

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

<b>In re Multi-Circuit Episcopal Church</b>	)	<b>Case Nos.:</b> CL 2007-248724,
<b>Litigation:</b>	)	CL 2007-1235,
	)	CL 2007-1236,
	)	CL 2007-1238,
	)	CL 2007-1625,
	)	CL 2007-5250,
	)	CL 2007-5364,
	)	CL 2007-5682,
	)	CL 2007-5683,
	)	CL 2007-5684, and
	)	CL 2007-5902

**THE DIOCESE OF VIRGINIA’S AND THE EPISCOPAL CHURCH’S  
MEMORANDUM REGARDING THE CHURCH OF OUR SAVIOUR AT OATLANDS’  
REQUEST FOR SEPARATE TRIAL**

The Protestant Episcopal Church in the Diocese of Virginia (the “Diocese”) and The Episcopal Church (the “Church”) respectfully submit this brief pursuant to the Court’s directions at the November 12, 2010, hearing. As we explain below, the circumstances that led the Three-Judge Court in April 2007 to consolidate these cases into a single proceeding have not changed, and a separate trial for Church of Our Saviour at Oatlands (COSO) is not warranted. There are still numerous common questions of law and fact in these cases, and therefore a separate trial for any one of the Congregations would involve unnecessary duplication and almost undoubtedly would waste judicial resources and unfairly burden the Diocese and the Church.

**ARGUMENT: A SEPARATE TRIAL FOR COSO IS UNWARRANTED.**

In April 2007, the Three-Judge Court appointed under Virginia’s Multiple Claimant Litigation Act (“MCLA”), Va. Code § 8.01-267.1 *et seq.*, ordered the consolidation of twenty pending cases, all involving disputes over Episcopal parish property. In reaching its determination that consolidation was appropriate, the Three-Judge Court emphasized the presence of significant common questions of law and fact shared among the cases and the

efficiency for the courts and the parties of handling the cases together. Specifically, the Court found that “[t]he proceedings present common questions of law or fact that arise from the same transaction, occurrence, or series of transactions or occurrences”; “[c]ommon questions of law or fact predominate and are significant to the proceedings”; “[t]he nature of the common questions favors consolidation”; “consolidating these proceedings would promote the ends of justice and the efficient conduct and disposition of the proceedings”; “[i]t would be substantially more convenient for the parties to resolve these disputes in a single case”; and “the efficient utilization of judicial facilities and personnel favors consolidation.” Order, *In re: Multi-Circuit Church Property Litigation*, April 10, 2007 (copy attached as Exhibit 1). Counsel for COSO agreed to and endorsed that Order. *See also* Va. Code § 8.01-267.1 (MCLA factors).

The § 57-9 issues have been eliminated from these cases, but the fundamental premises underlying the Three-Judge Court’s Order remain. The claims that remain must be analyzed under the four factors set out in *Green v. Lewis*: (1) state statutes, (2) the language of the deeds conveying the properties, (3) the Diocese’s and the Church’s governing documents, and (4) the dealings between the parties. *Green v. Lewis*, 221 Va. 547, 555, 272 S.E.2d 181, 186 (1980). The consideration of these factors for each of the Congregations will involve significant overlap:

(1) The meaning and significance of state statutes in these church property disputes is a question of law that is common to all the cases.

(2) The numerous deeds at issue obviously are not identical, but all were conveyances to an Episcopal entity and most contain language specifically stating that fact. The significance of such language under *Green* will be a common issue.<sup>1</sup>

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<sup>1</sup> For example, in *Diocese of Southwestern Virginia of the Protestant Episcopal Church v. Burhman*, Judge (later Justice) Stephenson determined that similar language was binding as a matter of law: “a reasonable interpretation of these deeds leads inescapably to the conclusion

(3) The Diocese's and the Church's governing documents, and their legal significance under *Green*, are a common issue. Different historical versions of those documents may be relevant to particular parishes or churches, and separate evidentiary presentations with reference to each Congregation will help to avoid potential confusion resulting from those different histories; but the key provisions governing church property will remain the same.

(4) Much of the evidence of the dealings between the parties will be unique to each Congregation, of course, but it will not be limited to such evidence. Here, as in *Green*, 221 Va. at 548, 272 S.E.2d at 181-82, evidence of the Church's and the Diocese's structure and polity, services provided by the Diocese, and the relationships that are commonly found between Episcopal dioceses and their parishes are relevant and will be common to all the cases.

Because the overlap of both factual and legal issues in these cases remains so substantial, as the Three-Judge Court recognized, continued consolidated proceedings, including trial, is the most sensible use of judicial resources and the fairest outcome for all parties. Indeed, trying a full COSO case separately would require an enormous amount of unwarranted and inefficient duplication of efforts – not by COSO, which would put its case on only once, but by the Diocese and the Church, which would be forced to try many facts twice. The Court would be required to hear those facts twice as well.

Allowing COSO to go forward with a separate trial might impose an entirely separate set of pretrial and discovery deadlines, which would be burdensome for the Diocese and the Church and potentially confusing to all parties.

COSO's request for an entirely separate trial would deprive the Diocese and the Church

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that the trustees cannot hold title to the subject property for persons or groups who are withdrawn from and not under the authority of The Episcopal Church.” 5 Va. Cir. 497, 503 (Clifton Forge 1977), *writ refused, no reversible error, Burhman v. Diocese of Southwestern Virginia*, Record No. 780347 (Va. June 15, 1978).

of their right, as plaintiffs, to determine the order and manner in which to present their own evidence.

For all of these reasons, the Court should deny COSO's request for a separate trial.

Respectfully submitted,

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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 counsel indicated with an asterisk below, on this 24th day of November, 2010:

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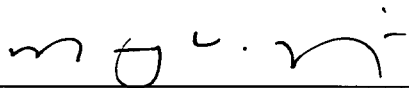
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# **EXHIBIT 1**



**VIRGINIA:**

**IN THE THREE-JUDGE COURT APPOINTED BY  
THE SUPREME COURT OF VIRGINIA  
PURSUANT TO VA. CODE § 8.01-267.4**

**IN RE: MULTI-CIRCUIT CHURCH  
PROPERTY LITIGATION**

**ORDER**

This matter came before the Court on applications of:

1. The Church At The Falls – The Falls Church; Church of the Apostles; Church of the Epiphany; St. Margaret’s Church; St. Paul’s Church; St. Stephen’s Church; and Truro Church (collectively, the “Church Applicants”), for an order pursuant to Virginia’s Multiple Claimant Litigation Act (“MCLA”), Va. Code § 8.01-267.4, transferring to the Fairfax County Circuit Court the proceedings commenced by the Church Applicants under Virginia Code § 57-9, from various circuit courts (January 29, 2007);
2. The Church Applicants; Christ the Redeemer Church; Church of the Word; and Potomac Falls Church, for an order, also pursuant to the MCLA, transferring to the Fairfax County Circuit Court those declaratory judgment actions filed against them on January 31, 2007 by the Protestant Episcopal Church in the Diocese of Virginia (the “Diocese”) pending in various circuit courts, excluding the action filed in Loudon County Circuit Court against the Church of Our Savior at Oatlands, which did not join in the applications of the congregations noted above (February 8, 2007); and
3. The Diocese and the Protestant Episcopal Church in the United States of America (the “Episcopal Church”), (a) supporting the applications noted above; (b) seeking to join in consolidated proceedings an additional declaratory judgment action filed in the Fairfax County

Circuit Court by the Episcopal Church on January 31, 2007; and (c) seeking to transfer to the Fairfax County Circuit Court the Diocese's declaratory judgment action against the Church of Our Savior at Oatlands and the proceedings commenced by the Church of Our Savior at Oatlands under Virginia Code § 57-9 (February 9, 2007).

Upon consideration of these applications, and in view of the Church of Our Savior at Oatlands' withdrawal of its opposition to the application filed by the Diocese and the Episcopal Church, which was communicated to this Court by counsel, and in view of the consent of all parties to the granting of these applications, the Court finds that the foregoing proceedings meet all the requirements of the MCLA:

1. The proceedings present common questions of law or fact that arise from the same transaction, occurrence, or series of transactions or occurrences. Va. Code § 8.01-267.1.
2. Common questions of law or fact predominate and are significant to the proceedings. Va. Code § 8.01-267.1.
3. An order transferring and consolidating these proceedings would promote the ends of justice and the efficient conduct and disposition of the proceedings. Va. Code § 8.01-267.1.
4. Consolidation is also consistent with the parties' due process rights. Va. Code § 8.01-267.1.
5. The nature of the common questions favors consolidation. Va. Code § 8.01-267.1.
6. It will be substantially more convenient for the parties to resolve these disputes in a single case, rather than in twenty cases in five different courts. Va. Code § 8.01-267.1.

7. None of the proceedings has moved beyond minimal preliminary discovery. Thus, the relative stages of the actions, the work of counsel, and the efficient utilization of judicial facilities and personnel favors consolidation. Va. Code § 8.01-267.1.

8. Failure to consolidate the proceedings would pose a greater likelihood of duplicative and inconsistent rulings, orders or judgments. Va. Code § 8.01-267.1.

9. These proceedings consist largely of identical claims and defenses, which, if timely resolved in a single forum, may increase the likelihood of settlement for all parties. Va. Code § 8.01-267.1.

10. There is little chance that a jury, if empanelled, would be prejudiced or confused by consolidation, because the common issues at stake so predominate. Va. Code § 8.01-267.1.

Accordingly, it is hereby ORDERED that the following proceedings be transferred to the Circuit Court of Fairfax County, and/or consolidated before that Court, for all purposes authorized by the MCLA:

**Va. Code Section 57-9 Proceedings**

1. *In re: Truro Church*, No. CL 2006 15792 (Circuit Court of Fairfax County)
2. *In re: Church of the Apostles*, No. CL 2006 15793 (Circuit Court of Fairfax County)
3. *In re: Church of the Epiphany*, No. CL 2007 556 (Circuit Court of Fairfax County)
4. *In re: The Church At The Falls – The Falls Church*, Civ. No. 06-1751 (Circuit Court of Arlington County)
5. *In re: St. Paul's Church*, No. CL 73428, formerly CH44676 (Circuit Court of Prince William County)
6. *In re: St. Margaret's Church*, No. CL73429, formerly CH44674 (Circuit Court of Prince William County)
7. *In re: St. Stephen's Church*, No. CL-06-123 (Circuit Court of Northumberland County)

8. *In re: The Church of Our Saviour at Oatlands*, Civ. No. 43909 (Circuit Court of Loudoun County)

#### **Declaratory Judgment Actions**

1. *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church, et al.*, No. 1236 (Circuit Court of Fairfax County)
2. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles, et al.*, No. 2007 1238 (Circuit Court of Fairfax County Case)
3. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon, et al.*, No. 2007 1235 (Circuit Court of Fairfax County)
4. *The Protestant Episcopal Church in the Diocese of Virginia v. Christ the Redeemer Church, et al.*, No. 2007 1237 (Circuit Court of Fairfax County)
5. *The Protestant Episcopal Church in the Diocese of Virginia v. The Church At The Falls – The Falls Church, et al.*, No. 07-125 (Circuit Court of Arlington County)
6. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket, et al.*, No. CL 73466 (Circuit Court of Prince William County)
7. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Margaret's Church, et al.*, No. CL 73465 (Circuit Court of Prince William County)
8. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word, et al.*, No. CL 73464 (Circuit Court of Prince William County)
9. *The Protestant Episcopal Church in the Diocese of Virginia v. Potomac Falls Church, et al.*, No. 44149 (Circuit Court of Loudoun County)
10. *The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Saviour at Oatlands, et al.*, No. 44148 (Circuit Court of Loudoun County)
11. *The Protestant Episcopal Church in the Diocese of Virginia v. St. Stephen's Church, et al.*, No. CL 07-16 (Circuit Court of Northumberland County)
12. *The Episcopal Church v. Truro Church, et al.*, No. 2007 1625 (Circuit Court of Fairfax County)

IT IS FURTHER ORDERED that upon completion of coordinated or consolidated pretrial proceedings and joint hearings or trials, the Circuit Court of Fairfax County may remand proceedings to the courts in which they originally were filed or retain them for final disposition.

The Clerk of the Supreme Court is directed to send certified copies of this Order to the clerks of the Circuit Courts of Fairfax County, Prince William County, Northumberland County, Arlington County and Loudoun County, and to all counsel named below.

The clerks of the Circuit Courts of Prince William County, Northumberland County, Arlington County and Loudoun County are directed to send their case files for the cases named in this Order to the Clerk of the Circuit Court of Fairfax County forthwith.

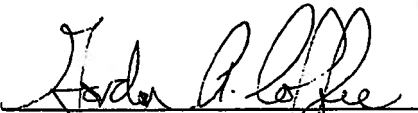
Entered this 10<sup>th</sup> day of April, 2007.

Margaret Spencer  
Circuit Court Judge

[Signature]  
Circuit Court Judge

[Signature] 4/19/07  
Circuit Court Judge

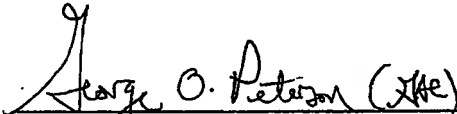
WE ASK FOR THIS:



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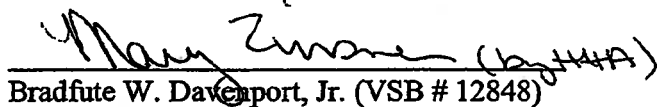
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