

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

In re:	)	Case Nos.:	CL 2007-248724,
Multi-Circuit Episcopal Church Litigation	)		CL 2006-15792,
	)		CL 2006-15793,
	)		CL 2007-556,
	)		CL 2007-1235,
	)		CL 2007-1236,
	)		CL 2007-1237,
	)		CL 2007-1238,
	)		CL 2007-1625,
	)		CL 2007-5249,
	)		CL 2007-5250,
	)		CL 2007-5362,
	)		CL 2007-5363,
	)		CL 2007-5364,
	)		CL 2007-5682,
	)		CL 2007-5683,
	)		CL 2007-5684,
	)		CL 2007-5685,
	)		CL 2007-5686,
	)		CL 2007-5902,
	)		CL 2007-5903, and
	)		CL 2007-11514

ORDER

This matter came before the Court on April 25, 2008, on the Diocese's and the Episcopal Church's Renewed Motion for Leave to Proceed with Discovery and Scheduling in the Declaratory Judgment Actions ("Motion to Proceed with Discovery"). Upon consideration of the motion, the memoranda submitted by the parties, and the arguments of counsel, and for the reasons set forth in the Ruling portion of the transcript of the April 25, 2008, hearing attached hereto as Exhibit A and incorporated herein, it is hereby

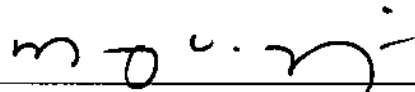
ORDERED that the Motion to Proceed with Discovery is GRANTED and the stay of discovery entered on November 21, 2008, is lifted.

Entered this ____ day of May, 2008.

Circuit Court Judge Randy I. Bellows

WE ASK FOR THIS:

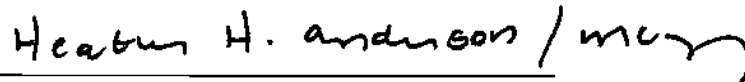
THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF VIRGINIA

By: 

Bradfute W. Davenport, Jr. (VSB #12848)
George A. Somerville (VSB #22419)
Joshua D. Heslinga (VSB #73036)
TROUTMAN SANDERS LLP
P.O. Box 1122
Richmond, VA 23218-1122
Telephone: (804) 697-1200
Facsimile: (804) 697-1339

Mary C. Zinsner (VSB #31397)
TROUTMAN SANDERS LLP
1660 International Drive, Suite 600
McLean, VA 22102
Telephone: (703) 734-4363
Facsimile: (703) 734-4340

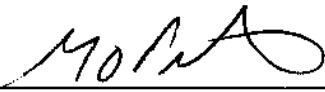
THE EPISCOPAL CHURCH

By: 

Heather H. Anderson (VSB #38093)
Adam Chud
Soyong Cho (VSB #70896)
GOODWIN PROCTER LLP
901 New York Avenue, NW
Washington, DC 20001
Telephone: (202) 346-4000
Facsimile: (202) 346-4444

SEEN AND OBJECTED TO FOR THE REASONS SET FORTH IN THE OPPOSITION TO THE RENEWED MOTION TO PROCEED WITH DISCOVERY, IN THE RESPONSE TO THE SUPPLEMENTAL/REPLY BRIEF, FOR THE REASONS SET FORTH AT THE HEARING OF THIS MATTER, AND TO THE EXTENT THAT PORTIONS OF THE TRANSCRIPT ARE ATTACHED AND INCORPORATED HERETO THAT EXCEED THE COURT'S RULING ON THE RENEWED MOTION TO PROCEED WITH DISCOVERY (SPECIFICALLY ANY PORTIONS OF THE TRANSCRIPT OTHER THAN PAGE 11, LINE 6 THROUGH PAGE 13, LINE 1):

TRURO CHURCH AND ASSOCIATED INDIVIDUALS

By: 

Gordon A. Coffee (VSB #25808)
Gene C. Schaerr
Steffen N. Johnson
Andrew C. Nichols (VSB #66679)
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 282-5000
Facsimile: (202) 282-5100

George O. Peterson
J. Jonathan Schraub
Heather A. Jones
SANDS ANDERSON MARKS & MILLER, P.C.
1497 Chain Bridge Road, Suite 202
McLean, VA 22101
Telephone: (703) 893-3600
Facsimile: (703) 893-8484

THE CHURCH AT THE FALLS—THE FALLS CHURCH AND ASSOCIATED INDIVIDUALS

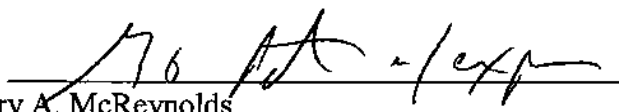
By: 

Gordon A. Coffee (VSB #25808)
Gene C. Schaerr
Steffen N. Johnson
Andrew C. Nichols (VSB #66679)
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 282-5000
Facsimile: (202) 282-5100

James A. Johnson
Paul N. Farquharson
Scott H. Phillips
Sarah W. Price
SEMMES, BOWEN & SEMMES, P.C.
25 South Charles Street, Suite 1400
Baltimore, MD 21201
Telephone: (410) 576-4712
Facsimile: (410) 539-5223

Scott J. Ward (VSB #37758)
Timothy R. Obitts (VSB #42370)
Robert W. Malone (VSB #65697)
GAMMON & GRANGE, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102
Telephone: (703) 761-5000
Facsimile: (703) 761-5023

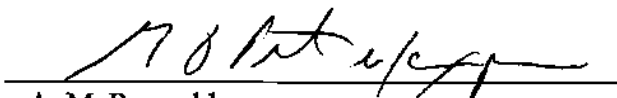
ST. STEPHEN'S CHURCH AND ASSOCIATED INDIVIDUALS

By: 

Mary A. McReynolds
MARY A. MCREYNOLDS, P.C.
1050 Connecticut Avenue, N.W., Tenth Floor
Washington, DC 20036
Telephone: (202) 429-1770
Facsimile: (202) 772-2358

R. Hunter Manson (VSB #05681)
P.O. Box 539
876 Main Street
Reedville, VA 22539
Telephone: (804) 453-5600
Facsimile: (804) 453-7055

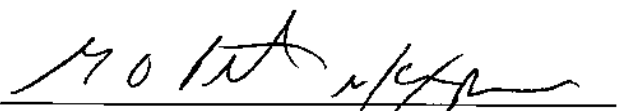
CHURCH OF THE APOSTLES and CHURCH OF THE EPIPHANY AND ASSOCIATED INDIVIDUALS

By: 

Mary A. McReynolds
MARY A. MCREYNOLDS, P.C.
1050 Connecticut Avenue, N.W., Tenth Floor
Washington, DC 20036
Telephone: (202) 429-1770
Facsimile: (202) 772-2358

Gordon A. Coffee (VSB #25808)
Gene C. Schaerr
Steffen N. Johnson
Andrew C. Nichols (VSB #66679)
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 282-5000
Facsimile: (202) 282-5100

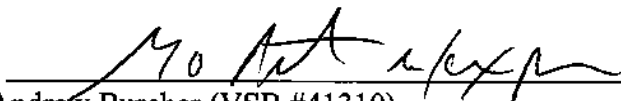
ST. MARGARET'S CHURCH and ST. PAUL'S CHURCH, HAYMARKET AND ASSOCIATED INDIVIDUALS

By: 

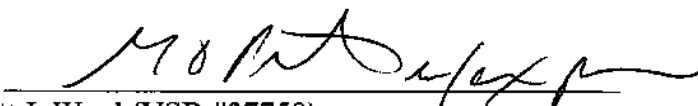
Mary A. McReynolds
MARY A. MCREYNOLDS, P.C.
1050 Connecticut Avenue, N.W., Tenth Floor
Washington, DC 20036
Telephone: (202) 429-1770
Facsimile: (202) 772-2358

E. Andrew Burcher (VSB #41310)
WALSH, COLUCCI, LUBELEY,
EMRICH & WALSH, P.C.
4310 Prince William Parkway,
Suite 300
Prince William, VA 22192
Telephone: (703) 680-4664
Facsimile: (703) 680-2161

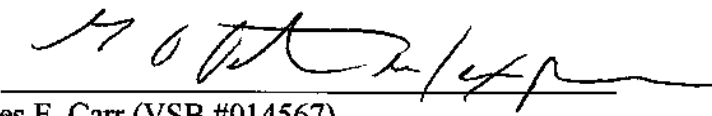
CHURCH OF THE WORD

By: 
E. Andrew Burcher (VSB #41310)
WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.
4310 Prince William Parkway, Suite 300
Prince William, VA 22192
Telephone: (703) 680-4664
Facsimile: (703) 680-2161

CHRIST THE REDEEMER CHURCH and POTOMAC FALLS CHURCH

By: 
Scott J. Ward (VSB #37758)
Timothy R. Obitts (VSB #42370)
Robert W. Malone (VSB #65697)
GAMMON & GRANGE, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102
Telephone: (703) 761-5000
Facsimile: (703) 761-5023

CHURCH OF OUR SAVIOUR AT OATLANDS AND ASSOCIATED INDIVIDUALS

By: 
James E. Carr (VSB #014567)
CARR & CARR
44135 Woodbridge Parkway, Suite 260
Leesburg, Virginia 20176
Telephone: (703) 777-9150
Facsimile: (703) 726-0125

SEEN AND _____:

CERTAIN TRUSTEES OF THE CHURCH AT THE FALLS – THE FALLS CHURCH

By: Edward H. Grove / me with auth.

Edward H. Grove, III, Esquire

BRAULT PALMER GROVE WHITE & STEINHILBER LLP

3554 Chain Bridge Road

Suite 400

Fairfax, Virginia 22030

1 VIRGINIA :

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

3 - - - - - x

4 IN RE: :

5 MULTI-CIRCUIT EPISCOPAL : CASE NO. CL 2007-0248724

6 CHURCH PROPERTY LITIGATION :

7 - - - - - x

8 Fairfax, Virginia

9 Friday, April 25, 2008

10 The above-entitled matter came on for hearing
11 before The Honorable Randy I. Bellows, Judge in and for
12 the Circuit Court of Fairfax County, Virginia, 4110 Chain
13 Bridge Road, Courtroom 4G, Fairfax, Virginia, beginning at
14 approximately 2:35 p.m., before Maureen S. Bennie,
15 Verbatim Court Reporter, when were present on behalf of
16 the respective parties:

17

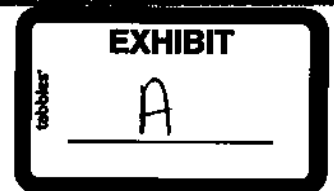
18

19

20

21

22



EXCERPT FROM PROCEEDINGS

1
2 (Whereupon, the court reporter was sworn by the
3 Court.)

4 * * * * *

5 THE COURT: All right. Here's my decision. I
6 premise my decision by saying again that if at all
7 possible, it is my aspiration to resolve this litigation
8 in its entirety this year. I believe that these are
9 matters of such importance and consequence that if it is
10 possible to resolve it in an orderly manner this year,
11 then that's what I aspire to do. I may not be able to
12 achieve that, it depends on the various turns that this
13 litigation is going to take, but it is certainly my
14 aspiration.

15 And, secondly, toward that end, I believe the
16 October trial ought to resolve any outstanding evidentiary
17 issues. And I say any and all outstanding evidentiary
18 issues, which would include such issues, depending upon
19 their applicability, as to the vote, any evidentiary
20 aspect of -- remaining aspect of 57-9 which I think will
21 be addressed sooner than that in some legal resolutions.
22 In other words -- I don't want to be obscure here -- TEC

1 is asserting that there are aspects of 57-9 that are
2 evidentiary, such as whether the property is held in trust
3 for the congregations. I don't know -- I think I will
4 first address that issue as a legal matter, and then we
5 will know what factual issues have to be resolved, but the
6 -- any factual issues related to the contract clause issue
7 and the declaratory judgment actions to the extent that
8 they still must be resolved.

9 Now, my next point is that the October trial can
10 be organized, it seems to me, in a way that minimizes
11 litigating matters that don't need to be resolved. In
12 other words -- and we don't need to do this today, but at
13 some point, I think we will need to meet to talk about the
14 organization of the October trial. Just as one
15 hypothetical, I can imagine a scenario where the Court
16 upholds 57-9 against the constitutional challenge,
17 excepting the contract clause issue, and the first issue
18 that would be resolved at the trial would be the vote and
19 maybe the contract clause issue, although it's also
20 possible that will have been resolved beforehand through
21 some other litigation. I'm not ruling out the possibility
22 of setting some additional trial time prior to October or

1 after October. That's still a possibility. But it is my
2 aspiration, in addition to resolving the declaratory
3 judgment action in October, to address any other issue
4 that remains outstanding so that subsequent to the October
5 trial, I can give the parties a final decision.

6 Now, that brings me to the issue that you are
7 here for today, which is discovery, and I've got several
8 things to say about that. The first thing I'm going to
9 say is that the stay on discovery and motions related to
10 both discovery and non-discovery issues on all issues
11 related to this litigation is lifted, and it is lifted
12 immediately. I see that as the only way that this Court
13 can resolve the case in the reasonably foreseeable future,
14 is to lift discovery. I am persuaded by the
15 representations of the Episcopal Church and the Diocese
16 that if they do not proceed with discovery at this time,
17 they cannot go to trial in October. And I accept those
18 representations, and on that basis, I am lifting discovery
19 because, otherwise, I do not see how this case can be
20 resolved in the reasonably foreseeable future.

21 Let me say -- and I took the time to pull out
22 the Rules of the Supreme Court, 4:1(c), which deals with

1 protective orders. And it says, in part, upon motion by a
2 party or by the person from whom discovery is sought,
3 accompanied by a certification that the movant has in good
4 faith conferred or attempted to confer with other affected
5 parties in an effort to resolve the dispute without court
6 action, and for good cause shown, the court in which the
7 action is pending or alternatively, on matters relating to
8 a deposition, the court in the county or city where the
9 deposition is to be taken -- and here is the reason I am
10 citing this to you -- may make any order which justice
11 requires to protect a party or person from annoyance,
12 embarrassment, oppression, or undue burden or expense.
13 And then it sets out a variety of different powers that
14 the Court has.

15 That's very broad authority this Court has, and
16 much of what I've heard from the CANA congregations today
17 is that their concerns fit into the category of oppression
18 or undue burden or expense. And I invite them as the
19 discovery proceeds to seek protective orders as they
20 believe appropriate, and I will rule on them. I may rule
21 for them, I may rule against them. I, obviously, can't
22 judge that. But our rules do provide for addressing their

1 concerns.

2 Next: By Wednesday noon, next Wednesday, both
3 parties are to file with the Court by e-mail and then just
4 file in the Clerk's office sometime that day -- but by
5 e-mail by noon to the Court, to Ms. Cranston and to the
6 parties, of course, a list of all legal issues that either
7 party believe can be resolved as a matter of law, in other
8 words, without any fact finding or further evidence. And
9 by Friday noon, two days later, all the parties can
10 respond to the other parties' assertion of whether legal
11 issues can be resolved without further fact finding. And
12 then this Court will issue an order promptly after that,
13 listing the issues that the Court will resolve as a matter
14 of law and giving the parties a briefing schedule and
15 setting the matter for a hearing, for argument, the idea
16 being that many of the issues that we have talked about
17 today are legal or have a discrete legal component. And
18 it will advance this litigation materially, I believe, if
19 I can resolve those issues as a matter of law, and I am
20 prepared to devote the time to do it on parallel with our
21 constitutional litigation. So that's how we will proceed.

22 So with that said, Mr. Davenport, on your

1 motion, is there anything further I need to say?

2 MR. DAVENPORT: No, sir.

3 THE COURT: Okay. Mr. Coffee or anybody else,
4 is there anything more they believe I need to say, address
5 today on that issue?

6 MR. COFFEE: Not that I can think of, Your
7 Honor.

8 THE COURT: Okay. Now, Mr. Coffee, you said you
9 had a scheduling matter you wanted to bring to the Court's
10 attention?

11 MR. COFFEE: Yes, Your Honor. Pursuant to the
12 Court's -- the schedule, I believe, set in the Court's
13 April 3rd order, the CANA congregation has filed a brief
14 on the constitutional implications of your April 3rd
15 ruling, basically a post-ruling constitutional brief. The
16 Diocese and the Episcopal Church each filed briefs,
17 separate briefs, mind you. In addition, an amicus brief
18 has been filed by the Methodists.

19 We have a response to all three briefs due next
20 week, and I have approached the Episcopal Church and --

21 THE COURT: I haven't ruled on the Methodist
22 Church filing yet. I haven't ruled as to whether -- when

1 you say you have a response, I just want to be clear that
2 that issue I haven't even -- I don't even know your
3 position on, although --

4 MR. COFFEE: I'm about to tell you.

5 THE COURT: What?

6 MR. COFFEE: I'm about to tell you.

7 THE COURT: Oh, you are. Okay. All right. You
8 are in advance of my deadline.

9 MR. COFFEE: Ms. Cranston may be pleased here,
10 for once, for ahead of time.

11 The arrangement that we have worked out with the
12 Diocese and the Episcopal Church is in exchange for their
13 agreeing to giving us an additional week to respond to all
14 three briefs, we will not oppose the filing of the amicus
15 by the Methodists. We do oppose the request by the
16 counsel for the Methodists to participate in oral
17 argument, and we will fight that out separately. But for
18 purposes of trying to facilitate this, we would propose,
19 with the Court's blessing, that we will not object to the
20 filing of the amicus brief. Obviously, Your Honor still
21 retains discretion to accept it, but we won't oppose it.
22 Again, because of the fact we will have the burden of

1 . responding to three separate briefs, they have agreed that
2 we can have until May 9th in which to file the brief.
3 They will also have until May 9th to file their briefs.

4 THE COURT: Okay. What's their date now?

5 MR. COFFEE: The 2nd.

6 MR. DAVENPORT: Everybody is the 2nd.

7 MR. COFFEE: Everybody --

8 THE COURT: Everybody is the 2nd.

9 MR. COFFEE: We have a simultaneous filing date
10 on the 2nd. We would move that simultaneous date back to
11 the 9th.

12 THE COURT: So you both would file your briefs
13 on the 9th?

14 MR. COFFEE: Correct.

15 THE COURT: And your brief would also respond to
16 the brief filed by the Methodist Church?

17 MR. COFFEE: Correct.

18 THE COURT: And has anybody talked to counsel
19 for the Methodist Church about their position on this
20 agreement?

21 MR. COFFEE: Well, I'm not sure they have
22 standing to object on the due dates, Your Honor.

1 THE COURT: No, they wouldn't. They wouldn't
2 have standing on your deadline for filing. I mean, that's
3 out of their control. My only hesitation is -- I mean,
4 since they are asking to have amicus status, essentially
5 you are saying that your position is you don't oppose
6 amicus status?

7 MR. COFFEE: Correct.

8 THE COURT: So they certainly would have no
9 problem with me granting them amicus status --

10 MR. COFFEE: Correct.

11 THE COURT: -- for purposes of the filing of the
12 brief without resolving yet the issue of argument?

13 MR. COFFEE: I have already apprised counsel for
14 the Methodists that we do object to their participating in
15 oral argument.

16 THE COURT: Okay.

17 MR. COFFEE: So they understand the need to have
18 that teed up for resolution by the Court.

19 THE COURT: Okay.

20 MS. ZINSNER: Your Honor, I just want to make
21 sure, absolutely clear, that with respect to the amicus
22 brief, it's not necessarily limited to the Methodists.

1 There may be other -- we believe there will be four
2 national churches that join in that brief, so I don't want
3 there to be any --

4 THE COURT: Well, you mean the churches that are
5 listed now?

6 MS. ZINSNER: Right.

7 THE COURT: You are not talking about other
8 amicus briefs, are you?

9 MS. ZINSNER: No. They will be joining that
10 brief.

11 THE COURT: Well, I believe I understand
12 Mr. Coffee when he refers to the Methodist Church, he is
13 referring to every church listed on that pleading.

14 MR. COFFEE: That's correct, Your Honor. I am
15 using it generically.

16 MS. ZINSNER: But I believe there may be more
17 joining that brief, Your Honor.

18 THE COURT: You mean filing additional briefs or
19 simply filing --

20 MS. ZINSNER: No, Your Honor.

21 THE COURT: -- statements that they join in the
22 position?

1 MS. ZINSNER: Simply filing statements that they
2 join in it.

3 THE COURT: Okay.

4 MS. ZINSNER: I just didn't want there to be any
5 misunderstanding.

6 THE COURT: All right. Well, that's something
7 that's not before me right now, right, because they
8 haven't done that.

9 And, Mr. Davenport, this is consistent with your
10 understanding?

11 MR. DAVENPORT: We have absolutely no objection
12 to the Methodists or others filing an amicus brief and
13 arguing.

14 THE COURT: Okay. Well, the argument issue I
15 certainly am not resolving today, because I don't have the
16 counsel for the Methodist churches here. So I can't
17 resolve that issue without giving him an opportunity to
18 respond to -- because I believe I -- didn't I schedule
19 this for the parties to have an opportunity to respond to
20 the other parties' position?

21 MR. COFFEE: You had asked us, Your Honor, to
22 respond by Wednesday.

1 THE COURT: And then I put another date in for
2 them to respond or I did not?

3 MR. COFFEE: You did not.

4 THE COURT: No?

5 MR. DAVENPORT: No.

6 THE COURT: All right.

7 MR. DAVENPORT: Everybody is supposed to respond
8 next Wednesday.

9 THE COURT: All right. Thank you.

10 Well, I have no problem with that at all. The
11 Methodist Church will be given amicus status for the
12 purpose of the filing of their brief. The issue of
13 arguing is unresolved at this point.

14 You will be filing some opposition to it, I take
15 it, Mr. Coffee?

16 MR. COFFEE: The very limited issue of whether
17 they can argue.

18 THE COURT: Only argument?

19 MR. COFFEE: Correct.

20 THE COURT: And, Mr. Davenport, you will be
21 filing something in support of their argument?

22 MR. DAVENPORT: Yes, sir.

1 THE COURT: Okay. Well, then, that issue will
2 be resolved by the Court later. But in terms of the
3 filing of the brief, they will be given amicus status
4 and -- actually, I have to hesitate in one respect, as I
5 think about it, and that is having granted the
6 Commonwealth, the Attorney General's office, amicus status
7 --

8 MR. DAVENPORT: Yes, you did.

9 THE COURT: What?

10 MR. DAVENPORT: Yes, you did.

11 THE COURT: No. No. I said having granted them
12 -- I know I did. Having granted them amicus status and
13 having given them a copy and having e-mailed them, along
14 with you all, has anybody consulted with the Attorney
15 General's office to see if they agree to the -- you know,
16 it may be overcautious of me as to whether or not they get
17 to weigh in on this, but -- well, let me do this:

18 Assuming -- well, it's hard to imagine that one
19 amicus would get a vote on whether another amicus gets to
20 file a brief. And, as I think about it, that becomes more
21 clear to me. So the Methodist Church will be granted
22 amicus status for -- their brief will be deemed a filing

1 of an amicus brief. I will resolve the issue of whether
2 they get to argue it May 28th at a later point.

3 Is there any other issue?

4 MR. HESLINGA: There is, Your Honor, a
5 scheduling issue on our side. There was a motion filed
6 this morning that we would like to have heard. We have
7 been told by the congregations that the earliest Friday
8 they could commit to is May 30th. We would prefer that it
9 be heard sooner than that, because it relates very much to
10 the constitutional issues. So we have two questions:

11 One, are there any dates other than Friday civil
12 motions dockets where the Court might be available that we
13 could try and arrange something, and then second, if not,
14 if nothing is available before the last week of May, would
15 the Court be amenable to hearing our motion on May 28th
16 rather than May 30th for the sake of efficiency, as we
17 will all already be before the Court on the larger
18 constitutional hearing?

19 THE COURT: What is the motion?

20 MR. HESLINGA: It's on Virginia Code 57-2.02,
21 Your Honor, which is the statute that provides that -- and
22 I can hand you up a copy of it, if you would like to see

1 it, Your Honor. It's the statute that provides that the
2 government may not substantially burden someone's exercise
3 of religion unless there is a demonstration that it is in
4 pursuit of a compelling government interest and it is the
5 least restrictive means, most narrowly tailored -- it is
6 prescribing a strict scrutiny test, Your Honor, to be
7 applied by the Court anytime there is a substantial burden
8 on someone's religion. It's basically a carve-out to any
9 government action, with the exception of the Bureau of
10 Prisons and a couple of others that are mentioned in the
11 statute.

12 We would like to amend our 57-9 answers to
13 assert that as an affirmative defense. It is very closely
14 tied to all the free exercise things that have already
15 been discussed, because we have already been arguing all
16 along that free exercise requires strict scrutiny. The
17 statute takes it a step further and says that even if the
18 government action is of general applicability, the Court
19 still has to find that strict scrutiny has been satisfied
20 in order to sustain the substantial burden.

21 THE COURT: So how does that impact on the
22 hearings on the 28th? This is not a constitutional tack,

1 this is a separate argument, right?

2 MR. HESLINGA: That is correct. It is entirely
3 a statutory issue, although it is very tied in under its
4 core, obviously, because it is based on a substantial
5 burden on someone's exercise of religion and it is
6 prescribing some of the same tests that are used under the
7 First Amendment. So some of the underlying issues are
8 very tied in with the constitutional issues, but it is
9 entirely a statutory provision.

10 THE COURT: Okay.

11 MR. PETERSON: As far as I understand, the only
12 issue is whether they get to -- the issue is whether they
13 can amend their pleadings to assert that, and we can
14 certainly have it heard on the 28th of May, if that's okay
15 with Your Honor.

16 THE COURT: Just so I understand, when is that
17 issue -- let's say I let you amend. When do you propose
18 for me to address and in what context would I address the
19 applicability of the statute?

20 MR. HESLINGA: We believe that Your Honor could
21 address that along with whatever constitutional opinion
22 you are going to render after May 28th because, again, all

1 the statute is doing is saying --

2 THE COURT: But the parties haven't filed briefs
3 on it. I mean, what I'm wondering about is whether the
4 issue ought to be decided long before May 28th and give
5 the parties an opportunity to supplement their pleadings
6 with this statute. Otherwise, I'm going to end up having
7 to have another round of litigation on it.

8 MR. HESLINGA: Sure. And we have already filed
9 a supporting memorandum with the motion, Your Honor. So,
10 you know, in normal course of business, they would file an
11 opposition -- which they have indicated they want to do --
12 and we would have a hearing and we would resolve it. And
13 that could all be done sooner, subject to availability.

14 MR. PETERSON: We may be able to give them a
15 date and come up with a mutually agreeable date before May
16 28th. I think that Mr. Heslinga was just asking the Court
17 in case we weren't able to come up with a date before the
18 30th. And I told him today that we should be able to tell
19 him by Monday whether we can try and get it on one of your
20 earlier Fridays.

21 THE COURT: Well, I want you to get it -- I want
22 it resolved early enough that the parties can file a

1 supplemental -- if I grant the motion, I want to get it
2 resolved. I want to have the parties get to supplement
3 prior to the May 28th hearing. I don't want to find
4 myself in a position where I have to get supplemental
5 briefs and have argument after May 28th.

6 MR. PETERSON: We don't want that either.

7 MR. HESLINGA: Your Honor, they already --
8 obviously, by virtue of the filing today -- have the
9 reasons that we think the statute applies. It certainly
10 seems like they could respond to that in their brief on
11 the 9th. And then if they raise anything --

12 THE COURT: What about letting the Court resolve
13 this on the papers?

14 MR. HESLINGA: We're amenable to that, Your
15 Honor.

16 THE COURT: Is that something -- that would save
17 you all the trouble of a hearing.

18 MR. HESLINGA: We are very amenable to that.

19 MR. PETERSON: That will be fine, keeping in
20 mind that this is just simply whether they can get leave
21 to amend. It is not an actual issue --

22 THE COURT: I know that. But let me say to you,

1 just for your edification, that if I grant the motion, I'm
2 going to also order supplemental briefing on it so that
3 the issue can be addressed on May 28th.

4 MR. PETERSON: And we may actually bring it back
5 in the form of a demurrer to that amendment as well -- or
6 a motion to strike, actually. If they are going to lodge
7 it as a defense, we may actually move to strike on that.
8 So it may be mature in that situation as well.

9 THE COURT: Well, if you do that, then how is
10 the issue going to be asserted in the May 28th hearing?

11 MR. PETERSON: Well, it may or may not. I mean,
12 if you grant the motion for leave to amend to assert that
13 as a defense, we may, as a response, file a motion to
14 strike that, saying that as a matter of law --

15 THE COURT: Okay.

16 MR. PETERSON: And so I'm not sure when it might
17 fit in or whether it may be addressed in the May 28th
18 hearing. Obviously, that's at your discretion.

19 THE COURT: All right. Well, I will decide it
20 on the papers. You have filed your pleading, right,
21 already?

22 MR. HESLINGA: We have, Your Honor.

1 THE COURT: When did you file it?

2 MR. HESLINGA: Today; this morning.

3 THE COURT: All right.

4 Mr. Peterson, can the congregations file their
5 response a week from today?

6 MR. PETERSON: Yes, Your Honor.

7 THE COURT: All right. By next Friday, by
8 Friday noon, and then I will decide it on the papers
9 without hearing -- does anybody object to me deciding it
10 on the papers without a hearing?

11 MR. DAVENPORT: No, Your Honor.

12 THE COURT: All right. So hearing no objection,
13 the motion carries.

14 Anything else we need to talk about?

15 (No response.)

16 THE COURT: Okay. Mr. Heslinga, I will give
17 this back to you.

18 Thank you very much.

19 (Whereupon, at approximately 5:21 p.m., the
20 hearing in the above entitled matter was concluded.)

21

22

CERTIFICATE OF REPORTER

1
2
3 I, Maureen S. Bennie, the court reporter who was
4
5 duly sworn to well and truly report the foregoing
6
7 proceedings, do hereby certify that they are true and
8
9 correct to the best of my knowledge and ability; and that
10
11 I have no interest in said proceedings, financial or
12
13 otherwise, nor through relationship with any of the
14
15 parties in interest or their counsel.

16 _____
17 Maureen S. Bennie

18 Verbatim Court Reporter
19
20
21
22