considered a “no” vote.**

Therefore, if you are not able to vote during the designated times, you may, by your choice, request that you be **moved temporarily to inactive status**. Pam Stutz has the form to be filled out if you wish to be made temporarily inactive. Forms are also available in the narthex of the church.

For example, if someone was going to be away or out of the country during this time, they may want to move to inactive status. Please call Pam at the office for further information (703-754-7536).

**The Last Sunday after Pentecost  
November 26, 2006 RITE I - 8:00 a.m.**

*Loving God, Loving People  
"Sharing Jesus' Love in the Power of the Holy Spirit"*

Preparation for Worship  
Prelude *Prelude on Duke St.* Wilbur Held  
Book of Common Prayer

Opening Hymn

*Jesus Shall Reign*

Hymn # 544

Acclamation

p. 323

**The Collect of the Day (Please see insert)**

*Invitation to the Holy Spirit*

Lord Jesus, You promised Your disciples that You would send to them, from the Father, the power of the Holy Spirit and that they would be Your witnesses. As the One who sends the Holy Spirit, Lord Jesus, fill us with Your Spirit, fill me with Your power, fill me with Your life, fill me with Your self, that I may be all that You want me to be and do all that You want me to do. I want Your love, Your grace, Your joy, Your truth to rule my heart and to reign in my life. Thank You, that Your Spirit is a gift. Thank You for being here with us now. Please make Yourself known to Your people. Jesus, in Your Name we pray. *Amen.*

**1st Reading:** Daniel 7:9-14

**Psalm:** 93

**2nd Reading:** Revelation 1:1-8

**Holy Gospel:** John 18:33-37

**Sermon** *The Reverend David Nickerson Jones*

p. 326 The Nicene Creed  
p. 328 The Prayers of the People  
p. 330 Confession & Absolution

The Peace

Announcements

**THE HOLY COMMUNION**

Offertory Sentences

Chorale Prelude "Nun Danket Alle Gott" Georg Friedrich Kauffman

p. 333      The Great Thanksgiving  
p. 334      Prayer of Consecration  
p. 336      The Lord's Prayer  
p. 337      The Breaking of the Bread  
Music      Flox Peeters  
p. 339      The Thanksgiving & Blessing

Closing Hymn:

Crown Him with Many Crowns

Hymn # 494

Sending Forth    (*standing*)

Celebrant: Let us go forth in the Power of the Holy Spirit to love and testify to our exalted Lord Jesus.

People:      *Thanks be to God. Alleluia! Alleluia!*

Postlude Diademata

Robert Crane

**MINISTERS:** Acolytes: Liz Fletcher and John Duckett (C); Chalice Bearers: Bob Rodgers (8:00) Fran Bell (10:30); Lectors; Gay Harris Ushers/Greeters: Norris Sisson (8:00) Judy McCauley (9:30) Ray Bell and Sean Roberts (10:30); Counters: Norris Sisson and Sean Roberts Altar Guild: Roz Duckett and Jerri Rutledge

**Flowers:** The Altar Guild has donated the flowers on the altar today in honor and glory of God.

*Statements from members of St. Paul's Church*

*The most important thing in my life is my relationship to the Lord Jesus Christ and to fulfill his purpose for me.*

*And that I may be a blessing to my church family, home family, and everyone that comes across my path, to exemplify the Love of Jesus and make a difference in this life.*

*We value our relationship with Christ that we grow closer as a family to knowing Christ. We endeavor to get our family to truly know what it is to be Christ like, to love and care for each other, to learn to forgive, to love to care for our fellow man, to draw our family closer together through Christ.*

*What I value in my life is the Church body, to study with the Bible groups, Worship, and Christian friends.*

**The Last Sunday after Pentecost  
Christ the King  
Holy Communion Rite II  
November 26, 2006, 10:30 a.m.**

*Loving God, Loving People*

**“Sharing Jesus’ Love in the Power of the Holy Spirit”**

**Preparation for Worship**

Prelude *Prelude on Duke St* Wilbur Held

**Opening Hymn**

*Jesus Shall Reign Where'er the Sun*

Hymn # 544

Jesus shall reign where'er the sun  
Doth his successive journeys run;  
His kingdom stretch from shore to shore,  
Till moons shall wax and wane no more.

To him shall endless prayer be made,  
And praises throng to crown his head;  
His Name like sweet perfume shall rise  
With every morning sacrifice.

People and realms of every tongue  
Dwell on his love with sweetest song;  
And infant voices shall proclaim  
Their early blessings on his Name.

Blessings abound where'er he reigns;  
The prisoners leap to lose their chains,  
The weary find eternal rest,  
And all who suffer want are blest.

Let every creature rise and bring  
Peculiar honors to our King;  
Angels descend with songs again,  
And earth repeat the loud amen.



*Priest:* Alleluia. Christ is risen.

*People:* *The Lord is risen indeed. Alleluia.*

*Priest:* Almighty God, to You all hearts are open, all desires known, and from You no secrets are hid: Cleanse the thoughts of our hearts by the inspiration of Your Holy Spirit, that we may perfectly love You, and worthily magnify Your Holy Name; through Christ our Lord. *Amen.*

## **Songs of Praise**

### *Majesty*

- Jack Hayford

Majesty, worship His majesty.  
Unto Jesus be all glory, honor and praise.  
Majesty, kingdom authority  
Flow from His throne unto His own, His anthem raise.  
So exalt, lift up on high the name of Jesus.  
Magnify, come glorify Christ Jesus, the King.  
Majesty, worship His majesty.  
Jesus who died, now glorified, King of all kings.

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### *Awesome God*

#### **Refrain**

**Our God is an awesome God  
He reigns from heaven above  
With wisdom pow'r and love  
Our God is an awesome God x3**

### *Spirit Song*

Oh let the Son of God enfold you  
With His Spirit and His love,

Let Him fill your life  
And satisfy your soul.  
Oh let Him have the things that hold you  
And His Spirit, like a dove  
Will descend upon your life  
And make you whole.

**Refrain**

Jesus, oh Jesus,  
Come and fill Your lambs.  
Jesus, oh Jesus,  
Come and fill Your lambs.

Oh come and sing this song with gladness  
As your hearts are filled with joy,  
Lift your hands in sweet surrender  
To His name.  
Oh give Him all your tears and sadness,  
Give Him all your years of pain  
And you'll enter into life in Jesus' name.

**Refrain**

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*Celebrant:* The Lord be with you.

*People:* And also with you.

*Celebrant:* Let us pray.

**The Collect of the Day**

Almighty and Everlasting God, whose will is to restore all things in your well-beloved Son, the King of kings and Lord of lords: Mercifully grant that the peoples of the earth, divided and enslaved by sin, may be freed and brought together under his most gracious rule; who live and reigns with you and the Holy Spirit, one God, now and for ever. *Amen*

### *Invitation to the Holy Spirit*

Lord Jesus, You promised Your disciples that You would send to them, from the Father, the power of the Holy Spirit and that they would be Your witnesses. As the One who sends the Holy Spirit, Lord Jesus, fill us with Your Spirit, fill me with Your power, fill me with Your life, fill me with Your self, that I may be all that You want me to be and do all that You want me to do. I want Your love, Your grace, Your joy, Your truth to rule my heart and to reign in my life. Thank You, that Your Spirit is a gift. Thank You for being here with us now. Please make Yourself known to Your people. Jesus, in Your Name we pray. *Amen.*

*Reader:* A Reading from the book of Daniel

#### **First Reading Daniel 7:9-14**

"As I looked, "thrones were set in place, and the Ancient of Days took his seat. His clothing was as white as snow; the hair of his head was white like wool. His throne was flaming with fire, and its wheels were all ablaze.

A river of fire was flowing, coming out from before him.

Thousands upon thousands attended him; ten thousand times ten thousand stood before him. The court was seated, and the books were opened.

"Then I continued to watch because of the boastful words the horn was speaking. I kept looking until the beast was slain and its body destroyed and thrown into the blazing fire. (The other beasts had been stripped of their authority, but were allowed to live for a period of time.)

"In my vision at night I looked, and there before me was one like a son of man, coming with the clouds of heaven. He approached the Ancient of Days and was led into his presence. He was given authority, glory and sovereign power; all peoples, nations and men of every language worshiped him. His dominion is an everlasting dominion that will not pass away, and his kingdom is one that will never be destroyed.

*Reader: The Word of the Lord*

*People: Thanks be to God.*

**Psalm 93 (Sung)**

**1** The LORD himself is King,  
In glorious robes arrayed;  
Arrayed in glory, clad in strength,  
In majesty displayed.

**2** He set the world in place  
By his most sure command;  
Your throne has stood, eternal Lord,  
Since first the world began.

**3** The floods lift up their voice,  
Lift up their pounding waves,  
But mightier than the flood is God  
Who dwells on high and saves.

**4** Your testimonies, Lord,  
Are fixed most certainly,  
And holiness adorns your house  
To all eternity.

Glory be to the Father, and to the Son, and to the Holy Spirit; as it was in the beginning, is now, and will be for ever. *Amen*

*Reader: A reading from Revelation*

**Second Reading Revelation 1: 1-8**

The revelation of Jesus Christ, which God gave him to show his servants what must soon take place. He made it known by sending his angel to his servant John, who testifies to everything he saw—that is, the word of God and the testimony of Jesus Christ. Blessed is the one who reads the words

of this prophecy, and blessed are those who hear it and take to heart what is written in it, because the time is near.

John,

To the seven churches in the province of Asia:

Grace and peace to you from him who is, and who was, and who is to come, and from the seven spirits before his throne, and from Jesus Christ, who is the faithful witness, the firstborn from the dead, and the ruler of the kings of the earth.

To him who loves us and has freed us from our sins by his blood, and has made us to be a kingdom and priests to serve his God and Father--to him be glory and power for ever and ever! Amen.

Look, he is coming with the clouds,  
and every eye will see him,  
even those who pierced him;  
and all the peoples of the earth will mourn because of him.  
So shall it be! Amen.

"I am the Alpha and the Omega," says the Lord God, "who is, and who was, and who is to come, the Almighty."

*Reader: The Word of the Lord.*

*People: Thanks be to God.*

The Sequence

*This is the Feast of Victory for Our God*

Worthy is Christ, the Lamb who was slain,  
whose blood set us free to be people of God.

**Refrain**

**This is the feast of victory for our God.  
Alleluia, alleluia, alleluia!**

Power, riches, wisdom, and strength,  
and honor, blessing, and glory are his.

**Refrain**

Sing with all the people of God,  
and join in the hymn of all creation.

**Refrain**

Blessing, honor, glory, and might  
be to God and the Lamb forever. Amen.

**Refrain**

For the Lamb who was slain  
has begun his reign. Alleluia!

**Refrain**

**Words:** Revelation 5:12-13; adapt. John W. Arthur (1922-1980) **Music:** *Festival Canticle*, Richard Hillert (b.1923)

*Priest:* The Holy Gospel of our Lord Jesus Christ according to John

*People:* *Glory to You, Lord Christ.*

**The Gospel      John 18:33-37**

Pilate then went back inside the palace, summoned Jesus and asked him,  
"Are you the king of the Jews?"

"Is that your own idea," Jesus asked, "or did others talk to you about me?"

"Am I a Jew?" Pilate replied. "It was your people and your chief priests  
who handed you over to me. What is it you have done?"

Jesus said, "My kingdom is not of this world. If it were, my servants would  
fight to prevent my arrest by the Jews. But now my kingdom is from  
another place."

"You are a king, then!" said Pilate.

Jesus answered, "You are right in saying I am a king. In fact, for this  
reason I was born, and for this I came into the world, to testify to the truth.  
Everyone on the side of truth listens to me."

*Reader: The Gospel of the Lord.*

*People: Praise to You, Lord Christ.*

**Sermon:** *The Reverend David Nickerson Jones*

**The Nicene Creed**     *(standing)*

I believe in one God,  
    the Father, the Almighty,  
    maker of heaven and earth,  
    of all that is, seen and unseen.  
I believe in one Lord, Jesus Christ,  
    the only Son of God,  
    eternally begotten of the Father,  
    God from God, Light from Light,  
    true God from true God,  
    begotten, not made,  
    of one Being with the Father.  
Through Him all things were made.  
For us and for our salvation  
    He came down from heaven:  
by the power of the Holy Spirit  
    He became incarnate from the Virgin Mary,  
    and was made man.  
For our sake He was crucified under Pontius Pilate;  
    He suffered death and was buried.  
On the third day He rose again  
    in accordance with the Scriptures;  
    He ascended into heaven  
    and is seated at the right hand of the Father.  
    He will come again in glory to judge the living and the dead,  
    and His kingdom will have no end.  
I believe in the Holy Spirit, the Lord, the giver of life,  
    who proceeds from the Father and the Son.  
With the Father and the Son He is worshiped and glorified.  
He has spoken through the Prophets.  
I believe in one holy catholic\* and apostolic Church.  
I acknowledge one baptism for the forgiveness of sins.

I look for the resurrection of the dead,  
and the life of the world to come. Amen.

*\*The word "catholic" in this context refers to all people of all denominations who acknowledge the Lordship of Jesus and thus are part of His Church*

### **The Prayers of the People** *(kneeling)*

Father, we pray for Your holy catholic\* Church;  
*That we all may be one.*

Grant that every member of the Church may truly and humbly serve You;  
*That Your Name may be glorified by all people.*

We pray for all bishops, priests, and deacons;  
*That they may be faithful ministers of Your Word and Sacraments.*

We pray for all who govern and hold authority in the nations of the world;  
*That there may be justice and peace on the earth.*

Give us grace to do Your will in all that we undertake;  
*That our works may find favor in Your sight.*

Have compassion on those who suffer from any grief or trouble;  
*That they may be delivered from their distress.*

We praise You for Your saints who have entered into joy;  
*May we also come to share in Your heavenly kingdom.*

*\*The word "catholic" in this context refers to all people of all denominations who acknowledge the Lordship of Jesus and thus are part of His Church.*

Let us pray for our own needs and those of others.  
*Concluding Collect*

### **Confession of Sin and Absolution**

*Celebrant:* Let us confess our sins against God and our neighbor.

*Silence may be kept.*

*Minister and People*

Most merciful God,  
we confess that we have sinned against You  
in thought, word, and deed, by what we have done,



and by what we have left undone.  
We have not loved You with our whole heart;  
we have not loved our neighbors as ourselves.  
We are truly sorry and we humbly repent.  
For the sake of Your Son Jesus Christ,  
have mercy on us and forgive us;  
that we may delight in Your will, and walk in Your ways,  
to the glory of Your Name. *Amen.*

*Priest says: The Absolution*

Almighty God have mercy on you, forgive you all your sins through our Lord Jesus Christ, strengthen you in all goodness, and by the power of the Holy Spirit keep you in eternal life. *Amen*

**The Peace** (*standing*)

*The Celebrant says to the people*

The peace of the Lord be always with you.

*People: And also with you.*

*Then the minister and the people may greet one another in the name of the Lord.*

**Announcements**

## **THE HOLY COMMUNION**

**Offertory Sentences**

**Offertory**

*Rejoice, the Lord is King*

*Verse 1*

Rejoice the Lord is King  
Your Lord and King adore  
Mortals, give thanks and sing  
And triumph evermore

**Refrain**

**Lift up your heart!**

**Lift up your voice!**

**Rejoice! again I say, rejoice!**

**Lift up your heart!  
Lift up your voice!  
Rejoice! again I say rejoice!**

Verse 2

The Lord the Savior reigns,  
The God of truth and love:  
When He had purged our stains,  
He took His seat above.

**Refrain**

Verse 3

His kingdom cannot fail;  
He rules o'er earth and heav'n;  
The keys of death and hell  
Are to Christ the Lord are given.

**Refrain**

Verse 4

Rejoice in glorious hope!  
Our Lord the Judge shall come,  
And take His servants up  
To their eternal home

**Refrain**

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**The Presentation and Doxology** *(standing)*

*Celebrant and People:*

Praise God from whom all blessings flow.  
Praise Him, all creatures here below.  
Praise Him above, ye heavenly host,  
Praise Father, Son and Holy Ghost.

**The Great Thanksgiving** *(standing)*

*Celebrant:* The Lord be with you.

*People: And also with you.*

*Celebrant: Lift up your hearts.*

*People: We lift them to the Lord.*

*Celebrant: Let us give thanks to the Lord our God.*

*People: It is right to give him thanks and praise.*

*Celebrant: It is right, and a good and joyful thing, always and everywhere to give thanks to You, Father Almighty, Creator of heaven and earth.*

Through Jesus Christ our Lord. In fulfillment of his true promise, the Holy Spirit came down from heaven, lighting upon the disciples, to teach them and to lead them into all truth; uniting peoples of many tongues in the confession of one faith, and giving to your Church the power to serve you as a royal priesthood, and to preach the Gospel to all nations.

Therefore we praise You, joining our voices with Angels and Archangel and with all the company of heaven, who for ever sing this hymn to proclaim the glory of Your Name:

*Celebrant and People: (All Sing)*

**Sanctus** *(Scholtes)*

Holy, holy, holy Lord, God of pow'r and might

Heaven and earth are filled with Your glory.

Holy, holy, holy Lord, God of pow'r and might

Blessed is He that comes in the name of the Lord.

Hosanna! Hosanna in the highest.

Hosanna! Hosanna in the highest.

*Celebrant: (Congregation kneeling)*

Holy and gracious Father: In Your infinite love You made us for Yourself, and, when we had fallen into sin and become subject to evil and death, You, in Your mercy, sent Jesus Christ, Your only and eternal Son, to share our human nature, to live and die as one of us, to reconcile us to You, the God and Father of all.

Jesus stretched out His arms upon the cross, and offered Himself, in obedience to Your will, a perfect sacrifice for the whole world.

On the night He was handed over to suffering and death, our Lord Jesus Christ took bread; and when He had given thanks to You, He broke it, and gave it to His disciples, and said, "Take, eat: This is My Body, which is given for you. Do this for the remembrance of Me."

After supper He took the cup of wine; and when He had given thanks, He gave it to them, and said, "Drink this, all of you: This is My Blood of the new Covenant, which is shed for you and for many for the forgiveness of sins. Whenever you drink it, do this for the remembrance of Me."

Therefore we proclaim the mystery of faith:

*Celebrant and People:*

Christ has died.

Christ is risen.

Christ will come again.

*Celebrant:*

We celebrate the memorial of our redemption, O Father, in this sacrifice of praise and thanksgiving. Recalling our Lord Jesus' death, resurrection, and ascension, we offer You these gifts.

Sanctify them by Your Holy Spirit to be for Your people the Body and Blood of Your Son, the holy food and drink of new and unending life in Him. Sanctify us also that we may faithfully receive this holy Sacrament, and serve You in unity, constancy, and peace; and at the last day bring us with all Your saints into the joy of Your eternal kingdom.

All this we ask through Your Son Jesus Christ: By Him, and with Him, and in Him, in the unity of the Holy Spirit all honor and glory is Yours, Almighty Father, now and for ever. *Amen.*

And now, as our Savior Jesus Christ has taught us, we now pray,

*Celebrant and People:*

### ***The Lord's Prayer***

Our Father who art in heaven,  
hallowed be Thy Name,  
Thy kingdom come,  
Thy will be done,  
on earth as it is in heaven.  
Give us this day our daily bread.  
And forgive us our trespasses  
as we forgive those  
who trespass against us.  
And lead us not into temptation,  
but deliver us from evil.  
For Thine is the kingdom,  
and the power, and the glory,  
for ever and ever. *Amen*

### **The Breaking of the Bread**

*Celebrant:* Alleluia, Christ our Passover was sacrificed for us;

*People:* Therefore let us keep the feast. Alleluia.

### **Prayers for Healing**

*After receiving communion at the altar rail, persons who would like prayer for healing or other needs are invited to go to the kneeling desk on the left side of the chancel. There will be people present who are prepared to pray with those who come for prayer. Those waiting for prayer may sit in the pews nearby.*

### **Communion Music**

#### *Give Thanks*

-Henry Smith

Give thanks with a grateful heart,  
Give thanks to the Holy One,  
Give thanks because  
He's given Jesus Christ, His Son.

And now let the weak say,  
"I am strong." Let the poor say,  
"I am rich" Because of what  
The Lord has done for me.

Give thanks.

May The Mind Of Christ My Savior

Verse 1

May the mind of Christ my Savior  
Live in me from day to day  
By His love and pow'r controlling  
All I do and say

Verse 2

May the Word of God dwell richly  
In my heart from hour to hour  
So that all may see I triumph  
Only thru' His pow'r

Verse 3

May the love of Jesus fill me  
As the waters fill the sea  
Him exalting self abasing  
This is victory

Verse 4

May His beauty rest upon me  
As I seek the lost to win  
And may they forget the channel  
Seeing only Him

**May I run the race before me  
With a passion in my soul  
Looking only unto Jesus as my source my life my goal  
May I run the race before me**

**Strong and brave to face the foe  
Looking only unto Jesus as I onward go**

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Holy Ground

-Christopher Beatty

This is holy ground. We're standing on holy ground.  
For the Lord is present and where He is, is holy.  
This is holy ground. We're standing on holy ground  
For the Lord is present and where He is, is holy.

These are holy hands. He's given us holy hands.  
He works through these hands and so these hands are holy.  
These are holy hands. He's given us holy hands.  
He works through these hands and so these hands are holy.

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Holy Ground

-Geron Davis

We are standing on holy ground  
And I know that there are angels all around.  
Let us praise Jesus now.  
We are standing in His presence on holy ground

Last time – sing "We are standing in His presence" three times

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Here I Am To Worship

Verse 1

Light of the world  
You stepped down into darkness  
Opened my eyes let me see  
Beauty that made  
This heart adore You  
Hope of a life spent with You

**Refrain**

**So here I am to worship  
Here I am to bow down  
Here I am to say that You're my God  
And You're altogether lovely  
Altogether worthy  
Altogether wonderful to me**

Verse 2

King of all days  
Oh so highly exalted  
Glorious in heaven above  
Humbly You came  
To the earth You created  
All for love's sake became poor

**Refrain**

**Misc 1**

(BRIDGE)

And I'll never know how much it cost  
To see my sin upon that cross  
And I'll never know how much it cost  
To see my sin upon that cross

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Alleluia! Sing to Jesus

Hymn #461

Alleluia! sing to Jesus! His the scepter, His the throne;  
Alleluia! His the triumph, His the victory alone;  
Hark! the songs of peaceful Zion thunder like a mighty flood;  
Jesus out of every nation hath redeemed us by His blood.

Alleluia! not as orphans are we left in sorrow now;  
Alleluia! He is near us, faith believes, nor questions how:  
Though the cloud from sight received Him, when the forty days were  
o'er, Shall our hearts forget His promise, "I am with you evermore"?



Alleluia! Bread of Heaven, Thou on earth our food, our stay!  
Alleluia! here the sinful flee to Thee from day to day:  
Intercessor, friend of sinners, earth's Redeemer, plead for me,  
Where the songs of all the sinless sweep across the crystal sea.

Alleluia! King eternal, Thee the Lord of lords we own:  
Alleluia! born of Mary, earth Thy footstool, heaven Thy throne:  
Thou within the veil hast entered, robed in flesh, our great High Priest:  
Thou on earth both Priest and Victim in the eucharistic feast.

### **The Thanksgiving**

*Celebrant:* Let us pray.

*Celebrant and People:*

Almighty and ever living God, we thank You for feeding us with the spiritual food of the most precious Body and Blood of Your Son our Savior Jesus Christ; and for assuring us in these holy mysteries that we are living members of the Body of Your Son, and heirs of Your eternal kingdom. And now, Father, send us out to do the work You have given us to do, to love and serve You as faithful witnesses of Christ our Lord. To him, to You, and to the Holy Spirit, be honor and glory, now and forever. *Amen.*

### **The Blessing**

### **Closing Hymn**

*Crown Him With Many Crowns*

Hymn # 494

Crown him with many crowns, the Lamb upon his throne;  
Hark how the heavenly anthem drowns all music but its own;  
Awake, my soul, and sing of him who died for thee,  
And hail him as thy matchless King through all eternity.

Crown him the Son of God before the worlds began,  
And ye, who tread where he hath trod, crown him the Son of man;  
Who every grief hath known that wrings the human breast,  
And takes and bears them for his own, that all in him may rest.

Crown him the Lord of life, who triumphed o'er the grave,  
And rose victorious in the strife for those he came to save;  
His glories now we sing who died, and rose on high,  
Who died, eternal life to bring, and lives that death may die.

Crown him of lords the Lord, who over all doth reign,  
Who once on earth, the incarnate Word, for ransomed sinners slain,  
Now lives in realms of light, where saints with angels sing  
Their songs before him day and night, their God, Redeemer, King.

**Sending Forth** (*standing*)

Celebrant: Let us go forth in the Power of the Holy Spirit to love and  
testify to our exalted Lord Jesus.

People: *Thanks be to God. Alleluia! Alleluia!*

**Postlude** *Diademata* Robert Crane

**MINISTERS:** Acolytes: Liz Fletcher and John Duckett (C); Chalice Bearers:  
Bob Rodgers (8:00) Fran Bell (10:30); Lectors; Gay Harris Ushers/Greeters:  
Norris Sisson (8:00) Judy McCauley (9:30) Ray Bell and Sean Roberts (10:30);  
Counters: Norris Sisson and Sean Roberts Altar Guild: Roz Duckett and  
Jerri Rutledge

**Flowers:** The Altar Guild has donated the flowers on the altar today in  
honor and glory of God.

**Mission Statement of St. Paul's Church**

The mission of our church family is to share Jesus Christ's love and  
saving grace through proclamation and service, teaching and discipleship in  
the power of the Holy Spirit so that all people may know, love, and serve  
God by responding to His love with all their hearts, minds, and strength.

# Christ Is Alive!

*St. Paul's Welcomes You*



***St. Paul's Episcopal Church***  
***Haymarket, Virginia***

**The Last Sunday after Pentecost**  
**November 26, 2006**

*Loving God, Loving People*  
*"Sharing Jesus' Love in the Power of the Holy Spirit"*

**Children's Music for this Sunday may be found in the  
Children's Praise Booklet (Yellow)**

**Preparatory Time: Children's Music**

**Opening Song**

***Invitation to the Holy Spirit***

Lord Jesus, You promised Your disciples that You would send to them, from the Father, the power of the Holy Spirit and that they would be Your witnesses. As the One who sends the Holy Spirit, Lord Jesus, fill us with Your Spirit, fill me with Your power, fill me with Your life, fill me with Your self, that I may be all that You want me to be and do all that You want me to do. I want Your love, Your grace, Your joy, Your truth to rule my heart and to reign in my life. Thank You, that Your Spirit is a gift. Thank You for being here with us now. Please make Yourself known to Your people. Jesus, in Your Name we pray. *Amen.*

**Asking for Forgiveness**

Dear Jesus:

Thank You for Your love for me. I'm sorry for what I have done wrong. Please forgive me. Help me to love You. Help me be good. Help me to obey my parents and do what is right. Thank You, Jesus. *Amen.*

**God's Loving Assurance of Forgiveness**

God, Who is love, forgive you and make you more like Jesus, His Son, today and always. *Amen.*

## Lord's Prayer

Our Father who art in heaven,  
hallowed be Thy Name,  
Thy kingdom come,  
Thy will be done,  
on earth as it is in heaven.  
Give us this day our daily bread.  
And forgive us our trespasses  
as we forgive those  
who trespass against us.  
And lead us not into temptation,  
but deliver us from evil.  
For Thine is the kingdom,  
and the power, and the glory,  
for ever and ever. *Amen*

## Story Time

### Closing Hymn

*Please join us after the service for refreshments in the Narthex.*

**MINISTERS:** Acolytes: Liz Fletcher and John Duckett (C); Chalice Bearers: Fran Bell (8:00) John Duckett (10:30); Lectors; Gay Harris Ushers/Greeters: Norris Sisson (8:00) Judy McCauley (9:30) (10:30); Counters: Norris Sisson and Sean Roberts Altar Guild: Roz Duckett and Jerri Rutledge

**Flowers:** The Altar Guild has donated the flowers on the altar today in honor and glory of God.

WELCOME, VISITORS! We're glad you are here! Please help us get to know you by completing a visitors' form and placing it in the offering plate or by signing our Guest Book at the Church entrance.

Nursery is available for the Rite II 10:30 a.m. service. We want every child to know that he or she is loved by God and by us. Through the time your child is with us, we desire each one to come to know Jesus, to experience His loving grace, and to grow in his or her love for Him. Please ask an usher to direct you to our Parish Hall.

If you are new to St. Paul's and would like information about becoming a member, please call the Church Office at 703-754-7536, Monday through Friday, 9:00 a.m. to 5:00 p.m., or speak with the Rector. Thank you.

**Home Visits** by Lay Eucharistic Ministers and/or the Rector – Anyone who is not able to worship with us on Sunday mornings for health or other reasons may receive a visit and Holy Communion. If you would like a visit, please call the church office at 703-754-7536. If you know of someone who cannot attend the Sunday worship, please let him or her know they may receive a visit by calling the church office.

**Mission Statement of St. Paul's Church**

The mission of our church family is to share Jesus Christ's love and saving grace through proclamation and service, teaching and discipleship in the power of the Holy Spirit so that all people may know, love, and serve God by responding to His love with all their hearts, minds, and strength.

**Vision for Ministry**

As a church family, St. Paul's is called:

- 1) To give every person (adult and child) within a ten mile radius (and beyond) of St. Paul's the opportunity to hear the good news of God's love in Jesus Christ and to respond in faith to His call on his or her life.
- 2) To give every person (adult and child) who accepts God's call to follow Jesus Christ the opportunity and resources to become a mature disciple of our Lord.

***"Upholding the Historic Biblical Faith of the Anglican Communion"***

**St. Paul's Church**

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The Reverend David Nickerson Jones, Rector



1 VIRGINIA: 1  
2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY 2  
3  
4  
5 -----X  
6 In Re: )  
7 Multi-Circuit ) Consolidated Cases:  
8 Episcopal Church ) CL 2007-248724, et al.  
9 Litigation )  
10 ----- x  
11  
12  
13 Hearing  
14 Before The Honorable Randy T. Bellows  
15 Fairfax, Virginia  
16 Monday, August 11, 2008  
17 10:01 a.m.  
18  
19  
20 Job No.: 1-133957  
21 Pages 1 through 127  
22 Reported by: Cheryl K. O'Donnell

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2 FAIRFAX COUNTY CIRCUIT COURT  
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9 Pursuant to agreement, before Cheryl K.  
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11 Commonwealth of Virginia.  
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HEARING IN RE: MULTI-CIRCUIT EPISCOPAL CHURCH LITIGATION  
CONDUCTED ON MONDAY, AUGUST 11, 2008

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| <p style="text-align: right;">17</p> <p>1 the November 2007 trial and, specifically, the brief<br/>2 that the Episcopal Church and the Diocese submitted on<br/>3 September 10, '07 in response to the Court's four<br/>4 questions about relationship between 57-9 and the<br/>5 declaratory judgment actions.</p> <p>6 THE COURT: I read that. That's at page 5<br/>7 of your second brief, your opposition brief, and I<br/>8 read that language, and that in an elliptical way, it<br/>9 doesn't use the terms waiver, contracted around. It<br/>10 doesn't use that term, but there is language in there<br/>11 that suggests that there's something else out there.</p> <p>12 That doesn't mean it was pled, and it also,<br/>13 to me, was not teed up in a way that would have<br/>14 communicated to the Court that there was a whole other<br/>15 phase of this case. I mean, you know, throughout this<br/>16 litigation, I have been extremely careful to always<br/>17 say, I resolve 57-9, I don't resolve<br/>18 constitutionality, or I resolve constitutionality, but<br/>19 I don't resolve the contract clause issue.</p> <p>20 But nowhere do I ever say, and I don't<br/>21 resolve the issue of waiver or contracted around or<br/>22 that they've given up their right to assert it. I</p> | <p style="text-align: right;">19</p> <p>1 entered into an alternative structure whereby they<br/>2 agreed that 57-9 would not apply, and that's what<br/>3 we're saying here.</p> <p>4 So we went through 57-9. The Court<br/>5 concluded that the elements had been met on their<br/>6 terms, but because of that, then we get to the next<br/>7 question, which is not only just the declaratory<br/>8 judgment issue, but whether the parties have entered<br/>9 into some sort of alternative arrangement that would<br/>10 say that 57-9 doesn't apply because of the party<br/>11 situations with respect to each other.</p> <p>12 And if I may go back even further, the<br/>13 answers that were filed do say that the rules of the<br/>14 church and the Diocese bind the parish such that<br/>15 they're not able to take the property and use it<br/>16 except for the mission of the church and the Diocese.</p> <p>17 That only even makes sense as an affirmative<br/>18 defense to 57-9 if it means that, despite what 57-9<br/>19 might say, the parties have agreed to some alternative<br/>20 structure that they claim binds them.</p> <p>21 And recently, the Court asked the parties,<br/>22 tell me the issues that are remaining in this action</p>                            |
| <p style="text-align: right;">18</p> <p>1 never say that, and it was because I certainly was not<br/>2 aware of the fact that, in your mind, there was a<br/>3 whole other phase of this case.</p> <p>4 But I read your brief. I read that line,<br/>5 and that line actually is the line that comes closest<br/>6 to making a reference to the fact that you've got<br/>7 something else out there, but it is written very<br/>8 elliptically, and it's not written in the language<br/>9 that certainly you're using now.</p> <p>10 MR. CHUD: Your Honor, the brief, of course,<br/>11 doesn't use the word "waiver" because waiver is not a<br/>12 term that we would use to describe what this defense<br/>13 is, what this affirmative defense is.</p> <p>14 In that brief, the Court had asked which one<br/>15 between the 57-9 proceeding and the declaratory<br/>16 judgment actions would take precedence. And our<br/>17 answer was that if 57-9 didn't apply by its own -- if<br/>18 the elements of 57-9 had not been met, then the whole<br/>19 57-9 petition could be thrown out.</p> <p>20 But if 57-9 applied under its own terms,<br/>21 then the Court would move to the declaratory judgment<br/>22 phase where one issue would be whether the parties had</p>                                | <p style="text-align: right;">20</p> <p>1 to be resolved. Both sides told the Court that one of<br/>2 the questions was whether the parties had entered into<br/>3 a structure that would have been other than applying<br/>4 Section 57-9. That includes the congregations issue,<br/>5 whether ECUSA and the Diocese can establish by clear<br/>6 and convincing evidence that the CANA Congregations<br/>7 expressly waived the right to invoke Virginia Code<br/>8 57-9.</p> <p>9 Now, the loss that they put on this about<br/>10 clear and convincing and expressly and all that -- but<br/>11 the issue that they raised that they said was a live<br/>12 issue in this matter back in April of 2008 was whether<br/>13 the parties had entered into some alternative<br/>14 arrangement that would have said that, even if 57-9<br/>15 applies by its terms, the parties have contracted to<br/>16 do something completely different. So, as recently as<br/>17 April, both sides have recognized that this is a live<br/>18 issue in the action.</p> <p>19 The first thing Your Honor had asked about,<br/>20 though, was that does the recent decision on the five<br/>21 questions basically resolve this. So the answer is<br/>22 that it does, because it's one thing to say that in</p> |

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1 order to apply 57-9 the Court doesn't have to look at  
2 all the neutral principles, considerations, it doesn't  
3 have to look at the Constitution and Canons.  
4 It's another to say that even if 57-9 is  
5 satisfied, the Court is satisfied that it applies, the  
6 parties have nonetheless decided that it's  
7 inapplicable to their relationship between each other  
8 because of contractual or other arrangements between  
9 the parties. Therefore, there's no reason why the  
10 Court's decision on those five questions necessarily  
11 means --  
12 THE COURT: Mr. Chud, let me be clear. I'm  
13 not suggesting at all that 57-9 -- that the  
14 five-question opinion resolved the waiver issue that  
15 you're raising now.  
16 What I'm saying is that when you read what I  
17 wrote, you could not read that consistent with the  
18 notion that there is another phase to the trial. The  
19 way I set it out was, if 57-9 is properly invoked,  
20 which I have done, if it's constitutional, which I've  
21 done, except for the contract clause, if the vote was  
22 in favor of one side or the other, then it's a matter

22

1 of deciding.  
2 It doesn't -- what I'm suggesting to you is  
3 that there's nothing in that opinion that would  
4 suggest what you're arguing now, which is that there's  
5 a whole other phase to this trial dealing with whether  
6 CANA Congregations waived or contracted around or  
7 agreed that 57-9 would not be applicable.  
8 It is illustrative of the fact that I  
9 certainly was not under the impression that there was  
10 another phase to this trial. Had I been under that  
11 impression, it's hard to imagine that that issue would  
12 not have been tried first.  
13 I mean, you make the argument that it's  
14 efficient to try it with the declaratory judgment  
15 action, but I don't find that persuasive. I don't  
16 find that persuasive because I lived through the last  
17 year of litigation in this case. We issued an 83-page  
18 opinion, a constitutionality opinion, an opinion on  
19 the five questions, none of which would have had to  
20 have been done or addressed if I had found waiver.  
21 So the -- I mean, can you point to me a  
22 place where I ever said at any point in this

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1 litigation that the issue of waiver or contracted  
2 around, you know, the idea that 57-9 is not applicable  
3 is an issue that we will try after I decide that it  
4 has been properly invoked? I'm asking you in way that  
5 I have explicitly said we are not trying  
6 constitutionality in November; we are not trying -- I  
7 am not resolving the contract clause issue when I  
8 resolve the other -- the First Amendment issues.  
9 Is there something that is with that degree  
10 of clarity that I set out that that issue is going to  
11 be -- the waiver issue -- I know you say it's not used  
12 in those terms, but the idea that CANA has forfeited  
13 its right to assert the protections of 57-9, where I  
14 said we are going to try that with the declaratory  
15 judgment action?  
16 Because, you know, if you're able to do  
17 that -- you know, I feel like this is a -- we're in a  
18 difficult posture here because you're asking to  
19 litigate a whole other phase of this case that it  
20 appears to me is being raised explicitly after the  
21 trial, where it should have been litigated at or  
22 before that trial.

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1 MR. CHUD: Your Honor, in response to your  
2 specific question, I'm not aware of anything that the  
3 Court has said that explicitly reserves this issue for  
4 after the initial 57-9 trial.  
5 But what I will say is that when the Court  
6 asked the parties prior to that trial to explain the  
7 interplay between the 57-9 trial and the declaratory  
8 judgment actions, that's when we took the opportunity  
9 to say, well, if the Court concludes 57-9 does apply  
10 and is constitutional, there will still be additional  
11 issues to be resolved, and it makes sense to resolve  
12 those issues in conjunction with the declaratory  
13 judgment action.  
14 Because at that time it was our  
15 understanding that the declaratory judgment actions  
16 would be necessary whether 57-9 was properly invoked,  
17 and those would consider the applicability of the  
18 Canons and the Constitution and the other  
19 relationships between the parties, and then the  
20 question of contracting around or waiver or whatever  
21 term might be used fit in with the discovery on that  
22 declaratory judgment action and the resolution of the