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August 17, 2007

**VIA HAND-DELIVERY**

Fairfax County Circuit Court  
ATTENTION: Robin Brooks  
4110 Chain Bridge Road  
Fairfax, Virginia 22030-4009

RE: *Multi-Circuit Episcopal Church Property Litigation, Fairfax County  
Circuit Court, CL-2007-0248724*

*In re: Church at the Falls, The Falls Church; Fairfax County Circuit Court; CL  
2007-5249;*

*In re: Truro Church; Fairfax County Circuit Court; CL 2006-15792;*

*In re: Church of the Epiphany; Fairfax County Circuit Court; CL 2007-556;*

*In re: Church of Our Savior at Oatlands; Fairfax County Circuit Court; CL 2007-  
5363;*

*In re: St. Paul's Church, Haymarket; Fairfax County Circuit Court; CL 2007-  
5686;*

*In re: St. Margaret's Church; Fairfax County Circuit Court; CL 2007-5685;*

*In re: St. Stephen's Church; Fairfax County Circuit Court; CL 2007-5903;*

*In re: Church of the Apostles; Fairfax County Circuit Court; CL 2006-15793*

*The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church  
(Circuit Court of Fairfax County Case No. 2007-1236);*

*The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles* (Circuit Court of Fairfax County Case No. 2007-1238);

*The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon* (Circuit Court of Fairfax County Case No. 2007-1235);

*The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church* (Circuit Court of Fairfax County Case NO. 2007-1237);

*The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket* (Circuit Court of Prince William County Case No. CL 73466)(Circuit Court of Fairfax County Case No. CL 2007-5683);

*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 Case No. CL 2007-5682);

*The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word* (Circuit Court of Prince William County Case No. CL 73464)(Circuit Court of Fairfax County Case No. CL 2007-5684);

*The Protestant Episcopal Church in the Dioceses of Virginia v. Potomac Falls Church* (Circuit Court of Loudoun County Case No. 44149)(Circuit Court of Fairfax County Case No. CL 2007-5362);

*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 Case No. CL 2007-5364);

*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 Case No. CL 2007-5250); and

*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 Case No. CL 2007-5902).

*The Episcopal Church v. Truro Church et al.* (Circuit Court of Fairfax County Case No. 2007-1625),

Letter to Clerk of the Court  
August 17, 2007  
Page 3

Dear Ms. Brooks:

I am enclosing for filing in the above-styled case an original CANA Congregations' Memorandum of Law on Scope of Hearing on Congregational Determinations Pursuant to Virginia Code § 57-9 and twenty (20) copies of a one-page covers sheet to be placed in the file for the above-styled cases.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

SANDS ANDERSON MARKS & MILLER, PC

A handwritten signature in black ink, appearing to read 'G. O. Peterson', with a large, stylized flourish at the end.

George O. Peterson

cc: Maia L. Miller, Law Clerk to the Honorable Randy I. Bellows (via hand-delivery)  
Bradfute W. Davenport, Jr., Esquire  
Heather H. Anderson, Esquire  
Gordon A. Coffee, Esquire  
Steffen N. Johnson, Esquire  
Mary A. McReynolds, Esquire  
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E. Andrew Boucher, Esquire  
Scott T. Ward, Esquire  
R. Hunter Manson, Esquire  
James E. Carr, Esquire  
Edward H. Grove, III, Esquire

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR FAIRFAX COUNTY**

<b>In re:</b>	)	
<b>Multi-Circuit Episcopal Church</b>	)	<b>Civil Case Numbers:</b>
<b>Litigation</b>	)	CL 2007-248724,
	)	CL 2006-15793,
	)	CL 2006-15792,
	)	CL 2007-556,
	)	CL 2007-1625,
	)	CL 2007-1235,
	)	CL 2007-1236,
	)	CL 2007-1237,
	)	CL 2007-1238,
	)	CL 2007-5249,
	)	CL 2007-5250,
	)	CL 2007-5363,
	)	CL 2007-5364,
	)	CL 2007-5362,
	)	CL 2007-5686,
	)	CL 2007-5685,
	)	CL 2007-5683,
	)	CL 2007-5682,
	)	CL 2007-5684,
	)	CL 2007-5902, and
	)	CL 2007-5903.

**CANA CONGREGATIONS' MEMORANDUM OF LAW  
ON SCOPE OF HEARING ON CONGREGATIONAL DETERMINATIONS  
PURSUANT TO VA. CODE § 57-9**

This acts as a one-page cover sheet reference pleading to the complete CANA Congregations' Memorandum of Law on Scope of Hearing on Congregational Determinations Pursuant to Virginia Code § 57-9, which was filed in CL 2007-248724 (the omnibus case file), filed on August 8, 2007. The CANA Congregations' Memorandum of Law on Scope of Hearing on Congregational Determinations Pursuant to Virginia Code § 57-9 and this corresponding one-page reference pleading applies to the Omnibus case number: CL 2007 – 248724 and the following cases:

1. *In re: Church at the Falls, The Falls Church*; Fairfax County Circuit Court; CL 2007-5249;
2. *In re: Truro Church*; Fairfax County Circuit Court; CL 2006-15792;
3. *In re: Church of the Epiphany*; Fairfax County Circuit Court; CL 2007-556;
4. *In re: Church of Our Savior at Oatlands*; Fairfax County Circuit Court; CL 2007-5363;
5. *In re: St. Paul's Church, Haymarket*; Fairfax County Circuit Court; CL 2007-5686;
6. *In re: St. Margaret's Church*; Fairfax County Circuit Court; CL 2007-5685;
7. *In re: St. Stephen's Church*; Fairfax County Circuit Court; CL 2007-5903;
8. *In re: Church of the Apostles*; Fairfax County Circuit Court; CL 2006-15793;
9. *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church* (Circuit Court of Fairfax County Case No. 2007-1236);
10. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles* (Circuit Court of Fairfax County Case No. 2007-1238);
11. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon* (Circuit Court of Fairfax County Case No. 2007-1235);
12. *The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church* (Circuit Court of Fairfax County Case NO. 2007-1237);
13. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket* (Circuit Court of Prince William County Case No. CL 73466)(Circuit Court of Fairfax County Case No. CL 2007-5683);
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 Case No. CL 2007-5682);

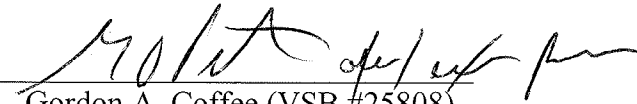
15. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word* (Circuit Court of Prince William County Case No. CL 73464)(Circuit Court of Fairfax County Case No. CL 2007-5684);
16. *The Protestant Episcopal Church in the Dioceses of Virginia v. Potomac Falls Church* (Circuit Court of Loudoun County Case No. 44149)(Circuit Court of Fairfax County Case No. CL 2007-5362);
17. *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 Case No. CL 2007-5364);
18. *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 Case No. CL 2007-5250);
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 Case No. CL 2007-5902); and
20. *The Episcopal Church v. Truro Church et al.* (Circuit Court of Fairfax County Case No. 2007-1625).

For the complete CANA Congregations' Memorandum of Law on Scope of Hearing on Congregational Determinations Pursuant to Virginia Code § 57-9, please see the omnibus case file, CL 2007 – 248724.

Dated: August 17, 2007

Respectfully submitted,

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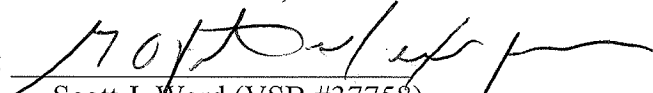
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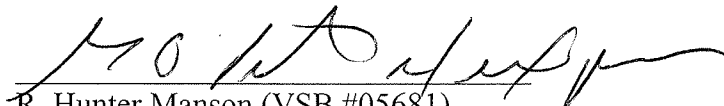
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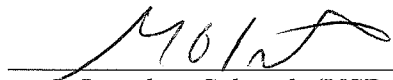
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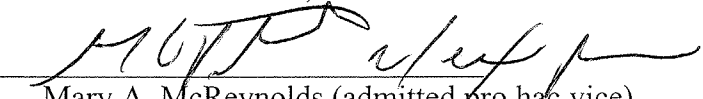
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17<sup>th</sup> day of August, 2007 a copy of the foregoing one-page Cover Sheet for the CANA Congregations' Memorandum of Law on Scope of Hearing on Congregational Determinations Pursuant to Virginia Code § 57-9, was sent by electronic mail and first-class mail, postage prepaid, to:

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

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Fairfax, VA 22030

  
\_\_\_\_\_  
George O. Peterson

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR FAIRFAX COUNTY**

**In re:** )  
**Multi-Circuit Episcopal Church** ) **Civil Case Numbers:**  
**Litigation** ) CL 2007-248724,  
 ) CL 2006-15793,  
 ) CL 2006-15792,  
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 ) CL 2007-5684,  
 ) CL 2007-5902, and  
 ) CL 2007-5903.

**CANA CONGREGATIONS' MEMORANDUM OF LAW  
ON SCOPE OF HEARING ON CONGREGATIONAL DETERMINATIONS  
PURSUANT TO VA. CODE § 57-9**

COME NOW The Falls Church, Truro Church, Church of Our Saviour at Oatlands, Church of the Apostles, Church of the Epiphany, Church of the Word, St. Margaret's Church, Christ the Redeemer Church, St. Stephen's Church, St. Paul's Church, and Potomac Falls Church (hereinafter collectively, the "CANA Congregations") and each of their Trustees<sup>1</sup> who are named defendants (hereinafter collectively, "Related Individuals") and, pursuant to the order of this

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<sup>1</sup> The Trustees of The Falls Church are separately represented and have filed a Special Plea.

Court, file this joint memorandum of law explaining the scope of the hearing (to be held on November 19, 2007) on the CANA Congregations' determinations pursuant to Virginia Code § 57-9. (CL 2007-5249; CL 2006-15792; CL 2007-556; CL 2007-5363; CL 2007-5686; CL 2007-5685; CL 2007-5903; CL 2006-15793; CL 2007-1236; CL 2007-1238; CL 2007-1235; CL 2007-1237; CL 2007-5683; CL 2007-5682; CL 2007-5684; CL 2007-5362; CL 2007-5364; CL 2007-5250; CL 2007-5902; and CL 2007-5903).

## INTRODUCTION

In 1867, the Virginia General Assembly, acting in response to denominational schisms generated by disputes over slavery and the Civil War, passed Va. Code § 57-9.<sup>2</sup> Recognizing that local congregations should retain property held by their appointed trustees in the event of a past or future denominational conflict, the General Assembly provided that where a “church or religious society” experiences a “division,” affiliated congregations may simply vote to determine which “branch” of the divided body they wish to join. Each voting congregation may then report its determination to the local circuit court, and the court’s approval of that determination is “conclusive as to the title and control of any property held in trust for such congregation.” The statute remains on the books today, in a form that is substantially the same as when it was enacted.

In this case, the CANA Congregations will demonstrate at trial that there is a division in the Diocese of Virginia (the Diocese), the Episcopal Church (TEC), and the worldwide Anglican

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<sup>2</sup> § 57-9. How property rights determined on division of church or society.

A. If a division has heretofore occurred or shall hereafter occur in a church or religious society, to which any such congregation whose property is held by trustees is attached, the members of such congregation over 18 years of age may, by a vote of a majority of the whole number, determine to which branch of the church or society such congregation shall thereafter belong. Such determination shall be reported to the circuit court of the county or city, wherein the property held in trust for such congregation or the greater part thereof is; and if the determination be approved by the court, it shall be so entered in the court’s civil order book, and shall be conclusive as to the title to and control of any property held in trust for such congregation, and be respected and enforced accordingly in all of the courts of the Commonwealth.

B. If a division has heretofore occurred or shall hereafter occur in a congregation whose property is held by trustees which, in its organization and government, is a church or society entirely independent of any other church or general society, 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, may decide the right, title, and control of all property held in trust for such congregation. Their decision shall be reported to such court, and if approved by it, shall be so entered as aforesaid, and shall be final as to such right of property so held.

Communion, triggered by a decision of TEC to repudiate past positions on human sexuality and the authority of Scripture. The existence, source, and depth of the division have been widely reported in the press and acknowledged in public statements issued by the Diocese, TEC, and the Anglican Communion. The division has led more than half of the provinces of the Anglican Communion to announce a severance of relations with TEC and has prompted a substantial number of congregations in the United States to disaffiliate from TEC and their dioceses. Many of the departing congregations, including the CANA Congregations, chose to affiliate with branches that were created as a result of the division in the church.

In conformity with Subpart A of § 57-9, the CANA Congregations conducted a vote on whether to affiliate with the Convocation of Anglicans in North America (CANA) and the Anglican District of Virginia (ADV). CANA and ADV were created in response to the subject division as an offshoot for Episcopal congregations that desire to remain part of the Anglican Communion and to adhere to its stated doctrine on sexuality and the authority of Scripture. By large supermajorities,<sup>3</sup> the CANA Congregations voted to end their affiliation with TEC and to affiliate with CANA and ADV.<sup>4</sup> By even larger supermajorities,<sup>5</sup> nine of the CANA Congrega-

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<sup>3</sup> The following percentages of voting members cast ballots to disaffiliate from TEC and the Diocese: (1) Truro Church: 92 percent; (2) The Falls Church: 90 percent; (3) Church of our Saviour: 82 percent; (4) Church of the Apostles: 97 percent; (5) Church of the Epiphany: 78 percent; (6) St. Margaret's Church: 78 percent; (7) St. Paul's Church: 94 percent, (8) St. Stephens Church: 75 percent; (9) Potomac Falls Church: 86 percent; and (10) Church of the Word: 95 percent.

<sup>4</sup> Defendant Christ the Redeemer Church, never having been affiliated with TEC, did not vote on the issue of ending any affiliation with TEC, but voted unanimously to affiliate with CANA.

<sup>5</sup> The following percentages of voting members cast ballots indicating that the property should be retained by the majority of the congregations: (1) Truro Church: 94 percent; (2) The Falls Church: 94 percent; (3) Church of Our Saviour: 82 percent; (4) Church of the Apostles: 98 percent; (5) Church of the Epiphany: 89 percent; (6) St. Margaret's Church: 84 percent; (7) St. Paul's Church: 96 percent, (8) St. Stephens Church: 72 percent; (9) Potomac Falls Church: 93 percent; and (10) Church of the Word: 97 percent.

tions voted to retain their property and improvements that they and their fellow parishioners had purchased, erected, and maintained.<sup>6</sup> Reports attesting to the votes of the CANA Congregations were filed with the Circuit Courts in which the CANA Congregations are located, as required by § 57-9.

TEC and the Diocese have disputed the CANA Congregations' right to invoke § 57-9, claiming that the statute is applicable only to divisions that TEC and the Diocese have formally recognized or implemented. They have also disputed that CANA and ADV are branches within the meaning of the statute and refused to acknowledge that the votes conducted by the CANA Congregations met the requirements of § 57-9. The legal and factual issues to be resolved by the Court in this case thus are: (1) whether there has been a "division" in (2) a "church or religious society" to which the CANA Congregations were formerly "attached"; (3) whether the CANA Congregations determined to join a "branch" of the divided church or religious society; and (4) whether that determination was based on a properly conducted vote within the meaning of § 57-9. As explained below, each of these issues involves sub-issues of statutory interpretation and will require the presentation of certain evidence at the § 57-9 hearing in November.

## **ISSUES TO BE RESOLVED**

### **I. What Constitutes a Division Under § 57-9?**

The threshold substantive question in a matter arising under Va. Code § 57-9 is whether there has been a "division" in the "church or religious society" to which the voting congregations were "attached." The term "division" is undefined, but the traditional understanding—both in 1867 and today—is of a schism or rupture in a church (typically over doctrinal issues). Nowhere

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<sup>6</sup> The other two CANA Congregations that are defendants, Christ the Redeemer Church and Potomac Falls Church, do not own any real property.



in the plain text of the statute or in the historic context in which the statute was enacted is there support for the Diocese's and TEC's insistence that a "division" requires the formal approval of the governing body of a denomination. Moreover, requiring such a formal recognition would render the statute and the voting rights it confers meaningless.

In Virginia, "legislative intent is determined by the plain meaning of words used." *Richmond v. Confrere Club of Richmond, Inc.*, 239 Va. 77, 80 (1990). "[W]hen a statute is clear and unambiguous, its plain meaning must be accepted without resort to extrinsic evidence or the rules of construction." *Id.* According to both recent definitions and those that date from the era when the statute was adopted, "division" simply means "the state of being divided into parts or branches; partition; severance." 1 *Oxford English Dictionary* 558 (1971); see also Noah Webster, *A Dictionary of the English Language* 219 (1872) ("State of being divided"); *Random House Dictionary of the English Language* 420 (1967) ("the act or state of being divided"; "Division usually means little more than the marking off or separation of a whole into parts"); *Webster's New Universal Unabridged Dictionary* 538 (2d ed. 1983) ("a dividing or being divided; separation"). According to its plain meaning, then, a "division" "in a church or religious society" (§ 57-9) is just what it sounds like—a breaking into parts, separation, severance, or partition.

The Diocese and TEC maintain that, to satisfy the statute, such a partition, severance, or separation must be formally "recognized" by the denomination. As examples, the Diocese cites the "formal division in the Diocese of Virginia [that] occurred in 1877 when, with the permission of the General Convention of the Episcopal Church, the Diocese of Virginia separated into the Diocese of Virginia and the Diocese of West Virginia"; (2) the similarly approved 1892 division of the Diocese of Virginia, creating a new Diocese of Southern Virginia; and (3) the similarly

approved 1919 division of the Diocese of Southern Virginia, creating the Diocese of Southwestern Virginia. Diocese Answers to First Set of Interrog. at 3-4. By contrast, the Diocese argues, in this case there was no such “recognized” division, and therefore § 57-9 is not satisfied.

This reading of the statute is untenable for several reasons. *First*, § 57-9 uses the term “division” without any modifier—let alone the modifier “recognized,” “approved,” or “formal.” TEC and the Diocese thus ask this Court to read a word into the statute, which the Virginia Supreme Court strictly forbids. *BBF, Inc. v. Alstom Power, Inc.*, 645 S.E.2d 467, 469 (Va. 2007) (“we are not free to add language, or to ignore language, contained in statutes”) (quotation omitted).

*Second*, the TEC-Diocese interpretation is at odds with the limited guidance that the Virginia Supreme Court has provided concerning the meaning of § 57-9. As the Court explained in analyzing subpart B of the statute in *Reid v. Gholson*, the type of “division” that is “a prerequisite to relief under 57-9” involves a situation where the disaffiliating parties “have expressed [their] desire to separate from the body of their church, and to rend it into groups,” and where some are “excommunicated” or viewed as “apostate” based on the underlying disagreement. 229 Va. 179, 192 (1985). Under this common sense reading of the statute, a division exists where (as here) different groups have gone their separate ways over what they deem to be important differences of opinion over doctrine, policy, governance, or polity.

*Third*, the view that § 57-9 is limited to denominationally approved divisions is otherwise inconsistent with the phrasing, verb tense, and verb choice in § 57-9. The statute applies “[i]f a division *has heretofore occurred or shall hereafter occur*” (emphasis added). The verb “occur” simply means “to come into existence: happen,” and the dictionary explains that the term “‘occurrence’ may apply to a happening without intent, volition, or plan.” *Webster's Ninth New Col-*

*legiate Dictionary* 817 (1983). Thus, the sense of the statute is that “divisions happen,” whether or not they are planned, contrary to TEC’s and the Diocese’s insistence that the statute is limited to divisions that result from a consensual, deliberative process by denominational authorities. If the purpose of the statute were to address consensual redistricting, it would have been far more natural for the General Assembly to have referred to a division having been “effected,” “implemented,” or in some way brought about *by the denomination*.

*Fourth*, the absence of any requirement in § 57-9 for denominational approval stands in contrast to other sections of the Virginia Code (including some sections of title 57) that *do* reference official determinations by church leadership. *See* Va. Code § 57-7.1 (“conveyance . . . shall be used for the . . . purposes of the . . . religious society . . . as determined by the authorities which, under its rules or usages, have charge of [its] administration”); Va. Code §§ 8.01-400, 19.2-271.3, 20-26, 24.2-703.1 (“‘accredited religious practitioner’ means a person who has been . . . accredited by a formal religious order”). Virginia “follow[s] the rule . . . that ‘when the General Assembly includes specific language in one section of a statute, but omits that language from another section of the statute, we must presume that the exclusion of the language is intentional.’” *Halifax Corp. v. Wachovia Bank*, 268 Va. 641, 654 (Va. 2004). *See also Lucy v. County of Albemarle*, 258 Va. 118, 129 (Va. 1999) (noting that the courts will compare statutes that “relate to the same person or thing”). Thus, the Court can conclude that the General Assembly did not intend to limit § 57-9 to officially recognized or consensual divisions but rather to make the statute applicable to *all* divisions in a denomination.

*Fifth*, the word “division” as commonly understood in 1867 referred to schisms in denominations that typically were not sanctioned by church officials. When interpreting undefined terms in a statute, a court should examine the usual meaning of the terms at the time the statute

was enacted. *Lawrence v. Craven Tire Co.*, 210 Va. 138, 140-41 (1969) (“[T]he popular, or received import of words, furnishes the general rule for the interpretation of statutes.”) (quotation omitted); *Lewis v. Com.*, 184 Va. 69, 72 (Va. 1945) (looking to meaning “[a]t the time of enactment of the statute”). In this case, the CANA Congregations intend to introduce evidence at trial showing that fierce controversies over abolition and the Civil War led several major denominations—Baptist, Presbyterian, Methodist, and Episcopal—and many smaller ones to fracture by 1861.<sup>7</sup> In at least half of those denominations, including the Episcopal Church, the Southern churches established a new branch without formal recognition or approval by higher church authority of the separation. Contemporaneous accounts, including from persons affiliated with TEC, referred to the fractures of the denomination as “divisions,” notwithstanding the absence of approval for the fractures from the governing authority of the original denomination.

The notion that the General Assembly in 1867 would require denominational consent to any “division” thus flies in the face of the historical backdrop, an important component of any statutory analysis. *Enoch v. Com.*, 141 Va. 411, 434 (Va. 1925) (it is the “duty” of courts to consider “history and life of the country”); accord 17 Michie’s Jurisprudence, *Statutes* § 39 (2006) (courts appropriately consult “the history of the times”). Virginia had just fought a war over whether individual States had the right to separate from the Union without the Union’s consent. It is fanciful to suggest, in the immediate aftermath of this war, that the pre-Reconstruction General Assembly would have enacted legislation that effectively forbade churches from separating from (typically Northern) denominations and keeping their property without the consent of the

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<sup>7</sup> These were not the sole causes of divisions. Many denominations fractured in the mid-1800s in response to divergent views on evangelism, the role of ritual, the significance of baptism, use of English in liturgy, and the Oxford Movement. The Episcopal Church itself experienced long periods of conflict over many of these issues.

higher authorities of the denominations. Indeed, the opposite conclusion can be drawn—that the General Assembly wanted to ensure the right of local congregations to maintain their property in the event of a division in a denomination, regardless of whether the denomination’s governing body then approved of the division.

This motivation to ensure local control of church property would not have ended with the Civil War. As the CANA Congregations will demonstrate at trial, the ruptures occasioned by the debates over slavery were not quickly reconciled after the South surrendered in 1865. While the Episcopal Church by 1866 reached some form of reconciliation with the Episcopal Church in the Confederate States, the Baptist, Presbyterian, and Methodist churches remained divided for decades to come. Moreover, property disputes continued even after the Civil War. For example, in 1865 the General Assembly of the Presbyterian Church offered reconciliation to congregations that were part of the southern branch, but on the condition that ministers sign statements repenting of their support for slavery and state secession. The resulting disagreements led to court fights over property that culminated, ironically, in the U.S. Supreme Court case of *Watson v. Jones*, 80 U.S. 679 (1871). These controversies would have been well-known to the Virginia General Assembly at the time of the enactment of § 57-9.

*Sixth*, the interpretation of § 57-9 advanced by TEC and the Diocese would render the provision useless. Under their view, divisions under § 57-9 occur only when dioceses are split into small geographic regions, not when doctrinal disputes cause a rupture in a denomination. Putting aside the fact that the term “division” was not so narrowly defined in 1867, TEC and the Diocese have not explained why the General Assembly would provide a statutory right to conduct a congregational vote in the case of amicable redistricting. More fundamentally, they have not indicated that they would even have permitted such a vote.

In the cases TEC and the Diocese identified, there appears to have been no opportunity given to congregations to decide which Diocese to join. For example, a congregation in Norfolk in 1892 that was geographically located in the new Diocese of Southern Virginia evidently could not vote to remain in the Diocese of Virginia. Indeed, such a vote would have violated the concept enshrined in church canons that diocesan authority is strictly *territorial*. See TEC Canon I.13.1 (“Every Congregation of this Church shall belong to the Church in the Diocese in which its place of worship is situated”); TEC Canon I.16 (congregations wishing to affiliate with TEC must have “the consent of the Bishop in whose Diocese it is situate”); see also I E. White & J. Dykman, *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America* 318-319 (1954) (“Whereas a question may arise, whether a congregation within the diocese of any bishop, or within any State in which there is not any bishop settled, may unite themselves with the Church in any other diocese of State, it is hereby determined and declared that all such unions shall be considered irregular and void; and that every congregation of the Church shall be considered as belonging to the body of the Church of the diocese, or of the State, within the limits of which they dwell or within which there is seated a Church to which they belong”).

TEC and the Diocese are thus urging the Court to adopt an interpretation of § 57-9 that makes the voting rights conferred by the statute meaningless. Such a result is not permitted under Virginia law. See *Natrella v. Board of Zoning Appeals*, 231 Va. 451, 461 (Va. 1986) (“[t]he rules of statutory interpretation argue against reading any legislative enactment in a manner that will render any portion of it useless, repetitious, or absurd”).

## II. Has a Division Occurred in the Diocese, TEC, or the Anglican Communion?

In light of the text of § 57-9, the initial factual issue to be determined at trial is whether a division has occurred in the Diocese, TEC, or the Anglican Communion. If the Court rejects TEC's and the Diocese's contention that a "division" within the meaning of § 57-9 requires formal consent by church authorities, then perhaps they would stipulate to the existence of a division within their ranks triggered by decisions at TEC's 2003 General Convention. If the Diocese and TEC challenge the existence of this division, the CANA Congregations will put on evidence to prove that such a division exists.<sup>8</sup>

Such evidence would take several forms, including statements from representatives of the Diocese. The CANA Congregations would show that in 1998, the bishops of the Anglican Communion overwhelmingly passed a resolution declaring that "abstinence is right for those who are not called to marriage" and "homosexual practice [is] incompatible with Scripture." In 2003, however, TEC's General Convention approved the election of a non-celibate homosexual as the Bishop of New Hampshire and authorized blessings for same-sex unions. The Primates of all of the various provinces of the Communion then issued a unanimous warning that "[i]f [the] consecration [of the Bishop of New Hampshire] proceeds . . . many provinces are likely to consider themselves to be out of communion with [TEC]. This will tear the fabric of our Communion at its deepest level, and may lead to further division on this and further issues as provinces have to decide in consequence whether they can remain in communion with provinces that choose not to break communion with [TEC]" (emphasis added). TEC proceeded with the consecration. *See Congregations' § 57-9 Reports* (hereinafter, "Reports") ¶¶ 14-16.

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<sup>8</sup> While the CANA Congregations are asking the Court to acknowledge the fact of a division, they are in no way asking for a judicial determination of doctrinal issues.

In what has become known as the Windsor Report, a commission appointed by the Archbishop of Canterbury (at the unanimous request of the Primates) declared that TEC's actions "have uncovered major divisions throughout the Anglican Communion." "Those divisions," the Report explained, "have been obvious at several levels of Anglican life: between provinces, between dioceses and between individual Anglican clergy and laity." "The overwhelming response [to TEC's actions]," the Report continued, "has been to regard these developments as departures from genuine, apostolic Christian faith." The Report also noted that "some eighteen of the thirty-eight provinces of the Anglican Communion, or their [bishops] on their behalf, have issued statements which indicate . . . their basic belief that [TEC's actions] are 'contrary to biblical teaching' and as such unacceptable." Reports ¶¶ 20-21. As the CANA Congregations will show at trial, the number of Anglican provinces to do so has since grown.

The Windsor Report also recommended that, among other things, TEC "be invited to express its regret that the proper constraints of the bonds of affection were breached in the events surrounding the election and consecration of [the bishop of New Hampshire], and for the consequences which followed, and that such an expression of regret would represent the desire of TEC to remain within the Communion." If TEC would not respond favorably to these recommendations, and "[s]hould the call to halt . . . not be heeded," the Report declared, "then we shall have to begin to learn to walk apart." TEC failed to adopt fully the recommendations of the Windsor Report.

In June 2006, Archbishop of Canterbury Rowan Williams—one of the Anglican "Instruments of Unity," and the Primate of the Church of England—responded by stating that "[t]he recent resolutions of the General Convention have not produced a complete response to the challenges of the Windsor Report." As a result, he explained, "[t]here is no way that the Anglican



