

TROUTMAN SANDERS LLP

A T T O R N E Y S A T L A W
A LIMITED LIABILITY PARTNERSHIP

TROUTMAN SANDERS BUILDING
1001 HAXALL POINT
RICHMOND, VIRGINIA 23219
www.troutmansanders.com
TELEPHONE: 804-697-1200
FACSIMILE: 804-697-1339

MAILING ADDRESS
P.O. BOX 1122
RICHMOND, VIRGINIA 23218-1122

Joshua D. Heslinga
joshua.heslinga@troutmansanders.com

Direct Dial: 804-697-1283
Direct Fax: 804-698-5156

February 10, 2009

BY HAND DELIVERY

Ms. Patricia L. Harrington, Clerk
The Supreme Court of Virginia
Supreme Court Building, 5th Floor
100 N. 9th Street
Richmond, VA 23219

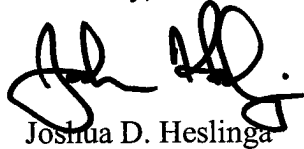
Re: *The Protestant Episcopal Church in the Diocese of Virginia*
v. Truro Church, et al., Record No. not yet assigned

Dear Ms. Harrington,

Enclosed please find an original and four copies of the Protestant Episcopal Church in the Diocese of Virginia's Motion to Increase Page Limitations for a Petition for Appeal. Please stamp one copy to reflect the filing and return it with the courier.

If you have any questions about this, please let me know.

Sincerely,



Joshua D. Heslinga

Enclosure

cc: All counsel of record

Richmond01 1808981v1

ATLANTA • CHICAGO • HONG KONG • LONDON • NEW YORK • NEWARK • NORFOLK •
ORANGE COUNTY • RALEIGH • RICHMOND • SAN DIEGO • SHANGHAI •
TYSONS CORNER • VIRGINIA BEACH • WASHINGTON, D.C.

**In the
SUPREME COURT OF VIRGINIA**

RECORD NO. _____

**The Protestant Episcopal Church in the Diocese of Virginia
v. Truro Church, *et al.***

**Motion To Increase Page Limitations
for a Petition for Appeal**

This appeal arises from eighteen cases, involving nine formerly Episcopal congregations, which were filed in five different Circuit Courts and consolidated in the Circuit Court of Fairfax County pursuant to the Multiple Claimant Litigation Act (Va. Code §§ 8.01-267.1 - 8.01-267.9).

Each of the appellee congregations voted, in December 2006 or January 2007, to leave the Episcopal Church and the Episcopal Diocese of Virginia (the "Diocese") and to join the Convocation of Anglicans in North America ("CANA"), which is affiliated with the Church of Nigeria, and the Anglican District of Virginia ("ADV"). Each of the congregations then filed a petition, pursuant to Va. Code § 57-9(A), seeking a judgment giving the congregations exclusive title to and control of the real and personal

property that they occupy and use. The Diocese in turn filed an action against each of the nine congregations, seeking a declaratory judgment that the Diocese and the Episcopal Church, pursuant to Virginia church property law and as provided by the canon laws of the Diocese and the Episcopal Church, have trust, contractual, and proprietary rights and interests in the property that the congregations cannot unilaterally eliminate or avoid. The Episcopal Church filed a single action against all nine congregations, seeking a declaratory judgment to the same effect. The Attorney General intervened to defend the constitutionality of § 57-9(A).

The Circuit Court conducted a five-day trial on the applicability of § 57-9(A) and thereafter issued an 82-page opinion, single-spaced, finding the statute applicable. The Circuit Court then turned to the constitutional defenses asserted in the § 57-9 cases by the Diocese and the Episcopal Church. The Circuit Court issued two letter opinions, totaling 58 pages, finding § 57-9(A) to be constitutional. The court also issued two other letter opinions, totaling 25 pages, holding that § 57-9(A) overrides any rights and interests that the Diocese and the Episcopal Church might have, that under Virginia law the property could not be held in trust for the Diocese or the Episcopal Church, and that the Diocese and the Church had waived the argument that the Congregations' contractual commitments as part of a

hierarchical church subject to its rules prevented them from using § 57-9(A) to obtain exclusive congregational control of the property.

Remaining evidentiary issues under § 57-9 were then tried to final judgment in the circuit court. On February 3, 2009, the Diocese filed a timely notice of appeal from the Final Order entered on January 8, 2009. The Episcopal Church separately has noticed its appeal from the final judgment and will file a separate petition for appeal.

The Diocese respectfully moves for leave to file a petition for appeal not exceeding 50 typed pages, 15 pages more than the 35 pages allowed by Rule 5:17(c)). The Diocese states the following in support of this motion:

1. The nature of this litigation and the novel, complex, and weighty issues involved distinguish these cases. As discussed below, this litigation involves the interpretation and application of Virginia church property statutes, both old and new; 19th century Virginia law, including decisions of this Court dating to the 1850s; the “neutral principles” approach to resolving church property disputes; the federal Free Exercise and Establishment Clauses and the convoluted jurisprudence glossing those provisions; the religious liberty provisions of the Virginia Constitution; other state and federal constitutional provisions; the doctrine of waiver; and Rule 1:1.

2. This appeal arises from complex, protracted litigation. The eighteen cases at issue in this appeal were filed in December 2006 and January 2007 and did not reach final judgment until January 2009, in a Circuit Court that is well known for its speedy disposition of cases. The trials in the Circuit Court consumed eight days, in November 2007 and October 2008. The Circuit Court also conducted numerous non-evidentiary hearings, including oral arguments on the constitutionality of § 57-9(A) occupying one entire court day. The parties submitted many briefs on a wide variety of issues. Approximately 770 pages of those briefs, in 12 point Times New Roman font, specifically address the issues to be presented on appeal; and the Circuit Court addressed those issues in a series of nine letter opinions totaling 194 pages, single-spaced, also in a 12 point font. Approximately 150 pages of the Circuit Court's letter opinions relate directly to the issues that the Diocese intends to present on appeal.

3. The Diocese should have a reasonable opportunity to demonstrate to this Court, in a petition for appeal, that the Circuit Court's rulings were in error. Counsel for the Diocese believe that the normal page limit for a petition for appeal does not allow such an opportunity, and the Rules do not permit the Diocese and the Episcopal Church to split the assignments of error and to incorporate each other's assignments or arguments by

reference. To the extent that they raise the same issues on appeal, each will have to assign the same errors and present arguments in support of those assignments.

4. The issues presented by these appeals are important, substantial, and, in many cases, issues of first impression. They involve construction and application of Va. Code §§ 57-9(A), 57-7.1, 57-15, and other statutes; how Virginia's church property statutes have evolved over time; the interaction of § 57-9(A) with the "neutral principles of law" analysis approved in *Jones v. Wolf*, 443 U.S. 595 (1979), and mandated in Virginia by *Green v. Lewis*, 221 Va. 547, 272 S.E.2d 181 (1980), and *Norfolk Presbytery v. Bollinger*, 214 Va. 500, 201 S.E.2d 752 (1974), in determining ownership of church property; the constitutionality of § 57-9(A), as interpreted and applied by the Circuit Court, under the Religion, Equal Protection, Takings, and Due Process Clauses of the United States and Virginia Constitutions; whether the trial court erred in finding a waiver by the Diocese and the Episcopal Church of the argument that the Congregations' contractual commitments prevent their use of § 57-9(A); and the application of Rule 1:1, contrary to *Niklason v. Ramsey*, 233 Va. 161, 164, 353 S.E.2d 783, 785 (1987), to bar a challenge to the validity of a conveyance in a prior *ex parte* action brought by a congregation within the

Diocese without the approval or knowledge of the appropriate church authorities.

5. The issues presented by this case are highly invested with the public interest; and there is a strong public interest in ensuring their best and most effective presentation, on both sides of the case.

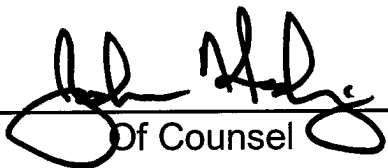
6. Counsel for the Diocese have conferred, regarding this motion, with Gordon A. Coffee, Esquire, who has served as a lead counsel for the nine appellee congregations throughout this litigation; and with Stephen R. McCullough, Esquire, the Solicitor General of Virginia, who represents the Attorney General. We are authorized to state that the Attorney General consents to this motion, on condition that the Diocese consent to a like increase in the page limits if requested by the Attorney General, to which condition the Diocese has agreed. The appellee congregations have declined to consent, however, on the ground that the Diocese and the Episcopal Church “are effectively doubling the page limits by filing separate petitions.”

7. The appellee congregations’ stated ground for declining to consent is not accurate. The Diocese and the Episcopal Church are entitled to file separate petitions for appeal, the same as multiple appellants in any other case may do, and they have determined that it is necessary for them to do

so. Appellants are not able to divide the arguments between them, as discussed *supra* in ¶ 3. The appellees – the nine congregations and the Attorney General – obviously will be entitled to file separate briefs in opposition, if they elect to do so, and therefore they cannot claim to be prejudiced by separate petitions for appeal.

Respectfully submitted,

THE PROTESTANT EPISCOPAL CHURCH
IN THE DIOCESE OF VIRGINIA

By:  _____
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
Telephone: (804) 697-1200
Facsimile: (804) 697-1339

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

A.E. Dick Howard (VSB # 08606)
627 Park Street
Charlottesville, Virginia 22902
Telephone: (434) 293-6668
Facsimile: (434) 977-5281

Counsel for The Protestant Episcopal Church in the Diocese of Virginia

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing motion 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 10th day of February, 2009:

* 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 related trustees*

* 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 related trustees

* 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 related trustees*

* 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, and related trustees*

* 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 related
trustees*

* R. Hunter Manson, Esquire (manson@kaballero.com)
PO Box 539
876 Main Street
Reedville, Virginia 22539
Counsel for St. Stephen's Church and related trustees

* Scott J. Ward, Esquire (sjw@gg-law.com)
Timothy R. Obitts (tro@gg-law.com)
Robert W. Malone (rwm@gg-law.com)
Dawn W. Sikorski (dws@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

* 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.
Suite 1400
25 South Charles Street
Baltimore, Maryland 21201
Counsel for The Church at The Falls – The Falls Church

* Edward H. Grove, III, Esquire (egrove@thebraultfirm.com)
Brault Palmer Grove White & Steinhilber LLP
3554 Chain Bridge Road
Suite 400
Fairfax, VA 22030
Counsel for Trustees of The Church at The Falls – The Falls Church

* Robert C. Dunn, Esquire (rdunn@robdunnlaw.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
(mccullough@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

* Heather H. Anderson, Esquire
(handerson@goodwinprocter.com)
Adam Chud, Esquire (achud@goodwinprocter.com)
Soyong Cho, Esquire (scho@goodwinprocter.com)
Goodwin Procter
901 New York Avenue, N.W.
Washington, D.C. 20001
Counsel for the Episcopal Church

