

LAW OFFICES OF
CARR & CARR

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

LANSDOWNE PROFESSIONAL PARK
44135 WOODRIDGE PARKWAY, SUITE 260
LEESBURG, VIRGINIA 20176-1244

(703) 777-9150

JAMES E. CARR, P.C.
ANN B. CARR, P.C.

FACSIMILE:
(703) 726-0125

April 23, 2008

BY HAND

Office of the Clerk
Attn: Ms. Robin Brooks
Circuit Court of Fairfax County
Fairfax Judicial Center
4110 Chain Bridge Rd
Fairfax, Virginia 22030-4009

In Re: *Multi-Circuit Church Property Litigation*
(Omnibus Case No. CL 2007-0248724)

Dear Ms. Brooks:

Enclosed for filing in the Omnibus Case No. CL 2007-0248724, is an original Church of Our Saviour at Oatlands' Supplemental Brief in Regard to Constitutional Issues, along with a Cover Sheet for filing in Case Nos.:

1. *In re: Truro Church* (Circuit Court of Fairfax County; CL 2006-15792);
2. *In re: Church of the Apostles* (Circuit Court of Fairfax County; CL 2006-15793);
3. *In re: Church of the Epiphany* (Circuit Court of Fairfax County; CL 2007-556);
4. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon* (Circuit Court of Fairfax County; CL 2007-1235);
5. *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church* (Circuit Court of Fairfax County; CL 2007-1236);

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

Office of the Clerk
Attn: Ms. Robin Brooks
Circuit Court of Fairfax County
Re: Multi-Circuit Church Property Litigation
(Case No. CL 2007-0248724)
April 23, 2008
Page 3 of 4

16. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word* (Circuit Court of Prince William County Case No. 73464) (Circuit Court of Fairfax Virginia CL 2007-5684);
17. *In re: St. Margaret's Church* (Circuit Court of Fairfax County CL 2007-5685);
18. *In re: St. Paul's Church, Haymarket* (Circuit Court of Fairfax County CL 2007-5686);
19. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church* (Circuit Court of Northumberland County Case No. CL 07-16) (Circuit Court of Fairfax County CL 2007-5902);
20. *In re: St. Stephen's Church*; (Circuit Court of Fairfax County CL 2007-5903); and
21. *In re: Church of the Word, Gainesville* (Circuit Court of Fairfax County CL 2007-11514).

Best regards.

Very truly yours,

James E. Carr

TDL/tdl
enclosures

cc: Gordon A. Coffee, Esquire
Steffen N. Johnson, Esquire
George O. Peterson, Esquire
James A. Johnson, Esquire
Mary A. McReynolds, Atty At Law
Scott T. Ward, Esquire
E. Andrew Burcher, Esquire

Office of the Clerk
Attn: Ms. Robin Brooks
Circuit Court of Fairfax County
Re: Multi-Circuit Church Property Litigation
(Case No. CL 2007-0248724)
April 23, 2008
Page 4 of 4

R. Hunter Manson, Esquire
Edward H. Grove, III, Esquire
Heather H. Anderson, Atty At Law
Soyong Cho, Atty At Law
Mary C. Zinsner, Atty At Law
Bradfute W. Davenport, Jr. Esquire
George A. Somerville, Esquire
Joshua D. Heslinga, Esquire
Robert C. Dunn, Esquire
William E. Thro, Esquire

Courtesy copy to:
Seana C. Cranston, Law Clerk to the
Honorable Randy I. Bellows

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

IN RE: MULTI-CIRCUIT CHURCH
PROPERTY LITIGATION

CASE NUMBERS: CL 2007-248724,
CL 2006-15792,
CL 2006-15793,
CL 2007-556,
CL 2007-1235,
CL 2007-1236,
CL 2007-1237,
CL 2007-1238,
CL 2007-1625,
CL 2007-5249,
CL 2007-5250,
CL 2007-5362,
CL 2007-5363,
CL 2007-5364,
CL 2007-5682,
CL 2007-5683,
CL 2007-5684,
CL 2007-5685,
CL 2007-5686,
CL 2007-5902,
CL 2007-5903, and
CL 2007-11514.

**CHURCH OF OUR SAVIOUR AT OATLANDS' SUPPLEMENTAL
BRIEF IN REGARD TO CONSTITUTIONAL ISSUES**

COMES NOW, the Congregation of the Church of Our Saviour at Oatlands, by and through its counsel, and hereby supplements the Individual Opposition Brief of the Church of Our Saviour at Oatlands, filed on January 11, 2008, stating as follows:

The Diocese and the TEC are endeavoring to rely upon the free exercise and establishment clauses of the First Amendment, and counterpart rights in the Virginia Bill of Rights, Article I, Sections 16 and 17, as if these are freedoms designated solely for the benefit of religious denominations, and courts must defer to such denominational entities. Such contended

deference in favor of religious denominations, over the religious rights of individuals, is presumptuous and incorrect under Virginia law.

In Norfolk Presbytery, supra, at 214 va.500, the Virginia Supreme Court stated that:

“Virginia has never adopted the implied trust doctrine to resolve church property disputes. The Constitutions of Virginia reflect the determination of our citizens from early days to maintain the separation of state and church and to prevent the establishment of any religion. See, e.g., Constitution (1830) Art. III, 11; Constitution (1902) Art. I, § 16; Constitution (1971) Art. I, § 16.”

The pronouncement in Norfolk Presbytery was merely reflective of a long standing position on individual religious freedom in the Commonwealth. In Maddox & al. v. Maddox's Adm'r & als., 52 Va. 804, 812-816; 11 Gratt. 804, 812-816 (1854), the Supreme Court stated:

*“It will not be denied that one of the most marked and distinctive features of our civil institutions, is the perfect, absolute and unqualified freedom of opinion in matters of religion which they secure to all who dwell under them. Unjust encroachment upon the rights of conscience, in no inconsiderable degree, gave impulse to the early immigration from the European continent to this, in the hope that upon this new and virgin soil might be enjoyed that full and unquestioned freedom of opinion in matters of religion which was seemed a part of the natural rights of man, but which was denied to him in the old world. It was the spirit of resistance to such encroachment which filled the sails of the May Flower, and wafted her, with the Pilgrim Fathers upon her decks, to their landing on Plymouth rock. *** Hence, nothing was more natural or more certain than that when the separation took place from the British crown, and the state of colonial dependence was replaced by a separate and independent government, the rights of conscience and freedom of opinion in matters of religion, should have a prominent and well assured place in the new institutions. Thus we see ***the first article of the amendments to the constitution declares, that congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. So the sixteenth section of the bill of rights of Virginia, passed unanimously in convention on the 12th of June 1776, adopted by the convention of 1829-30, and again by that of 1850-51, declares ‘that religion or the duty we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion according to the dictates of conscience’*** And again: By the act for establishing religious freedom, passed in 1785, the natural rights of mankind upon this subject are set forth and asserted to their fullest extent, and in their widest comprehension, and provision made to hold them sacred, and to give to them their fullest effect. Again: By the amended constitution of 1830, article 3, § 11, and also by that of 1851, article 4, § 15, it is declared that “no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall any man be enforced,*

*restrained, molested [*814] or burdened, in his body or goods, or otherwise suffer on account of his religious opinions or belief: but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise affect, diminish or enlarge their civil capacities. ****

*I take it, then, that upon no subject is the policy of our law more firmly settled, or more plain, clear and unmistakable than upon this, and that all contracts and all conditions to the same or to gifts or legacies the effect of which is to thwart and violate this policy, should be held to be [**19] utterly void and ineffectual.****

*In England, as we know, the established church constitutes an element, and a material element, in the government; and different ideas and a different sentiment prevail. [but]*** however it may be in England, I think such restriction here is contrary to the genius of our institution, to the spirit [**21] of our government and to the policy of our laws, and as such is utterly nugatory, and should be held for nought.” (Emphasis added).*

As previously stated by The Church of Our Saviour, under the provisions of the Virginia Act for Religious Freedom the members of the CANA Congregations cannot be compelled to support with their property and money, religious opinion and doctrine with which they do not agree. See Virginia Code Sections 57-1 and 57-2. Under the same provisions the members of those Congregations cannot be penalized, diminished or otherwise negatively affected in their property rights, as a function of the religious practices they choose to follow. These rights are expressly stated by the Virginia legislature to be “of the natural rights of mankind”, and “any act passed to repeal or narrow its operation will be in infringement of” such rights declared in the Act. Section 57-2.

As a matter addressed in detail in the points and authorities set forth in the CANA Congregations’ Memorandum in Opposition to the Post-Trial Opening Brief of the Episcopal Church and the Diocese, pp. 35-51, Section 57-9 provides a presumption that the neutral principle of majority rule should properly control the secular matter of property held by trustees for that Congregation in the event of a disaffiliation from a denomination by that Congregation. Such a process, so founded upon the neutral principle of majority rule, is clearly consistent with

and supported by the rulings in Jones v. Wolf, 443 U.S. 595, 607-608 (1979). Should a religious denomination be truly hierarchical, as the TEC professes itself to be, it can readily protect itself from the consequences of this procedure by the simple expediency of placing title of any property it owns in the name of a representative of the denomination.

As conceded by the Episcopal Church in the Stipulation of Facts filed in this case on December 6, 2007, numerous religious denominations in Virginia have for some time enjoyed the ability to hold title to property in their own name. According to that Stipulation of Facts, the Roman Catholic Church, Church of Jesus Christ of Latter Day Saints, Presbyterian Church, and other denominations have placed title in property they own in the name of the denomination, or a bishop or other official of that denomination. Under Diocesan Canon 15.4, the Bishop of the Episcopal Diocese of Virginia is specifically authorized to hold title to property “for the use or benefit of the Diocese”, and in fact, has routinely held title to property, including property used for parishes or missions. See TEC-Diocese Exhibit 3, at 28; and CANA Exhibits 148, at 331-337 and 147, at 344-349.

But the Diocese and Episcopal Church claim that as a matter of first amendment right they can do as they will, and place properties in their name or not, as they desire, and it is of no moment, because a Court of the Commonwealth must defer to *their* determination under *their* ecclesiastic law of whether or not they own property, and no state statute can run counter to this required deference and remain constitutional. Of course, this argument ignores the fact that the United States Supreme Court has clearly rejected any notion that such compulsory deference is required, and has clearly validated procedures for resolution of secular church matters which are consistent with neutral principles. Jones, supra, 443 U.S. at 605-606.

For the reasons stated above, the Court should apply the majority rule principle set out in Section 57-9. The Court should not create a judicial exemption from neutral principles solely in favor of the denomination known as the Episcopal Church, because such an exemption would result in the confiscation of the property of the Congregation of the Church of Our Saviour at Oatlands to support a religion with which the members of that Congregation disagree. There is no compelling state interest to justify such a result.

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

Respectfully submitted,

CHURCH OF OUR SAVIOUR AT OATLANDS
AND RELATED TRUSTEES

By: _____

James E. Carr, Esquire, VSB# 014567
CARR & CARR
44135 Woodridge Parkway, Suite 260
Leesburg, Virginia 20176
703-777-9150 Phone
703-726-0125 Facsimile

*Counsel for Church of Our Saviour at Oatlands and its
Related Trustees*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2008 a copy of the foregoing Church of Our Saviour at Oatlands' Supplemental Brief in Regards to Constitutional Issues was 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

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

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

R. Hunter Manson, Esq.
PO Box 539
876 Main Street
Reedville, Virginia 22539

Edward H. Grove, III, Esquire
BRAULT PALMER GROVE
WHITE & STEINHILBER, LLP
10533 Main Street
Fairfax, VA 22030

James A. Johnson, Esquire
SEMMES BOWEN & SEMMES, PC
250 West Pratt Street, 16th Floor
Baltimore, Maryland 21201

E. Andrew Burcher, Esq.
WALSH, COLUCCI, LUBELEY,
EMRICH & WALSH, PC
4310 Prince William Pkwy
Suite 300
Prince William, Virginia 22192

George O. Peterson, Esq.
SANDS ANDERSON MARKS &
MILLER, PC
1497 Chain Bridge Rd, Suite 202
McLean, Virginia 22101

Gordon C. Coffee, Esq.
Steffen N. Johnson, Esq.
WINSTON & STRAWN, LLP
1700 K Street NW
Washington, DC 20006

Mary A. McReynolds, Esq.
Mary A. McReynolds, PC
1050 Connecticut Ave, NW
10th Floor
Washington, DC 20036

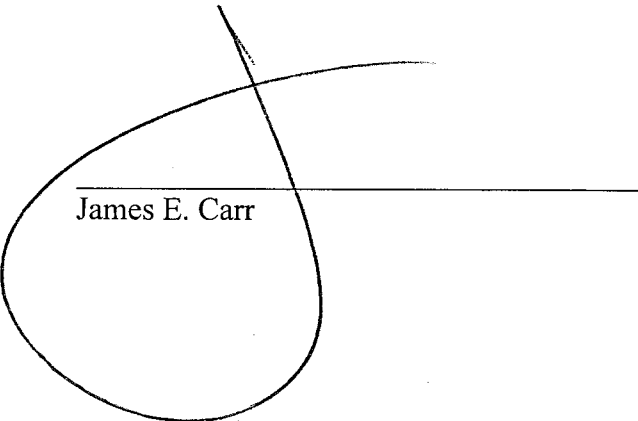
Scott J. Ward, Esq.
GAMMON & GRANGE, PC
8280 Greensboro Drive
7th Floor
McLean, Virginia 22102

Robert C. Dunn, Esq.
Law Office of Robert C. Dunn
707 Prince Street
PO Box 117
Alexandria, Virginia 22313-0117

William E. Thro, Esq.
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

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

Seana C. Cranston
Law Clerk to the Honorable Randy I. Bellows
Circuit Court of Fairfax County
Fairfax Judicial Center
4110 Chain Bridge Road
Fifth Floor Judges' Chambers
Fairfax, VA 22030-4009



James E. Carr

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

IN RE: MULTI-CIRCUIT CHURCH
PROPERTY LITIGATION

CASE NUMBERS: CL 2007-248724,
CL 2006-15792,
CL 2006-15793,
CL 2007-556,
CL 2007-1235,
CL 2007-1236,
CL 2007-1237,
CL 2007-1238,
CL 2007-1625,
CL 2007-5249,
CL 2007-5250,
CL 2007-5362,
CL 2007-5363,
CL 2007-5364,
CL 2007-5682,
CL 2007-5683,
CL 2007-5684,
CL 2007-5685,
CL 2007-5686,
CL 2007-5902,
CL 2007-5903, and
CL 2007-11514.

COVER FOR CHURCH OF OUR SAVIOUR AT OATLANDS'
SUPPLEMENTAL BRIEF IN REGARD TO CONSTITUTIONAL ISSUES

This acts as a one-page cover sheet reference pleading for the Church of Our Saviour at Oatlands' Supplemental Brief in Regard to Constitutional Issues, which is being filed in Case No. CL 2007-0248724 (the Omnibus Case File), on April 23, 2008. The foregoing pleading and this corresponding one-page reference pleading applies to the Omnibus Case No. CL 2007-0248724 and the following cases:

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

3. *In re: Church of the Epiphany* (Circuit Court of Fairfax County; CL 2007-556);
4. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon* (Circuit Court of Fairfax County; CL 2007-1235);
5. *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church* (Circuit Court of Fairfax County; CL 2007-1236);
6. *The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church* (Circuit Court of Fairfax County; CL 2007-1237);
7. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles* (Circuit Court of Fairfax County; CL 2007-1238);
8. *The Episcopal Church v. Truro Church et al.* (Circuit Court of Fairfax County; CL 2007-1625);
9. *In re: Church at the Falls, The Falls Church* (Circuit Court of Fairfax County); CL 2007-5249);
10. *The Protestant Episcopal Church in the Diocese of Virginia v. The Church at The Falls – The Falls Church* (Circuit Court of Arlington County Case No. 07-125) (Circuit Court of Fairfax County; CL 2007-5250);
11. *The Protestant Episcopal Church in the Diocese of Virginia v. Potomac Falls Church* (Circuit Court of Loudoun County Case No. 44149) (Circuit Court of Fairfax County; CL 2007-5362);
12. *In re: Church of Our Saviour at Oatlands* (Circuit Court of Fairfax County; CL 2007-5363);
13. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Saviour at Oatlands* (Circuit Court of Loudoun County Case No. 44148) (Circuit Court of Fairfax County; CL 2007-5364);
14. *The Protestant Episcopal Church in the Diocese of Virginia v. St Margaret's Church* (Circuit Court of Prince William Case No. CL 73465) (Circuit Court of Fairfax County; CL 2007-5682);
15. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket* (Circuit Court of Prince William County Case No. 73466) (Circuit Court of Fairfax Virginia CL 2007-5683);
16. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word* (Circuit Court of Prince William County Case No. 73464) (Circuit Court of Fairfax Virginia CL 2007-5684);

17. *In re: St. Margaret's Church* (Circuit Court of Fairfax County CL 2007-5685);
18. *In re: St. Paul's Church, Haymarket* (Circuit Court of Fairfax County CL 2007-5686);
19. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church* (Circuit Court of Northumberland County Case No. CL 07-16) (Circuit Court of Fairfax County CL 2007-5902);
20. *In re: St. Stephen's Church*; (Circuit Court of Fairfax County CL 2007-5903); and
21. *In re: Church of the Word, Gainesville* (Circuit Court of Fairfax County CL 2007-11514).

For the complete foregoing pleading, please see the Omnibus case file, CL 2007-0248724.

Respectfully submitted,

CHURCH OF OUR SAVIOUR AT OATLANDS
AND RELATED TRUSTEES

By: _____

James E. Carr, Esquire, VSB# 014567
CARR & CARR
44135 Woodridge Parkway, Suite 260
Leesburg, Virginia 20176
703-777-9150 Phone
703-726-0125 Facsimile

*Counsel for Church of Our Saviour at Oatlands and
Related Trustees*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2008 a copy of the foregoing Cover for Church of Our Saviour at Oatlands' Supplemental Brief in Regards to Constitutional Issues was 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

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

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

R. Hunter Manson, Esq.
PO Box 539
876 Main Street
Reedville, Virginia 22539

Edward H. Grove, III, Esquire
BRAULT PALMER GROVE
WHITE & STEINHILBER, LLP
10533 Main Street
Fairfax, VA 22030

James A. Johnson, Esquire
SEMMES BOWEN & SEMMES, PC
250 West Pratt Street, 16th Floor
Baltimore, Maryland 21201

E. Andrew Burcher, Esq.
WALSH, COLUCCI, LUBELEY,
EMRICH & WALSH, PC
4310 Prince William Pkwy
Suite 300
Prince William, Virginia 22192

George O. Peterson, Esq.
SANDS ANDERSON MARKS &
MILLER, PC
1497 Chain Bridge Rd, Suite 202
McLean, Virginia 22101

Gordon C. Coffee, Esq.
Steffen N. Johnson, Esq.
WINSTON & STRAWN, LLP
1700 K Street NW
Washington, DC 20006

Mary A. McReynolds, Esq.
Mary A. McReynolds, PC
1050 Connecticut Ave, NW
10th Floor
Washington, DC 20036

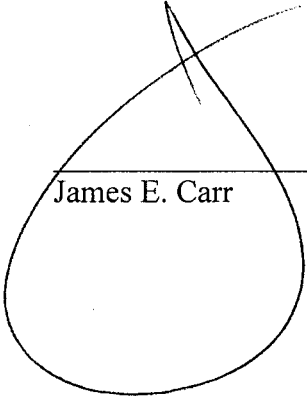
Scott J. Ward, Esq.
GAMMON & GRANGE, PC
8280 Greensboro Drive
7th Floor
McLean, Virginia 22102

Robert C. Dunn, Esq.
Law Office of Robert C. Dunn
707 Prince Street
PO Box 117
Alexandria, Virginia 22313-0117

William E. Thro, Esq.
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

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

Seana C. Cranston
Law Clerk to the Honorable Randy I. Bellows
Circuit Court of Fairfax County
Fairfax Judicial Center
4110 Chain Bridge Road
Fifth Floor Judges' Chambers
Fairfax, VA 22030-4009



James E. Carr