

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

<b>In re:</b>	)	<b>Case Nos.:</b>	CL 2007-248724,
<b>Multi-Circuit Episcopal Church Litigation</b>	)		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

**RENEWED MOTION FOR LEAVE TO PROCEED  
WITH DISCOVERY AND SCHEDULING  
IN THE DECLARATORY JUDGMENT ACTIONS**

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The Diocese of Virginia (“Diocese”) and the Episcopal Church, by counsel, pursuant to the direction of the Court from the bench at the hearing on January 4, 2008, and the Order entered January 11, 2008, respectfully renew their motion for leave to proceed in the actions filed by the Diocese and the Episcopal Church (the “Declaratory Judgment Actions”). In support of this Motion, the Diocese and the Episcopal Church state as follows:

1. On November 30, 2007, the Diocese and the Episcopal Church filed a Motion for Leave to Proceed with Discovery, Motions Practice, and Scheduling in the Declaratory Judgment Actions, pursuant to the direction of the Court from the bench at the conclusion of the 57-9 trial on November 20, 2007. The Congregations opposed the Motion, and a hearing was held.

2. At the January 4, 2008, hearing, the Court decided to set a trial date but to continue the suspension of all discovery, motions practice, and scheduling in the Declaratory Judgment Actions. In response to concerns raised by both sides, the Court twice emphasized that the parties were free to ask the Court to revisit its decision. In a colloquy with counsel for the Diocese, the Court stated that it would set a trial date “[a]nd then for now suspend all discovery and further activity in the case, *with leave for you to renew as we get closer* -- if you haven’t gotten a decision from me you may need -- because, you know, a month from now I’ll know much more; I’ll have a much better idea of when I’m going to be able to get you my decision than I do now.” (Hr’g Tr., Jan. 4, 2008, at 14) (emphasis added) (condensed copy attached as Exhibit A.) Later, counsel for the Congregations expressed concern about “find[ing] ourselves in the position with a trial date, and not really having had a full opportunity to do the type of discovery that we think we need.” *Id.* at 16. The Court responded:

Well, it would seem to me that that can be addressed by us setting a trial date in September or October, and as we get into February or March we would be in a much better posture than we are to see if, in light of what you contemplate doing, we’ve got to get moving on it. But I do think there are advantages to doing that.

I think it meets everybody's needs in the sense that it gives you a trial date. It does not permit discovery or anything else to go forward to at this point, but it does get this on a schedule, and there's enough time now that, if you start getting to a point where you think the problems you're raising may be a problem, then you can bring that to the Court's attention.

*Id.* at 17.

3. A week after the hearing, the Court entered an Order memorializing its decisions. Specifically, the Order provided “that until further Order of the Court, all discovery, motions litigation, and scheduling orders are suspended in the Declaratory Judgment Actions filed by the Diocese of Virginia and the Episcopal Church”; “that the Declaratory Judgment Actions and Counterclaims thereto shall be set for trial October 6 through October 30, 2008”; and “that should any party believe there may be an issue with a provision in this Order, it may file an appropriate motion with the Court.” (Order, Jan. 11, 2008, at 1-2) (copy attached as Exhibit B.)

4. Briefing was completed and the 57-9 issues submitted to the Court with the filing of Reply Briefs on January 17, 2008.<sup>1</sup>

5. The Diocese and the Episcopal Church now renew their motion for leave to proceed with discovery and scheduling in the Declaratory Judgment Actions. Specifically, the Diocese and the Episcopal Church ask that the Court permit discovery to proceed and direct the parties to submit for entry a scheduling order defining all deadlines relevant to dispositive motions and the scheduled October trial. If the Court would prefer to hold a scheduling conference prior to entering a scheduling order, the Diocese and the Episcopal Church ask that the Court direct counsel to submit their availability and set a date for such a conference.

6. Allowing discovery to proceed would make it possible for all parties to prepare

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<sup>1</sup> In their Reply Brief, the Diocese and the Episcopal Church also responded to the Brief of the Commonwealth, which was subsequently accepted as an *amicus curiae* brief. See TEC-Diocese Reply Brief at 15-28 & n.9; Order, Feb. 26, 2008, at 1.

adequately for the scheduled trial, which is of significant scope and now only six months away. The Court need not and should not permit the Congregations' attempts to avoid discovery to create the very risk about which counsel for the Congregations purported to be concerned. *See supra* ¶ 2.

7. Submission and entry of a scheduling order addressing filing and briefing of dispositive motions as well as all trial-related deadlines is entirely appropriate given that a trial date has been set. Entry of such an order would impose no significant or unnecessary burden on the parties. Indeed, a scheduling order would do nothing more than allow all parties and counsel to arrange their availability accordingly. Similarly, setting a scheduling conference, if needed, would be efficient and prudent, given the number of counsel in this case and the lead time necessary to arrange any such conference, and would insure that no party is prejudiced by unnecessary delay.

8. Providing for the filing and briefing of dispositive motions in a scheduling order also would benefit all parties. The Congregations have stated their belief that if they prevail on the interpretation, application, and constitutionality of Va. Code § 57-9, such a ruling would be dispositive of the Declaratory Judgment Actions as well. *See CANA Congregations' Opposition to Motion for Leave to Proceed* (filed Dec. 28, 2007) at 2 ("If the CANA Congregations prevail on the § 57-9 issue, that decision will moot the declaratory judgment action"). The Congregations have also stated their belief that the Diocese and the Episcopal Church have no more valid constitutional arguments. *See id.* at 3 n.5 ("the Contracts Clause is not implicated in this case and the pursuit of the claim is simply a red herring invented by the TEC [*sic*] and the Diocese to prolong this litigation"). Presumably, the Congregations may file a motion seeking a ruling on those positions, both of which the Diocese and the Episcopal Church dispute. On the

other hand, the Diocese and the Episcopal Church believe that it may be possible to grant summary judgment in their favor, in whole or in part, in the Declaratory Judgment Actions.

9. As the Diocese and the Episcopal Church have noted previously, the Congregations have propounded substantial discovery in the declaratory judgment actions, in the form of numerous requests for admission, interrogatories, and broad document requests, including: certain document requests propounded jointly on July 3, 2007; six sets of requests for admission propounded by individual congregations on July 6, 2007, and July 9, 2007; most of a second set of joint interrogatories propounded on September 28, 2007; and requests for admission, interrogatories, and document requests propounded by the Church of Our Saviour at Oatlands on September 28, 2007, and October 3, 2007.<sup>2</sup> By allowing discovery to proceed in the Declaratory Judgment Actions, the Court would do nothing more than level the discovery playing field. The Congregations' arguments that discovery in the Declaratory Judgment Actions might not be necessary or would be unduly burdensome are disingenuous and lack any merit, especially given that the Congregations already propounded extensive discovery in the Declaratory Judgment Actions themselves.

10. If there is any chance that continuation of the suspension ultimately would result in a continuance of the October trial date, principles of fairness, justice, and efficiency dictate that the suspension end. A continuance would undermine the Court's January 11, 2008, Order, which sought to allow resolution of the Declaratory Judgment Actions as expeditiously as possible by setting a trial date. Also, as this Court is well aware, substantial amounts of real and

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<sup>2</sup> The Congregations dispute this argument. They cannot dispute the huge disparity in the numbers of discovery requests propounded by each side, and even a cursory examination of the various requests would validate this argument. It is unnecessary for the Court to examine the dozens or hundreds of pages of discovery requests, however, because allowing discovery to proceed would have the same effects on both sides. Any benefits would inure equally, and any burdens would be imposed equally – the essence of fairness.

personal property stand in legal limbo until this litigation is finally resolved. Prompt resolution of the Declaratory Judgment Actions benefits all parties. Moreover, the Congregations are in possession of the disputed property, to the exclusion of loyal Episcopalians, the Diocese, and the Episcopal Church. Loyal and continuing Episcopal congregations are forced to function without the benefit of personal property accumulated over the years, without any input into use of the disputed real and personal property, and in temporary and shared accommodations that make it difficult to promote the stability and fellowship that are integral to the functions and worship of a congregation.<sup>3</sup> Put simply, delay disproportionately burdens the Diocese and the loyal Episcopalians who it assists and cares for. In sum, the Court should not continue the suspension if doing so creates any risk of postponing resolution of the Declaratory Judgment Actions.

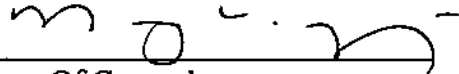
WHEREFORE, for the foregoing reasons, the Diocese and the Episcopal Church respectfully request that the Court allow discovery to proceed, direct the parties to submit for entry a scheduling order setting forth all deadlines and time periods relevant to dispositive motions and the scheduled October trial, and, if necessary, direct counsel to submit their availability for a scheduling conference and set such a conference.

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<sup>3</sup> The Congregations are insensitive to these concerns, arguing essentially that the loyal Episcopalians can and should be ignored because continuing Episcopal congregations have not yet developed at each of the eleven churches and loyal Episcopalians were in the minority in the votes to disaffiliate. *See* CANA Congregations' Opposition to Motion for Leave to Proceed (filed Dec. 28, 2007) at 5. That dismissive argument is meritless.

Respectfully submitted,

THE PROTESTANT EPISCOPAL CHURCH  
IN THE DIOCESE OF VIRGINIA

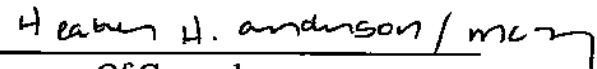
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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were sent by electronic mail to all counsel named below and by first-class mail to the lead counsel at each firm (indicated with an asterisk below), on this 28th day of March, 2008:

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official capacity as Attorney General*

A handwritten signature in black ink, appearing to read "m. r. m.", is written above a horizontal line. The signature is stylized and somewhat cursive.

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

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 :  
 IN RE: :  
 :  
 MULTI-CIRCUIT EPISCOPAL : OMNIBUS CASE NO.:  
 :  
 CHURCH PROPERTY LITIGATION : CL2007-0248724  
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Fairfax, Virginia

Friday, January 4, 2008

The above-entitled Matter came on for motions before The Honorable Randy I. Bellows, Judge in and for the Circuit Court of Fairfax County, Virginia, 4110 Chain Bridge Road, Fairfax, Virginia 22030, in Courtroom 4G, beginning at approximately 11:00 a.m. before Lorraine E. Webb, Verbatim Court Reporter, when were present on behalf of the respective parties:

\* \* \* \* \*



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1 PROCEEDINGS  
2 JUDGE BELLOWS: Good morning everybody.  
3 Let me first deal with a matter involving the  
4 correspondence to Bishop Griswold. As the parties know, I  
5 received from -- was it Ms. Zinsner? Who gave it to me?  
6 Ms. Anderson?  
7 MS. CHO: Your Honor, it was Ms. Anderson.  
8 JUDGE BELLOWS: Okay. Some additional  
9 correspondence to -- it may all be to Frank Griswold.  
10 Anyway, I've had an opportunity to go through  
11 it already. I'm going to place the unredacted set under  
12 seal, the way I did in the last set. I am going to give  
13 -- Ms. Cho, are you going to receive it?  
14 MS. CHO: Yes.  
15 JUDGE BELLOWS: I'll give her the set that I  
16 have circled what needs to be produced, and I've crossed  
17 out what does not, so I'll give that to Ms. Cho, and then  
18 I'm placing under seal another copy with my circles and  
19 cross-outs, so that it's clear what I ordered produced.  
20 And I just expect you to produce that some time today. I  
21 don't think it will take you very long. So this is all  
22 under seal. Okay.

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1 The only matter that I'm aware of on today's  
2 docket is the motion for leave to proceed with discovery,  
3 motions, practice and scheduling in the Declaratory  
4 Judgment Action; is that correct?  
5 MS. ZINSNER: Yes, Your Honor.  
6 JUDGE BELLOWS: Okay.  
7 MS. ZINSNER: Good morning, Your Honor; Mary  
8 Zinsner from the Diocese of Virginia. The Court will  
9 notice the congregations argue that because the 57 statute  
10 itself, 57.9, states that the determination of the Court  
11 shall be conclusive, then that necessarily means our  
12 Declaratory Judgment actions would be mooted by the  
13 Court's ruling in the 57.9 cases.  
14 That really ignores all arguments we've made  
15 time after time in this Court, and that we've briefed.  
16 It's our position that, again, if the Court rules there's  
17 no proof of any division or branch, then the Declaratory  
18 Judgment actions will proceed.  
19 If the Court rules that 57.9 is applicable, but  
20 it would be unconstitutional as applied against the  
21 Diocese and the Episcopal Church, then the Declaratory  
22 Judgment actions would proceed.

1 And then similarly, if the Court rules that  
2 57.9 applies, and that it doesn't violate the free  
3 exercise clauses or the establishment clauses of the  
4 United States or the Virginia Constitution, then we would  
5 still have our contract clause and constitutionality  
6 argument, as well as the declaratory judgment actions  
7 would proceed in tandem, because they are the --

8 JUDGE BELLOWS: Well, let me stop you right  
9 there, because you actually say that in your pleadings,  
10 that they would proceed in tandem, but I'm not sure I  
11 understand why that would be, other than that the issues  
12 are the same.

13 What I mean by that is, the CANA Congregations  
14 take the position that if I find their 57.9 to be  
15 applicable, and I find the statute to be constitutional in  
16 all respects, including the contract clause issue, then  
17 there's no reason for -- there's no basis for the  
18 declaratory judgment action.

19 In other words, that the 57.9 action is  
20 conclusive. Would you agree that that's what they're  
21 saying?

22 MS. ZINSNER: I agree that's what you're

1 saying, Your Honor, but --

2 JUDGE BELLOWS: No, not what I'm saying, that's  
3 what they're saying. You don't want me to say that's what  
4 I'm saying. That's what they're saying, right?

5 MS. ZINSNER: Well, Your Honor, we haven't  
6 briefed or had any discovery on a contract clause issue,  
7 so you're --

8 JUDGE BELLOWS: But that's what they're saying.

9 MS. ZINSNER: Right.

10 JUDGE BELLOWS: So they, I'm sure, would take  
11 issue with the notion -- I mean, let's say I find 57.9 to  
12 be applicable, I find it to be constitutional based on the  
13 briefing, the issues presented to me to date.

14 They would argue, I am certain, that they  
15 should not proceed -- the contract clause issue should not  
16 proceed in tandem with the declaratory judgment action,  
17 because their view is that I never get to the declaratory  
18 judgment action because the 57.9 issue concludes the case.

19 Now, the dilemma I have in ruling on your  
20 motion today is, I have no idea how that issue is going to  
21 be resolved. In other words, that issue is certainly not  
22 before me today, and it would seem to me would not be

1 before me, until and unless I ruled on everything that is  
2 before me today.

3 If I did, if I found 57.9 to be applicable, and  
4 I ruled against T.C. and the Diocese on the constitutional  
5 issues that have been presented to me already, at that  
6 point I think I would need to decide, well, what happens  
7 in the event I rule against T.C. and the Diocese on the  
8 contract clause issue. Because if the answer is we then  
9 proceed to declaratory judgment action -- if that's the  
10 answer, I think everybody would agree, let's do them at  
11 the same time.

12 MS. ZINSNER: But that is the answer, Your  
13 Honor, because the evidence in the contract clause case is  
14 identical to the evidence in the declaratory judgment  
15 case. It's all -- it's the course of dealing. It's our  
16 contractual rights to the property, it's the --

17 JUDGE BELLOWS: But they're saying you have no  
18 right to a declaratory judgment trial at all, because of  
19 57.9, but that issue is not before me today, and it's  
20 critical that we discuss it, because their view is that --  
21 I don't think they disagree.

22 I mean, they do take issue with the scope of

1 the contract clause issue. They say it only applies to  
2 two churches, and I know your view is it applies to every  
3 church. There's disagreement on that.

4 But they clearly take the position that you're  
5 not entitled to a declaratory judgment proceeding at all  
6 if 57.9 is found to be applicable, and upheld against all  
7 your constitutional challenges.

8 So I don't see how we can proceed on the  
9 assumption that we would try a contracts clause issue at  
10 the same time we would try a declaratory judgment action  
11 issue until I decide that you're entitled to your  
12 declaratory judgment issue, regardless of what I do in  
13 57.9.

14 And then furthermore, of course, I haven't  
15 decided the 57.9 case. So we don't know if -- you know,  
16 for example, if you prevail on either the  
17 constitutionality issue or the division issue on 57.9,  
18 then it may well be that everybody agrees we have to reach  
19 the declaratory judgment action.

20 So what strikes me is, there's enormous amount  
21 of uncertainty here, and I'm predisposed -- I'm not  
22 settled in my mind on this, but I'm predisposed to issue a

1 stay, or to continue the stay I issued at the end of the  
2 trial, because I'm concerned that both parties are going  
3 to be expending substantial resources, substantial time,  
4 and substantial judicial time, for something that may or  
5 may not ultimately need to come before the Court.

6 MS. ZINSNER: Your Honor, a couple things.  
7 First, I'm not convinced that that's their argument, that  
8 the plea in bar component of their response to our  
9 declaratory judgment action, since it's dispositive,  
10 and/or that the declaratory judgment actions would proceed  
11 again.

12 It's our position that the evidence to the  
13 contract clause arguments will be the same as the  
14 declaratory judgment arguments, and it would make sense  
15 for them to proceed.

16 Secondly, this Court made the decision in May  
17 that the declaratory judgment actions and the 57.9  
18 proceedings would proceed in tandem, and there's no reason  
19 to make that decision inappropriate now. Litigants  
20 routinely --

21 JUDGE BELLOWES: But we also stage this, right?  
22 We stage this, so we're going to do the 57.9 first, and

1 having done the 57.9 trial, what we're really talking  
2 about is simply what should we do between the time the  
3 final brief is submitted in January, and the time I give  
4 you a decision. And you know, I think it was Mr.  
5 Peterson's brief that says -- although I don't know who  
6 wrote the brief -- was making predictions as to how fast  
7 that decision would come out. I think if they consult  
8 with you also they would probably say, no, he takes months  
9 and months to render decisions.

10 I don't know how soon I'll be able to get you a  
11 decision, but that's what we're talking about, really.  
12 We're not talking about a time period beyond that. We're  
13 talking about -- and once I issue a decision then  
14 everybody will be in a far better position to figure out  
15 where we go from here.

16 MS. ZINSNER: But, Your Honor, we're not asking  
17 for extensive leave to take protracted depositions, et  
18 cetera, we just want to set out some simple discovery to  
19 keep the declaratory actions going. We want to notice out  
20 the demurrers that we asserted to their counterclaims.

21 They're very simple demurrers.

22 So that the declaratory judgment actions are

1 ready to proceed once the 57.9 ruling is issued. Again,  
2 Your Honor, this Court adheres to a one-year rule, and the  
3 declaratory judgment actions were filed back in January.  
4 They trivialize our affected loyal Episcopalian argument,  
5 that there are loyal Episcopalians who are without a home  
6 of worship because of the pending litigation.

7 The delay favors the CANA congregations. Your  
8 Honor, there are loyal Episcopalians who are worshipping  
9 in Fairfax County public school gyms, and in Presbyterian  
10 churches. We have an obligation to our client, and this  
11 Court has an obligation to move this proceeding along.

12 JUDGE BELLOWES: Well, you know, that actually  
13 raises an issue, and maybe it presents a way we can  
14 resolve this. Your concern, your principal concern, is  
15 delay. And I'm certainly not sitting here minimizing the  
16 impact.

17 I mean, the parties need a decision in this  
18 case, the members of all the churches involved here need a  
19 decision in this case, and I certainly consider this to be  
20 of most critical importance.

21 And let me talk to you for a moment about  
22 scheduling in a way that may or may not be helpful. Let

1 me just talk to you for a moment about my trial schedule,  
2 because it's -- can you bring my calendar? I wrote some  
3 notes on it -- it's directly relevant.

4 I mean, you said in your pleading that you want  
5 a spring trial date, and that suggested to me that you are  
6 unaware of the fact that as I'm starting -- as you may  
7 know, I'm starting a death penalty case Monday that is  
8 likely to go to the middle of March. But March 10 I'm  
9 starting a lengthy trial that would -- with the lawyers in  
10 the Upper Occoquan Sewage Authority case who are here in  
11 court, that they also anticipate will be lengthy, although  
12 we haven't figured that out.

13 So I can tell you that it is absolutely certain  
14 that, even if I gave you a decision in the Episcopal  
15 Church case the day after you filed the final briefs, and  
16 to be clear, you won't get a decision the day after you  
17 file. You're not going to get a spring trial date in this  
18 case, so --

19 MS. ZINSNER: Your Honor, we would be happy  
20 with a trial date.

21 JUDGE BELLOWES: What?

22 MS. ZINSNER: We would be happy with a trial

1 date.

2 JUDGE BELLOWS: Well, that's what I'm thinking  
3 about. I'm wondering whether there's a way that we can  
4 resolve this by setting a trial date, so that we block out  
5 that time, and then we may suspend discovery but -- see,  
6 in your pleading, when you were talking about how delay  
7 hurts the church because we want a spring trial date, I  
8 can't give you a spring trial date.

9 So what that means is -- it seems to me when I  
10 can give you a trial date -- I have trials -- I've got  
11 trials, basically, that are going to take me into July,  
12 and so it would seem to me that -- and I'm not adverse to  
13 set a trial date -- perhaps in September is a possibility,  
14 or October. I actually don't have anything on my docket  
15 in those times, so I think I could do that.

16 And then for now suspend all discovery and  
17 further activity in the case, with leave for you to renew  
18 as we get closer -- if you haven't gotten a decision from  
19 me you may need -- because, you know, a month from now  
20 I'll know much more; I'll have a much better idea of when  
21 I'm going to be able to get you my decision than I do now.  
22 I mean, obviously, the final briefs haven't even been

1 filed yet, and won't be filed for another two weeks or so.

2 All right. Let me ask Mr. Peterson what his  
3 view on this is.

4 MR. PETERSON: Your Honor, we wouldn't have a  
5 problem with the last plan that you outlined, and we  
6 certainly wouldn't mind setting a trial date, so long as  
7 the discovery and the proceedings remain stayed, pending  
8 hopefully -- and I don't mean to presume when you'll be  
9 issuing a rule on the 57.9 issues, but certainly a stay  
10 until that ruling is made. We don't have a problem with  
11 setting a trial date.

12 JUDGE BELLOWS: Okay.

13 MR. PETERSON: We could not do it today. We  
14 don't have all counsel present, but we could certainly get  
15 together and certainly come up with --

16 JUDGE BELLOWS: I can tell you when I could do  
17 it, and you can consult with each other, and we could set  
18 a trial date. I just want to make sure that I would be  
19 giving you dates that are available to the Court.

20 Is that acceptable to the T.C. and the Diocese  
21 to do that?

22 MS. ZINSNER: Yes, Your Honor. That's one of

1 our concerns, is that the Court's calendar fills quickly.

2 JUDGE BELLOWS: All right. Why don't you do  
3 this? Why don't you look at September and October, as my  
4 docket is clear for those time periods, and then just  
5 start corresponding with Ms. Cranston to work out a --  
6 we'll come up with a date. How much time do you think --

7 I'm sorry, did you want to be heard on this?

8 MS. MCREYNOLDS: Yes, Your Honor.

9 JUDGE BELLOWS: Okay.

10 MS. MCREYNOLDS: My only observation is that,  
11 on behalf of the five churches that I represent, I have  
12 not had an opportunity to confer with my co-counsel  
13 regarding the type of discovery and the extent of  
14 discovery that we want to do collaboratively on behalf of  
15 the congregations.

16 I can envision a situation where, though we  
17 would want extensive discovery, we might not get the  
18 cooperation that we would like from the Episcopal Church  
19 and the Diocese with respect to that, and find ourselves  
20 in the position with a trial date, and not really having  
21 had a full opportunity to do the type of discovery that we  
22 think we need.

1 So, while I think your approach is a sound one,  
2 I would like to just note that we don't want to get  
3 squeezed in a situation where the other side drags their  
4 feet on discovery, and we've got ourselves locked into a  
5 trial date.

6 JUDGE BELLOWS: All right. Well, it would seem  
7 to me that that can be addressed by us setting a trial  
8 date in September or October, and as we get into February  
9 or March we would be in a much better posture than we are  
10 to see if, in light of what you contemplate doing, we've  
11 got to get moving on it. But I do think there are  
12 advantages to doing that.

13 I think it meets everybody's needs in the sense  
14 that it gives you a trial date. It does not permit  
15 discovery or anything else to go forward to at this point,  
16 but it does get this on a schedule, and there's enough  
17 time now that, if you start getting to a point where you  
18 think the problems you're raising may be a problem, then  
19 you can bring that to the Court's attention.

20 So look at trial dates -- don't set anything  
21 right after Labor Day, because that would mean that you  
22 would end up with a lot of motions in August, and I'll

1 probably be away for part of August. So I think that  
2 probably the safest thing is to probably look at the first  
3 week of October, or something like that.

4 And the order that you generate should say that  
5 until further order of the Court all discovery and motions  
6 litigation, scheduling orders, everything is suspended in  
7 the declaratory judgment actions, and don't give me an  
8 order until we come up with a trial date.

9 The last question I have related to this is, I  
10 know this is somewhat speculative, but how much time do  
11 you think you should block out for this?

12 MS. ZINSNER: Your Honor, we have discussed  
13 this among ourselves, and we believe our evidence would  
14 take about four days, and we anticipate the case would be  
15 about two weeks.

16 MR. PETERSON: I personally have no idea how  
17 long it might take. It seems to me that if we're talking  
18 about, you know, a course of dealings issues, and then we  
19 would be talking about congregations on a congregational  
20 basis, or congregation by congregation basis.

21 JUDGE BELLOWS: Well, it might well be exactly  
22 that, because you're talking about deeds, and

1 judgment action. That might be a difference, a  
2 distinction without a difference may not be. All right?

3 MR. PETERSON: Thank you, Your Honor.

4 JUDGE BELLOWS: Thank you.

5 MS. ZINSNER: Your Honor, can we have a date on  
6 which we need to get back to Ms. Cranston?

7 JUDGE BELLOWS: Yes. By next Friday. How  
8 about that? Okay? For next Friday.

9 MS. ZINSNER: Okay.

10 JUDGE BELLOWS: Thank you.

11 \* \* \* \* \*

12 (Whereupon, at 11:25 a.m. the hearing in the  
13 above-entitled Matter was concluded.)

1 communications and correspondence on -- I mean, that may  
2 not be T.C.'s and the Diocese's position, but it may be  
3 your position.

4 MR. PETERSON: I don't have a real good way of  
5 handicapping or estimating how long a trial might last  
6 right now. I would like to confer with the other counsel  
7 who are not here today, as well, but we should be able to  
8 come up with a decent estimate, I think.

9 JUDGE BELLOWS: Okay. Well, go ahead and put  
10 this down for a time when everybody can be available for  
11 the amount of time they come up with.

12 I think, to be on the safe side, you should  
13 plan on blocking out three or four weeks. If it turns out  
14 that it's two weeks, we'll have a better idea of that as  
15 we get closer to trial, and you know, there remains the  
16 issue, of course, if I find 57.9 to be applicable, and the  
17 statute to be constitutional, there does remain the issue  
18 that it will have to be litigated of whether to combine  
19 the contract clause issue with the declaratory judgment  
20 action, or whether the contract clause issue will have to  
21 be tried separately, and then perhaps the evidence from  
22 that be the basis of a decision in the declaratory

#### CERTIFICATE OF REPORTER

I, Lorraine E. Webb, the Verbatim Court Reporter, do hereby certify that the transcript in the foregoing proceedings is true and accurate, to the best of my knowledge and belief; that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Lorraine E. Webb



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

<b>In re:</b>	)	<b>Case Nos.:</b>	CL 2007-248724,
<b>Multi-Circuit Episcopal Church Litigation</b>	)		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

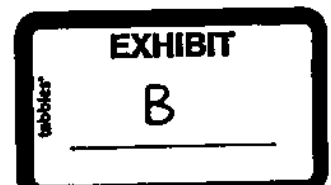
**ORDER**

This matter came before the Court for a hearing on January 4, 2008, on the Diocese of Virginia's and the Episcopal Church's motion for leave to proceed with discovery, motions practice, and scheduling in the declaratory judgment actions. Upon consideration of the motion, the arguments of counsel, for the reasons stated from the bench, it is hereby

ORDERED that until further Order of the Court, all discovery, motions litigation, and scheduling orders are suspended in the Declaratory Judgment Actions filed by the Diocese of Virginia and the Episcopal Church; and it is

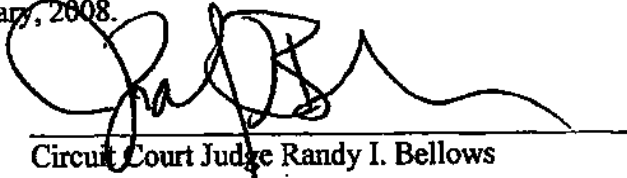
FURTHER ORDERED that the Declaratory Judgment Actions and Counterclaims thereto shall be set for trial October 6 through October 30, 2008; and it is

FURTHER ORDERED that should any party believe there may be an issue with a



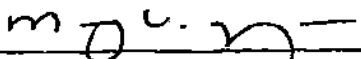
provision in this Order, it may file an appropriate motion with the Court.

ENTERED this 11 day of January, 2008.

  
Circuit Court Judge Randy I. Bellows

SEEN AND OBJECTED TO AS TO PROVISION SUSPENDING DISCOVERY AND  
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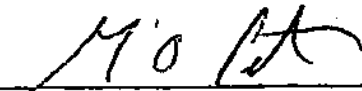
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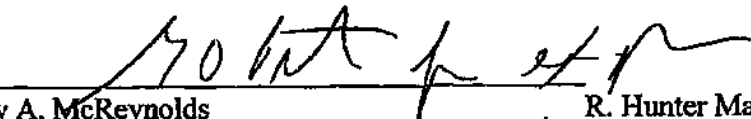
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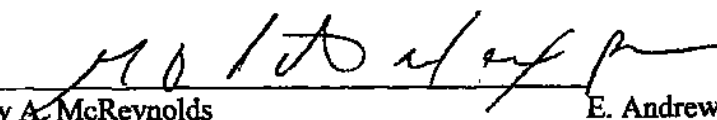
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