

**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

December 21, 2007

VIA HAND-DELIVERY

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

RE: *Multi-Circuit Episcopal Church Property Litigation*, (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; 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);

Letter to Clerk of the Court
December 21, 2007
Page 3

Dear Ms. Brooks:

I am enclosing for filing in the above-styled case an original CANA Congregations' Opening Post-Trial Memorandum Concerning Application of Va. Code § 57-9, plus twenty-one (21) copies of a one-page covers sheet to be placed in the file for the above-styled cases.

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

Very truly yours,

SANDS ANDERSON MARKS & MILLER, PC



George O. Peterson

cc: Seana C. Cranston, 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

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In re:

**Multi-Circuit Episcopal Church
Litigation**

)
) **Civil Case Numbers:**
) 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

**CANA CONGREGATIONS' OPENING POST-TRIAL MEMORANDUM
CONCERNING APPLICATION OF VIRGINIA CODE § 57-9**

Truro Church, The Falls Church, Church of the Apostles, Church of the Epiphany, Church of Our Saviour at Oatlands, Church of the Word, St. Margaret's Church, Christ the Redeemer Church, St. Stephen's Church, St. Paul's Church, and Potomac Falls Church (collectively, the "CANA Congregations") and various associated defendants respectfully submit this

memorandum of law concerning the application of Va. Code § 57-9 to the facts established at the bench trial conducted between November 13 and November 20, 2007 (the “hearing” or “trial”).¹

¹ (CL 2007-1236; CL 2007-1238; CL 2007-1235; CL 2007-1237; CL 2007-5683; CL 2007-5682; CL 2007-5684; CL 2007-5362; CL 2007-5364; CL 2007-5250; CL 2007-5902; and CL 2007-5903).

TABLE OF CONTENTS

Page(s)

INTRODUCTION AND SUMMARY OF ARGUMENT - 1 -

I. There Is No Evidentiary Dispute Over The Ordinary 19th Century Usage Of “Division” And “Branch,” The Key Terms In Virginia Code § 57-9. - 4 -

 A. The Term “Division” Connotes the Separation of a Group of Congregations, Clergy, or Members from Their Former Denomination in Sufficient Numbers to Establish a New Polity or Governmental Structure. - 6 -

 B. There Is No Basis to the Contention of TEC and the Diocese that Separations of Religious Entities Are Only “Divisions” if Approved, Recognized, Formally Declared, or Consented to by the Highest Denominational Authorities. - 13 -

 1. The text of § 57-9 provides no support for the notion that “divisions” must be approved by the highest authorities of the denomination. - 14 -

 2. The undisputed evidence concerning the ordinary usage of the term “division” in the 19th century confirms that the term was not limited to formally approved separations..... - 15 -

 3. TEC-Diocese expert Professor Robert Mullin conceded that at least some of the “major” or “great” divisions in the 19th century did not involve denominational approval. - 16 -

 4. Professor Mullin’s testimony on whether the Episcopal Church has experienced “divisions” was contrary to his prior public statements and writings, which used the term “division” in the same manner as ordinary Americans in the 19th century and today. - 20 -

 5. Professor Mullin admitted that he had no knowledge of the common usage of the term “division” in the 19th century, and that his own distinctive reading of that term was a technical historians’ view..... - 23 -

 6. Shortly after its adoption, the division statute was successfully invoked at least 29 times in several Virginia counties, with no evidence that any such division was approved by the denomination. - 25 -

 7. Other considerations confirm that the term “division” in § 57-9 is not limited to formally approved denominational splits, and such a reading would render the statute meaningless. - 28 -

 C. The Term “Branch” Is Properly Interpreted to Include the New Entity Created When a Group of Congregations, Clergy, or Members Separates from Its Former Denomination and Formally Reorganizes a Separate Polity, and to the Original Entity from which the Group Separates. - 30 -

II.	The CANA Congregations Have Satisfied The Core Requirements Of Virginia Code § 57-9 By Establishing The Existence Of A Division In TEC And The Existence Of Branches Resulting From That Division.....	- 33 -
A.	The CANA Congregations Have Established a “Division” in the Episcopal Church.....	- 34 -
1.	In the wake of TEC’s 2003 General Convention, numerous congregations, clergy, and members have disaffiliated from the Church and joined alternative polities.	- 34 -
2.	The testimony of TEC expert Robert Mullin and documentary evidence from the Episcopal Church’s own website both confirm that a division has occurred in TEC.....	- 36 -
B.	The CANA Congregations Have Established that the Convocation of Anglicans in North America and the American Arm of the Church of Uganda Are “Branches” of the Episcopal Church Formed as a Result of the Division in the Church.....	- 38 -
1.	The Convocation of Anglicans in North America Is a “Branch” of the Episcopal Church Formed in Response to the Division in the Church.....	- 38 -
2.	The Church of Uganda’s American Arm Is a “Branch” of the Episcopal Church Formed in Response to the Division in the Church.	- 40 -
3.	The Episcopal Church’s Response to the Establishment of CANA and the American Arm of the Church of Uganda Confirm that Those Entities Are “Branches” Within the Meaning of Virginia Code § 57-9.....	- 41 -
III.	The CANA Congregations Have Independently Satisfied the Core Requirements of Virginia Code § 57-9 By Establishing The Existence Of A Division In The Diocese Of Virginia And The Existence Of A Branch Resulting From That Division.....	- 43 -
A.	The CANA Congregations Have Demonstrated that a “Division” Has Occurred in the Diocese of Virginia.....	- 43 -
1.	In the wake of TEC’s 2003 General Convention, numerous congregations, clergy, and members have disaffiliated from the Diocese and joined the Anglican District of Virginia.	- 43 -
2.	The Diocese has repeatedly acknowledged the existence of a “division” in the Diocese resulting from the 2003 TEC General Convention.	- 44 -
B.	The CANA Congregations Have Established that the Anglican District of Virginia Is a “Branch” of the Diocese of Virginia Formed in Response to the Division in the Diocese.....	- 47 -
IV.	The CANA Congregations Have Independently Satisfied the Requirements of Virginia Code § 57-9 By Establishing The Existence Of A Division In The	

Worldwide Anglican Communion And The Existence Of Branches Resulting From That Division..... - 49 -

A. The CANA Congregations Have Demonstrated that a “Division” Has Occurred in the Anglican Communion. - 49 -

B. The CANA Congregations Have Established that the Church of Nigeria Is A “Branch” of the Anglican Communion that Has Divided From the Episcopal Church. - 54 -

C. The CANA Congregations Have Established that the Anglican Communion Is a “Church” or “Religious Society.” - 55 -

D. The CANA Congregations Were “Attached” to the Anglican Communion by Virtue of Their Affiliation with TEC and the Diocese. - 58 -

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>BBF, Inc. v. Alstom Power, Inc.</i> , 645 S.E.2d 467 (Va. 2007)	14
<i>Enoch v. Com.</i> , 141 Va. 411 (1925)	28
<i>Lawrence v. Craven Tire Co.</i> , 210 Va. 138 (1969)	5, 25
<i>Lewis v. Com.</i> , 184 Va. 69 (1945)	5, 25
<i>Natrella v. Board of Zoning Appeals</i> , 231 Va. 451 (1986)	30
<i>Oraee v. Breeding</i> , 270 Va. 488 (2005)	14
 STATUTES	
Va. Code §§ 8.01-400, 19.2-271.3, 20-26, 24.2-703.1	15
Va. Code § 57-7.1	15
Va. Code § 57-9(A)	1, 55
Virginia Code § 57-9	passim
 OTHER AUTHORITIES	
<i>American Heritage Dictionary of the English Language, Fourth Edition</i> (2004)	58
<i>An Episcopal Dictionary of the Church</i>	11, 37
<i>Black's Law Dictionary</i> 199 (8th ed. 2004).....	31
<i>Compact Oxford English Dictionary of Current English, Third Edition</i> (2005).....	55
<i>Dictionary of the English Language</i> 44 (1872)	58

<i>Merriam-Webster Online Dictionary</i>	55, 56
Michie’s Jurisprudence, <i>Statutes</i> § 39 (2006).....	28
<i>Oxford English Dictionary</i> 558 (1971).....	8
<i>Random House Dictionary of the English Language</i> 420 (1967).....	8
<i>Roget’s New Millennium™ Thesaurus</i> (1st ed. 2007).....	56
<i>Webster’s New Universal Unabridged Dictionary</i> 538 (2d ed. 1983)	8
<i>Webster’s Ninth New Collegiate Dictionary</i> 817 (1983).....	14
White & J. Dykman, <i>Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America</i> 318-319 (1954).....	30

INTRODUCTION AND SUMMARY OF ARGUMENT

From the days of Thomas Jefferson, James Madison, George Mason, and the Virginia Statute for Religious Freedom, the Commonwealth of Virginia has had a long history of deferring to local control of congregational property. In keeping with this tradition, in 1867 the Virginia General Assembly, acting in response to the myriad denominational splits in the 19th century, passed the statute now codified at Va. Code § 57-9(A).² Recognizing that local congregations should generally retain property held by their duly appointed trustees in the event of a past or future denominational split, the General Assembly provided that where a “church or religious society” experiences a “division,” congregations “attached” to such a church or religious society may vote to determine which “branch” of the divided body they wish to join. Each voting congregation may then report its determination to the local circuit court, and the court’s approval of that determination is “conclusive as to the title and control of any property held in trust for such congregation.” The statute remains on the books today, after several recodifications, with only minor, non-substantive changes.

At trial, the CANA Congregations showed that they have satisfied each of the core requirements of § 57-9.³ Specifically, they demonstrated that there has been a “division” in the

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

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

³ Pursuant to the Court’s direction at the September 14, 2007, hearing (Sept. 14, 2007, Tr. 41), the resolution of certain related issues, such as whether the CANA Congregations’ majority de-

“church” or “religious society” to which they were formerly “attached”—namely, the Episcopal Church (“TEC”), the Diocese of Virginia (“Diocese”), and the worldwide Anglican Communion—and that they have joined a “branch” of the divided body created as a result of that division. Indeed, the evidence on many of these points was undisputed.

In the brief that follows, we summarize the evidence proffered on these issues at trial and explain why it supports judgment in the CANA Congregations’ favor. In Part I, we discuss the proper interpretation of the key terms in § 57-9—“division” and “branch”—in light of the expert testimony at trial. CANA experts Mark Valeri and Charles Irons demonstrated from their exhaustive review of primary source materials that ordinary 19th century Americans would have understood a “division” to have occurred when a group of congregations, members, or clergy broke away from their denomination—typically without the denomination’s approval—in sufficient numbers to set up a new organization. Relatedly, a “branch” was most commonly understood to be that new organization—a group of churches with its own, newly established polity, but with a historical connection to the prior denomination. Indeed, the testimony on this issue was essentially undisputed, because TEC’s historical expert conceded that he knew nothing about the common usage of “division” and “branch” in the 19th century. Instead, he offered an admittedly “distinctive,” “narrow,” and “technical” historian’s definition.

Against this backdrop, we explain in Parts II, III, and IV how the evidence at trial independently satisfies these statutory requirements at the TEC, Diocese, and Anglican Communion levels, respectively. Here again, much of the evidence is undisputed. Numerous congregations and clergy have disaffiliated from TEC and formed new branches thereof. CANA is one such branch, and since its formation in 2005 CANA has quickly grown into a religious denomination

terminations satisfied the procedural requirements of § 57-9, and whether the property at issue is held by the Congregations’ trustees, has been deferred to a later date.

that provides ecclesiastical oversight for some 60 congregations and 12,000 members, the vast majority of whom are former members of TEC. Since intervening in this litigation, TEC has studiously avoided referring to any “division,” but its use of that term outside of this Court—including in reference to past splits in the Church, such as the division that created the Reformed Episcopal Church—confirm that TEC has experienced such a division. Indeed, TEC’s leading expert effectively conceded as much on cross examination. He acknowledged not only that he had used the term “division” in prior public statements and writings to describe splits in TEC, but also that TEC has experienced a post-2003 “schism,” which he defined as a group’s “voluntary action” to separate from its denomination—*i.e.*, in a manner consistent with the common understanding of the term “division.”

As shown in Part III, moreover, the CANA Congregations have proven a division not only at the TEC level, but also at the diocesan level, thereby providing a separate basis for satisfying the statute. The division in the Diocese is evidenced not only by the many congregations, clergy, and several thousand members that have disaffiliated from the Diocese to form the Anglican District of Virginia—according to the Diocese’s own statistics, more than 11 percent of the Diocese’s membership and 18 percent of its average Sunday attendees disaffiliated between 2005 and 2007—but also by the admissions of several senior diocesan officials, formally appointed committees, and the Diocese’s Annual Council. Indeed, the Bishop of the Diocese, Peter Lee, wrote to the members of the voting congregations on the eve of their vote, and said this:

American Christianity has been punctuated over the years by frequent divisions, with one group choosing to separate because they believed the separated group might be more pure than their former identity. That has not been characteristic of the way we Anglicans have dealt with differences.

I encourage you when you vote, to vote for the unity and mission of the church, therefore remaining one with your diocese, and reject the tempting calls to division

“Frequent divisions, with one group choosing to separate” to form a new “identity.” Bishop Lee’s words are a testament to the common understanding of “division” and “branch,” not only today but in 1867. Indeed, the statute was invoked at least 29 times shortly after its adoption, in circumstances much like those that gave rise to this dispute.

Finally, as demonstrated in Part IV, the CANA Congregations’ showing that the Anglican Communion is divided independently satisfies the requirements of § 57-9. The division at the international level is evidenced by many official pronouncements of “division” by the organs and offices of the Anglican Communion, including its Primates and the Windsor Report issued by the Lambeth Commission on Communion; by formal statements of “broken communion” between numerous Anglican Provinces and TEC; and by the decision of the Church of Nigeria, with which CANA is affiliated, to amend its constitution to cut off all legal and structural relations with TEC. The international element of this dispute also confirms the magnitude of the division in TEC and the Diocese, as many TEC congregations, clergy, and members have reaffiliated with foreign Anglican provinces in order to maintain their ties with the historic Anglican faith.

In summary, the General Assembly enacted the division statute to ensure that a neutral principle—majority rule—would govern situations when a group of congregations and clergy divided from their former denomination and formed a new branch of the church. That happened in the 19th century, and it happens today. What is perhaps unique about this case is that the division has played out at the international level of the church as well. But it is no less a division within the meaning of § 57-9, and the evidence at trial demonstrated as much.

I. There Is No Evidentiary Dispute Over The Ordinary 19th Century Usage Of “Division” And “Branch,” The Key Terms In Virginia Code § 57-9.

In Virginia, “the popular, or received import of words, furnishes the general rule for the interpretation of statutes.” *Lawrence v. Craven Tire Co.*, 210 Va. 138, 140-41 (1969) (quotation

omitted). Moreover, when interpreting undefined statutory terms, courts examine the terms' ordinary meaning "[a]t the time of enactment of the statute." *Lewis v. Com.*, 184 Va. 69, 72 (1945). Part I of this brief addresses the meaning of the terms "division" and "branch," which is central to a proper interpretation of Virginia Code § 57-9.

In Part I.A, for example, we explain that in mid-19th century America (as today), the term "division" was most commonly understood to refer to a split in a religious denomination involving the separation of a group of congregations, clergy, or members who formed an alternative polity. The evidence on this issue was undisputed, as TEC's historical expert admitted that he had no knowledge concerning the common usage of the term during the relevant time period.

In Part I.B, we explain that there is no basis—in the text, history, or purpose of the statute—to the notion that the separation of a group of congregations from its mother church is not a "division" unless the highest authorities of the denomination formally approve of it. TEC's historical expert conceded that most of the church "separations" in the 19th century were not consensual. The division statute was successfully invoked some 29 times shortly after its adoption, including in contested cases arising in denominations whose divisions were anything but consensual. And any reading of § 57-9 that limited its application to denominationally authorized divisions would render meaningless the voting rights that it confers.

In Part I.C., we explain that the term "branch" was most commonly understood in mid-19th century America to refer to an offshoot of a denomination created as a result of a division, or to the group left behind—not to an administrative subunit of the church, or to a new diocese created by administrative or geographical redistricting. Indeed, TEC has admitted that when it subdivides an existing diocese, congregations are not permitted to choose which diocese they

wish to join, and that the resulting entities are not “branches”—and thus that the statute has no application in such circumstances.

A. The Term “Division” Connotes the Separation of a Group of Congregations, Clergy, or Members from Their Former Denomination in Sufficient Numbers to Establish a New Polity or Governmental Structure.

The period leading up to 1867 was an era of myriad church splits. CANA expert Mark Valeri explained that there were “divisions all over the place,” Tr. 82:2, and TEC expert Robert Mullin likewise testified that “[t]here are all sorts of separations going on in the 19th Century”—there was “a tremendous flowering of religious differentiation.” Tr. 1102:4-5, 1098. Many of these divisions were over slavery, but others involved issues ranging from “revivalism” to governance to “[d]ebate over liturgical practices” and “the language of the Baptismal Office.” Tr. 81:22, 105:19 (Valeri); Tr. 1120, 1148 (Mullin). In short, denominational divisions were the order of the day, and “were a subject of frequent public commentary” in Virginia and elsewhere in the nation. Tr. 104:16-22 (Valeri).

Many of the divisions in the 19th century involved groups separating from the Methodist, Presbyterian, and Baptist churches,⁴ then the nation’s largest denominations. Tr. 103:6-104:14

⁴ There were numerous 19th century divisions among the Methodists. Tr. 183:10-183:14 (Irons) (the Methodist family of churches divided “[m]ore than a dozen times” in the 19th century), Tr. 104 (Valeri) (discussing the divisions that created the Methodist Church in 1830, the Protestant Methodist Church in 1843, the Wesleyan Methodist Church in 1844 to 1845, and the Free Methodist Church in 1860); Tr. 185:19-186:10 (Irons) (Reformed Methodist Church); Tr. 186:11-188:11 (Irons) (African Methodist Episcopal Church and African Methodist Zion Church); Tr. 188 (Irons) (Methodist Protestant Church); Tr. 188-89 (Irons) (Methodist Episcopal Church and Methodist Episcopal Church South); Tr. 188-189 (Irons) (division of the Baltimore Conference from the Methodist Episcopal Church); Tr. 1161 (Mullin) (“the separation of the African Methodist Episcopal [Church] was a great scandal and a great division”).

The same is true of the Presbyterians. *See, e.g.*, Tr. 57-69 (Valeri) (Old School-New School division); Tr. 69-75 (Valeri) (United Synod division from New School Presbyterians, creating a Southern branch of the New School); Tr. 1155 (Mullin) (describing same division as a division of the New School into Northern and Southern branches); Tr. 77-78 (Valeri) (Cumberland Presbyterians division from PCUSA); Tr. 81 (Valeri) (Old Light Synod, Associate Reform Presbyte-

(Valeri); Tr. 183, 208 (Irons); Tr. 1134 (Mullin). Others, however, involved smaller denominations such as the Lutherans and Episcopalians. For example, Professor Mullin testified that “the Lutherans divided into 17 [or] 18 different religious communities” during the 19th century (Tr. 1098), and he admitted to publicly describing as “divisions” splits resulting in the formation of the Episcopal Church in the Confederate States and the Reformed Episcopal Church (Tr. 1124-25; 1129-31).

A great number of 19th century divisions directly involved Virginians, and ordinary Virginians would have been aware of the many divisions occurring elsewhere.⁵ Furthermore, the frequency with which the division statute was invoked shortly after its adoption confirms that Virginians were accustomed to church splits and the resulting litigation over property.

Although § 57-9 does not define “division,” evidence at trial conclusively demonstrated that the most common understanding of that term in mid-19th century America (as today) was of a split, schism, or rupture in a religious denomination that involved the separation of a group of congregations, clergy, or members from the church and the formation of an alternative polity that disaffiliating members could join.⁶ For example, Professor Valeri offered unrefuted testimony

rian Church of the South, Associate Reform Synod); Tr. 83-84 (Valeri) (Old School division into Northern and Southern branches).

The same is also true of the Baptists. Tr. 204-206 (Irons); 1102 (Mullin).

⁵ E.g., Tr. 1153:16-18 (Mullin) (there were “many, many separations that were going on in Virginia”); Tr. 183:10-184:12 (Irons) (Virginians were aware of all of the dozen-plus splits in the Methodist Church, and were directly affected in Virginia by at least nine of them); Tr. 205:12-206:6 (Irons) (Baptists divisions affected Virginia); Tr. 207 (Irons) (Lutheran division involving the Lutheran Church in the Confederate States of America affected Virginia); Tr. 70-72, 104 (Valeri) (discussing Presbyterian and other divisions arising in or affecting Virginia).

⁶ According to definitions that date from the era when § 57-9 was adopted, “division” simply means the “[s]tate of being divided.” See Noah Webster, *A Dictionary of the English Language* 219 (1872) (preface dated 1867). Recent definitions are to the same effect. 1 *Oxford English Dictionary* 558 (1971) (“division” means “the state of being divided into parts or branches; partition; severance.”); *Random House Dictionary of the English Language* 420 (1967) (“the act or

that “the most common definition” of “division” was “[t]he separation of a group from an existing denomination, renunciation of its authority, and beginning of the formation of an alternative structure.” Tr. 55 (Valeri).⁷ Similarly, Professor Charles Irons testified that an “ordinary Virginian” would have understood the term “division” to refer to any “separation” or “fragmentation of one religious jurisdiction” into “two or more jurisdictions.” Tr. 178, 179; *accord id.* at 191 (explaining that a division involved the breaking apart of a church into “separate and distinct organizations”); *cf.* Tr. 1099:1-16, 1101:11-1102:20 (Mullins) (drawing a “distinction between a separation” and a “division,” but acknowledging that all divisions entail “separation” and that other historians use the term “division” to describe the “not-so-great division[s]”).

TEC and the Diocese offered no contrary evidence. Indeed, Professor Mullin disclaimed any knowledge of the ordinary usage of “division” in the 19th century. Tr. 1100, 1149:11, 1135, 1152:18-1153:7, Tr. 1133:9-13 (same).⁸

The historical evidence at trial also demonstrated that although divisions typically began with internal strife, such strife did not itself amount to a “division” under the most common un-

state of being divided”; “Division usually means little more than the marking off or separation of a whole into parts”); *Webster’s New Universal Unabridged Dictionary* 538 (2d ed. 1983) (“a dividing or being divided; separation”).

⁷ *See id.* (Valeri: describing “[t]he most common definition” as “the separation out of the group of members of a religious . . . denomination in sufficient numbers to begin to form an alternative polity and the renunciation of the authority of the original group in that process”); *accord id.* at 54 (a “division” is “a separation” of “a group of congregations or lower adjudicatories . . . and renunciation of the previous group and formation of—beginning of a formation of a separate polity or governmental structure”), *id.* at 116.

⁸ As Professor Valeri explained on cross examination, the meaning of “division” in “church historical parlance” was consistent with its meaning in general 19th century “common parlance.” Tr. 128. In particular, “[f]rom 1890 to 1910, the American Society of Church History produced a series of definitive—what at the time were definitive histories of the major denominations,” “a great new sociological project, and they were to represent official denominational records and accounts, and the words ‘divisions’ and ‘branches’ are used throughout those volumes as I’ve represented the meanings today.” *Id.*

derstanding of that term. As Professor Valeri explained, “internal strife” was occasionally called “division” and “frequently” led to a “division,” but the most common use of that term involved “[t]he separation of a group from an existing denomination” and “beginning of the formation of an alternative structure.” Tr. 78:20-79:16, 54-55. In other words, divisions would often result from internal strife, but the divisions themselves entailed disaffiliating congregations or clergy and the formation of a new entity. Moreover, divisions would often widen over time as additional congregations and members left the denomination to join the new entity. Tr. 79:1-7 (Valeri) (after the initial members “form a group,” “they are later joined by other groups over the period of weeks, months, sometimes years”). For example, TEC expert Mullin admitted that the division of the Old School Presbyterians into Northern and Southern branches took at least two to three years (Tr. 1155:15-17), Professor Irons recounted that the divisions involving the African Methodist Episcopal Church (AME Church), and the African Methodist Episcopal Zion Church (AME Zion Church) widened over several years (Tr. 186-187), and Professor Valeri explained that the division in the Episcopal Church that led to formation of the Reformed Episcopal Church took place over a two-year period, from 1873 to 1874 (Tr. 105:6-16).

The only numerical threshold for a division was that the number of disaffiliating members be sufficient to form a new polity. Tr. 92-94 (Valeri). This would likely preclude the departure of a single congregation from being considered a division, as “a single congregation cannot form a polity or begin to form an alternative polity.” Tr. 93 (Valeri). But apart from whatever number of congregations and ministers was necessary to “form an alternative polity,” there was no specific “stated size” or “minimum size in order to reflect a division.” Tr. 92:4-9, 93:3-22, 94 (Valeri).

Many 19th century divisions began small and grew over time. For example, it is undisputed that the groups that divided from the Methodists to form the Reformed Methodist Church, the AME Church, and the AME Zion Church were “very small”—roughly a dozen congregations formed the AME Church and six or seven congregations formed the AME Zion Church. Tr. 185:19-186:4, 187 (Irons). The Cumberland Presbyterian Church was established by just “three ministers” who divided from their former church and formed a presbytery that quickly grew to include congregations. Tr. 78:4-19 (Valeri). Likewise, the Presbyterian divisions that resulted in the formation of the Old Light Synod, the Associate Reform Presbyterian Church of the South, and the Associate Reform Synod, all involved “very small groups, handfuls . . . of smaller Presbyterian Churches.” Tr. 81:4-16 (Valeri). As TEC’s Professor Mullin acknowledged, “you see the word division used in common parlance to describe other, smaller separations.” Tr. 1153:1-4.⁹

The Reformed Episcopal Church is perhaps the most powerful illustration of how the separation of a relatively small group is appropriately considered a “division,” whether judged by the standard of the 19th century or that of modern usage. Tr. 105-112 (Valeri). As Professor Valeri explained, the division that resulted in the formation of Reformed Episcopal Church in 1873 and 1874 arose out of a disagreement over liturgical practices and the related suspension of TEC Bishop George David Cummins. The division “culminated in a formal organization into a church and then after that into congregations worshipping under [the Reformed Episcopal Church’s] name.” Tr. 105:17-106:5. The Reformed Episcopal Church began with only seven ministers and 19 laypersons, and with only a handful of congregations attending its first conven-

⁹ Most of the 19th century groups that separated from their denomination were smaller than their mother church, Tr. 91:15-92:3, 111:21-112:1 (Valeri), and the name and governmental structure of the former church typically did not change after the division, Tr. 77:13-22, 90:5-8, 194 (Valeri).

tion. Tr. 111:21-112:1 (Valeri); Tr. 1103 (Mullin). Indeed, the Reformed Episcopal Church has always been small in relation to TEC; even today the Reformed Episcopal Church has only 6,000 members. Tr. 111:7-112:1 (Valeri). Yet the Reformed Episcopal Church's modest numbers did not deter the Bishop of the Episcopal Diocese of Minnesota, in his annual address in 1874, from describing the separation as a "division" or from charging Bishop Cummins with causing a "schism." Tr. 109 (Valeri); Tr. 1104-12 (Mullin).

Indeed, TEC has consistently taken the position that the formation of the Reformed Episcopal Church was the result of a "division" in the Church—including, most significantly, in an official resolution adopted by the Church in 1988 at its 69th General Convention. Tr. 112-13 (Valeri); Tr. 1117-18 (Mullin). Resolution D-088, which TEC then adopted, stated:

"Resolved, the House of Bishops concurring, That this 69th General Convention direct the Standing Commission on Ecumenical Relations to explore the possibilities of dialogue with representatives of the Reformed Episcopal Church *looking toward the healing of this particular division* and direct the Standing Commission on Ecumenical Relations to report to the next General Convention.

CANA Exh. 6 (emphasis added). As Professor Valeri explained, TEC adopted this resolution to "reach out" to the Reformed Episcopal Church as a matter of "ecumenical relations," and "quite intentionally" "chose the word 'division' to describe what happened historically." Tr. 112:10-20. Thus, although it took some 115 years, the General Convention of the Episcopal Church has called the church split involving the Reformed Episcopal Church a "division."

Similarly, TEC's own website contains a "Glossary of Church Terms" with definitions from *An Episcopal Dictionary of the Church*, which is published by Church Publishing, Inc., the "official publisher of the General Convention of the Episcopal Church." CANA Exh. 5; Tr. 110:10-111:3; Tr. 906:3-10 (Douglas). "Schism" is among the dictionary terms listed on this website, and it is defined as follows: "This word of Greek origin means *a rip, tear, split, or division*. In ecclesiastical terms, it is a *formal and willful separation* from the unity of the church."

CANA Exh. 5 (emphasis added). After listing some of the best known schisms in church history, the definition concludes: “The earliest *significant schism* from the Episcopal Church was that of the *Reformed Episcopal Church, which began in 1873*. There were also some *smaller schisms* from it in the later twentieth century over Prayer Book revision and the ordination of women.” CANA Exh. 5 (emphasis added).

This definition is instructive for several reasons. *First*, it shows that when TEC is speaking of “divisions” outside of the context of this litigation, it describes them as everyone else does—as “willful separations” from the church, or “splits,” or “schisms.” *Second*, TEC’s own definition undermines Professor Mullin’s claim (discussed below) that TEC has never experienced “divisions,” as it not only describes the division involving the Reformed Episcopal Church as a “significant schism” but acknowledges other, late-20th century divisions involving other points of disagreement. *Third*, in stating that the split involving the Reformed Episcopal Church “began in 1873,” TEC’s definition confirms the testimony of Professors Valeri and Irons that a division or schism sometimes involves a process that unfolds over time. *Fourth*, the definition confirms that the separation involving the Reformed Episcopal Church was a “formal and willful separation” despite the absence of approval from TEC’s General Convention. *Finally*, in indicating that the split that resulted in the formation of the Reformed Episcopal Church was of greater significance than other “smaller,” late-20th century divisions, the definition confirms that there is no particular size requirement for a division. *See also* Tr. 900:14-17 (Douglas) (acknowledging TEC’s view that “there’s no numerical requirement for a division”). In short, this definition confirms that a departure of congregations such as the one that led to this dispute is a division under TEC’s own understanding of that term.

