

**SANDS ANDERSON
MARKS & MILLER** 
A PROFESSIONAL CORPORATION

George O. Peterson
Attorney

gpeterson@sandsanderson.com

RICHMOND • BLACKSBURG • FREDERICKSBURG
MCLEAN • RESEARCH TRIANGLE

WWW.SANDSANDERSON.COM

1497 Chain Bridge Road, Suite 202
McLean, Virginia 22101
Main: (703) 893-3600
Fax: (703) 893-8484

September 16, 2008

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*, (Circuit Court of Fairfax County, CL-2007-0248724);

In re: Truro Church; (Circuit Court of Fairfax County; CL 2006-15792);

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

In re: Church of the Word, Gainesville; (Circuit Court of Prince William County; CL73464) (Circuit Court of Fairfax County; CL 2007-11514);

The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon (Circuit Court of Fairfax County; CL 2007-1235);

The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church (Circuit Court of Fairfax County; CL 2007-1236);

The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church (Circuit Court of Fairfax County; CL 2007-1237);

The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles (Circuit Court of Fairfax County; CL 2007-1238);

The Episcopal Church v. Truro Church et al. (Circuit Court of Fairfax County; CL 2007-1625);

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

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);

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; CL 2007-5362);

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

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);

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

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);

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; CL 2007-5683);

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; CL 2007-5684);

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

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

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); and

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

Letter to Clerk of the Court
September 16, 2008
Page 3


Dear Ms. Brooks:

I am enclosing for filing in the above-styled case an original, The CANA Congregations' Reply Brief on Voting Issues, plus twenty-one (21) copies of the one-page cover sheets 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 stylized flourish at the end.

George O. Peterson

cc: Sara G. Silverman, 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
James A. Johnson, Esquire
E. Andrew Boucher, Esquire
Scott T. Ward, Esquire
R. Hunter Manson, Esquire
James E. Carr, Esquire
Edward H. Grove, III, Esquire
William E. Thro, Esquire
Stephen R. McCullough, Esquire

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In re:)	
Multi-Circuit Episcopal Church	)	Civil Case Numbers:
Litigation	)	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

THE CANA CONGREGATIONS' REPLY BRIEF ON VOTING ISSUES

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, Potomac Falls Church, and St. Paul's Church (collectively, "CANA Congregations"), by their counsel, hereby file this reply brief on the voting issues identified by the Court at the August 22, 2008, Hearing.

1. Which party bears the burden of proof and production related to the voting issues in the § 57-9 actions and what is the standard of proof?

The parties appear to be in agreement on this issue.

2. What factors should the Court examine in determining whether the votes taken by the CANA Congregations filing Va. Code § 57-9 Petitions were “fairly taken”?

There appears to be agreement concerning most of the standards that govern whether a vote was “fairly taken.” Still, the Church insists that “whether the eligibility standards used for the disaffiliation votes were generally consistent with the pre-existing eligibility standards for congregational votes set forth in [their] canons” should “*not* be a part of the analysis of whether the votes were fairly taken.” Opp. 2. This view is hard to square with *Reid*’s concern with post-division changes in voter eligibility (*see* 229 Va. at 190-91), and with the fact that the definitions of “members” advanced by the Church are themselves based on its rules. *See* Br. 7. The only question is whether the Church will be allowed to “cherry pick” from among those definitions, ignoring those that are relevant to congregational voting. It should not be able to do so.

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

A. The Church’s reading of the phrase “members of [the] congregation” is foreclosed by its plain text and common sense.

1. The Church offers a half-hearted defense of its assertion that the “plain meaning” of “members” “may in fact encompass” those with “no current connection to the congregation.” Br. 5. But as we have shown, this reading divorces “members” from the phrase “of [the] congregation”—those who regularly assemble for worship. Opening Br. 4-5; Resp. Br. 3. ECUSA’s internal documents acknowledge as much: Canon I.17.1(a) defines “members” of “this Church,” and the parochial report instructions state that “[a] person’s baptism, when duly recorded in the Register . . . of the recording congregation, is his/her record of membership *in the Episcopal Church.*” Opening Br., Exh. A at 1 (emphasis added). The Church is thus confusing being

“members” of the Episcopal Church as a whole with being “members of [the] congregation” at issue. The statute, however, requires a connection sufficient to support the latter determination.¹

2. The Church says not a *word* in response to the practical consequences of its reading of the statute. That reading presumes that the General Assembly intended to grant control over the congregation’s property to many who never attend services; who are in fact active members in other churches (Episcopal or otherwise); who are unreachable; who have never expressed any desire to become members; or who do not want to be considered members. But as we have shown, those who never “congregate” cannot be considered part of the “congregation.”

The Church’s reading is also inconsistent with § 57-9(A)’s requirement that those who vote be “over 18 years of age”—*i.e.*, *adult* members of the congregation. This requirement does not merely indicate that those who vote should be old enough to make an informed choice as to which “branch” to join; it confirms that whether people are “members of [the] congregation” should be based on whether they have participated as “members” *as adults*.

In short, the Church’s reading would give many who have made no conscious decision to be a member, let alone as an adult, a voice in the most important of congregational votes—a vote on denominational affiliation and property ownership. And when combined with their reading of “whole number,” the Church’s reading would give all such people automatic votes *against* disaffiliation. That “absurd result” cannot be the law, let alone the “plain meaning” of the (undefined)

¹ ECUSA and the Diocese dismiss *Brown v. Virginia Advent Christian Conference*, reasoning that it “merely held that certain individuals lacked standing to sue a group of trustees at law for the demolition of a particular church where ‘it was neither alleged nor proven that [the plaintiffs] constituted the congregation.’” Br. 5 n.3 (quoting 194 Va. 909, 912 (1953)). But that is exactly why *Brown* is relevant. In holding that the plaintiffs did not “constitute[] the congregation,” the Court focused on the fact that they “had not attended services there for years.” *Id.* *Brown* thus confirms that people cannot stop attending a church yet claim to be “members.”

phrase “members of [the] congregation.” See *Andrews v. Browne*, 276 Va. 141, 153 (2008).²

3. Unable to answer the textual and practical difficulties with their reading of “members of [the] congregation,” it comes as little surprise that ECUSA and the Diocese would now back away from it. They now say that “in accordance with the ordinary meaning of the term ‘member,’ the Church’s rules, and the Congregations’ own understandings, it should . . . be interpreted to mean *either* (a) ‘a person baptized or enrolled in a church,’ *or* (b) active baptized persons.” Br. 7 (emphasis added; citations omitted). The “active baptized member” standard is far more plausible than the position that a “member of the congregation” is anyone ever baptized there who has not died or been transferred. But it makes far more sense to look to the participation level ordinarily used to determine eligibility for congregational votes. ECUSA and the Diocese have acknowledged that only “communicants in good standing” are “eligible to vote at ordinary congregational meetings.” Br. 6-7. Indeed, in contrast to the term “communicant in good standing,” the term “active baptized member” is not defined in their canons. Thus, application of the “communicant in good standing” standard is the least arbitrary way of defining the level of activity required to obtain (or maintain) the status of a “member of [the] congregation.”³

² Presumably that is also why ECUSA’s own parochial report instructions state that “[f]or statistical purposes the Episcopal Church counts only *active baptized members*” (Opening Br. Exh. A at 1), and why ECUSA’s own website answers the question “What constitutes membership in the Episcopal Church?” by reference to the definitions of “communicants” and “communicants in good standing.” See CANA Responsive Br. 8, Exh G. It is anomalous for the Church to advocate a definition of “member of the congregation” that is far broader than its own ordinary usage.

³ ECUSA and the Diocese suggest that membership extends even to those who have never been formally added to the congregation’s membership rolls: “[I]f the touchstone of ‘membership’ is to be active participation in the congregation,” they say, “each of the Congregations has additional numbers of such people who were not permitted to vote because they were not formally registered on the parish’s rolls.” Br. 6. But this reading of the statute would *presume* that someone wants to be a “member” without any express indicia of such intent. And in fact many who look like “members” to one looking at attendance might have serious doubt about the congregation’s faith or otherwise prefer not to be formally associated with it—just as many who frequently vote “Republican” or “Democrat” wish to remain “independent.” Thus, while it may be

ECUSA and the Diocese suggest that there is an inconsistency between our position that “division” and “branch” should be defined without reference to church rules and our position on the phrase “members of [the] congregation.” Br. 4 n.1. The issue in both cases, however, is what the General Assembly intended. As to the meaning of “division” and “branch,” both the historical and contemporary understanding showed that those terms refer to an organized group of congregations separating from their mother church (the “division”) to form a new polity (the “branch”); reading those terms by the light of ECUSA’s canons, by contrast, would have limited the statute to situations in which the “division” and “branch” were consensual, thus rendering the statute “a nullity.” April 3 Op. 81. Here, the General Assembly granted voting rights to adult “members of [the] congregation,” and it would be both textually unsupportable and absurd as a practical matter to read the statute as granting voting rights to those with no current connection to the congregation. At the same time, the very idea of “membership” involves satisfying an association’s internal standards, and there is no reason to think the General Assembly would have wanted courts to ignore such standards. Indeed, *both* sides here advocate definitions of “members” based on either church canons or other church documents. The question, therefore, is *which* internal rules most closely approximate the General Assembly’s intent.⁴

appropriate to look to attendance as an indication that people want to maintain membership in a group that they have formally asked to join, defining membership solely by attendance is inconsistent with the idea that membership must be based on an adult’s conscious choice. In short, the fact that participation is required to remain a member does not make it sufficient to become one.

⁴ Citing 2005 parochial reports that show an “active membership” . . . that exceeds their reported number of “communicants in good standing,” the Church claims that the CANA Congregations “implicitly admit” that active members over 18 “were not permitted to vote.” Br. 5-6. But voter eligibility must be determined as of the votes, which took place roughly a year after the period that these reports covered. As a practical matter, in light of the careful attention given to the vote, the CANA Congregations’ rolls and records were likely to be particularly reliable at the time of the votes. But in any event, the existence of a delta between the number of “communicants in good standing” and the number of “active baptized members” is unlikely to be dispositive. Indeed, were the Court to read the phrase “majority of the whole number” to require a

B. ECUSA and the Diocese are estopped from challenging the “communicants in good standing” standard for voter eligibility.

Contrary to the Church’s suggestion, we are not contending that the Protocol constitutes a “binding contract,” or that it guaranteed a negotiated resolution of the parties’ differences over property ownership. Br. 8-9. The evidence at trial will show, however, that the CANA Congregations reasonably relied upon the Protocol’s provision concerning voter eligibility.

1. The Church first says that there can be no estoppel here because *ECUSA* “never approved the ‘Protocol.’” Br. 9. But even setting aside the fact that the Diocese holds itself out as an arm of *ECUSA*—the “Protestant Episcopal Church in the Diocese of Virginia”—this argument is unpersuasive. *ECUSA* Canon I.14.1 provides that issues such as “the qualifications of voters” in congregational votes “shall be such as the State or Diocesan law may permit or require.” *ECUSA* has thereby delegated the subject of voter eligibility to the Diocese, and the Protocol precisely tracks the standard in the Diocese’s own canons. *Compare* Diocese Canon 11, § 5, *with* CANA Exh. 67 at 2; *see also* Tr. 500-501 (property issues were generally resolved at the Diocesan level). Thus, *ECUSA*’s approval was not required.

Further, the evidence will show that *ECUSA* knew of the Protocol and Va. Code § 57-9 before the vote, yet did nothing to question the “communicants in good standing” standard.

2. *ECUSA* and the Diocese next argue that the Protocol does not preclude them from urging different voter eligibility rules now because it “does not mention § 57-9.” Br. 9. But that does not mean that the Diocese was unaware of the statute—or of the possibility that it might be invoked—when the Protocol was being negotiated. To the contrary, the evidence at trial will show that well before the vote, the Diocese was aware of both § 57-9 and the risk that the CANA

showing of a majority of all eligible votes, the exclusion of any eligible voters would simply count as “no” votes, and thus would not prejudice *ECUSA* and the Diocese.

Congregations would invoke it. Representatives of the Congregations met with representatives of the Diocese in September 2006 (well before the Protocol was finalized), informing them that their position was supported by “Va. Code § 57-9,” under which, “if a court approves a congregation’s vote to affiliate with a particular branch of a denomination, that ruling is *conclusive* as to all property ownership.” Exh. A. The CANA Congregations later reached a “standstill agreement” with both ECUSA *and* the Diocese providing that the Congregations would file their § 57-9 petitions but would stay them upon request during settlement discussions. Exh. B.

The evidence will show that while the CANA Congregations wished to avoid litigation, both sides were aware that negotiations might break down, as they did when Bishop Schori pulled the plug on them in January 2007. Tr. 500-01. Despite their knowledge of § 57-9 and these risks, at no point did representatives of the Church state that the CANA Congregations’ eligibility standards were unfair or that those who were eligible to vote were not “members.” Rather, for months after the votes, the Diocese referred to those voters as “members.” Responsive Br. 8-10. Thus, it was reasonable for the CANA Congregations to rely on the Protocol.

3. The Church says that the Protocol “is not a Diocesan ‘representation,’” and that the CANA Congregations knew as much. Br. 10. But the Protocol need not have been sanctioned by Diocesan Committees to support reasonable reliance. It was drafted and signed by Chancellor Palmore, a Diocesan officer appointed by Bishop Lee to chair the Special Committee. Exh. C. The parties had many meetings to discuss how things were proceeding pursuant to the Protocol. Even when concerns were raised about the Protocol on December 1, 2006—ten days before the vote—Bishop Lee described it as “a useful way forward, which I support.” ECUSA Br. 11.

In response to Bishop Lee’s December 1, 2006, letter, representatives of the CANA Congregations informed him that they had “proceeded with complete transparency in reliance upon

the Protocol and your assurances concerning that Protocol.” Exh. D. But even if one interprets Bishop Lee’s letter in a manner favorable to the Diocese, it provides no hint that the manner in which the Congregations were conducting their votes was invalid. The only provisions cast in doubt were those pertaining to “a negotiated settlement.” TEC-Diocese Exh. 66 at 1-2.

4. Recognizing these difficulties, the Church resorts to arguing that “[t]he Congregations have waived their equitable estoppel argument.” Br. 12-13. The CANA Congregations’ petitions, however, allege that they relied on the Protocol. *E.g.*, Truro Report ¶ 46. And it is only now, at the voting stage, that whether ECUSA and the Diocese are estopped from challenging the Congregations’ eligibility standards is relevant. Indeed, that the Church would assert waiver suggests that they misunderstand the scope of our estoppel argument. We are not invoking the Protocol’s provisions as a whole; we are asserting only that the Diocese’s efforts to persuade the CANA Congregations to use the “communicants in good standing” standard preclude it from changing its tune now. The CANA Congregations are entitled to present this evidence at trial.

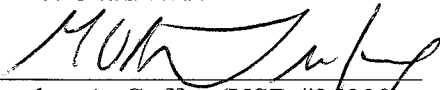
4. How should the Court construe the phrase “by a vote of a majority of the whole number,” in Va. Code § 57-9(A)?

The Court may not need to resolve whether § 57-9(A) requires a majority of those voting or a majority of eligible voters, assuming it rejects the argument that “members” should be defined to include those who never attend the church—persons who may now be adherents to another faith (or no faith), residents of another state, unreachable, or even dead. It is inconceivable that the General Assembly intended to give an automatic vote against disaffiliation to persons with no real stake in the congregation’s denominational affiliation or the ownership of its property. Nor could such a reading be reconciled with the idea of a vote “fairly taken.” But that would be the result of adopting the Church’s reading of “whole number” with its reading of the phrase “member of [the] congregation.” This Court should decline that invitation.

Dated: September 16, 2008

Respectfully submitted,

WINSTON & STRAWN

By: 
Gordon A. Coffee (VSB #25808)
Gene C. Schaerr
Steffen N. Johnson
Andrew C. Nichols (VSB #66679)

1700 K Street, N.W.

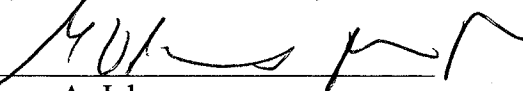
Washington, DC 20006-3817

(202) 282-5000 (telephone)

(202) 282-5100 (facsimile)

Counsel for Truro Church and its Related Trustees, The Falls Church, Church of the Apostles, and Church of the Epiphany

SEMMES, BOWEN & SEMMES, P.C.

By: 
James A. Johnson
Paul N. Farquharson
Scott H. Phillips

25 South Charles Street

Suite 1400

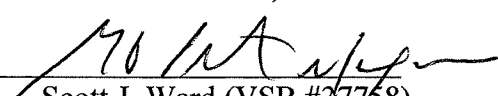
Baltimore, Maryland 21201

(410) 539-5040 (telephone)

(410) 539-5223 (facsimile)

Counsel for The Falls Church

GAMMON & GRANGE, P.C.

By: 
Scott J. Ward (VSB #37758)
Timothy R. Obitts (VSB #42370)
Robert W. Malone (VSB #65697)

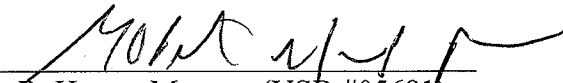
8280 Greensboro Drive, Seventh Floor

McLean, VA 22102

703-761-5000 (telephone)


703-761-5023 (facsimile)

Counsel for Christ the Redeemer Church, Potomac Falls Church, and The Falls Church

By: 
R. Hunter Manson (VSB #05681)


P. O. Box 539
876 Main Street
Reedville, VA 22539
804-453-5600 (telephone)
804-453-7055 (facsimile)
Counsel for St. Stephen's Church

SANDS ANDERSON MARKS & MILLER

By: 
J. Jonathan Schraub (VSB # 17366)
George O. Peterson (VSB # 44435)
Michael T. Marr (VSB # 48536)
Heather A. Jones (VSB #48431)

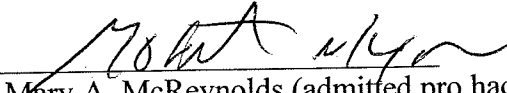
1497 Chain Bridge Road, Suite 202
McLean, VA 22101
703-893-3600 (telephone)
703-893-8484 (facsimile)
Counsel for Truro Church and its Related Trustees

WALSH, COLLUCCI, LUBELEY,
EMERICK & WALSH, PC

By: 
E. Andrew Burcher (VSB # 41310)

4310 Prince William Parkway, S-300
Prince William, VA 22192
703-680-4664 x 159 (telephone)
703-680-2161 (facsimile)
*Counsel for Church of the Word, St. Margaret's Church,
St. Paul's Church and their Related Trustees*

MARY A. McREYNOLDS, P.C.

By: 
Mary A. McReynolds (admitted pro hac vice)

1050 Connecticut Avenue, N.W.

Tenth Floor

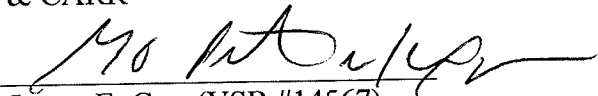
Washington, D.C. 20036

(202) 426-1770 (telephone)

(202) 772-2358 (facsimile)

Counsel for Church of the Apostles, Church of the Epiphany, Herndon, St. Margaret's Church, St. Paul's Church, Haymarket, and St. Stephen's Church, and their Related Trustees

CARR & CARR

By: 
James E. Carr (VSB #14567)

44135 Woodbridge Parkway

Suite 260

Leesburg, VA 20176

703-777-9150 (telephone)

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 16th day of September, 2008, a copy of the foregoing CANA Congregations' Reply Brief on Voting 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

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

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

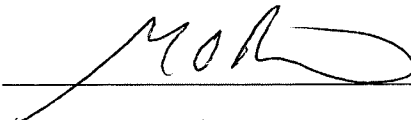
Heather H. Anderson, Esquire
Adam M. Chud, Esquire
Soyong Cho, Esquire
GOODWIN PROCTER, LLP
901 New York Ave., N.W.
Washington, D.C. 20001

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

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

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

Sara G. Silverman
Law Clerk to the Honorable Randy I. Bellows
4110 Chain Bridge Road
Fifth Floor Judges' Chambers
Fairfax, VA 22030



George O. Peterson



Ch
Fall 2

**The Congregations Are The Legal and Beneficial Owners Of Their Properties,
And Any Adverse Claim By The Diocese Or TEC Would Be Legally Unfounded.**

- **The Importance of Complete Information to Amicable, Christ-like Negotiations.** All of us want to resolve any property-related issues between us in a fair, amicable, and Christ-like manner. This depends, however, upon both sides having accurate information about the relative strengths and weaknesses of their positions. Unless both sides are operating from the same information base—a sober and comprehensive legal appraisal of the situation—we cannot expect to negotiate a good-faith resolution of the issue.
- **Trust Doctrine in Virginia.** Virginia law does not recognize an *express* trust, let alone an *implied* trust, in favor of denominations such as TEC. Church property law is a state-by-state issue, and the Supreme Court of Virginia has repeatedly made clear that “[a]s express trusts for supercongregational churches are invalid under Virginia law, no implied trusts for such denominations may be upheld.” For this reason, “Virginia has never adopted the implied trust doctrine to resolve church property disputes.” Given this plain rule of law, the Diocese has no serious claim to ownership of the Virginia congregations’ property under a theory of express or implied trust. Thus, even if the Dennis Canon supported denominational claims to property in other states (and there are serious questions about the validity of its adoption), it cannot have any application in Virginia. The same is true of the diocesan property canons.
- **The Deeds.** Even if Virginia law did recognize express trusts in favor of religious denominations, none of the deeds at issue (other than those of mission parishes) creates such a trust. For example, the Falls Church deed of 1746—which predates TEC, the Diocese, and the Commonwealth itself—conveys property to the *vestry* of the parish to be used as the *vestry* deems proper. Only one deed (of many) of the two largest churches’ property mentions the Diocese at all, and even that deed conveys property to trustees for the *local congregation*, not the Diocese. In short, the grantors of these deeds expressly intended to benefit these congregations, not the Diocese. The same is true of the deeds of other non-mission congregations.
- **Equitable Considerations.** It would be especially inequitable to strip *these* congregations of their long-held property. Congregations such as The Falls Church and Truro Church were *founders* of the Diocese, and some of their deeds predate the Diocese and TEC, let alone their property canons. Historically, except for mission parishes, the flow of financial support has generally run from congregations to the Diocese and TEC, not the other way around. And those who gave their property to the congregations did so against the backdrop of Virginia law, which has never recognized denominational trust interests in congregational property. Thus, it would violate their wishes to award such property to TEC or the Diocese.
- **The Virginia “Division” Statute.** The Virginia congregations’ position is further supported by the “division statute,” Va. Code § 57-9, which sets forth neutral principles for resolving property disputes when a diocese or denomination experiences division. Under § 57-9, if a court approves a congregation’s vote to affiliate with a particular branch of a denomination, that ruling is *conclusive* as to all property ownership. The case for application of the statute could hardly be stronger. The Archbishop, the Windsor Report, and the Primates have recognized the division within the Anglican Communion. Even before GC 2006, 15 of 37 Provinces within the Communion, 10 dioceses, and hundreds of parishes had announced that they were not in communion with TEC. ECUSA has even adopted a new name—TEC. The Virginia reconciliation committee recognized that the divide within the Diocese is of the deepest and most serious nature. Since GC 2006, many more congregations have parted with TEC and more than 20 percent of this Diocese is participating in a discernment period, after which the participating congregations may decide whether to join another branch of Anglicanism. Should they do so, either collectively or individually, Virginia law would protect their property interests against any claim by the Diocese. The congregations would not be a renegade body but rather part of a large and existing community within the Anglican Communion that has divided from TEC.

EDV 1067

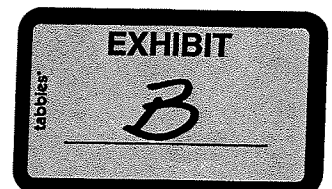
Confidential

September 19, 2006

TERMS OF STANDSTILL AGREEMENT
APPROVED BY THE STANDING COMMITTEE AND EXECUTIVE BOARD
OF THE DIOCESE OF VIRGINIA ON
DECEMBER 18, 2006

1. The Diocese of Virginia ("Diocese") and The Episcopal Church ("TEC"):
 - a. will not initiate any attempt to take possession of the congregations' property.
 - b. will not initiate any canonical or ecclesiastical actions against the congregations or their clergy or vestries.
 - c. will not initiate any civil legal action against the congregations, their clergy, their vestries, or their trustees.
 - d. will permit the congregations' clergy and staff to continue to pay premiums and receive benefits under the Diocesan health care plan until at least January 31, 2007.
2. The congregations:
 - a. will not initiate any transfer or conveyance of their property.
 - b. will not initiate any civil legal action against The Diocese/TEC, but may report their congregational determinations by filing a petition/report with the relevant VA Circuit Courts pursuant to Va. Code 57-9 without violating the agreement. The congregations' Va. Code 57-9 filings will state that notice has been provided to The Diocese/TEC. The congregations will not take any further steps to bring the Va. Code 57-9 filings to judgment. Upon the Diocese's request, the congregations will seek a stay of their Va. Code 57-9 filings. If the Diocese seeks to intervene in the Va. Code 57-9 filings, the congregations will not oppose such intervention and upon the Diocese's request will jointly with the Diocese move to stay the filings. In not opposing this intervention, the congregations of course reserve the right to contest the Diocese/TEC's alleged interest in their property.
3. The Diocese/TEC and each of the congregations:
 - a. will seek in good faith to negotiate with each other an amicable resolution of their differences concerning property and clergy status.
 - b. may terminate their agreement by giving 7 days notice to all other parties, but this shall not affect the agreement between any remaining parties unless they independently invoke their right to terminate. This Agreement shall terminate on January 18, 2007 unless renewed by mutual agreement.

FRXLIB-456221.1-RMDILLIN



The Right Reverend Peter James Lee
The Bishop of Virginia

October 21, 2005

The Rev. John Yates
The Falls Church
115 E Fairfax St.
Falls Church, VA 22046

Dear John,

After consulting with the Standing Committee, I am prepared to appoint a special committee to explore options that may be available to enable churches in continuing distress over the actions of General Convention 2003 to focus on their mission in as close a union as possible with the other churches of the Diocese of Virginia.

Russel V. Palmore, Jr., the chancellor of the diocese, has agreed to chair this special group. I ask you to consult with whomever you wish and to nominate three persons whom I might ask to serve on this group. I will expect them to be active, supportive communicants of churches in the Diocese of Virginia if they are laity, and if clergy that they be canonically resident in Virginia.

My prayer is that such a group might offer to the distressed churches and to the diocese as a whole a graceful way forward.

Faithfully yours,

Peter James Lee

PJL: wlp

