

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

In re:	)	Case Nos.:	CL 2007-248724,
Multi-Circuit Episcopal Church Litigation	)		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 REPLY BRIEF
ON 57-9 VOTING ISSUES PURSUANT TO AUGUST 22, 2008, ORDER**

Bradfute W. Davenport, Jr. (VSB # 12848)
William H. Hurd (VSB # 16769)
George A. Somerville (VSB # 22419)
Joshua D. Heslinga (VSB # 73036)
Troutman Sanders LLP
Post Office Box 1122
Richmond, Virginia 23218-1122
Telephone: (804) 697-1200
Facsimile: (804) 697-1339

Mary C. Zinsner (VSB # 31397)
Elizabeth Billingsley (VSB # 70808)
Troutman Sanders LLP
1660 International Drive
Suite 600
McLean, Virginia 22102
Telephone: (703) 734-4334
Facsimile: (703) 734-4340

Counsel for The Protestant Episcopal Church in the Diocese of Virginia

Heather H. Anderson (VSB # 38093)
Adam M. Chud (*pro hac vice*)
Soyong Cho (VSB # 70896)
Goodwin Procter
901 New York Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 346-4000
Facsimile: (202) 346-4444

Counsel for the Episcopal Church

The Congregations did not allow all known members or all active persons to vote. Instead, they adopted various standards similar but not identical to the canonical definition of a “communicant in good standing.” Based on conjecture about long-gone members and a “local Kiwanis club” invented from whole cloth, along with sources that are not properly before the Court and that do not show what the Congregations say anyway, they now argue that the Court should rewrite § 57-9(A)’s plain language in the name of construction so as to defer to their standards. They cannot and do not explain why the Court should act so inconsistently, or why they now urge a party-specific approach that they ridiculed earlier this year as one that “makes no sense as a matter of statutory interpretation.” *See* TEC-Diocese Opposition Brief at 4 n.1.¹

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

The Congregations do not and cannot deny that they did not permit all “members,” or even all “active members” over the age of 18, to vote.² Ignoring the language of the statute, they applied theological criteria roughly aimed at limiting the right to vote to “communicants in good standing”; but if required, the evidence would show that the Congregations did not even apply that canonical standard correctly. Some required specific doctrinal commitments. Some applied “known to the Rector and Treasurer” standards. Others modified the canonical standard to ignore denominational ties. In an effort to convince this Court to defer to what they each did, the Congregations (1) attribute to the legislature a solicitude for the rules of hierarchical churches they have until now disclaimed, (2) imply inaccurately that the only “members” excluded from

¹ We rest on our prior briefs regarding (1) the burdens of proof and production and the standard of proof; (2) the factors the Court should examine to determine whether the votes were “fairly taken”; and (3) the Congregations’ new and meritless theory that equitable estoppel should be applied to relieve them of the obligation to comply with the statute.

² *See, e.g.*, Ex. H at 2-5 (Truro’s admissions of its standard and that “there were more people who Truro Church considered members ... than there were communicants in good standing”).

voting were people who were unknown and who lacked any connection to the parish, and (3) speculate about the effect of earlier statutory references to “communicants” and “pew holders.” Despite their attempts at obfuscation, a congregation’s “members” are not the same as its “eligible voters” or “communicants in good standing,” and the statute refers to “members.”

A. The Congregations’ “plain meaning” argument gives the Court little guidance and no constitutionally permissible standard, and their historical argument is unsupported and incorrect.

The Congregations argue that being a member of a congregation requires “at least occasional attendance.” Congregations’ Responsive Brief (“Cong’s Resp.”) at 3. Members, they say, are the “principal supporters of a particular parish” who “habitually meet at the same church,” “meaningful stakeholders” who “made [a] conscious and voluntary choice to be an adult member.” *Id.* at 5, 6. The Congregations do not explain how the Court can determine what persons fit such descriptors, and it cannot. *See* TEC-Diocese Opening Brief at 11-12. Indeed, they concede that “civil courts may not themselves determine ... whether someone was a ‘faithful’ church member”; yet at the same time they suggest that the Court identify and apply “secular components” of faithfulness: attendance and financial support. Cong’s Resp. at 12. The Congregations’ standard creates inherent constitutional problems, defining who votes under a statute by “reference to issues of faith and doctrine.” *Reid v. Gholson*, 229 Va. 179, 188, 327 S.E.2d 107, 112 (1985).³ It also creates practical problems, requiring an “I know it when I see

³ The Congregations distort the case law. *Reid* assessed a vote’s procedural validity (notice, opportunity to speak, validity of absentee ballots, etc.), and not issues of voter eligibility. *See* 229 Va. at 189-90. Notably, none of the cases cited by the Congregations actually assesses membership. *Reid* simply recognized two competing groups of members. *Id.* at 181-82. *Green* merely noted the contents of the pastor’s list. 221 Va. at 551. *Brown* specifically states that “[n]o attempt was made to prove the membership of the congregation” and in fact describes the congregation as defunct “for nine years prior to [the] litigation,” resting its decision on an assessment of the existence of the collective group, not individual members’ status. 194 Va. at 911-12.

it” approach by failing to define any minimum level of the “secular components” they suggest.⁴

Our Opposition Brief (at 7) proposes that the Court adopt one of two definitions, each of which may be applied objectively, uniformly, and without entanglement. The Court may define membership as dictionaries do – by looking at the simple facts of enrollment.⁵ Alternatively, the Court may require “active”-ness, but it must accept that any method or level of participation is sufficient, “regardless of how much or how little.” Congs’ Opening Brief Ex. A at 1 (instructions for determining “active baptized members”). Section 57-9 does not limit the right to vote to those who attended at least once a month or gave regularly or at some dollar level. The evidence will show that the Congregations complied with neither. They excluded some known members under more rigid standards for voting eligibility. But they also excluded some active participants because those persons were not properly registered.

B. The language of § 57-9(B) contrasts with, not equates to, § 57-9(A).

Ignoring the differences in §§ 57-9(A) and (B) and this Court’s recognition of that “significant distinction,” April 3 Letter Opinion at 48, the Congregations now claim that the two provisions should be read to mean the same thing. Principles of statutory interpretation notwithstanding, they argue that the legislature *meant* “members of such congregation, entitled to vote by its constitution [or] by its ordinary practice or custom,” and not “members of such

⁴ Indeed, some of them explicitly incorporated such an approach, by identifying an eligible voter, in part, as a person “known to” the Rector and the Treasurer.

⁵ To be sure, enrollment in the Episcopal Church requires baptism, a religious ritual. But the subsequent fact of enrollment, critically, is a “yes or no” event – one that can be determined without resolution of any doctrinal criteria and that is not an attempt to demarcate a scale of participation, with no guidance for fixing or questioning the lines drawn. Long before the votes at issue, the Congregations assessed whether persons seeking membership were properly baptized; if so, they recorded those persons as baptized members. Whether someone has been sufficiently “faithful” in corporate “giving, working, and praying” (or other such standards) cannot be established through any such objective record.

congregation over 18 years of age,” in § 57-9(A). That is so, they claim, because § 57-9(B)’s “import ... is that the same basic eligibility rules that applied before the vote should generally apply afterwards as well.” Congs’ Resp. at 10-11. That accurately describes § 57-9(B), but it does not establish that the very different language of § 57-9(A) means the same thing.⁶

The Congregations argue that the original statutory language, “communicants and pew holders and pew owners,” equaled “those who typically would have been ‘entitled to vote’ under denominational rules.” Congs’ Resp. at 11. As their own exhibit shows, however, the statutory language did *not* match voting requirements under Church rules: the statute in 1868 permitted “communicants and pew holders” to vote; Diocesan canons extended that privilege to a different group, “[e]very person above 21 years of age, resident of the parish six months next preceding the day of election, being a pew holder or contributor to the charges of the parish.” *Id.*, Ex. A, Canon IX. Likewise, it is not “communicants and pew holders” over the age of 18 who are entitled to vote under today’s rules, but “communicants *in good standing*” over the age of 16.

Moreover, the Court has held, of course, that § 57-9(A) was drafted to apply to *any* hierarchical church. The Congregations do not and cannot contend either that all hierarchical churches have identical rules for voting eligibility or that such rules equate to “communicants and pew holders” within any denomination, let alone all.⁷

⁶ The Congregations assert that rather than “specifying a different eligibility rule for subpart B than for subpart A,” the General Assembly was merely trying to ensure that “the basic ground rules [for voting] should be set ahead of time.” Both of the procedures the General Assembly selected, for subparts A and B, respectively, accomplish that objective. The point is that the General Assembly plainly specified *different* rules in each part. It could have articulated the same rule in both subsections, had it intended to do so. It did not.

⁷ The Congregations now employ a scattershot approach to history and interpretation of former statutory terms. Last year, with respect to more common terms like “division,” the Congregations argued that the Court required expert historical evidence. This year, they do not offer expert evidence. They simply attach a handful of historical documents, provide

The General Assembly knew how to state that voting under § 57-9(A) should be conducted by “members of such congregation, entitled to vote by its constitution [or] by its ordinary practice or custom,” and it could have done so. It chose a different formulation.

C. If the Court is to defer, it must defer to the hierarchical church.

We agree that if a legal dispute involves a matter of doctrine or polity, courts must defer to the ecclesiastical authority’s determination of that matter. *E.g., Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). In a hierarchical church, however, it is not the *congregations’* interpretation or application of Diocesan or Episcopal Church Canons to which the Court must defer, but the hierarchical church’s. Indeed, as noted above, the Congregations did not even properly apply denominational rules with respect to voting. More to the point, this Court has consistently rejected the view that § 57-9(A) should be interpreted in light of ecclesiastical rules; and in this particular area, the statutory language actually leaves no room for such accommodation. The Diocese’s rules, for example, *cannot* be deemed incorporated into the statute without ignoring the statute’s direction that voters be over 18 and the reality that both the Church and the Congregations recognize “members” (and “active” members) who cannot vote. The Court can and should defer when necessary; but in this case, defining “members” to mean “communicants in good standing” or “members entitled to vote under ecclesiastical rules” ignores the statute and *creates* ecclesiastical issues.

D. The Church and the Diocese have not admitted either the Congregations’ standard for membership or the “majority of the whole number” issue.

The Congregations next plumb the Church’s and the Diocese’s websites for evidence to

unsupported interpretations of them, and ask the Court to equate less common terms in a former version of the statute (“communicants” and “pew holders”) both with “those entitled to vote in hierarchical denominations” and with the current “members.”

overcome the clear distinction both they and the Canons have drawn between “members” and “communicants in good standing” entitled to vote. The exhibits do not show what the Congregations suggest. Even if some individuals have, on certain occasions (and perhaps improperly) used the overinclusive “members” to refer to “voters” or “communicants in good standing,” that does not and cannot erase the facts that (i) these are different terms that are separately and differently defined both in secular dictionaries and in the Church’s canons, (ii) the Congregations understand and make the same distinction, and (iii) the Court has rejected – at the Congregations’ urging – the approach to statutory interpretation they now seek. It was and is the Congregations’ responsibility to insure that the statutory requirements were met.⁸

4. “Majority of the whole number” in § 57-9(A) refers to all eligible voters.

The Congregations argue that the Church and the Diocese “have failed to make their

⁸ The Congregations (at 8) first point to a single answer in a “FAQ” in which an unidentified staff person referred to “communicants in good standing” in connection with a question about Church membership. The response’s list of terms is at best incomplete, as it does not refer to the Canon defining “membership” (Canon I.17(1)(a)), but only to later sections of the same canon defining certain subsets of members. The quoted answer, in fact, shows that there is an additional requirement for “members ... to be considered communicants” and then more requirements for “communicants ... to be considered communicants in good standing.” It in fact reveals that the terms are different, not equivalent.

The Diocesan exhibits are equally unavailing, for three additional reasons: (1) They do not purport to specify whether the “members” or “membership” that voted was correctly defined under the statute (or the Canons). Nor do they specify whether the majority was “of the whole number” or “of those who voted.” They simply use the broadest term available in the Episcopal Church and the one most familiar to non-Episcopalians – “members” – to describe events for a public audience in a non-technical way. (2) The Congregations’ assertion that the Diocese was aware of their voting criteria at the time of the communications (Cong’s Resp. at 8-9) is wrong. Parishes are responsible for keeping membership records in accordance with the rules of the Church, and those records have been in the Congregations’ exclusive possession. Only recent discovery has shown the Congregations’ contortions to define “members” in a way that shrinks the “whole number.” (3) The Diocese recognizes and describes the Congregations’ votes as the votes of groups of individuals to leave the Episcopal Church. The Diocese has never recognized or acknowledged § 57-9(A)’s applicability or that the votes complied with the statute. The communications are entirely consistent with that position.

case” because we did not discuss *Baber v. Caldwell*, 207 Va. 694, 152 S.E.2d 23 (1967), a § 57-9(B) case, in our Opening Brief. Congs’ Resp. at 14. The Church and the Diocese did not discuss *Baber* in our Opening Brief because the Congregations had not yet backed away from their prior representations – both by counsel at the August 22 hearing and by leaders of at least four Congregations prior to their votes – regarding what § 57-9(A) requires. In any event, *Baber* does not address this issue, as we explained in our Opposition Brief at 13-14.⁹

It is not true that the Congregations complied “with both Diocesan canons and the Protocol.” Congs’ Resp. at 14. The latest evidence on this point, and a fourth example of pre-vote representations about § 57-9(A)’s majority requirement, is from Church of the Apostles:

An eligible voter must meet ALL FIVE requirements in order to be in compliance with our Articles of Incorporation and our By-Laws; Diocesan Canon law is much less restrictive, so it’s not really a consideration. When we take our vote, the Virginia Division statute ... requires that the resolution be adopted by more than 50% of the eligible voters (ALL eligible voters, NOT 50% of those in the room at the time).

Ex. I (e-mail from Gary Fitzgerald (sent Oct. 11, 2006)) (italics added). The Congregations pursued § 57-9(A), as their pleadings allege. Their votes to leave with the property were not taken pursuant to the rules of the Church.¹⁰ Rather, they seek to use § 57-9(A) to override the rules of the Church – except, apparently, where it is convenient for them not to do so.

⁹ The Congregations fail entirely to respond to the arguments in our Opening Brief at 12-14, which demonstrate that both the Congregations themselves, prior to the votes, and their counsel, in open Court on August 22, 2008, were fully aware that § 57-9(A)’s “majority of the whole number” language means a majority of *all* of the members, “[w]hether they show up or not.” *Id.* at 13 n.10, quoting Tr. at 62 (Aug. 22, 2008).

¹⁰ Indeed, as the “Protocol” shows, the rules of the Church would allow such a vote only as part of a negotiated settlement approved by the Diocese’s governing bodies.

Respectfully submitted,

THE PROTESTANT EPISCOPAL CHURCH
IN THE DIOCESE OF VIRGINIA

By: Egon Beck
Of Counsel

Bradfute W. Davenport, Jr. (VSB # 12848)
William H. Hurd (VSB # 16769)
George A. Somerville (VSB # 22419)
Joshua D. Heslinga (VSB # 73036)
Troutman Sanders LLP
Post Office Box 1122
Richmond, Virginia 23218-1122
(804) 697-1200
fax: (804) 697-1339

Mary C. Zinsner (VSB # 31397)
Elizabeth Billingsley (VSB # 70808)
Troutman Sanders LLP
1660 International Drive
Suite 600
McLean, Virginia 22102
Telephone: (703) 734-4334
Facsimile: (703) 734-4340

Counsel for the Protestant Episcopal Church in the Diocese of Virginia

THE EPISCOPAL CHURCH

By: Heather Anderson / EWS VSB # 70808
Of Counsel

Heather H. Anderson (VSB # 38093)
Adam M. Chud (*pro hac vice*)
Soyong Cho (VSB # 70896)
Goodwin Procter
901 New York Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 346-4000
Facsimile: (202) 346-4444
Counsel for the Episcopal Church

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 16th day of September, 2008:

* Gordon A. Coffee, Esquire (gcoffee@winston.com)
Gene C. Schaerr, Esquire (gschaerr@winston.com)
Steffen N. Johnson, Esquire (sjohnson@winston.com)
Andrew C. Nichols, Esquire (anichols@winston.com)
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006

*Counsel for Truro Church, Church of the Epiphany,
Church of the Apostles, The Church at The Falls – The Falls Church, and
associated individuals*

* George O. Peterson, Esquire (gpeterson@sandsanderson.com)
J. Jonathan Schraub, Esquire (jjschraub@sandsanderson.com)
Heather A. Jones, Esquire (hjones@sandsanderson.com)
Tania M.L. Saylor, Esquire (tsaylor@sandsanderson.com)
Sands Anderson Marks & Miller, P.C.
1497 Chain Bridge Road, Suite 202
McLean, Virginia 22101

Counsel for Truro Church and certain associated individuals

* Mary A. McReynolds, Esquire (marymcreynolds@mac.com)
Mary A. McReynolds, P.C.
1050 Connecticut Avenue, N.W., 10th Floor
Washington, D.C. 20036

*Counsel for St. Margaret's Church, St. Paul's Church, Church of the Epiphany,
Church of the Apostles, St. Stephen's Church, and associated individuals*

* E. Andrew Burcher, Esquire (eaburcher@pw.thelandlawyers.com)
Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.
4310 Prince William Parkway, Suite 300
Prince William, Virginia 22192

Counsel for St. Margaret's Church, St. Paul's Church, and Church of the Word

* James E. Carr, Esquire (NorthVaJim@aol.com)
Carr & Carr
44135 Woodridge Parkway, Suite 260
Leesburg, Virginia 20176

Counsel for the Church of Our Saviour at Oatlands and associated individuals

* R. Hunter Manson, Esquire (manson@kaballero.com)
PO Box 539
876 Main Street
Reedville, Virginia 22539

Counsel for St. Stephen's Church and associated individuals

* Scott J. Ward, Esquire (sjw@gg-law.com)
Timothy R. Obitts (tro@gg-law.com)
Robert W. Malone (rwm@gg-law.com)
Gammon & Grange, P.C.
8280 Greensboro Drive
Seventh Floor
McLean, Virginia 22102

Counsel for The Church at The Falls – The Falls Church and certain associated individuals, Christ the Redeemer Church, and Potomac Falls Church

* James A. Johnson, Esquire (jjohnson@semmes.com)
Paul N. Farquharson, Esquire (pfarquharson@semmes.com)
Scott H. Phillips, Esquire (sPhillips@semmes.com)
Semmes Bowen & Semmes, P.C.
25 South Charles Street
Suite 1400
Baltimore, Maryland 21201

Counsel for The Church at The Falls – The Falls Church and certain associated individuals

* Edward H. Grove, III, Esquire (egrove@thebrautfirm.com)
Brault Palmer Grove Steinhilber & Robbins LLP
3554 Chain Bridge Road
Suite 400
Fairfax, VA 22030

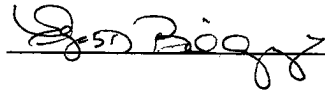
Counsel for certain trustees of The Church at The Falls – The Falls Church (Episcopal)

* Robert C. Dunn, Esquire (rdunn@robduunnlaw.com)
LAW OFFICE OF ROBERT C. DUNN
707 Prince Street
P. O. Box 117
Alexandria, Virginia 22313-0117

Counsel for Marjorie Bell, trustee of Church of the Epiphany (Episcopal)

* Stephen R. McCullough, Esquire (SMccullough@oag.state.va.us)
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*



1767111.3

GENERAL OBJECTIONS

1. Truro Church objects to the Requests to the extent that they seek information protected by the attorney-client privilege and/or the attorney work-product doctrine.
2. Truro Church objects to the Requests to the extent that they seek information outside the scope of discovery permitted under the Rules of the Supreme Court of Virginia.
3. Truro Church objects to the Requests to the extent that they are overly broad and unduly burdensome and seek information irrelevant to the instant action and/or not reasonably calculated to lead to the discovery of admissible evidence.
4. Truro Church's investigation into the issues in this lawsuit is ongoing, and the responses provided represent the information acquired to date. Truro Church reserves the right to amend, supplement or change in any way the answers herein, should information come to light through further investigation that would so warrant an amendment, supplementation or change.
5. Truro Church's responses are not deemed a waiver of any of the foregoing objections. A partial response to any Request as set forth below is not deemed a waiver of Truro Church's objections thereto (if any) or of the right of Truro Church to object to additional, supplemental or further Requests.

REQUESTS FOR ADMISSIONS

Request No. 1:

According to Truro Church, the persons eligible to vote in the Subject Votes by Truro Church were those persons 18 years of age or older who were "registered" and were a "communicant in good standing" at Truro Church.

RESPONSE: Truro Church objects to this request because it uses the undefined terms, “registered” and “communicant in good standing.” Notwithstanding that objection, Truro Church admits that those persons over the age of 18 who were registered at Truro Church and communicants good standing were eligible to vote in the vote referenced in Truro Church’s Va. Code § 57-9 Petition.

Request No. 2:

According to Truro Church, for a person to satisfy the “registered” element of eligibility to vote in the Subject Votes by Truro Church, that person must have: (i) been confirmed and a member of Truro Church; (ii) transferred to Truro Church from another Episcopal church; (iii) been confirmed at another church and received at Truro Church; or (iv) filed a membership or registration form with Truro Church.

RESPONSE: Truro Church objects to this request because it uses the undefined term, “registered.” Notwithstanding that objection, Truro Church admits that consistent with ECUSA and the Diocese’s Constitution and Canons, the above requirements satisfied the “registered” element for voting in the vote referenced in Truro Church’s Va. Code § 57-9 Petition

Request No. 3:

According to Truro Church, for a person to satisfy the “communicant in good standing” element of eligibility to vote in the Subject Votes by Truro Church, that person must have been: (i) baptized, (ii) for the previous year, faithful in corporate worship at Truro Church, unless prevented for good cause, and (iii) for the previous year, faithful in working, praying, and giving to Truro Church.

RESPONSE: Truro Church objects to this request because it uses the undefined term, “communicant in good standing.” Notwithstanding this objection, Truro Church admits that

consistent with ECUSA and the Diocese's Constitution and Canons, the above were requirements for a person to satisfy the "communicant in good standing" element for voting in the vote referenced in Truro Church's Va. Code § 57-9 Petition

Request No. 4:

According to Truro Church, for a person to satisfy the "communicant in good standing" element of eligibility to vote in the Subject Votes by Truro Church, that person must have: (i) received Holy Communion in the Episcopal Church at least three times during the preceding year, (ii) been baptized, (iii) been faithful in corporate worship, unless for good cause prevented, and (iv) been faithful in working, praying, and giving for the spread of the Kingdom of God.

RESPONSE: Truro Church objects to this request because it uses the undefined term, "communicant in good standing." Notwithstanding this objection, denied. Truro Church does not explicitly require a person to receive Holy Communion in the Episcopal Church at least three times during the preceding year as there is simply no way for Truro Church to monitor or verify that any particular person has received Holy Communion. Truro Church, however, assumes that all persons who were eligible voters did in fact take Holy Communion at least three times during the preceding year.

Request No. 5:

Canon I.17(1)-(3) of the Constitutions and Canons of the Episcopal Church provide that persons are communicants in good standing in the Episcopal Church if they have: (i) been baptized and had their baptisms recorded in the Episcopal Church; (ii) received Holy Communion in the Episcopal Church at least three times during the preceding year, (iii) been faithful in corporate worship, unless for good cause prevented, and (iv) been faithful in working, praying, and giving for the spread of the Kingdom of God.

RESPONSE: Truro Church objects to this request because it does not specify which version of the Constitution and Canons of the Episcopal Church is being referenced.

Notwithstanding this objection, Truro Church admits that the factors cited in this Request for Admission appears to be how the Episcopal Church defines “communicants in good standing.”

Request No. 6:

At Truro Church, as of the day before the Subject Votes, there were one or more persons who were members but who were not communicants in good standing.

RESPONSE: Truro Church objects to this request because it uses the undefined term, “member.” Notwithstanding this objection, Truro Church admits that there were one or more persons who were members but who were not communicants in good standing as of the day before the Subject Votes.

Request No. 7:

At Truro Church, as of the day before the Subject Votes, there were a greater number of persons who were members than who were communicants in good standing.

RESPONSE: Truro Church objects to this request because it uses the undefined term, “member.” Notwithstanding this objection, Truro Church admits that at as of the day before the Subject Votes there were more people who Truro Church considered members of Truro Church than there were communicants in good standing.

INTERROGATORIES

Interrogatory No. 1:

If you deny any of the foregoing Requests for Admission, in whole or in part, for each denial state all reasons for your denial and describe all documents that support your denial.

ANSWER: Please see responses to individual Request for Admissions.

Interrogatory No. 2:

Identify each person whom Truro Church expects to call as an expert witness at the evidentiary hearing or trial scheduled to occur in October 2008. With respect to each such person, provide: the subject matter on which each expert is expected to testify; the substance of the facts and opinions to which each expert is expected to testify; a summary of the grounds for each opinion of each expert; a listing of literature, treatises, or supporting materials each expert intends to rely upon for his opinion(s); the educational background and work experience which qualifies each expert to testify as an expert witness, including a list of all of each expert's publications and presentations; and a list of all depositions and trials (including case name, number, and jurisdiction) at which the expert has testified as an expert during the past five years.

OBJECCION: Truro Church objects to the extent that this Interrogatory seeks information beyond the scope of Rule 4:1(b)(3)(A).

ANSWER: Please see Truro Church's Expert Witness Designation served on September 5, 2008.

Interrogatory No. 3:

State how you contend each of the following terms or phrases in Va. Code § 57-9(A) should be interpreted by the Court – “members of such congregation” and “a majority of the whole number” – and state all facts and describe all documents upon which you base those contentions.

OBJECTION: Truro Church objects to this Interrogatory as it calls for a purely legal conclusion beyond the scope of discovery.

ANSWER: Without waiving the objection, please see the CANA Congregations' Opening Brief on Voting Issues served on September 5, 2008.

Truro Church reserves the right to supplement this Answer and hereby incorporates the

CANA Congregations additional legal briefs on these issues.

Interrogatory No. 4:

State in detail all criteria that a person was required to meet before he or she was deemed to be a member of Truro Church eligible to vote in the Subject Votes by Truro Church.

ANSWER: Pursuant to Rule 4:8(f), Truro Church directs ECUSA and the Diocese to Truro Church's By-laws adopted May 23, 2006; Voting Policy in 2004; Amended Voting Policy dated October 26, 2006; and Supplemental Voting Policy dated November 28, 2006.

Interrogatory No. 5:

If you contend that the parochial report submitted to the Episcopal Church or the Diocese by Truro Church for 2005 was not accurate in any way as of December 31, 2005, describe in detail each instance or way that you contend it was inaccurate and state all facts and describe all documents upon which you rely for any such contentions.

ANSWER:

The Parochial Reports historically have been inaccurate based on inconsistencies between the instruction books for the Parochial Reports and the actual Parochial Reports. Additionally, the Parochial Reports have, in the past, failed to accurately reflect the definitions and terms set forth in ECUSA's own Constitutions and Canons. This has led to widespread problems for congregations affiliated, or previously affiliated, with ECUSA in determining precisely how to report various figures.

Notwithstanding the historical imprecision of the Parochial Reports, Truro Church has always had significant difficulty in determining how to apply the criteria set forth in the Parochial Reports to actual levels of current "membership." For instance, the Parochial Reports generally begin with requiring Truro Church to incorporate the figure for active baptized

members reported from the prior year and to capture additions and losses (only by death or by letter of transfer according to ECUSA's reporting workbooks). While Truro Church believes that the various additions and losses were accurate to the best of its ability to determine, the plain fact is that the beginning number, based solely on the prior year's number, was required to be used and not necessarily accurate in the first instance.

Interrogatory No. 6:

State the number of members, the number of members 18 years of age or older, the number of communicants in good standing, and the number of communicants in good standing 16 years of age or older that Truro Church had as of December 31, 2005; June 30, 2006; September 30, 2006; and the day before the Subject Votes by Truro Church.

ANSWER:

Truro Church maintains a database for membership and such a database provides a snapshot of the membership at Truro on the day an inquiry is made of the database. As such, Truro Church cannot go back in time and provide information for the dates requested except for the day before the Subject Votes by Truro Church.

Truro Church's best estimate of membership as of December 10, 2006 is contained in the voter rolls for the discernment vote which has previously been supplied.

Interrogatory No. 7:

Explain in detail how each of the figures reported in response to Interrogatory No. 6 was calculated, identify all persons who participated in the calculation of those figures and the preparation of the response to Interrogatory No. 6, and identify all documents that were reviewed or considered in connection with the calculation of those figures and the preparation of the response to Interrogatory No. 6.

ANSWER:

Pursuant to Rule 4:8(f), Truro Church refers ECUSA/Diocese to documents previously produced.

Interrogatory No. 8:

Identify each person who had any role in, input into, or responsibility for determining who would be considered eligible to vote in the Subject Votes by Truro Church, and describe in detail each such person's role, input, or responsibility.

ANSWER:

Those determined to be eligible to vote in the Subject Votes by Truro Church were established by Truro Church's By-laws adopted May 23, 2006; Voting Policy in 2004; Amended Voting Policy dated October 26, 2006; and Supplemental Voting Policy dated November 28, 2006. The Vestry of Truro Church adopted the By-Laws and policies for voting.

In terms of implementing the policies for voting, several persons had substantive input in the process. Douglas LeMasters, Parish Administrator, and Linda Huntington, currently Director of Administration and Finance, were responsible for reviewing Truro Church's membership records and determining eligibility to vote. Documents reflecting their efforts have been previously produced.

Interrogatory No. 9:

State all facts and describe each and every document upon which you rely for your contention that the number of persons eligible to vote in the Subject Votes by Truro Church was the number alleged in Truro Church's pleadings.

ANSWER: Pursuant to Rule 4:8(f), Truro Church directs ECUSA and the Diocese to documents previously produced.

Interrogatory No. 10:

If you contend that any part of the September 2006 report of the "Special Committee" appointed by Bishop Lee (*see* CANA Congregations' Ex. 126 at the November 2007 trial) was adopted, approved, or otherwise binding upon the Diocese or the Episcopal Church, state all facts and describe all documents upon which you rely for that contention.

ANSWER: Truro Church contends that the Report of the Special Committee was received and thereby approved and adopted by the Standing Committee of the Diocese. Truro Church relies upon the documents produced in the first phase of this litigation as well as testimony related thereto.

Interrogatory No. 11:

For each of the deeds that you contend describe or apply to real property that is the subject of Truro Church's 57-9 Petition, list the date of such deed, the deed book and page number where such deed is recorded, and the exact wording such deed uses to identify the grantor(s) and grantee(s).

ANSWER: Please see Stipulation on property between Truro Church and ECUSA/Diocese.

Interrogatory No. 12:

Identify all of the personal property that you contend is held by trustees for Truro Church or otherwise is the subject of Truro Church's 57-9 Petition.

ANSWER: Please see Stipulation on property between Truro Church and ECUSA/Diocese.

Interrogatory No. 13:

State the name, publisher, and version number of each piece of software used by Truro Church since January 1, 2004, to list, store data regarding, or keep track of persons who are members or communicants in good standing of Truro Church, and state when Truro Church

began (and, if applicable, ceased) using that software.

ANSWER:

Truro Church uses Shelby version 5.7.1521.

Since 2004, Truro Church has used the following versions:

05/28/04 541710 (V541710)
11/18/04 541900 (V541900)
12/08/04 05DB43 V54 Both Professors 4.03
01/03/05 541901 (V541901)
05/03/05 05DCPM Cross Check Plus Machine
05/12/05 542060 (V542060)
10/24/05 551000 (V551000)
12/19/05 05DB51 v5.5 Both Professors 5.1
12/30/05 552000 (V552000)
04/26/06 05MACT Activation Sheet
04/26/06 05MADD Adding Application Instruction
05/30/06 561000 (V561000)
10/30/06 562000 (V562000)
12/04/06 05DB61 v5.6 Both Professors 6.1
12/21/06 563000 (V563000)
05/26/07 571000 (V571000)
11/07/07 571300 (V571300)
02/14/08 05DF71 Financial Professor 7.1
02/14/08 05DS71 Church Professor 7.1

REQUESTS FOR PRODUCTION OF DOCUMENTS

Request No. 1:

All documents described, referred to, or relied upon by you in responding to any of the foregoing Requests for Admission or Interrogatories.

OBJECTION:

Truro Church objects to the extent that this Request seeks documents which are protected by the attorney-client privilege or work product doctrine.

RESPONSE:

Without waiving the objection, non-privileged documents will be produced for copying and inspection.

Request No. 2:

All documents (including all information accessible through computer database reports or kept in other electronic form) created, distributed, or maintained by Truro Church that list or identify the members or communicants in good standing at Truro Church at any point in time since January 1, 2004, regardless of whether other persons who are “friends” or otherwise not members or communicants in good standing are also included in any such list.

OBJECTION:

This Request seeks documents beyond the applicable dates of Truro Church’s Va. Code § 57-9 Vote, and its overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE:

Without waiving the objection, Truro Church maintains an electronic database of “members” or “communicants in good standing.” Truro Church has already produced the voting list for its Va. Code § 57-9 Vote which accurately reflects the “members” or “communicants in good standing” for Truro Church at the time of the vote.

Request No. 3:

All documents listed in response to Interrogatory no. 2, including copies of all materials upon which each expert intends to rely for his opinion(s) and all of each expert’s publications and presentations.

RESPONSE:

Truro Church will make such documents available for copying and inspection.

Dated: September 12, 2008

Respectively submitted,

TRURO CHURCH

by Counsel

SANDS ANDERSON MARKS & MILLER

A Professional Corporation

By: 

J. Jonathan Schraub (VSB # 17366)

George O. Peterson (VSB # 44435)

Michael T. Marr (VSB # 48536)

Heather A. Jones (VSB #48431)

1497 Chain Bridge Road

Suite 202

McLean, VA 22101

(703) 893-3600

(703) 893-8484 (facsimile)

WINSTON & STRAWN LLP

Gordon A. Coffee (VSB #25808)

Gene C. Schaerr

Steffen N. Johnson

Andrew C. Nichols (VSB #66679)

1700 K Street, N.W.

Washington, DC 20006-3817

(202) 282-5000 (Telephone)

(202) 282-5100 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Truro Church's Objections, Answers and Responses to the Diocese of Virginia's and the Episcopal Church's Additional Requests for Admissions, Interrogatories, and Requests for the Production Related to the Votes was served this 12th day of September, 2008, sent by electronic mail and first-class mail, postage prepaid, to:

Bradfute W. Davenport, Jr., Esquire
George A. Somerville, Esquire
Joshua D. Heslinga, Esquire
TROUTMAN SANDERS, LLP
P.O. Box 1122
Richmond, VA 23218

Mary C. Zinsner, Esquire
TROUTMAN SANDERS, LLP
1660 International Drive, Suite 600
McLean, VA 22102

Edward H. Grove, III, Esquire
BRAULT PALMER GROVE
STEINHILBER & WHITE, LLP
3554 Chain Bridge Road, Suite 400
Fairfax, VA 22030

Heather H. Anderson, Esquire
Adam M. Chud, Esquire
Soyong Cho, Esquire
GOODWIN PROCTER, LLP
901 New York Ave., N.W.
Washington, D.C. 20001

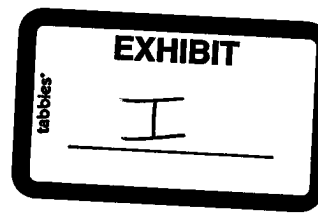
Robert C. Dunn, Esquire
Law Office of Robert C. Dunn
P.O. Box 117
Alexandria, VA 22313-0117

Stephen R. McCullough, Esquire
William E. Thro, Esquire
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

All CANA Counsel



George O. Peterson



Jenny Uehlinger

From: Gary Fitzgerald [gfitzgerald@churchoftheapostles.org]
Sent: Wednesday, October 11, 2006 10:46 AM
To: prooney@churchoftheapostles.org; juehlinger@churchoftheapostles.org; 'Annie Rothgeb'
Subject: RDS, membership, voting

Friends,

Here's an excerpt from my report to the Vestry last night:

“Thus voters must meet 5 requirements: baptism, adherence to the four principles, age 16 or older, recognition by the Rector as a regular worshiper, and recognition by the Treasurer or Wardens as a financial contributor. An e-mail has gone to our attorney to determine what kind of proof is needed in order to prove to a court’s satisfaction that every ballot we count is cast by a member who meets these five tests.”

An eligible voter must meet ALL FIVE requirements in order to be in compliance with our Articles of Incorporation and our By-Laws; Diocesan Canon law is much less restrictive, so it’s not really a consideration. When we take our vote, the Virginia Division statute (the approach being adopted by the congregations which are part of the Joint Defense agreement) requires that the resolution be adopted by more than 50% of the eligible voters (ALL eligible voters, NOT 50% of those in the room at the time). Our list of eligible voters must be bulletproof, and we will want as large a mandate as possible so that even if ballots are thrown out, we are comfortably above the 50% mark.

I’m waiting for our attorney’s reply to my questions, all of which can be summed up as “What is a satisfactory level of proof?” In the meantime, here’s where I think we are:

Baptism – most churches are accepting people’s word, so as not to become Certificate Police, and this standard is likely to hold

Adherence To The Four Principles – we will need to develop an efficient way to produce this record

Age at Voting Time – we already have this info (birthdates are on RDS, right?)

Recognition by the Rector – when we are ready, we can present a list for him to sign as confirmation that these people are recognized worshippers

Recognition by Treasurer or Wardens – My understanding is that we have this substantially in hand, but need to create an efficient way to confirm those who give cash, through third parties, etc.

There is a discrepancy between Canon law and the Virginia Division statute – for Canonical purposes the age limit is 16, but for the Division Statute it’s 18. Truro/TFC are toying with different colored ballots, etc., but I believe signed ballots are the way to go (not quite private, not quite public), in favor of a bulletproof list. We’ll need to create a final list of eligible voters which will be compared to the ballots that are collected; we want zero court challenges to the system.

The database will become much more useful when we can immediately confirm each entrant’s membership status and eligibility to vote. Our current definition of “member” is a baptized person who contributes financially to the operation of the church (By-laws Article III) and who proclaims (By-laws) and abides by (Section V, Articles of Incorporation) the four principles as set out in Section IV of the Articles of Incorporation. Voter eligibility requires two additional tests – meeting the age requirement and recognition by the Rector as a regular worshiper. Currently there is no provision made for absentee ballots – to vote, you have to be present. But there is no “residency” requirement, either – if people can make a legitimate case for any kind of regular attendance (and in most churches the standard is 3 times per year), their home address is irrelevant.

Two things come to my mind immediately – one person one record, regardless of how people are then grouped (by family, by address, whatever); and individual yes/no fields for baptism and recognition. These can be tied to other segments of the program – for instance, recording a contribution would automatically check off the recognized-by-the-treasurer field. I’m not a database designer, so there are certainly lots of other parameters to consider in getting ourselves up to speed with RDS. If we go with one person one record, that provides a solution

10/11/2006

COA014274

for people with children who tithe cash, and other similar situations – each person is an individual entity as well as a member of various groups. It will mean that young children are technically not “members” – they can’t proclaim adherence to the principles – but it won’t take long to develop a system for bringing children “into the fold.”

Last thing (I promise, at least for now) – it seems obvious that we’re trying to meet two challenges – getting ready for the congregational vote, and revamping RDS to make it a useful tool. The vote has to take priority; this might ultimately mean exporting data into Excel in order to create an efficient system for the congregational vote, or doing something else we wouldn’t ordinarily consider; we’ll need to talk more about this. But as someone has said before, failure is not an option, we HAVE to do this on time and correctly – so, we will!

Blessings on y’all for reading this all the way through, and being willing to pitch in!

Gary