

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR FAIRFAX COUNTY**

**In re:** )  
**Multi-Circuit Episcopal Church** ) **Civil Case Numbers:**  
**Litigation** ) CL 2007-248724,  
 ) CL 2007-1625,  
 ) CL 2007-1235,  
 ) CL 2007-1236,  
 ) CL 2007-1238,  
 ) CL 2007-5250,  
 ) CL 2007-5364,  
 ) CL 2007-5683,  
 ) CL 2007-5682,  
 ) CL 2007-5684, and  
 ) CL 2007-5902,

**CANA CONGREGATIONS’  
(CORRECTED) PROPOSED FINDINGS OF FACT FOR THEIR  
OPENING POST-TRIAL BRIEF**

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## PROPOSED FINDINGS OF COMMON FACTS

### I. The CANA Congregations' Congregations' Collective Contributions to the Diocese

1. Between 1984 and 2003 alone, the CANA Congregations voluntarily contributed at least \$10,202,809.30 to the Diocese.<sup>1</sup>

### II. The CANA Congregations' Collective Maintenance Expenses

2. Between 1991 and 2010, the CANA Congregations collectively spent at least \$15,987.840.77 on the maintenance of their properties.<sup>2</sup>

### III. Edwin A. White's 1898 Treatise and the Actions of the 1871 General Convention

3. In his book, *American Church Law: Guide and Manual for Rector, Wardens and Vestrymen of the Church Known in Law as 'The Protestant Episcopal Church in the United States of America,'* Edwin A. White, "an authoritative source on Episcopal canons in the late 19<sup>th</sup> century" (Tr. 1258:9-14) (Mullin), rejected the position that the issue of property ownership was settled in plaintiffs' favor by the early 1880s Apostles Ex. 289.0001.
4. White was both a lawyer and an "expert in canon law." Tr. 1275:11-19) (Mullin).
5. White's authoritative position was that "[a]lthough the Canons of the Church require the consent of the Bishop and the Standing Committee to the alienation of the real property of the corporation, the Courts have decided that, to have any legal effect, it must also be a provision of the Statute Law. 'Titles to property must be determined by the laws of the State.'" Apostles Ex. 289.0001.

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<sup>1</sup> DX-FALLS-0073C; Apostles Ex. 89; DCOE-041; DSTM-070; DSTP-354; DSTS-057A; PX-COM-0224-115; PX-COM-0226-121; PX-COM-0227-179; PX-COM-0228-188; PX-COM-0229-176; PX-COM-0230-176; PX-COM-0231-193; PX-COM-0232-172; PX-COM-0233-183; PX-COM-0234-159; PX-COM-0235-176; PX-COM-0236-192; PX-COM-0237-185; PX-COM-0237-185; PX-COM-0238-184; PX-COM-0239-170; PX-COM-0240-201; PX-COM-0241-197; PX-COM-0242-303; PX-COM-0243-282.

<sup>2</sup> DX-FALLS-0073A; DCOE-030; Apostles Ex. 134A (1999-2010); TRU268.0002-3 (2003-2010); DSTM-560; DSTS-054 (1991-2000); DSTS-055 (2001-2010); DSTP-355A (1991-1999); DSTP-371A (2000-2010).

6. White's analysis was published some 30 years after adoption of the anti-alienation canons, and some 15 years after the date when, according to Professor Mullin, the question of property ownership in the denomination was settled. Tr. 1201:11-1202:6.
7. When adopting its anti-alienation canons in the 19<sup>th</sup> century, TEC recognized that they lacked legal force and formally directed dioceses to "take such measures as may be necessary, by State legislation, or by recommending such forms of devise or deed or subscription," to place parish property under ECUSA's control. Apostles Ex. 376.0002.
8. In "the debates surrounding these [anti-alienation] canons [adopted in 1871,]" "there are repeated references to securing ownership by deeds." Tr. 1260:13-1261:14 (Mullin).
9. White's focus on deeds reflects recognition by experts in canon law, and in particular experts in TEC's canon law, that canons alone do not secure denominational ownership.

#### **IV. TEC's Official 1924 Edition of the Annotated Constitution and Canons**

10. TEC's General Convention recognized Mr. White's authority and expertise on canon law by electing him "chair of the House of Deputies on canons." Tr. 1261:15-17 (Mullin).
11. TEC's General Convention later "passed resolutions calling for the creation of a commentary on the Constitution and Canons" and "designated White to author it." Tr. 1261:18-1262:2 (Mullin).
12. The first edition of this official annotated edition of TEC's constitution and canons was published in 1924, "due to the request of the House of Deputies, as expressed in resolutions thereof in the General Conventions." Apostles Ex. 290.0002; Tr. 1267:5-8 (Mullin) ("the 1924 edition" was "published by order of the House of Deputies").
13. The first edition of this official annotated edition of TEC's constitution and canons acknowledges that TEC's anti-alienation canons, adopted in the late 1800s, were insufficient to keep a disaffiliating congregation from retaining its property.

14. The first edition of this official annotated edition of TEC's constitution and canons explains that the canons were adopted in response to the outcome of a case involving the rector of Christ Church in Illinois, who left TEC for the Reformed Episcopal Church, "took the property of Christ Church with him, and the Courts sustained the transfer, holding that there was no law to prevent it." Apostles Ex. 290.0007.
15. The first edition of this official annotated edition of TEC's constitution and canons shows that TEC "recognized that while this [adoption of the anti-alienation canons] was as far as the Convention could legislate in the matter, *it was not sufficient to prevent such alienation*, and the Convention therefore adopted the resolution, recommending that the several Diocesan Conventions take steps to procure *legislative action* by which such alienation could be prevented." *Id.* (emphasis added).
16. The first edition of this official annotated edition of TEC's constitution and canons states that TEC earlier adopted a canon, Canon 25, governing TEC-affiliated "Religious Communities" and providing in relevant part as follows: "It shall be provided in the Constitution of a religious community that real estate and endowments belonging to the community shall be held in trust for the community as a body in communion with this Church."
17. In discussing Canon 25, the first edition of this official annotated edition of TEC's constitution and canons recognized that even explicit canonical provisions dealing with property have only moral value and are insufficient to establish a legally cognizable interest in the property of local affiliates:

It is also required that the Constitution shall provide that real estate and endowments belonging to the Community shall be held in trust for the Community as a body in communion with the Church. *It would seem to be the intention of this provision to secure the property of the Community from being alienated from the Church in case the Community should officially sever its connection with the Church. If that is the intention thereof, it is very imperfectly expressed, and in any event it could only have moral weight. However expressed in a canon it would have no legal force.*

Apostles Ex. 372.0004; *see also id.* at 0002.

18. The statements above were published under TEC's supervision and direction, in a TEC publication, without any disclaimer that they did not constitute the official views of the denomination.

**V. TEC's Official 1954 Edition of the Annotated Constitution and Canons**

19. In 1954, TEC's General Convention directed "publication of a new annotated edition of the constitution and canons." Apostles Ex. 291A.0002; *see id.* at 291A.0001 (book was "published after review by a joint committee of General Convention"); Tr. 1268:10-18 (Mullin) (the book "was then published at the General Convention's direction").
20. TEC's General Convention adopted detailed procedures for preparation and review of this annotated edition of TEC's constitution and canons: Mr. Jackson A. Dykman, a leading canon lawyer (Tr. 1275:11-19) (Mullin), was designated to write a draft "under the authority of General Convention" (Apostles Ex. 291A.0004); and "galley proofs of the manuscript" were "prepared for each member of [a newly designated Joint Committee to Supervise Publication of a New Annotated Edition of the Constitution and Canons], thus affording each member the opportunity to make his own study of the material prepared by the annotator and to prepare suggestions for correction, clarification, and improvement." Apostles Ex. 291A.0004–0005.
21. As this second official annotated edition of TEC's constitution and canons states, "pursuant to the mandate of the General Convention [the joint committee] has reviewed the proofs of this new annotated edition of the Constitution and Canons and has approved the text." Apostles Ex. 291A.0003.
22. Professor Mullin admitted that this second official annotated edition "again reiterate[d] the view that the Church's property canons are not sufficient by themselves to secure an

interest in parish property,” and that “[w]hether [the canons] are enforceable in the courts depends upon the specifics of the legislation in effect.” Tr. 1269:4-12 (Mullin).

23. This second official annotated edition of TEC’s constitution and canons admits that “[t]he power of the General Convention over the disposition of real property *is questionable, governed as it is by the law of the state* in which it is situated.”; “[t]he law will differ in different jurisdictions and each case which arises must be decided according to the law of the situs of the property.” Apostles Ex. 291.0004 – 0005 (emphasis added).
24. This second official annotated edition again cites the 1871 General Convention resolution directing the “Diocesan Conventions to take such measures as may be necessary, by State legislation or by recommending such forms of devise or deed or subscription as may secure the Church buildings, grounds or other property, real and personal, . . . to protect such . . . property from the claims of those would abandon the doctrine, discipline or worship of the said church.” Apostles Ex. 291.0007.
25. The statements above were published under TEC’s supervision and direction, in a TEC publication, without any disclaimer that they did not constitute the official views of the denomination.

## **VI. TEC’s Official 1981 Edition of the Annotated Constitution and Canons**

26. In 1981, TEC published the most recent edition of its *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America otherwise known as The Episcopal Church*, which built on the 1924 and 1954 editions. Apostles Ex. 292.0001-292.0003; Tr. 1272:20-1273:1 (Mullin).
27. This third official annotated edition was copyrighted in the name of the Church’s corporate entity (The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America), published by its own publisher (Church Pub-

- lishing Incorporated), and “revised and updated by the Standing Commission on Constitution and Canons of the General Convention”—whose members include Walter Dennis, for whom the “Dennis Canon” is named. Apostles Ex. 292.0002 – 0003.
28. “[T]he General Convention directed the editing, updating, publication and sale of [this] edition,” and intended it “as an authoritative expression of the meaning of the Constitution and Canons of the Episcopal Church as they exist at this time.” Apostles Ex. 292.0006; DX-CANA2011-0009-00085 (Dep. of David B. Beers 476:14-22 (Oct. 23, 2007) (Rule 4:5(b)(3) deposition)) (“White & Dykman is published under the auspices of what we call a Standing Commission, which is an elected—appointed—body of priests, other clergy and laity. And this particular Standing Commission is called the Standing Commission on Constitution and Canons. And . . . they provide some inducement for the publication of editions of White & Dykman”).
29. This third official annotated edition of TEC’s constitution and canons states: “Although considered by some to be declaratory of existing law, Sections 4 and 5 of [the Dennis C]anon were adopted by General Convention in 1979 in response to the . . . invitation contained in the decision in *Jones v. Wolf*.” Apostles Ex. 292.0012; *accord id.* (noting that *Jones v. Wolf*, together with the actions of disaffiliating parishes in the wake of the 1976 General Convention, “made clear the need for action by the General Convention”).
30. The word “trust” appeared nowhere in the property canons concerning parishes and congregations until 1979. Tr. 1231:11-18 (Mullin).
31. This third official edition of TEC’s constitution and canons reiterates that “[t]he power of the General Convention over the disposition of real property is questionable, governed as it is by the law of the state in which it is situated.” Apostles Ex. 292.0008; *accord id.*



(“State laws control the conveying and encumbering of real estate, and each case which arises must be decided according to the law of the situs of the property.”).

32. Plaintiffs’ expert Professor Mullin admitted that this third edition of TEC’s constitution and canons, aka “the 1981 edition of White & Dykman,” “again states the position that the enforceability of the canons will turn on state law.” Tr. 1275:7-10 (Mullin).
33. In this third edition of TEC’s constitution and canons, TEC showed its recognition that the canons are subject to requirements of civil law, stating: “This is recognized by the exception at the end of the section that gives power to diocesan conventions to make provision by local canon for the encumbrance or alienation of real property, differing from that prescribed by this canon, and so adapt the process to local law.” Apostles Ex. 292.0008.
34. This third official annotated edition of TEC’s constitution and canons expressly acknowledges that a genuine “neutral principles” approach does not preclude a congregation from voting to disaffiliate from the denomination, while retaining its property:

*Jones v. Wolf* deci[ded] ... that States, consistent with the First and Fourteenth Amendments, could resolve disputes over the ownership of church property by adopting a ‘neutral principles of law’ approach and are not required to adopt a rule of compulsory deference to religious authority in resolving such disputes where no issue of doctrinal controversy is involved.

***This approach gives great weight to the actions of controlling majorities, and would appear to permit a majority faction in a parish to amend its parish charter to delete all references to the Episcopal Church, and thereafter to affiliate the parish—and its property—with a new ecclesiastical group.***

Apostles Ex. 292.0012 (emphasis added).

35. The statements above were published under TEC’s supervision and direction, in a TEC publication, without any disclaimer that they did not constitute the official views of the denomination.

## PROPOSED FINDINGS OF FACT RELATING TO INDIVIDUAL CONGREGATIONS

### THE FALLS CHURCH

#### I. The History of The Falls Church

##### A. Formation and Early History

36. The Falls Church was founded circa 1732, when the Vestry of Truro Parish made plans to establish a church “at the Cross Roads near Michael Reagans,” engaged a minister to preach at that church (and several others in the parish), and entered into a contract to construct the church building. DX-FALLS-0060-000014 to 000016 (J. Alves & H. Spelman, *Near the Falls: Two Hundred Years of The Falls Church* (1969) (“Near the Falls”).
37. The Falls Church was one of two congregations in Truro Parish. Tr. 925:7-18 (Professor Edward Bond).
38. By deed dated March 20, 1746, John Trammel, in exchange for 50 shillings, conveyed a two-acre parcel to the Vestry of Truro Parish for a churchyard, upon which the original sanctuary of The Falls Church was built. DX-FALLS-0002 (deed); DX-FALLS-0060-00018 (Near the Falls). *See also* Letter Op. at 14 (Dec. 19, 2008).
39. This Court has already concluded that plaintiffs, the Diocese of Virginia and The Episcopal Church, have acknowledged and admitted that defendant The Falls Church, and no other entity, is the owner of this two-acre parcel. Letter Op. at 16-18 (Dec. 19, 2008).
40. In 1764 or 1765, the colonial legislature divided Truro Parish and The Falls Church became one of two congregations in the new Fairfax Parish. Tr. 926:1-927:8 (Bond).
41. The Vestry of Fairfax Parish entered into contracts for constructing a brick church and vestry house on the two-acre parcel in 1766, and construction of the brick church was completed in 1769. DX-FALLS-0060-000023 to 000026 (Near the Falls).

42. The Falls Church came into existence more than 50 years prior to the creation of the Episcopal Diocese of Virginia (“Diocese”) and The Episcopal Church (“TEC”) in 1785.
43. The Falls Church was one of the congregations that founded the Diocese in 1785. Tr. 1109:3-6 (Bond).
44. When TEC and the Diocese were founded, there was strong opposition to any form of centralized hierarchical church government. Apostles Ex. 372-0005 (“there was a strong opposition to any form of centralized government.”); Tr. 1267:5-20 (Mullin).
45. Prior to the American Revolution, a parish and the vestry overseeing it were established by an act of the colonial legislature. Tr. 1005:10-1006:4 (Bond); Tr. 3610:10-16 (Curtis). There was no bishop in Virginia, and TEC and the Diocese did not exist. Tr. 1005:17-19 (Bond); Tr. 895:18-19 (Bond); Tr. 3499:17-21 (Curtis); DX-FALLS-0060-000035 (Diocese and TEC established in 1785).
46. Prior to the American Revolution, the parish vestry held and exercised full control over all property of the parish. Tr. 1007:2-1008:1 (Bond); Tr. 3498:16-3500:14 (Curtis).
47. Immediately following the Revolution, the parish vestry continued to hold and control all property of the parish. 1010:13-1011:2 (Bond); Tr. 3500:20-3501:7 (Curtis); Tr. 3506:3-20 (Curtis); Tr. 3510:3-3511:13 (Curtis).
48. There is no evidence that the parishes that formed the Diocese relinquished, delegated, or ceded their authority, including over church property. Tr. 1011:9-22 (Bond); Tr. 3500:15-3502:14 (Curtis); Tr. 3510:3-3511:22 (Curtis); Tr. 3520:13-3521:4 (Curtis).
49. Although Professor Bond initially testified that in 1785, when the Convention of the Diocese of Virginia was formed, power over church property “goes to the Convention rather than the vestries and it’s—the Convention delegates that back to them” (Tr. 1011:5-8), he admitted that he “can’t point to a specific act other than them joining this larger institu-

- tion which doesn't limit its powers" to support this assertion and that he was "not aware of any express delegation" of power by the vestries to the Diocese. Tr. 1011:9-22.
50. There was no action by the Virginia legislature transferring control over church property from vestries to the Diocese. Tr. 1012:1-4 (Bond); Tr. 3500:15-3501:7 (Curtis).
  51. There were no documents by which the parish vestries transferred their control over church property to the Diocesan Convention. Tr. 1012:22-1013:3 (Bond).
  52. Professor Bond was not aware of any communication either before or after the Diocesan Convention that informed the vestries they would be transferring or had transferred their control over church property to the Convention. Tr. 1013:13-1014:3.
  53. Professor Bond stated that the only support for his position was that the parishes "joined this Convention [in 1785] in which the rules of the Convention of the Diocese don't limit that Convention's powers." Tr. 1013:10-12.
  54. Canon XIII of the Diocesan Canons adopted in 1815 expressly repealed all earlier canons, including those "rules of the Convention" upon which Bond based his claims that the Convention was entitled to exercise control over parish property. Tr. 1019:16-1020:13 (Bond); PX-COM-0071-0397 (1815 Diocesan Canon XIII providing that "[t]he canons and constitution heretofore adopted by the former Conventions of this state shall be and are hereby repealed.").
  55. The only constitutional or canonical provision that Professor Bond could identify in the 1815, 1816, 1823, 1836, or 1848 Canons as support for his position that the Convention had the authority to control parish property but had delegated that authority back to the vestries was the single sentence in Canon XI (later Canon X) stating that the wardens would discharge the duties of their office. Tr. 1022:7-15 ("There's nothing there unless

it's covered in the church wardens carrying out the duties appropriate to their office"); Tr. 1022:16-1025:12; Tr. 1028:10-1029:7.

56. As Professor Bond recognized, the canonical language upon which he relied did not actually define the duties of the vestry, but simply said that they would discharge the duties appropriate to their office, and those duties would have been defined "based on what people had already been doing" prior to the adoption of any canons. Tr. 1025:4-1026:2.<sup>3</sup>
57. As Professor Bond agreed, there was no provision in the Diocese of Virginia Constitution or Canons in effect from 1815, 1816, 1823, or 1836 that indicated that the vestries held parish property in any way for the Diocese. Tr. 1032:16-1033:4 ("Q. So Professor Bond, it's fair to say, then, that in 1815 and 1816 and 1823, there is no provision in the Constitution or Canons that indicates that the vestries hold parish property in any way for the Convention, correct? A. There doesn't seem to be in the canons, no. Q. And, in fact, isn't it the case that the language you referred to earlier requiring consent to the sale of any glebes is no longer in the constitution or canons at that point? A. Yes."); Tr.

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<sup>3</sup> See also Tr. 1028:10 to 1029:7:

Q Professor Bond, we talked about this previously. Didn't -- don't you agree that the 1815 canons expressly repealed all earlier canons and all other earlier constitutions, correct?

A That's what they said.

Q And you said earlier that the only language you could identify in the canons that referred to any sort of interest by the Convention was this language, correct?

A Right.

Q But you're now saying that somehow it also defines the duties of the wardens as giving them authority -- as requiring -- as indicating Convention control over parish property based on this language, correct?

A I believe so.

Q So there's nothing else in the Constitution and Canons that you can point to supporting your position other than this sentence, correct?

A I don't believe at this point I can do that.

1036:18-22 (“THE COURT: When we look at the 1815 canons, there's no language that is consistent with the idea that the congregations had to get consent to sell glebes or portions of glebes, right? THE WITNESS: That's right.”).

**B. *The Falls Church in the 19th Century***

58. The historical record regarding The Falls Church from 1798 to 1819 is sparse. “By 1798 ... The Falls Church was no longer *functioning as an Episcopal congregation.*” Tr. 929:9-13 (Bond) (italics added). There is evidence that the church buildings continued to be used by local congregants, although the congregants then may have chosen to align with the Methodists, who had recently branched off from the Anglican/Episcopal church, rather than the Episcopalians. *See* Tr. 936:21-937:2 (Bond) (“some Methodist sources that say that the Episcopalians weren’t meeting their needs; the Methodists were.”).
59. During this same period from 1798 to 1819, the Diocese was itself in danger of ceasing to exist, and there were very few Diocesan activities in which churches might participate.
60. Between 1800 and 1812, the Diocese held only a single Annual Convention, in 1805. Tr. 1017:10-1018:1 (Bond); DX-FALLS-0060-000040 (Near the Falls).
61. From 1799 until 1814 there were no delegates from Virginia at TEC’s General Conventions. DX-FALLS-0060-000040 (Near the Falls).
62. In 1811, TEC’s General Convention expressed the strong fear that the church in Virginia was in danger of “total ruin”:

In the General Convention of the Church, held in the city of New Haven in 1811, there was no representation, or any report whatever from Virginia, but the following entry is found on the journal, “they fear, indeed, that the church in Virginia is from various causes so depressed that there is danger of her total ruin unless great exertions favoured by the blessing of Providence are employed to raise her.

PX-COM-0081-008 to 009 (Bishop Meade’s Address in 1845 Diocesan Journal, quoting 1811 ECUSA General Convention Journal).

63. In 1819 or 1820, a clergyman at The Falls Church obtained copies of Diocesan Canons from the minister of Christ Church Alexandria. Tr. 939:5-940:3 (Bond).
64. From 1819 to 1823, there is evidence in Diocesan records and in court records of a functioning congregation at The Falls Church that sought to participate in activities of the Diocese. Tr. 931:20-932:1 (Bond).
65. Diocesan Journals show that by 1823 this congregation of The Falls Church had its own distinct, active vestry that elected a lay delegate to the Diocese's Annual Convention:
- A petition of Mr. John Moore to this Convention was presented and read setting forth that he was, on the 10th instant, duly elected a lay deputy to represent the interests of the congregation of the Falls Church, in Fairfax parish, at the Convention; ... [and] that he verily believes that the vestry from whom he received his appointment are organized agreeably to the canons of the church, and prays that the case of the congregation at the Falls Church, in the parish of Fairfax, may be reconsidered....
- PX-COM-071-453 (1823 Diocesan Journal). *See also* Tr. 931:18-933:2 (Bond).
66. The Diocesan Convention declined this request on the grounds that there was no canon then in existence that allowed for more than one lay delegate from a parish and a delegate for Fairfax Parish had already been seated, but recommended that a canon for the division of parishes be adopted. PX-COM-071-454.
67. The Diocesan canons in effect in 1823 had no provisions giving the Diocese any control over or interest in congregational property. Tr. 1044:10-18 (Bond).
68. Between 1823 and 1836, The Falls Church functioned as a separate and distinct congregation with its own vestry. *See* Tr. 1073:6-1074:5 (Bond) (having a separate vestry would have required for admission in 1836 under Diocesan Canon 12).<sup>4</sup>

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<sup>4</sup> Tr. 1073:6-1074:5:

Q. Just to clarify a couple of things with regard to the canons we talked about, you testified this morning, I believe, that as of 1836, The Falls Church had its own vestry, correct?

69. In 1836, members of the congregation of The Falls Church again presented a petition to the Diocesan Convention seeking to have a lay delegate seated. PX-COM-0072-004.
70. The committee appointed to consider this petition recommended, and the Diocesan Convention adopted, a resolution stating “That the said Falls Church be admitted into connection with this Convention as a separate and distinct Church from the Parish Church of Fairfax Parish.” PX-COM-0072-007 (1836 Diocesan Annual Council Journal).
71. At this time, the Diocese acknowledged that the church property belonged to the congregation of The Falls Church, as stated in the parochial report in the 1837 Diocesan Journal:  
  
Measures are in progress which it is hoped will result in realizing funds sufficient to put in complete repair, during the coming summer, the venerable edifice *belonging to this congregation*.  
  
PX-COM-0073-014 (italics added).
72. When The Falls Church was re-admitted in 1836, nothing in the Diocesan Canons indicated that the Diocese had any control over or, interest in, church property, including congregational property. Tr. 1045:2-14 (Bond).
73. Canon 18, the first canon regarding church property adopted by the Diocese in the 19<sup>th</sup> Century, around the time of TFC’s readmission, provided that church property was held

A. I don't think I mentioned whether they had a vestry in that year or not. But in order to gain admittance to the Convention under what I think is Canon 12 -- the canon that governs the division of parishes, you had to have a vestry that had subscribed to the rules in the canons for electing vestrymen.

Q. So is it reasonable to believe that they would not have been admitted in 1836 without having had a vestry?

A. Yes, that would be reasonable.

Q. And isn't it correct that in applying in 1836 they would have made a representation that they had a vestry?

A. I suspect they would have.

Q. Isn't it the case that that vestry would not have been shared with any other church or parish at that time, correct?

A. That's true.



by the Vestries as trustees *for the congregation* of the local church, not the Diocese:

The Vestries, respectively with the Minister when there is one, shall hold all glebes, lands, parsonage houses, churches, books, plate, or other property now belonging or hereafter accruing to the Protestant Episcopal Churches of the Diocese of Virginia, as trustees for the congregation of said church for whose use the same were or shall hereafter have been purchased or otherwise obtained. . . .”

PX-COM-0074-022; see also Tr. 1045:15-1046:13, 1048:13-1048:19 (Bond).<sup>5</sup>

74. As Professor Bond acknowledged, the language of the Canons in effect in the 19<sup>th</sup> Century contradicted his earlier testimony that the Vestries held property in trust for the benefit of the Diocese, and rather showed that the vestries held property in trust for the benefit of the local church.<sup>6</sup> Tr. 1053:3-1054:5 (Bond).

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<sup>5</sup> Canon 18 provided in full:

Canon 18<sup>th</sup>. Respecting the Property of the Church

The Vestries, respectively with the Minister when there is one, shall hold all glebes, lands, parsonage houses, churches, books, plate, or other property now belonging or hereafter accruing to the Protestant Episcopal Churches of the Diocese of Virginia, as trustees for the congregation of said church for whose use the same were or shall hereafter have been purchased or otherwise obtained, and may improve, demise, or otherwise dispose of the same, during the vacancy of a minister, but may not demise or otherwise dispose of the lands or houses allowed for the ministers habitation or use when they have one without his consent. They may also use, improve, or dispose of all personal property, and the produce, rents, and profits of lands and houses (not appropriated for the minister) belonging to the church in repairing the church and parsonage houses for the benefit of the respective congregations; and may make such rules and orders for managing the affairs and temporal concerns of their respective churches, as they shall think most conducive to its interest and prosperity. They shall have the sole power of directing the payment of money belonging to the respective churches, and appoint a clerk, treasurer and collector, when necessary, all which proceeding shall be fairly entered in a well bound book, to be kept for that purpose.

<sup>6</sup> Tr. 1053:3 to 1054:5:

THE COURT: All right. Hold on a second. When I was looking at my notes, it seemed like a lifetime ago, but I think it was this morning, we were talking about 1787, which would have been just after the formation, I assume. And my notes say the property of the individual churches are held by vestries as trustees for the benefit of the society, the society being the Diocese, right?

THE WITNESS: Right, I think so.

75. Professor Bond was not aware of any canons of the Diocese or of the Episcopal Church adopted at any time from 1798 to 1950, that provided that vestries or trustees held church property for the benefit of, or in trust for, the Diocese or TEC. *See* Tr. 1048:4-12 (Bond).
76. Professor Mullin testified that the first national canons relating to congregational property were the anti-alienation canons adopted in 1871 (Tr. 1196:8-1200:17), but TEC has stated that these anti-alienation canons had only moral, not legal, force. Apostles Ex. 374.0004.
77. When adopting these canons, TEC's General Convention expressly recommended that dioceses "take such measures as may be necessary, by State legislation, or by recommending such forms of devise or deed or subscription," to establish a diocesan or TEC interest in congregational property. Apostles Ex. 376.0002. *See also* Tr. 1260:13-1261:14 (Mullin) ("there are repeated references to securing ownership by deeds" in "the debates surrounding these canons).
78. The Diocese understood that it did not have any property rights under Virginia law during the nineteenth century. Tr. 3536:3-3548:11 (Curtis).
79. The Diocese publicly lamented its lack of property rights during the first half of the nineteenth century. Tr. 3536:10-3539:11 (Curtis); Tr. 1042:10-1043:20 (Bond).
80. At the same time, the Diocese in 1843 and 1844 recognized that congregations, through their vestries and trustees, did have legal rights to receive, own, and transfer property in

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THE COURT: But this language here, putting aside whatever the national church might have in way of canons, this language says that the property – it actually goes farther -- it looks like it goes farther than the last canon because it actually says that the property that now belongs to the Protestant Episcopal Church of the Diocese is going to be held as trustees for the benefit of the parish, the church.

That strikes me as completely at odds with what you were talking about existing in the late 1700s, and I'm -- is that correct, or do you think I'm misreading it?

THE WITNESS: As I said, I don't know what the national canons say on this point, but it looks like the language may have shifted towards the favor of the vestries.

Virginia. PX-COM-0079-0006 (1843 Diocesan Journal); PX-COM-0080-00007 (1844 Diocesan Journal); Tr. 3537:10-3539:12 (Curtis).

81. In 1845, the Diocesan Convention appointed a committee to petition the General Assembly on behalf of the Convention seeking enactment of a law permitting the denomination to incorporate or otherwise to receive, hold, and transmit property. PX-COM-0079-0011, 0018 (1843 Diocesan Journal); Tr. 3536:10-3539:11 (Curtis).
82. The petition submitted on behalf of the Diocese thus described the Diocese's and denomination's inability to hold property under Virginia law:

The petition of the clergy and the laity of the Protestant Episcopal Church humbly showeth, that, in common with all other Christian denominations in the commonwealth, they suffer manifold and great injuries for the want of some adequate provision of law to enable them to hold and transmit property. For the want of it they are unable to provide in a becoming way for the performance of many of their duties in which the community at-large is interested.

As the law is now administered, no Christian denomination is capable of taking and holding property of the smallest amount. They can neither take what is given, nor acquire by purchase. Testamentary bequests in their behalf and all other denominations are held to be void: and any little modicum of which they may be possessed is at the mercy of the wrongdoer. In short - they are declared to be unknown to the laws, and courts of justice are shut against them.

Apostles Ex. 293-002 (1845 Legislative Petition); DX-FALLS-00413-0002 (1845 Legislative Petition); DX-FALLS-00413A-0001 (Transcription of 1845 Petition). *See also* Tr. 1039:10-23, 1041:11-1042:3 (Bond); Tr. 3539:13-3541:10 (Curtis); Tr. 3544:22-3548:11; Apostles Ex. 294-002 (1840 Legislative Petition).

83. In 1851, when the only property of The Falls Church was the historic two-acre parcel conveyed under the 1746 Trammell deed and the church buildings that had been erected on it, the vestry of The Falls Church obtained an Order from the Fairfax Superior Court of Law and Chancery appointing five individuals as "Trustees of the said church, the former trustees being all dead." DX-FALLS-0429-000001, 00006-00007.

84. In 1852, The Falls Church recorded its second deed, dated July 18, 1852, documenting a conveyance from Nathan Thompson to Trustees of the Episcopal Church known and designated as The “Falls Church” in Fairfax County of the County of Fairfax in the State of Virginia. DX-FALLS-003; DX-FALLS-003A (transcription of DX-FALLS-003).
85. The Civil War caused substantial disruption to churches throughout Virginia, in some cases causing churches to be evacuated, abandoned, or confiscated by the various armies for their use. Tr. 3553:11-22 (Curtis).
86. The Falls Church was one of the many churches in the area affected and was occupied at various times by both Union and Confederate troops and was used as a hospital and as a stable. DX-FALLS-0060-000044 to 000047 (Near the Falls).
87. The church building had been badly damaged by the Civil War and substantial repairs were necessary. DX-FALLS-0060-000046 to 000049 (Near the Falls).
88. In November 1865, a claim for restoration of The Falls Church building was submitted to, and subsequently substantial repairs were made by, the United States Army. DX-FALLS-0060-000047 to 000049 (Near the Falls).
89. In recognition of this widespread problem that had affected many churches throughout Virginia, the 1870 Virginia Constitution included an article that provided that property rights would be uninterrupted by the Civil War. Tr. 3554:1-7 (Curtis).
90. After the Civil War, the Vestry of The Falls Church continued to control the ownership and use of the property of The Falls Church, including appointing trustees to hold title to the church’s property, and at a meeting on February 8, 1877, adopted this resolution:  
  
Resolved: that application be made to the Court of Fairfax County for the appointment of Cassius F. Lee, L.M. Blackford, and Silas D. Tripp as Trustees to hold the real estate (church building and land) belonging to Falls Church, Fairfax County, as provided by the statute.

DX-FALLS-0063-000001 (Vestry Resolution); DX-FALLS-0063-000002 (Vestry Resolution and Transcription).

91. On June 11, 1877, the Fairfax Court entered the following Order:

On the motion of the property authority, It is ordered that Cassius F. Lee, L.M. Blackford, and Silas D. Tripp, are appointed Trustees of Falls Church Fairfax County to hold the church buildings and land, with all the powers duties and responsibilities invested in them by law.

DX-FALLS-0064-000001 (Order); (DX-FALLS-0065-000001-000005 (Order and Transcription).

**C. *The Falls Church in the 20th Century***

92. In 1912, the Diocesan Council (called the “Convention” prior to 1861) appointed a Diocesan Commission on Colonial Churches that included among its members both the current and future Historiographers of the Diocese, E.L. Goodwin and G. McLaren Brydon and State Court Judge T.R.B. Wright. PX-COM-0150-025 to 026 (1912 Diocesan Journal); Tr. 1112:6-1113:9 (Bond).
93. The Falls Church was one of 20 churches covered by the Report of this Commission, PX-COM-0151-056 to 057 (1913 Diocesan Journal), and was recognized as one of fifteen churches where the congregation owned the church property: “Of the twenty Colonial Church buildings in the Diocese, fifteen are cared for *by the well organized congregations which own them.*” PX-COM-0152-035 (1914 Diocesan Journal) (italics added).
94. The Diocese further recognized that “these, and the other Colonial Churches of the Diocese, *while of course they belong absolutely to the parishes in which they are located*, are also a very precious heritage of the Diocese, and arouse an interest far wider than would be accorded to them as parish churches.” *Id.* (emphasis added).
95. In 1951, the Diocese’s Standing Committee acknowledged that The Falls Church’s property was the congregation’s. In the 1951 Annual Council Journal, the Standing Commit-

tee described itself as having performed acts including “recommend[ing] permission to the Bishop to allow the encumbering of the church property of ... The Falls Church, Falls Church, Virginia.” PX-COM-0190-053 (1951 Diocese Annual Council Journal).

***D. The Falls Church in the 21st Century***

**1. Incorporation of The Falls Church**

96. From its inception until 2006, The Falls Church existed and operated as an unincorporated association. Tr. 2801:22-2802:15 (Wright).
97. Similarly, TEC and the Diocese have been unincorporated associations throughout their existence, and remain unincorporated associations. Diocese Compl. ¶ 1; TEC Compl. ¶ 1.
98. In 2006, after a federal court invalidated the Virginia Constitution’s prohibition on incorporation of churches, the Vestry incorporated The Falls Church as a Virginia nonstock corporation to gain the advantages of the corporate form. Tr. 2953:3-20 (Wilson).
99. The Vestry of The Falls Church unanimously adopted an Incorporation Resolution at its regular May 2006 meeting. DX-FALLS-0356A-000001. Tr. 2953:21-2955:7 (Wilson).<sup>7</sup>
100. This Incorporation Resolution provided that the new corporation would be the incorporated form of the pre-existing unincorporated parish known as The Falls Church and also at times as The Falls Church (Episcopal). DX-FALLS-0356A-000001, ¶ 2.
101. This Incorporation Resolution also provided that the property held by Trustees for the benefit of the unincorporated parish would continue to be held for the benefit of the parish in its corporate form. *Id.* ¶ 3. Tr. 2954:9-2955:7 (Wilson).
102. Articles of Incorporation were adopted by the Vestry and then filed with the Virginia State Corporation Commission at the end of June 2006. Tr. 2956:17-2961:16 (Wilson);

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<sup>7</sup> Both Mr. Fetsch and Mr. Goodrich were then serving on The Falls Church’s vestry. Tr. 2958:8-2959:5 (Wilson).

- DX-FALLS-0356B. The State Corporation Commission issued a Certificate of Incorporation incorporating the church on July 6, 2006. DX-FALLS-00356C.
103. The Articles and the Incorporation Resolution both specified that the governing board of the incorporated church would be the Vestry, and the Articles specifically identified all of the then-serving Vestry members (including Mr. Fetsch and Mr. Goodrich) as the initial directors of the incorporated church. DX-FALLS-0356B-00004; DX-FALLS-0356A, ¶ 4; Tr. 2958:8-2959:5 (Wilson).
104. Following incorporation, the Vestry adopted Bylaws for the incorporated church. DX-FALLS-0362; Tr. 2961:17-2964:16.
105. The duly adopted Articles of Incorporation specifically stated that the unincorporated association being incorporated thereby was “The Falls Church also known as The Falls Church (Episcopal), which was established as a church in the Commonwealth of Virginia in A.D. 1732.” DX-FALLS-0356B-000004, Article 12.
106. The duly adopted Bylaws contain a parallel provision. DX-FALLS-0362-000001, § 1.1.<sup>8</sup>
107. Because the corporate name “The Falls Church” was not available, the church incorporated under the name “The Church At The Falls–The Falls Church”, but the Articles and Bylaws expressly stated that the church would continue to operate under the name “The Falls Church,” as it had done since at least 1757. Tr. 2957:3-2958:7 (Wilson); DX-FALLS-00356C-00005; DX-FALLS-0362-000001, Section 1.1.

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<sup>8</sup> Mr. Fetsch, the primary founder in 2007 of the Falls Church Episcopal continuing congregation and its Senior Warden in 2007, served on the Vestry of The Falls Church in 2006. Tr. 1374:17-13758 (Fetsch); Tr. 1473:16-1474:1 (Fetsch). Mr. Fetsch voted in favor of incorporation, voted to adopt the Articles of Incorporation (which listed his name as one of the initial directors of the incorporated church), and voted to adopt the Bylaws. Tr. 1415:2-13 (Fetsch); Tr. 2958:8-2959:5 (Wilson). After incorporation, Mr. Fetsch continued to serve on the vestry/board of directors until he resigned on December 17, 2006, following the disaffiliation vote. Tr. 1414:12-1415:1 (Fetsch).

108. The members of the Vestry, the clergy of the church, and all operations of the church were the same before and after incorporation of the church. Tr. 2962:12-21 (Wilson).

**2. The Falls Church's Disaffiliation from The Episcopal Church and the Diocese**

109. Prior to the vote, The Falls Church was a lively, healthy congregation with large numbers of people involved in every area of ministry and about 2800 people regularly involved in the life of the church. Tr. 2734:13-17 (Rev. Yates).

110. TFC operated in excess of 27 ministries in which close to a thousand members of the congregation were involved. Tr. 2456:18-2458:2 (Deiss); *see also* DX-307-000003 (List of ministries in TFC Annual Report).

111. The Falls Church employed dozens of employees. Tr. 2458:15-2459:4 (Deiss); DX-FALLS-0307-000048-49 (List of employees in TFC Annual Report).

112. The vestry hired the employees and negotiated and paid their salaries and benefits. Tr. 2459:5-22 (Deiss).

113. The vestry also found and hired the clergy without help from TEC or the Diocese. Tr. 2460:1-2461:8 (Deiss).

114. The budget for 2006 was \$4,587,000, with \$2,665,000 budgeted for salaries. DX-FALLS-0307-000045.

115. As of the vote, The Falls Church owed money in the ordinary course of business to employees and vendors for salaries, services and products. Tr. 2463:12-2464:6 (Deiss).

116. The Rev. John Yates, Rector, and Hugo Blankingship, Chancellor of The Falls Church, were two of six members of a special committee appointed by Bishop Lee to help "congregations continuing in conflict over the decisions of the 2003 General Convention get on with their mission in as close a union as possible with the diocese." Tr. 2715:11-



- 2723:3 (Yates); DX-FALLS-242-000085 (Oct. 4, 2005 letter from Bishop Lee); DX-FALLS-0158 (Nov. 10, 2005 letter from Bishop Lee); DX-FALLS-0143 (Report).
117. This special committee was chaired by Diocesan Chancellor Russ Palmore, met monthly for about nine months (Tr. 2717:1-16 (Yates); Tr. 2966:22-2968:2 (Wilson); DX-FALLS-0158), and on September 28, 2006, published its unanimous report, authored by Chancellor of the Diocese Russell Palmore (Tr. 2718:14-15) (Yates), a Diocesan officer (PX-COM-0003-007). DX-FALLS-0143 (Report).
118. The special committee's report included a "Protocol for Departing Congregation." DX-FALLS-0143 (Report), and treated congregations within the Dioceses as separate and distinct entities, capable of disaffiliation, for purposes of disaffiliation and the ensuing negotiation over church property. DSTS Ex. 134-01913-01914.
119. Shortly after the publication of the Protocol, in October 2006, TFC entered a 40 day period of discernment, as required by the Protocol, at the conclusion of which the congregation was to vote on the question of disaffiliation. Tr. 2970:18-2972:2 (Wilson).
120. The Diocese participated in the discernment process in accordance with the Protocol, sending a videotape message by Bishop Lee that was played at services of The Falls Church and put on The Falls Church website. Tr. 2972:3-11 (Wilson).
121. The Diocese sent Chancellor Palmore and Standing Committee member Henry Burt to speak at The Falls Church's congregational meeting in December 2006 before the vote; they were allowed to speak because "we had agreed to do that with Bishop Lee pursuant to—in connection with implementation of the Protocol." Tr. 2985:18-2989:7 (Wilson).
122. Consistent with the Protocol, at its meeting in November 2006, the Vestry of The Falls Church passed a resolution by a greater than 70% majority vote calling for disaffiliation

- from the Diocese and TEC. Tr. 2973:2-2976:13 (Wilson); Tr. 2978:1-4 (Wilson); DX-FALLS-136 (November 13, 2006 Vestry Resolution).
123. On December 1, 2006, Bishop Lee emailed a letter to John Yates and the members of the vestry of The Falls Church that “made it very clear ... that he was going to hold us rigorously to the requirements of the special committee report and the protocol that was contained therein.” Tr. 2981:10-2983:8 (Wilson). PX-FALLS-0787 (email from Bishop Lee).
  124. The congregational meeting and vote took place beginning on December 10, 2006, and concluding on December 16, 2006, on the two questions required by the Protocol—disaffiliation and whether the departing congregation should retain the property. Tr. 2989:8-2992:18 (Wilson); Tr. 2818:15-2822:15 (Wright).
  125. The congregational vote was taken in a manner that fully complied with the Protocol, the Bylaws of The Falls Church, and the Constitutions and Canons of TEC and the Diocese. Tr. 2990:11-2991:5 (Wilson); Tr. 2815:22-2822:15 (Wright).
  126. More than 90% of the voters voted for disaffiliation and over 94% voted that the departing congregation should retain the property. Tr. 2990:6-2992:18 (Wilson); DX-FALLS-0185 (Report of Election Judges).
  127. Under any potentially applicable standard, there was a sufficient majority voting in favor of disaffiliation and in favor of retaining the property. Tr. 2991:6-2992:18 (Wilson).
  128. At the time of the congregational votes in December, The Falls Church and the other congregations agreed to a standstill agreement with the Diocese, terminable upon 30 days notice. Under this standstill agreement, the churches and the Diocese agreed to enter into good faith negotiations during which neither side would initiate any civil legal action against the others. The standstill agreement also provided that the congregations would file their 57-9 reports in the Circuit Court, which would not be considered a hostile act by

- the Diocese and TEC, would seek to stay their 57-9 filings, and would not oppose intervention by the Diocese. DX-FALLS-0459. Tr. 2995:8-2998:9 (Wilson).
129. Consistent with the Protocol and the standstill agreement, after the results of the vote were known, negotiating teams representing The Falls Church and other disaffiliating churches, and a team representing the Diocese, were appointed and met on or about December 28, 2006. Tr. 2993:20-2995:18 (Wilson).
130. In January 2007, representatives of the Diocese contacted the congregations to tell them that the Diocese was not going to extend the Standstill Agreement because the national Episcopal Church was not happy with the situation and was not going to cooperate with the negotiation process going forward, and the Diocese withdrew from the negotiations. Tr. 2994:21-2998:9 (Wilson).
131. After the vote, parish life continued unchanged. People were involved in just the same way as they had been before. Tr. 2734:18-2735:3 (Yates).
132. After the vote, The Falls Church conducted the same services, used the same hymnals, Book of Common Prayer, Bibles, and Sunday School materials, and continued all the same ministries with the same vestry. Tr. 2464:7-2466:11 (Deiss).
133. After the vote, The Falls Church retained its tax ID number, paid the employees and vendors in the ordinary course, issued W-2's to employees for the entire year and issued statements of contribution to members for the entire year. Tr. 2466:12-2469:6 (Deiss).
134. After the vote, The Falls Church continued as the same congregation in the same corporation as it had been before the vote. Tr. 2464:7-2469:6 (Deiss).

## **II. The Acquisition, Maintenance, Use, and Improvement of The Real Property of The Falls Church**

### ***A. The Deeds to the Real Property of The Falls Church***

135. Eleven of the twelve parcels owned by Trustees for The Falls Church are depicted on the Plat admitted as DX-FALLS-0014; the one parcel not depicted there is the rectory property at 1008 Broadmont Terrace in Falls Church. Tr. 2441:22-2442:7 (Deiss).
136. The first deed, dated March 20, 1746, conveyed a two-acre parcel by John Trammel to the Vestry of Truro Parish, in exchange for the Vestry's payment of 50 shillings. DX-FALLS-0002. This deed relates to the parcels labeled "1" and "2" on the plat DX-FALLS-0014. Tr. 2416:16-2417:2 (Schrantz).
137. This is the parcel upon which the original church building and vestry house of The Falls Church were built during the 18th Century, long before the Diocese or TEC existed. See Letter Op. at 14 (Dec. 19, 2008); Tr. 2416:16-2417:2 (Schrantz).
138. The second deed, dated July 18, 1852, is a conveyance from Nathan Thompson to Trustees of the Episcopal Church known and designated as The "Falls Church" in Fairfax County of the County of Fairfax in the State of Virginia. DX-FALLS-003; DX-FALLS-003A (transcription of DX-FALLS-003). This deed relates to the parcel labeled "3" on the plat DX-FALLS-0014.<sup>9</sup> Tr. 2417:3-2418:3 (Schrantz).
139. There is no evidence in the records of The Falls Church that the Diocese of Virginia either financially supported or contributed in any way to the acquisition of this property covered by the 1852 deed.

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<sup>9</sup> Expert Title Examiner Kenneth Schrantz testified that the language in the 1852 deed identifying as Grantee "the Episcopal Church known and designated as The 'Falls Church'" was not a use restriction. Tr. 2417:6-2418:3.

140. The third deed, dated October 1, 1918, is a conveyance to Trustees of The Falls Church Episcopal Church. DX-FALLS-0004. This deed relates to the parcel designated with the number “4” on the plat DX-FALLS-0014. Tr. 2418:7-17 (Schrantz).
141. Expert Title Examiner Kenneth Schrantz testified that the language in the 1852 deed identifying as Grantee “the Episcopal Church known and designated as The ‘Falls Church’” was not a use restriction. Tr. 2417:6-2418:3.
142. The fourth deed, dated October 29, 1953 is a conveyance to “Trustees of The Falls Church.” DX-FALLS-0005. This deed concerns the rectory property, which is not on DX-FALLS-14. Tr. 2441:22-2442:7 (Deiss).
143. The fifth deed, dated February 27, 1956, is a conveyance to “Trustees of The Falls Church.” DX-FALLS-0006. This deed relates to the property designated with the number “5” on the plat. DX-FALLS-0014. Tr. 2418:18-2419:13 (Schrantz).
144. The sixth deed, dated September 15, 1956, is a conveyance to “Trustees of The Falls Church.” DX-FALLS-0007. This deed relates to the parcel designated with the number “6” on the plat. Tr. 2419:22-2420:9 (Schrantz).
145. The seventh deed, dated August 30, 1963, is a conveyance to “Trustees of The Falls Church (Episcopal).” DX-FALLS-0008. This deed relates to the parcel designated with the number “7” on the plat. Tr. 2420:13-2421:1.
146. The eighth deed, dated December 15, 1986 is a conveyance to “Trustees of The Falls Church (Episcopal).” DX-FALLS-0009. This deed relates to the parcel designated with the number “8” on the plat.
147. The ninth deed, dated October 31, 1996, is a conveyance to “Trustees of The Falls Church (Episcopal).” DX-FALLS-0010. The deed relates to the property designated with the number “9” on the plat. DX-FALLS-0014. Tr. 2421:1-2421:17 (Schrantz).

148. The tenth deed, dated January 3, 2000, is a conveyance to “Trustees of The Falls Church (Episcopal).” DX-FALLS-0011. This deed relates to the parcel designated with the number “10” on the plat. DX-FALLS-0014. Tr. 2421:18-2422:6 (Schrantz).
149. The congregation of The Falls Church paid approximately \$1,650,000 for the purchase of this property; the Diocese and TEC contributed nothing. Tr. 2448:8-2449:3 (Deiss).
150. The eleventh deed, dated December 1, 2005, is a conveyance to “Trustees of The Falls Church (Episcopal).” DX-FALLS-0012. This deed pertains to the parcel designated with the number “11” on the plat. Tr. 2422:7-2423:1 (Schrantz).
151. There is no evidence in the records of The Falls Church that the Diocese of Virginia or TEC either financially supported or contributed in any way to the acquisition of any of these properties. Tr. 2441:17-2442:20 (Deiss).

***B. The Land and Title Records for the Property***

152. Kenneth Schrantz, accepted at trial as an expert Title Examiner, gathered and reviewed all of the deeds, the land records, and related court records relating to real property of The Falls Church, and prepared a Title Report stating his conclusion that the record owners of the properties are “Trustees of The Falls Church (Episcopal), also known of record as Trustees of The Falls Church.” Tr. 2403:20-2404:9 (Schrantz); Tr. 2406:2-11 (Schrantz).
153. Mr. Schrantz did not find any reversionary interest as to these properties. Tr. 2404:6-12.
154. Mr. Schrantz did not find any ownership interest in favor of TEC or the Diocese. Tr. 2404:13-16.
155. Mr. Schrantz did not find any option giving TEC, the Diocese, or anyone else the right to take the property if certain events happened. Tr. 2404:17-20.
156. Apart from the City’s historic district restrictions, Mr. Schrantz did not find any use restrictions requiring that the property be used in a certain way. Tr. 2404:21-2045:14.

157. Mr. Schrantz did not find any easements in favor of TEC or the Diocese. Tr. 2405:15-20.
158. Mr. Schrantz did not find any security interest that would give TEC or the Diocese an interest in the property if TFC should fail to satisfy some obligation to them. Tr. 2405:21-2406:1.
159. The name “Trustees for The Falls Church” was used on deeds until the 1960s, after which a parenthetical was added and the name “Trustees for The Falls Church (Episcopal)” was used. Tr. 2407:11-2413:12 (Schrantz).
160. As Mr. Schrantz explained, this was simply a name change that had no effect on ownership and did not impose any restrictions on use. Tr. 2406:2-2407:10.
161. The same persons continued to serve as Trustees for the church under both versions of the name. Tr. 2406:2-2412:3 (Schrantz).
162. Mr. Deiss, the Parish Administrator who reviewed the deeds and other documents when the last three of the parcels were acquired, understood the use of the parenthetical “(Episcopal)” to be merely an identifier to distinguish these properties from properties owned by The Falls Church Presbyterian Church. Tr. 2445:3-2450:14 (Deiss).

***C. Payments for Acquiring, Maintaining, and Improving the Real Property of The Falls Church***

163. As this Court found after hearing testimony in the 2008 trial concerning ownership of the The Falls Church’s historic 2-acre parcel, “it is the TFC’s vestry that for more than 150 years has governed the property in question, raised funds to upgrade the property, repaired the property, financed additions to the property and decided how the property was to be used.” Letter Op. at 14 (Dec. 19, 2008) at page 15, Note 10.
164. The 1746 two-acre parcel was purchased by the Vestry of Truro Parish, of which The Falls Church vestry is the successor, for 50 Shillings, Sterling. DX-FALLS-0002; Letter Op. at 14-18 (Dec. 19, 2008).

165. All other parcels were purchased by The Falls Church. Tr. 2441:17-2442:20 (Deiss).
166. Bill Deiss, the Parish Administrator, reviewed the church's records relating to the properties acquired, maintained, and/or improved from 1873 to the present, and was directly involved in the acquisitions, maintenance, and improvements from 1996 to the present. Tr. 2437:18-2438:18 (Deiss); 2441:17-2442:7 (Deiss).
167. All of these acquisitions of property of The Falls Church from 1873 to the present were paid for by the congregation of The Falls Church and without any financial contribution from TEC or the Diocese. Tr. 2442:11-20 (Deiss); Tr. 2443:6-2444:14 (Deiss); 2448:8-20 (Deiss); Tr. 2452:21-2454:22 (Deiss); Tr. 1458:22-1459:15 (Fetsch).
168. Since at least 1873, TFC's Vestry and congregation, and not TEC or the Diocese, have continuously maintained the property and have controlled the finance, expense, budget and use of the property. Tr. 2434:11-2435:18 (Deiss); Tr. 2437:1-2438:5 (Deiss); Tr. 2518:16-2522:11 (Deiss); Tr. 2523:14-2524:22 (Deiss).<sup>10</sup>
169. From 1950 through 2010, The Falls Church spent \$8,135,000 on maintenance to the property, and received no contributions for maintenance from either TEC or the Diocese. Tr. 2518:16-2522:7 (Deiss); DX-FALLS-0073A.
170. From 1950 to 2010, The Falls Church paid \$15,900,000 for new buildings, expansions and renovations, and other capital improvements to the property; TEC and the Diocese paid nothing. Tr. 2523:14-2523:4 (Deiss); Tr. 1457:15-1459:15 (Fetsch).
171. TEC and the Diocese were not involved in the design, planning, implementation, or payment for any of the property acquisitions, expansions, and improvements of The Falls Church's property. *E.g.*, Tr. 2443:6-2444:14 (Deiss) (1950s expansions); Tr. 2450:15-2452:20 (1960s expansions); Tr. 2452:21-2454:22 (1990s and 2000 expansions).

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<sup>10</sup> Records prior to 1873 are not available. Tr. 2437:18-2438:10 (Deiss).



172. When it came time to pay for the expansions to the buildings, including the \$7 million expansion in 1992, the money was raised by The Falls Church's congregation and the debt was incurred and repaid by The Falls Church. Tr. 1457:15-1459:15 (Fetsch); DX-FALLS-0033 (TFC's Integrated Financial Plan for the 1992 Expansion).
173. The Falls Church did not even think of asking TEC or the Diocese to help pay for the improvements to or expansions of its properties. Tr. 1465:22-1468:14 (Fetsch); Tr. 2455:1-2456:7 (Deiss); Tr. 2634:1-2635:20 (Yates) ("It was our building. We were responsible to pay for it. It wasn't the responsibility of the Diocese to pay for it.").
174. In addition to their financial contributions, The Falls Church's own vestry and members of its congregation also contributed their time and talents to maintaining and improving the property.
175. The Falls Church's Vestry and its building committee invested extensive time and work and made decisions including such things as design, site plans, zoning and variances, neighborhood meetings and work with architects and contractors. Tr. 1450:11-1458:14 (Fetsch).
176. At trial, neither the Diocese nor TEC identified any payments or contributions that either entity made to The Falls Church to support the acquisition of any of this property.
177. At trial, neither the Diocese nor TEC identified any payments or contributions that either entity made to The Falls Church to support the maintenance or improvement of any of this property, with the possible limited exceptions of two small grants from the Bruce Fund in 1877 and 1903 and/or 1904, and from the Nation-Wide Campaign in the 1920s. Tr. 947:17-948:14 (Bond).
178. The total contributions allocated from the Bruce Fund to The Falls Church added up to at most \$125. Tr. 1089:20-1090:10; PX-COM-260-015, 016, 046 (Bruce Fund Minutes).

179. Professor Bond could not identify any specific amounts provided by the Nation-Wide Campaign to The Falls Church. Tr. 1090:5-14.
180. Primary funding for the Nation-Wide Campaign came from churches in the Diocese, but Professor Bond admitted that he had not researched the amounts of funds contributed by churches and thus was not aware that The Falls Church had contributed at least \$1,485, and possibly more, to the Nationwide-Campaign. Tr. 1093:21-1097:1.

***D. Current fair market value of the real property of The Falls Church***

181. The Main Campus of The Falls Church, North of East Fairfax Street (parcels labeled 1 through 9 on DX-FALLS-0014), was appraised in 2006 with a value of \$18,500,000 and was appraised in 2011 with a value of \$19,535,000. DX-FALLS-0070-000001 to 000003 (2006 Appraisal); DX-FALLS-0071-000001 to 000003 (2011 Appraisal).
182. The Southgate Shopping Center property (parcel labeled 10 on DX-FALLS-0014) owned by The Falls Church was appraised in 2006 with a value of \$3,170,000 and was appraised in 2011 with a value of \$2,945,000. DX-FALLS-0070-000001 to 000003 (2006 Appraisal); DX-FALLS-0071-000001 to 000003 (2011 Appraisal).
183. The Southgate Parking Lot property (parcel labeled 11 on DX-FALLS-0014) owned by The Falls Church was appraised in 2006 with a value of \$3,060,000 and was appraised in 2011 with a value of \$3,100,000. DX-FALLS-0070-000001 to 000003 (2006 Appraisal); DX-FALLS-0071-000001 to 000003 (2011 Appraisal).
184. The Rectory at 1008 Broadmont Terrace in Falls Church owned by The Falls Church was appraised in 2006 with a value of \$950,000 and was appraised in 2011 with a value of \$930,000. DX-FALLS-0070-000001 to 000003 (2006 Appraisal); DX-FALLS-0072-000001 to 000003 (2011 Rectory Appraisal).

185. The combined appraised value of the real property of The Falls Church in 2006 was \$25,680,000 (DX-FALLS-0071-000001 to 000003), and the combined appraised value of the real property of The Falls Church in 2006 was \$26,510,000. DX-FALLS-0070-000001 to 000003 (2006 Appraisal); DX-FALLS-0071-000001 to 000003 (2011 Appraisal); DX-FALLS-0072-000001 to 000003 (2011 Rectory Appraisal).

### **III. The Falls Church's Autonomy in Operation and Over Its Property**

#### ***A. The Falls Church exercised independence in its leadership.***

186. The Falls Church found, interviewed, negotiated salaries with, hired and paid its Rector and clergy without any help from the Diocese. Tr. 2460:1-2461:8 (Deiss); Tr. 2629:6-2631:12 (Yates).

187. The vestry of The Falls Church, not TEC or the Diocese, evaluated the Rector's work. Tr. 2631:13-2632:12 (Yates); PX-FALLS-0225.

188. The Diocese was hardly involved in the life or operations of The Falls Church. TEC was even less involved. Tr. 2947:18-2948:6 (Wilson).

#### ***B. The Falls Church exercised independence in holding and managing its property.***

189. Since at least 1873, The Falls Church's Vestry and congregation, not TEC or the Diocese, have continuously controlled maintenance, repair, and use of The Falls Church's property. Tr. 2434:11-2438:5, 2518:16-2522:10, 2437:2-2437:5 (Deiss).

190. At all times, the Trustees holding title to the property of The Falls Church were selected by the Vestry of The Falls Church, not by TEC or the Diocese. Tr. 4257:20-4260:1 (Hutson); 4311:22-4323:15 (Goodrich).

191. The Trustees holding title to The Falls Church's property signed court petitions and deeds of trusts as Trustees for The Falls Church, and never signed or filed documents as Trustees for TEC or the Diocese. Tr. 4257:20-4260:1 (Hutson); 4311:22-4323:15 (Goodrich).

192. These Trustees, including the current trustees, have consistently filed court petitions, received court orders, granted deeds of trust, granted a deed, accepted deeds and granted easements, in which they were identified as Trustees for the local church, not for TEC or the Diocese. DX-FALLS-0003, DX-FALLS-0004; DX-FALLS-0005; DX-FALLS-0006; DX-FALLS-0007; DX-FALLS-0008; DX-FALLS-0009; DX-FALLS-0010; DX-FALLS-0011; DX-FALLS-0012; DX-FALLS-0016; DX-FALLS-0017; DX-FALLS-0018; DX-FALLS-0019; DX-FALLS-0020; DX-FALLS-0020A; DX-FALLS-0020B; DX-FALLS-0021; DX-FALLS-0021A; DX-FALLS-0021B; DX-FALLS-0022; DX-FALLS-0023; DX-FALLS-0024; DX-FALLS-0025; DX-FALLS-0026; DX-FALLS-0027; DX-FALLS-0028; DX-FALLS-0028A; DX-FALLS-0028B; DX-FALLS-0029; DX-FALLS-0031; DX-FALLS-0047; DX-FALLS-0048; DX-FALLS-0049; DX-FALLS-0052; DX-FALLS-0054; DX-FALLS-0055; DX-FALLS-0460; DX-FALLS-0461.

193. When the Trustees for The Falls Church signed a Deed of Trust on the property, it was The Falls Church, not TEC or the Diocese, that was obligated on the loan. Tr. 4324:8-4327:12 (Goodrich); DX-FALLS-0047; DX-FALLS-0052.

***C. The Falls Church did not agree to the TEC or Diocesan Property Canons or to grant any other proprietary interest to TEC or the Diocese.***

194. The Rev. Dr. John Yates became Rector of The Falls Church in June 1979, shortly before TEC's adoption of the Dennis Canon and four years before the Diocese's 1983 adoption of its Canon 15. Tr. 2629:17-2631:5 (Yates).

195. After adoption of those canons, TEC and the Diocese did not provide any additional services or benefits over and above the services or benefits, if any, that were provided prior to the adoptions of these property Canons. Tr. 2694:14-2696:17 (Yates).

196. Since June 1979, Dr. Yates has regularly attended meetings of the vestry and the congregation; and from that time to the present, neither the vestry nor the congregation ever

- adopted a resolution or signed a document agreeing to hold the property of The Falls Church in trust for TEC or the Diocese or giving TEC or the Diocese any ownership interest in the property. Tr. 2632:16-2633:15 (Yates).
197. Neither the vestry nor the congregation of The Falls Church ever agreed to TEC's Dennis Canon or to Diocesan Canon 15. Tr. 2694:20-2695:3 (Yates).
  198. Mr. Deiss, The Falls Church's parish administrator and records custodian, searched The Falls Church's entire records and found no record of The Falls Church's vestry or congregation ever having agreed to TEC's Dennis Canon or to the Diocese's Canon 15. Tr. 2555:16-2557:18 (Deiss).
  199. The only time before 2003 when The Falls Church addressed Plaintiffs' unilateral assertion of a trust claim was in a 1990 exchange of correspondence relating to TFC's \$7 million expansion.
  200. In January 1990, The Falls Church's vestry unanimously reduced its pledge to the Diocese because it believed TEC was deviating from doctrine. Tr. 2538:3-2542:17 (Deiss); DX-FALLS 0234-000025 (vestry minutes); PX-FALLS-0368 (letter to Bishop Lee).
  201. On July 5, 1990, Mr. William Goodrich, then senior warden, on behalf of the vestry requested Bishop Lee's consent for The Falls Church to borrow \$3,600,000 for its planned expansion. Tr. 2542-44 (Deiss); DX-FALLS-0034.
  202. Bishop Lee responded to this request by letter dated July 20, 1990, asserting near the conclusion of his letter that "it is well to remember that the property which the vestry plans to mortgage in this plan is held in trust for the Episcopal Church and the Diocese of Virginia." DX-FALLS-0035.
  203. The vestry considered Bishop Lee's letter to be focusing primarily on the money issue (Tr. 2545:19-2546:19\_\_ (Deiss) ("It's about the money.")), and did not accept that it was

holding property in trust for the Diocese or TEC, or that the Diocese or TEC had any proprietary interest in the property. Tr. 2546:1-2551:20 (Deiss).

204. The vestry responded to Bishop Lee in a letter from Mr. Goodrich (DX-FALLS-0039), which he showed to the vestry before sending to Bishop Lee (Tr. 2548:13-19), and which stated in closing:

Second, one of the concluding paragraphs of your letter spoke indirectly to the status of our Church's property. I am not an expert in the mysteries of Virginia real property law, the Virginia Code provisions addressing the ownership of Church property, the effect of the eighteenth century conveyances to which our Church Trustees trace their title, and the subsequently-adopted provisions of the Diocesan Canon. I see no need to deal with any of this in a legalistic way either now or hopefully ever. Hypothetical questions concerning the status of Church property and its legal ownership have little significance for us because our King, Jesus Christ, owns all we have. We share one objective, summarized in our Church motto: "Making Christ King in our lives, and in the lives of others." We strive to do this in all things, regardless of whether it affects our real property or any other assets God has entrusted to us.

205. In response to the Court's own questioning, Mr. Goodrich admitted that, when he "put in [his letter] the effect of the 18<sup>th</sup> century conveyances to which our church trustees trace their title and subsequently adopted provisions of the Diocesan canon," he was "letting [Bishop Lee] know that there were legal issues that could possibly affect the enforceability or the applicability of the Diocesan Canon." Tr. 4352:5-18.

206. Mr. Deiss, who was then a member of the vestry, further explained that this paragraph was "a gentleman's way in Virginia to say no." Tr. 2544:9-22 (Deiss).

207. In response to Mr. Goodrich's letter, Bishop Lee did not dispute Mr. Goodrich's comments about possible legal impediments to the enforceability of the Diocesan Canon. DX-FALLS-0004; Tr. 2548:3-8, 2550:4-11 (Deiss).

#### **IV. Financial Contributions**

208. Between 1950 and 2003, The Falls Church contributed approximately \$4,360,000 to the Diocese. Tr. 2525:6-2526:10 (Deiss); DX-FALLS-0073C.

209. Between 1950 and 2003, the only contribution to The Falls Church from TEC or the Diocese was a one-time contribution by Bishop Lee to a specific TFC ministry and was unrelated to its property. Tr. 2531:2-22 (Deiss).
210. The vestry decided how much The Falls Church contributed to the Diocese and reduced or eliminated those gifts beginning in the late 1990s. Tr. 2948:14-2952:15 (Wilson).
211. In the 1996 to 1998 time frame, approximately 84% of the congregation of The Falls Church indicated that they did not want their contributions to The Falls Church to go to the Diocese or to TEC. Tr. 2948:19-2950:2 (Wilson).
212. The vestry repeatedly reduced and eventually eliminated TFC's contributions to the Diocese, informing the congregation of these actions, and any member who wanted his or her money to go to the Diocese could have easily made contributions directly to the Diocese. Tr. 1480:11-1485:5 (Fetsch); Tr. 2950:15-2951:3 (Wilson).
213. Very few of the members of The Falls Church designated their contributions to go to the Diocese. Tr. 2950:21:-2951:3 (Wilson) ("Virtually none.").

#### **V. The Personal Property of The Falls Church**

214. At least since 1873, the earliest year for which records are available, the Falls Church vestry has made all decisions regarding finance, spending, money, budget and use of the property of The Falls Church. Tr. 2434:11-2438:5 (Deiss).
215. The vestry and the Rector controlled the real property and the vestry controlled the personal property. Tr. 2696:18-97:4 (Yates).
216. As of the beginning of December 2006, The Falls Church's personal property included cash and investments of \$3,500,000 and other personal property worth approximately \$1,600,000. Tr. 2531:22-2538:1 (Deiss); DX-FALLS-0108-00003; DX-FALLS-0074-00001.

217. None of this money was provided by TEC or the Diocese, and the only contribution by the Diocese to The Falls Church was a 1996 grant of \$10,000 to be used for a specified ministry unrelated to the property. Tr. 2531 (Deiss).
218. Money in these accounts is contributed from the church, from the congregation. Over the years, money goes out and money comes in, such that, by the end of 2006, almost all cash and funds in The Falls Church's bank accounts consisted solely of funds contributed after The Falls Church ceased giving to the Diocese. *See* Tr. 2533:12-2535:8 (Deiss).

## **VI. Impact on The Falls Church of Actions Taken by The Episcopal Church**

219. In the late 1990s and early 2000s, some members of The Falls Church, unhappy with the direction of the Episcopal Church and believing it to be in crisis, expressed a desire to leave the Episcopal Church, and, as discussed above, approximately 84% of the congregation of The Falls Church indicated that they did not want their contributions to The Falls Church to go to the Diocese or TEC. Tr. 2948:19-2950:2 (Wilson).
220. The Falls Church began to restrict its giving to the Diocese so as to prevent any portion from going on to TEC. Tr. 2948:14-2952:15 (Wilson).
221. The Diocese offered The Falls Church a mechanism for this, allowing The Falls Church to contribute to certain designated funds, proceeds from which would not be passed on to TEC. Tr. 3018:14-22 (Wilson).
222. Following the 2003 General Convention, The Falls Church believed that TEC had failed to honor the historic faith of the Church, setting TFC on the path toward disaffiliation. *See, e.g.*, DX-FALLS-0136 (Nov. 13, 2006 Vestry Resolution); Tr. 2693:6-16 (Yates).

## **VII. The Fetsch Congregation**

223. The Fetsch congregation, which refers to itself as the Falls Church Episcopal continuing congregation, first began getting together to worship in January 2007, about a month after



- TFC's congregational vote, with a very small minority of about 30 former members of The Falls Church. Tr. 1468:14-1469:17 (Fetsch).
224. The Fetsch congregation has never undertaken any of the pre-existing obligations of The Falls Church from prior to the 2006 vote, such as to pay vendors for pre-vote services and products, to pay employees for pre-vote work, did not either continue employees' employment or discharge them, did not obtain property, casualty or liability insurance on the property, and did not issue COBRA notices to the pre-vote employees, all of whom continued their employment with The Falls Church post-vote. Tr. 1475:8-1479:6 (Fetsch).
225. At the end of 2010, the Fetsch congregation had an average Sunday attendance of 74 people, of whom only 30% to 40% (22 to 30 people) had been members of The Falls Church prior to the vote. Tr. 1473:8-1474:10 (Fetsch); DX-FALLS-0312-000005.
226. The Fetsch congregation has never claimed an ownership interest in The Falls Church's property; that congregation thought it prudent not to take any such action and, despite repeated opportunities, declined to join this suit as Plaintiffs. Tr. 1475-76, 1479 (Fetsch).
227. The total utilities, insurance, and maintenance costs alone for the real properties owned by The Falls Church have been greater than \$250,000 per year for each of the past five fiscal years (2006-2010). *See, e.g.*, DX-FALLS-0106-000018-000019 [Sept. 1, 2005 to Aug. 31, 2006]; DX-FALLS-0113-000021-000022 [Sept. 1, 2006 to Aug. 31, 2007]; DX-FALLS-0116-000021-000022 [Sept. 1, 2007 to Aug. 31, 2008]; DX-FALLS-0118-000020-000021 [Sept. 1, 2008 to Aug. 31, 2009]; DX-FALLS-0120-000021-000022 [Sept. 1, 2009 to Aug. 31, 2010].
228. The Fetsch congregation's total income for fiscal year 2010 was \$233,641. Tr. 1474:17-1475:7 (Fetsch); DX-FALLS-0312-000026 (2011 Annual Report for Falls Church Episcopal). The monthly rent paid by the Fetsch congregation to Falls Church Presbyterian

Church for using its facilities in 2009 and 2010 was approximately \$750 per month, which is \$9,000 per year. *Id.* In 2010, for the second year in a row, the Fetsch congregation operated at a deficit for the year. *Id.* In 2010, the Fetsch congregation's budget and revenues were insufficient to handle a \$5,000 unbudgeted expense and the congregation needed direct financial assistance from the Diocese. Tr. 1394:6-12 (Fetsch).

## **ST. PAUL'S CHURCH, HAYMARKET**

### **I. Formation of Congregation**

229. According to St. Paul's Church's earliest Register, compiled beginning in about 1861, St. Paul's was organized circa 1832 when the "Rev. Mr. Steel, formerly a Methodist, was the first preacher at the old Court House used as a Church" (DSTP Ex. 460-06089).<sup>11</sup>
230. Diocese of Virginia Annual Council Journals after 1836 regularly contain references to St. Paul's Church (*see, e.g.*, PX-COM Exs. 73-18; 74-21; 75-17).

### **II. Acquisition and Improvement of Real Property**

231. Between about 1832 and 1999, St. Paul's Church acquired deeds to five parcels of real property located on Fayette Street in Haymarket, Virginia (Tr. 1800:14-1801:6):
- the historic church (DSTP Ex. 294, pictured in DSTP Ex. 560)
  - the parcel on which the rectory was built (now used for meetings and parish offices) (DSTP Exs. 297, 297A, pictured in DSTP Ex. 570)
  - a vacant parcel directly behind the original rectory (DSTP Ex. 295)
  - the parish hall (now used for church functions and the school) (DSTP Exs. 293, 293A, pictured in DSTP Ex. 571; Tr. 1808:11-14)
  - the Meade House (DSTP Ex. 296, pictured in DSTP Ex. 572)

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<sup>11</sup> At the 1834 Diocese of Virginia Annual Council, Bishop William Meade reported that during 1833 in Haymarket, "[t]he house in which I preached was an old deserted courthouse, which, nevertheless, was capable of being converted into a comfortable church, at a very modest expense." (PC-COM-Ex. 71-595). At the 1835 Diocese of Virginia Annual Council, Bishop Meade reported visiting during 1834 in "Hay Market," and that a courthouse "used for many years for religious meetings . . . has been recently secured by the friends of the church and very neatly and comfortably fitted up for public worship." (PX-COM Ex. 71-611).

232. There is no evidence that either The Episcopal Church (“TEC”) or the Diocese of Virginia (“Diocese”) contributed “any funds” to the “acquisition, improvement or maintenance” of any of St. Paul’s real properties (Tr. 1813:4-10; Tr. 2131:15-18).
233. Legal title to each parcel has always been held by trustees for the benefit of St. Paul’s (DSTP Exs. 293, 293A, 294, 295, 296, 297, 297A, 311).
234. St. Paul’s Vestry appoints its own trustees without seeking approval of its appointments from either TEC or the Diocese (Tr. 1894:8-1895:11).
235. St. Paul’s trustees take no oath or declaration prior to their service as trustees (Tr. 1894:8-12), take their direction from the St. Paul’s Vestry, and take no direction from either TEC or the Diocese (Tr. 1895:5-11).
236. St. Paul’s Vestry has always unilaterally planned, directed and funded the acquisition of, and all improvements to, each parcel, with no role by TEC or the Diocese in the planning, funding, selection or oversight of the plans, workers or contractors on any of these projects (Tr. 1812:4-11; Tr. 1813:11-1814:6; Tr. 1816:4-10; Tr. 1820:16-22).
237. The majority of the construction work was “done by parishioners themselves on a volunteer basis” (Tr. 2128:16-19, 2129:21-2130:8), and the costs were “funded by the general fund “ of St. Paul’s “coming from donations from the parishioners” (Tr. 2180:14-18).
238. There is no evidence that the congregation, vestry, or trustees of St. Paul’s Church ever voted to convey a property, trust or contract interest in the property of St. Paul’s Church to either TEC or the Diocese, and the records of the church contain no written deed, trust instrument or contract signed by the vestry, wardens or trustees giving a contract, trust or property interest in St. Paul’s Church property to either TEC or the Diocese (Tr. 1852:6-11; Tr. 1853:11-21; Tr. 1854:6-11; Tr. 1855:5-14, 16-20; Tr. 1856:1-1857:9, 11-15, 21-22; Tr. 1858:1-7, 12-19; Tr. 1859:5-9, 16-19, 20-22; Tr. 1860:1-1861:16; Tr. 1862:1-8).

**A. 1993 Deed: Historic Church Parcel**

239. St. Paul's historic church was built originally in 1801 as a district court courthouse (Tr. 1801, Tr. 17-20).
240. In or about 1834, "friends of the Church" "secured" the property and "very neatly and comfortably fitted [it] up" for "public worship" (PX-COM Ex. 71-595).
241. St. Paul's sought the permission of neither TEC nor the Diocese before acquiring this property (Tr. 1814:2-6; Tr. 1816:4-10).
242. In 1887, St. Paul's expended \$1,300 remodeling the church building, the cost of which was raised from parishioners (Tr. 1817:17-1818:3; DSTP Ex. 460-06090):

A new roof was put on, tower built, old windows were taken out and new long windows put in[;] the porch built up into a vestibule, the old gallery pulled down, the jury room (used as a vestry) taken away, a front window put in, and new gallery built with a vestry room in the vestibule.

243. In 1974, St. Paul's Vestry approved a major restoration of the historic church, which had become structurally unsafe (DSTP Ex. 12-01387; Tr. 2127:4-12).
244. The vestry engaged an architect and general contractor to study the needed restoration (DSTP Exs. 12-01391; 549), and based on this study, estimated the total restoration costs at about \$100,000 (*id.*). The Vestry determined in 1974 to stop using the church because of safety concerns and to fit out the Parish Hall with an altar and communion rail built by members of the congregation, so that it could be used for worship services during restoration (DSTP Ex. 12-01387; Tr. 2130:9-13).
245. The Vestry authorized and carried out the following restoration work, which began on February 22, 1975 (DSTP Exs. 12-01399-01406; 554): (a) replace 20 foot beams in the steeple; (b) replace the wooden louvers in the belfry; (c) reinforce the narthex floor with concrete; (d) repair the plaster ceiling and walls of the chancel; (e) brace the chancel floor; (f) replace the tin roof and guttering; and (g) restore the brick work on the church

exterior. The complex structural and brick work was performed by outside contractors, whereas much of the rest of the labor was performed by parishioners (*id.*).

246. Because so much of the construction work was performed by members of St. Paul's congregation, the total cost of restoration totaled approximately \$25,000 (DSTP Ex. 355A; Tr. 2128:16-19; Tr. 2129:21-2130:8).
247. Once the major structural repairs had been completed, the congregation learned that St. Paul's had been placed on the National Register of Historic Places (DSTP Ex. 12-01398), and returned to the historic church for Easter 1975 services (DSTP Exs. 12-01399; 553), completing the remaining restoration work by September 1975 (DSTP Ex. 12-01403).
248. By petition dated July 9, 1993, St. Paul's trustees sought the appointment of a special commissioner authorized to convey to them the historic church parcel, as described in surveys attached to the petition, on the grounds that St. Paul's had been in continuous and undisputed possession of the parcel since the 1830s (DSTP Ex. 306).
249. On July 23, 1993, after being satisfied that the trustees gave the required public notice of the proceeding, the court granted the petition, ordering the appointment of a special commissioner (DSTP Ex. 308), who, by deed dated July 28, 1993, conveyed the parcel to the trustees (DSTP Ex. 294).
250. The historic church building is used for Sunday morning worship services, mid-week prayer and praise services, and concerts (Tr. 1812:14-1813:3), and meetings of groups from outside the church, such as Alcoholics Anonymous (Tr. 1812:22-1813:2).

***B. 1900 and 1998 Deeds: The Rectory and Adjacent Vacant Parcel***

251. By deed dated January 18, 1900, St. Paul's purchased for \$525 a parcel on which a frame house originally used as a Rectory was built (DSTP Exs. 297, 297A).

252. On November 14, 1926, St. Paul's vestry, without input from the Diocese, adopted a resolution authorizing it to borrow \$2,000, with the loan secured by the Rectory parcel to be used to fund repairs to the Rectory (DSTP Ex. 9-00671; Tr. 1802:2-15; Tr. 1820:16-22).
253. In 1975, the Vestry replaced the Rectory roof for approximately \$3,000 (DSTP Ex. 12-01406), and this building is now used as for offices and meetings (Tr. 1807:5-16).
254. By deed dated February 19, 1998, St. Paul's purchased for \$50,000 an adjacent vacant parcel behind the original Rectory (DSTP Ex. 295; Tr. 1806:13-19).
255. The Diocese was consulted about neither purchase (Tr. 1812:4-11; Tr. 1813:11-14).

***C. 1904 Deed: The Parish Hall***

256. By deed dated April 21, 1904, in consideration of the support given grantors by the St. Paul's women's auxiliaries for "a number of years" and \$5, the grantors conveyed to St. Paul's Church property with a frame house (DSTP Exs. 293, 293A).
257. St. Paul's did not seek the permission of either TEC or the Diocese before acquiring the Parish Hall property (Tr. 1813:15-19), which is located down Fayette Street from the historic church "about half a block to a block" (Tr. 1809:5-7).
258. This property is used as the Parish Hall and also houses the St. Paul's School (Tr. 1808:11-14; Tr. 1809:14-1810:6).

***D. 1999 Deed: The Meade House***

259. By deed dated September 22, 1999, and without consultation of the Diocese (Tr. 1812:4-11; Tr. 1813:20-1814:1), St. Paul's paid \$209,900 in cash for an improved parcel containing a frame house named the Meade House after one of the 19<sup>th</sup> century residents of the house (DSTP Ex. 296; Tr. 1810:12-1812:3).
260. In the past, the Meade House was used by St. Paul's music minister, but it is now rented to a third party neither employed by nor connected with St. Paul's (Tr. 1810:16-22).

### **III. St. Paul's Church Ownership Costs**

261. St. Paul's Church accounting records show that, from 2000-2010, St. Paul's expended in connection with the operation, maintenance, insurance, cleaning and grounds keeping for the above properties the aggregate sum of \$507,982 (DSTP Ex. 371A).
262. Parochial Reports for the period 1967-2005 reflect that St. Paul's expended \$256,625 in ownership costs reported on those forms (DSTP Ex. 355A).
263. Combining the above data and omitting any duplicative costs for 2000-2006, total ownership costs for the period 1967-2010 is \$697,009. This translates to \$741,721 in 2010 dollars (DSTP Exs. 355A, 371A, DX-FALLS Ex. 73A).

### **IV. Governance of St. Paul's Church**

264. Throughout its history, St. Paul's Church has had a similar governance structure in that its Rector has always been called by the Vestry (a body of 5 to 12 congregants), the Vestry has always been elected by the congregation, and together, the Rector and Vestry have overseen the operation of the church discharging their respective duties as the spiritual and temporal leaders of the congregation (Tr. 1763:14-1764:22; Tr. 1767:8-20).
265. On August 8, 2006, St. Paul's vestry adopted new bylaws (DSTP Ex. 4; Tr. 2214:18-22).
266. On October 8, 2006, as a matter of sound business practice, St. Paul's vestry adopted a resolution authorizing incorporation of the church (DSTP Ex. 282; Tr. 2213:17-2214:3), and effective November 16, 2006, St. Paul's was incorporated under the laws of the Commonwealth of Virginia (DSTP Ex. 1; Tr. 1765:1-12).
267. Shortly after incorporation, on November 30, 2006, the Vestry amended the new bylaws to reflect the incorporation (DSTP Ex. 5; Tr. 2214:19-21), and, on December 18, 2006, as required by the ¶(i) of the Protocol for Departing Congregations (DSTS Ex. 134-01915),

amended them again after the disaffiliation vote to remove the name “Episcopal” from the church’s name (DSTS Ex. 6).

268. These governing documents continued in corporate form the foregoing basic governance structure used throughout St. Paul’s history (DSTS Exs. 1, 4-6).

#### **V. Operations of St. Paul’s Church**

269. As of disaffiliation, St. Paul’s Church had an average Sunday attendance of 112 persons (DSTP Ex. 353-04653); and, as of May 2011, average Sunday attendance was 100 persons (Tr. 1785:16-18).

270. In addition to leading and supporting the worship, ministry and mission of the church, the Rector and Vestry are responsible for managing and overseeing: (a) real property with a February 2011 appraised value of \$2 million (DSTP Ex. 356-04662); (b) tangible and intangible personal property with an aggregate December 2006 value of \$579,430 (DSTP Exs. 359; 381-390); (c) an annual budget on the eve of the vote of \$611,000 (DSTP Exs. 366, 377), and \$.75 million as of May 2011 (Tr. 1786:1-4); and, as of May 2011, (d) sixteen paid staff members (Tr. 1785:19-22).

271. The process used by St. Paul’s to fill paid staff positions was to create a position description—“the essential elements we feel that are important for that position”—do “research to “determine compensation,” then fill the position by finding candidates from “craigslist or other kinds of job sites”—all at the congregational level (Tr. 1792:19-1794:14).

272. St. Paul’s Vestry has always been responsible for managing the congregation’s investment funds, “ma[king] the decisions regarding how money would be invested, where it would be put” (Tr. 1827:11-19; DSTP Exs. 510-516; Tr. 1830:10-1831:14).

273. St. Paul’s did not seek consent from the Diocese before taking action with respect to its property, including purchasing, maintaining or improving its property (Tr. 1897:3-17)



and understood the purpose of seeking Diocesan permission before encumbering or selling property as based on a “pastoral concern” for the “well-being of the congregation” (Tr. 1895:12-1896:14; Tr. 1897:2-17).

274. St. Paul’s Church is dedicated to “upholding the historical Biblical faith of the Anglican Communion” (DSTP Ex. 459) by activities such as worship, education, mission, outreach, fellowship and the St. Paul’s School (Tr. 3648:20-22).<sup>12</sup>
275. St. Paul’s Church carries out its activities autonomously, including, but not limited to: prescribing its worship (Tr. 1887:2-7), choosing its spoken and music liturgy (Tr. 1887:2-7; Tr. 1889:12-1.), establishing and directing the content and nature of all of its Christian education (DSTP Ex. 396; Tr. 1883:1-22), selecting and overseeing all of its outreach (Tr. 1865:21-22; Tr. 1866:1-4) and mission (Tr. 1783:6-1785:11) activities.
276. Loss of its property would have a “deep impact” on St. Paul’s ability to continue its activities (Tr. 1866:5-9).

**A.     *Worship***

277. St. Paul’s regular worship consists of two Sunday and one mid-week service (DSTP Ex. 459-06064).
278. While St. Paul’s uses the *Book of Common Prayer* at its 8:00 A.M. Sunday worship service, for the 9:30 A.M. service St. Paul’s has used spoken liturgy created by the Rector drawing from Scripture, the Lord’s Prayer and other elements (Tr. 1888:11-1889:11). The

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<sup>12</sup> The St. Paul’s Church website (*see* <http://saintpaulschurchhaymarket.com/>) features detailed descriptions of the church’s principal activities, including various mission ([http://stpaulschurchhaymarket.com/ministries/outreach\\_missions/outreach.html](http://stpaulschurchhaymarket.com/ministries/outreach_missions/outreach.html)) and outreach ([http://stpaulschurchhaymarket.com/ministries/outreach\\_missions/missions.html](http://stpaulschurchhaymarket.com/ministries/outreach_missions/missions.html)) activities and the St. Paul’s School (<http://stpualsschoolhaymarket.org/>). These pages are collected in DSTP Ex. 459 and were identified and described at trial by the Rector (Tr. 1771:5-22:1-4).

*Book of Common Prayer* was not written by The Episcopal Church, but rather it “comes from [the] Church of England” (Tr. 1934:3-21; *id.*: 6-21).

279. Although it has used for worship The Episcopal Church hymnal, a “collection of compositions” drawn from Christian church history over a period of a “thousand years” (Tr. 1884:5-18), St. Paul’s draws upon “many, many” other sources for its musical liturgy (Tr. 1883:16-1884:18).
280. For each week’s worship services, St. Paul’s created its own 20-page worship booklet containing the prayers, music and lyrics used during the service (Tr. 1884:1-5; DSTP Exs. 400-402).
281. St. Paul’s also created its own song books, including a book of children’s praise songs used at its 9:30 A.M. family service (Tr. 1885:10-1886:5; DSTP Exs. 397, 463, 464).
282. St. Paul’s never sought the permission of either TEC or the Diocese before engaging in these worship activities (Tr. 1887:2-7).

### ***B. Education***

283. St. Paul’s Church sponsors many types of educational programs, including weekly Sunday School for children and adult education, Bible study groups (Tr. 1770:17-18; DSTP Ex. 459-06064), the Alpha course (an introductory adult program for people interested in learning about the Christian faith) (Tr. 3650:8-13), as well as Lenten programs on spiritual maturity and courses on how to confront life’s moral and ethical issues (*id.*).
284. St. Paul’s Church uses educational materials published by non-Episcopal Church sources and never sought permission of either TEC or the Diocese before doing so (DSTP Ex. 396; Tr. 1883:1-22; Tr. 1883:1-15).

285. During the summer, St. Paul’s sponsors Vacation Bible School for “children from the neighborhoods, from areas around Haymarket” to “learn[] about the Bible” (Tr. 1770:5-13; DSTP Ex. 459-06074).
286. Supported by 20 to 30 volunteers, the Biblically-oriented curriculum is organized around themes that appeal to children—the beach, travel, animals (Tr. 1780: 22; Tr. 1781:1-10).
287. St. Paul’s also offers summer day camps that are week-long camps from June to the second week of August, each with a theme, *i.e.*, “How Do You Do That? - Science Week,” “Math and Magicians Week,” “Little Chef’s Week,” “Dinosaurs Week,” “Spanish Week” (Tr. 1780:3-11; DSTP Ex. 459-06073).
288. These activities are initiated and undertaken without involvement of TEC or the Diocese. (DSTP Ex. 396; Tr. 1883:1-22).

**C. Mission**

289. On its own initiative and without denominational input, St. Paul’s Church supports national and international mission activities that spread the Gospel and help others in need (Tr. 1783:6-1785:11; DSTP Ex. 459-06077), including:
- Samaritan’s Purse, aiding people around the world who are faced with emergencies such as the Haitian earthquake
  - Christmas Child Shoe Box giving needy children around the world some 100 boxes filled with toothpaste, toothbrushes, small toys and other small gifts
  - The Barnabas Fund and the Persecution Project helping those being persecuted for their faith
  - Iraqi Action Packs containing basic supplies like soap and toothpaste for Iraqi people in desperate need
  - African crafts sales the proceeds from which aid African AIDS orphans
  - Well-drilling in Sudan to provide clean, safe drinking water
  - Five Talents providing capital and guidance to help people in third-world countries start their own businesses

- Safe Haven Urban Redemption of Newark, New Jersey, providing shelter and guidance to youth afflicted with drug addictions and broken, unsafe homes

290. Prior to disaffiliation, members of the St. Paul's congregation did not participate in mission trips or projects of either TEC or the Diocese (Tr. 1889:19-22, Tr. 1890:1-3).<sup>13</sup>

***D. Outreach***

291. St. Paul's Church's Outreach consists of reaching out to people in need in the local community, such as: the Haymarket Food Pantry, which feeds those in need; DivorceCare, for those going through divorce; CareNet, for those facing unwanted pregnancy; and SERVE, a shelter and food distribution facility (Tr. 1782:10-1783:4; DSTP Ex. 459-06076).

292. St. Paul's never sought permission of the Diocese and never received any direction therefrom before using its property for any of its outreach activities (Tr. 1865:21-1866:4).

293. St. Paul's congregation did not participate in outreach projects of either TEC or the Diocese (Tr. 1889:19-1890:3).

***E. Fellowship***

294. St. Paul's fellowship encompasses home groups, small groups, Sunday coffee hour, congregational dinners, Sunday luncheons, and other meals featuring speakers (Tr. 1770:14-1771:4). Neither TEC nor the Diocese had any role in St. Paul's fellowship activities.

***F. St. Paul's School***

295. St. Paul's Church owns and operates a school for 120 children ranging in age from 3 years old to second graders (Tr. 2211: 22-2212:4; Tr. 1772:22-1773:3).

296. The school offers not only Biblically-focused teaching and a core academic curriculum (Tr. 1771:6-1772:21 DSTP Ex. 459-06068), but also classes in art, piano, violin, ballet,

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<sup>13</sup> The sole exception was one occasion when a younger member of St. Paul's used a \$300 voucher from the Diocese to help pay for mission trip travel expenses (Tr. 1890:8-1892:14).

German and Spanish languages, computers, and physical education (Tr. 1779:2-14; DSTP Ex. 459-06065-06073).

297. St. Paul's school is managed by a board of directors, separate from St. Paul's Church Vestry, who are responsible for policy and oversight, but are ultimately accountable and responsible to the Rector and Vestry (Tr. 2212:5-13).
298. The school is administered by a principal hired by the Rector in consultation with the school board; the principal directs the school staff and programs (Tr. 2212:5-9). The school has an annual budget of \$500,000 (Tr. 2212:14-16).
299. The school operates at a profit, some of which is contributed to St. Paul's Church in the form of a contribution for the Parish House space in which the school operates, and the rest of which has been deposited into a building fund that is expected to support an expansion of the school (Tr. 2212:17-2213:3).
300. St. Paul's is in the process of expanding the school in time for Fall 2011, by adding six classrooms to enable it to accommodate an additional 50-60 students and by hiring additional staff (Tr. 1773:3-11; Tr. 1778:3-1779:1).

#### **VI. St. Paul's Financial Contributions to and Participation in the Diocese of Virginia**

301. From 1967 to 2005, St. Paul's Church contributed a total of \$179,748 to the Diocese (DSTP Ex. 354) and received no monies from either TEC or the Diocese (DSTP Ex. 354; Tr. 1894:1-7).<sup>14</sup> These contributions to the Diocese translate into \$336,419 in 2010 dollars (DSTP Ex. 354; DX-FALLS Ex. 73A).

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<sup>14</sup> The only financial contribution made to any St. Paul's-related ministry by the Diocese during the tenure of the current Rector was a \$1,000 check sent by Bishop Peter Lee specifically to support the ministry of a member of St. Paul's to the indigenous people of the Arctic (Tr. 1892:15-1893:15), a ministry also supported financially by St. Paul's (Tr. 1893:16-22).

302. Beginning in 1996, due to “serious issues with the doctrinal direction and ethical direction of the national Church and the Diocese,” St. Paul’s Church began limiting “contribut[ions] to the general operating budget of the Diocese of Virginia because those funds were going to the national Church” (Tr. 1878:1-18; DSTP Ex. 354).
303. St. Paul’s then decided to “restrict the gifts that we gave to the Diocese of Virginia to certain things that we felt were important, that were separate from the general operating budget of the Diocese” (*id.*), such as a fund for “church planting,” including the work at Church of the Holy Spirit in Ashburn and the Fund for Human Need (Tr. 1880:14-15).
304. St. Paul’s rector participated in no Diocesan committees (Tr. 1876:21-1877:12).
305. In 2005, St. Paul’s Rector met with Bishop David Jones to advise him that “it was not appropriate for him to come to St. Paul’s” (Tr. 1874:13, 22, 1875:1-22), after which no Diocese of Virginia bishops ever visited St. Paul’s (Tr. 1876:5-8).
306. St. Paul’s took its candidates for confirmation and reception to other churches where Lord Carey, the former Archbishop of Canterbury, performed “confirmations, receptions and reaffirmations” (Tr. 1876:9-20).

**VII. Disadvantages Experienced by St. Paul’s Church from Affiliation with The Episcopal Church and the Diocese of Virginia**

307. As a result of decisions of TEC and the Diocese, St. Paul’s Church experienced “turmoil” and “loss of some members of the congregation” (Tr. 1898:14-1899:10; Tr. 1900:6-10).
308. A common response of St. Paul’s members to the “stance the [Episcopal] [C]hurch was taking” was to specify that no contributions given to St. Paul’s “would go . . . to the Diocese or the national Church” (Tr. 2197:8-2198:3; Tr. 2199:2-11).
309. St. Paul’s parochial reports for 1967-2005 show a drop-off in contributions going to the Diocese beginning in 1990, which the Rector attributed to the “deep concern on the part

of the membership of St. Paul’s Church” for the “direction of the National Church and the Diocese” (DSTP Ex. 354; Tr. 1902:17-1903:8, Tr. 1904:1-2).

310. Beginning in the early 1990s, St. Paul’s Church implemented a “St. Paul’s Only” plan that allowed parishioners to restrict their financial contributions, so that none would go to the Diocese of Virginia (Tr. 1901:22-1902:16; Tr. 1880:22-1881:22; DSTP Ex. 526). Then, in 1996, the St. Paul’s Vestry determined to cease making contributions altogether to the general operating budget of the Diocese of Virginia “so that no funds would be passed on to the national Church” (Tr. 1879:21-1880:17). Instead, contributions were made directly to ministries supported by the Diocese that St. Paul’s also supported, such as the Fund for Human Need (Tr. 1880:11-17)

#### **VIII. St. Paul’s Church Discernment Process and Disaffiliation Vote**

311. In September 2006, St. Paul’s Church “entered into a time of discernment and reflection” (Tr. 1905:3-12), that culminated in a congregational vote to leave TEC and the Diocese (DSTP Ex. 395-05025-27).
312. On September 23, 2006, a Special Committee appointed by the Bishop of Virginia published its report (DSTS Ex. 134-01913), recognizing that for some congregations “separation from the Diocese and the Episcopal Church is increasingly likely” (*id.* at 01914) and offering a “Protocol for Departing Congregation[s],” setting forth a procedure to be followed by a congregation considering departure (*id.*).
313. The Special Committee’s report, authored by Chancellor of the Diocese Russell Palmore (Tr. 2718:14-15), a Diocesan officer (PX-COM-0003-007), treated the CANA Congregations as separate and distinct entities, capable of disaffiliation, for purposes of disaffiliation and the ensuing negotiation over church property (DSTS Ex. 134-01913-01914).

314. St. Paul's Vestry decided to follow the "Protocol for Departing Congregation[s]" contained in the report of the Special Committee appointed by Bishop Lee because it "identified a path . . . [for] achiev[ing] an amicable separation from the Diocese [of Virginia and] the Episcopal Church" (Tr. 2215:6-2216:2).
315. St. Paul's Church "followed" the Protocol "very closely" (Tr. 2217:3-2218:8) by:
- engaging in a 40-day period of discernment of the question whether to disaffiliate that included viewing materials supplied by the Diocese and the offer of participation in the process by representatives of the Diocese (Tr. 1931:3-13; DSTP Ex. 392);
  - a unanimous vote of the vestry to recommend that the congregation vote on the questions of disaffiliation and what should happen to church property (Tr. 1925:9-13; Tr. 1928:9-17; DSTP Ex. 395-05020-05021)
  - a vote of 86% and 88% of all adult communicants in good standing of the congregation, respectively, as to the questions to disaffiliate and to offer the property to the departing congregation (DSTP Ex. 395-05025; Tr. 1928:19-1929:20)

#### **IX. St. Paul's Church Since Disaffiliation**

316. Most of the members of the congregation who attended St. Paul's before the vote are still members (Tr. 1937:5-11).
317. All of the same activities and operations of St. Paul's prior to the disaffiliation vote have continued virtually unchanged since the vote, in that there have "essentially" been no appreciable changes to:
- Liturgy and music (Tr. 1935:1-4; 1936:14-17)
  - Use of vestments (Tr. 1935:19-22)
  - Sunday School or adult education curriculum (Tr. 1936:18-22).
  - Outreach, mission (Tr. 1937:5-7)
  - Church operations (Tr. 1935:11-13)
  - Governing documents (except to remove the name "Episcopal from its name) (Tr. 1933:12-21)
  - Number and method of electing the vestry (Tr. 1935, 14-18)
  - Staff except to add new employees (Tr. 1935:5-10)



- Size of congregation (Tr. 1937:5-7)

## **TRURO CHURCH, FAIRFAX**

### **I. Founding and Re-Formation**

318. Zion Church/Truro Church<sup>15</sup> was founded in 1843 by Rev. Richard Templeton Brown who was then the Rector of The Falls Church. *See* PX-TRU-0185-054 (“All or portion of 1907 Slaughter History of Truro Parish” (hereafter “Slaughter History”)).<sup>16</sup>
319. The Congregation originally met at the historic Fairfax Courthouse, but a structure was later built to house the congregation on a parcel of land given by William T. Rumsey. *Id.*
320. The first recorded deed to the Trustees of Truro Church was dated December 3, 1874. *See* DX-TRU001. (Deed: Replacement Deed dated December 3, 1874 from William S. Rumsey to “Trustee of the Zion Protestant Episcopal Church”).
321. No recorded deed has been introduced into evidence for any parcel of property held by the Trustees of Zion Church prior to 1874.
322. No evidence was taken on where the structure was located during the period between 1843 and 1861, but at some point during the Civil War the structure was torn down by Union Army soldiers. PX-TRU-0185-054.

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<sup>15</sup> Truro Church was previously known as Zion Protestant Episcopal Church, but the name was changed by vote of the congregation on May 27, 1934 and approved by the Vestry on June 1, 1934. *See* PX-TRU-011-051-52 (showing congregational vote of 20 votes for the name “Truro”, 8 votes for the name “Payne” and 1 vote for retaining the name “Zion.” Neither the Diocese nor TEC produced any evidence that they were consulted regarding the change of name. In order to avoid confusion, the pre-June 1, 1934, congregation will be referred to as “Zion Church” and the post May 31, 1934, congregation will be referred to as “Truro Church.” The name “Truro Church” will be used for general statements.

<sup>16</sup> Truro Church is distinct from Truro Parish. *See* Tr. 1121:13-1121:20 (Bond). Truro Church was formerly known as Zion Church until 1934, and the Slaughter History, while predominately about Truro Parish, contains a section related to Zion Church/Truro Church. *See* PX-TRU-0185-054-55.

323. In 1907, the Vestry of Zion Church made a claim to the United States Court of Claims, not for the structure that the congregation of Zion Church inhabited prior to the Civil War, but for Payne’s Church, a pre-Revolutionary War Anglican Church that was also destroyed by the Union Army soldiers during the Civil War. *See* DX-TRU269.<sup>17</sup>
324. No evidence was introduced that Zion Church ever made a claim for the destruction of the actual building that the congregation worshipped in prior to the Civil War.
325. The Congregation disbanded during the Civil War, and the evidence suggests that the Congregation partially re-formed, as early as November 1866, when the initial trustees of Truro Church were appointed “[o]n motion of the proper authorities.” *See* DX-TRU197 (“November 1866 Order Appointing Trustees”).<sup>18</sup>
326. As of 1868, the Congregation of Zion Church did not have its own place of worship and appears to have been multi-denominational. *See* PX-COM-0105-095.<sup>19</sup>
327. The Congregation of Zion Church erected a frame building around 1872 at the cost of \$2,000.00 and there is indication that the financing occurred through a loan. *See* PX-

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<sup>17</sup> Sometime after disestablishment, Jerusalem Baptist Church began meeting in Payne’s Church. The Trustee of Jerusalem Baptist Church and the Vestry of Zion Church made a joint claim for reparations to the United States Court of Claims. *See* DX-TRU269.0001.

<sup>18</sup> One of the original trustees for Truro Church was Thomas Moore, the great, great grandfather of J. Chapmen Petersen. *See* Tr. 3387:14-3387:18.

<sup>19</sup> This is evidenced by a notation in the Journal of the 74<sup>th</sup> (1869) Diocesan Annual Council which stated:

**Having no church building, our Sunday school**, although under the charge of a communicant of the Church, **is not strictly Episcopalian**. It is in a flourishing condition. We have commenced the rebuilding of the church, destroyed during the war, and hope to complete it during the coming summer.

(emphasis added).

TRU-0185-054-055 (noting that “[t]he second Zion Church was now completed” and “free from debt”).<sup>20</sup>

328. The congregation of Truro Church/Zion Church has been in continuous existence since the frame building was erected in the 1870s.
329. The evidence introduced at trial demonstrates that Truro Church operated as an autonomous entity with control over its real and personal property.<sup>21</sup>
330. The Congregation made decisions with respect to the acquisition of real property, improvements of real property, and day-to-day dominion and control over all real and personal property.<sup>22</sup>

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<sup>20</sup> Dr. Bond testified that Truro Church received aid from the Piedmont Convocation and the Bruce Fund to rebuild the church in the 1860s and 1870s. *See* Tr. 979:3-980:2. On cross-examination, Dr. Bond admitted that the amount of money received from the Bruce Fund was only \$100.00. *See* Tr. 1089:9-1089:13. A reasonable inference from the facts adduced at trial is that of the \$2,000.00 it cost to build the structure, \$1,900.00 was funded by the Congregation with at most 1/20<sup>th</sup> of the cost coming from the Bruce Fund.

<sup>21</sup> *See e.g.*, PX-TRU-0010-033 (Vestry Minutes); DX-TRU205 (petition and order to sell property); DX-TRU003 (deed); DX-TRU206 (petition and order to sell property); DX-TRU004 (deed); DX-TRU005 (deed); PX-TRU-0010-118 (Vestry Minutes); DX-TRU207.0001-0002 (order to sell property); DX-TRU007 (deed); DX-TRU212 (petition and order to sell property); DX-TRU156.0010 (Vestry Minutes); DX-TRU222.0001-0004 (petition to encumber property); DX-TRU146.0048 (Vestry Minutes); DX-TRU214 (petition and order to encumber property); DX-TRU208 (petition and order to encumber property); DX-TRU046 (buildings and grounds committee brief); DX-TRU050 (newspaper clipping); DX-TRU051 (newspaper clipping); DX-TRU117-DXTRU139 (budgets).

<sup>22</sup> *See e.g.*, DX-TRU205.0003-0004 (petition and order to sell property); PX-TRU-0010-118 (Vestry Minutes); DX-TRU006 (deed); DX-TRU152.0029 (Vestry Minutes); DX-TRU008 (deed); DX-TRU277 (purchase agreement); DX-TRU037 (escrow agreement); Tr. 1668:5-9 (T. Yates testimony regarding ICM building); Tr. 1670:20-1671:11 (T. Yates testimony about ICM building); Tr. 1668:21-1669:3 (T. Yates testimony about IMC building); Tr. 1671:22-1672:3 (T. Yates testimony about ICM building); DX-TRU048 (sale and lease agreement); DX-TRU038 (lease); DX-TRU039 (lease); DX-TRU040 (lease); DX-TRU041 (lease); DX-TRU042 (rent increase memo); DX-TRU046 (buildings and grounds committee brief); DX-TRU067 (building and grounds subcommittee report); DX-TRU082–DXTRU090 (applications to board of architectural review); DX-TRU010 (deed); DX-TRU045.0003-0009 (loan documents); DX-TRU146.0020 (Vestry Minutes); DX-TRU146.0028-0029 (Vestry Minutes); DX-TRU146.0038-0039 (Vestry Minutes); DX-TRU147.0130 (Vestry Minutes); DX-TRU219 (petition and order to encumber property); DX-TRU152.0005 (Vestry Minutes); DX-TRU152.0013 (Vestry Minutes);

331. Neither the Diocese nor TEC introduced any evidence of systematic dominion and control over the real and personal property of Truro Church, and as the evidence established no such dominion or control was evident to congregants of Truro Church. Tr. 3399:1-3399:5 (Petersen).<sup>23</sup>

## **II. Real Property Transactions**

### ***A. 1874 Rumsey Deed***

332. Despite the fact that a second structure for Zion Church was built in 1872, the first recorded deed to the “Trustees of Zion Protestant Episcopal Church” was executed on December 5, 1874. DX-TRU001.

333. The 1874 deed purports to be a replacement deed from William T. Rumsey, but no prior deed is recorded.

334. The property conveyed by the 1874 deed is a one-half acre parcel where the “historic chapel”<sup>24</sup> currently sits. Tr. 1637:4-1637:6 (T.Yates).

335. The historic chapel appears as Item 1 on the plat of the main campus for Truro Church. *See* DX-TRU241 (“Truro Church Plan for Main Property”); *see also* PX-TRU-490-03 (present day photograph of historic chapel).

### ***B. 1882 Simpson Deed***

336. On December 1, 1882, Trustees for “Zion Protestant Episcopal Church” took title to a 7-acre parcel from Samuel Simpson (“Simpson Property”), by a deed requiring the property

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DX-TRU153.0023 (Vestry Minutes); DX-TRU159.0003 (Vestry Minutes); DX-TRU159.0012 (Vestry Minutes); DX-TRU160.0008 (Vestry Minutes); DX-TRU160.0016 (Vestry Minutes).

<sup>23</sup> Tr. 3399:1-3399:5 (J. Chapman Petersen):

Q. From your personal observations prior to December 2006, did you -- do you see any exercise of dominion and control over the property by the Diocese or the Episcopal Church?

A. Not that I have ever seen.

<sup>24</sup> The “historic chapel,” which was designed as a replica of Payne’s Church, was built in 1934.

to be held “for the sole use and benefit of the said Zion Protestant Episcopal Church, with power in said trustees, with consent of the vestry of the said church, to charge, encumber, sell and convey said property.” DX-TRU002a; Tr. 1643:8-16 (T. Yates).

337. The 1882 deed recites that \$2,600.00 was paid for this property, and the Vestry minutes reflect that the Vestry authorized the purchase of the property for the amount stated in the deed. *See* PX-TRU-0010-033.
338. The structures that currently sit on this parcel are the Main Sanctuary and the Gunnell House. *See* PX-TRU-490-030 (photograph of Main Sanctuary); PX-TRU-490-038 (photograph of Gunnell House).
339. The Main Sanctuary was not completed until 1959, Tr. 1644:17-22, 1645:8-11 (T. Yates), but the Gunnell House was built in 1835 prior to the formation of the first Truro Church. PX-TRU-490-037 (photograph showing historic marker in front of the Gunnell House).
340. The original seven acre parcel conveyed pursuant to the 1882 deed is reflected on the Truro Church main campus plat as Items 2, 3, 4 and 5. *See* DX-TRU241.

***C. Sales of Portions of the Simpson Property***

341. In 1908, 1913, and 1921 portions of the original seven acre parcel were sold to John W. Rust, and in accordance with Virginia law at the time, each sale was initiated by petition to the Circuit Court for Fairfax County. DX-TRU205; DX-TRU003; DX-TRU206; DX-TRU004 ; DX-TRU005.
342. Following a congregational meeting on August 15, 1908, approving the sale of 1 ½ acres to John W. Rust for \$300.00, *see* DX-TRU205.0005, the Trustees for Zion Protestant Episcopal Church filed a petition and indicated that the funds received would be used to repair the Rectory. *See* DX-TRU205.0003-0004.

343. Neither the Diocese nor TEC joined in the petition, and no evidence was introduced that either the Diocese or TEC was consulted about a sale.
344. The Court approved the sale in the September 1908 term. *See* DX-TRU205.0001-0002.
345. Thereafter, by deed dated September 29, 1908, the Trustees for Zion Protestant Episcopal Church conveyed the property to John W. Rust. *See* DX-TRU003.
346. The parcel sold in 1908 is reflected as Item 3 on the Truro Church main campus plat. *See* DX-TRU241.
347. In 1913, the Trustees of Zion Protestant Episcopal Church filed a petition in the Fairfax County Circuit Court to sell to John W. Rust 1/8 acre of the property conveyed in the 1882 Simpson deed, with the sale proceeds being applied to “the debt now on the said Rectory land.” DX-TRU206.
348. Neither the Diocese nor TEC were parties to that petition, and no evidence was introduced that either the Diocese or TEC was consulted about the sale.
349. The Court approved the sale, *see* DX-TRU206.0005, and by deed dated February 15, 1913, the Trustees for Zion Protestant Episcopal Church conveyed the 1/8 acre parcel to John W. Rust. *See* DX-TRU004.
350. The parcel of property conveyed by this deed is noted as Item 4 on the Truro Church main campus plat. *See* DX-TRU241.
351. In 1921, the Trustees of Zion Church sold an additional 1 ½ acre portion of the Simpson Property to John W. Rust for \$1,800.00. *See* DX-TRU005.
352. The sale was approved by the Vestry and the congregation with the proceeds to be placed in the Church’s building fund. *See* PX-TRU-0010-118 (Vestry Minutes dated December 6, 1920).

353. Although the petition to the Circuit Court to approve the conveyance could not be located, the deed itself recites the fact that a petition was made to the Circuit Court and approval was obtained for the transfer. *See* DX-TRU005.
354. Notably, the deed recites only that the “surviving Trustees of said Church, holding the legal title to said land...” filed the petition. *See* DX-TRU005.
355. Neither the Diocese nor TEC produced any evidence that either was consulted regarding the sale of this property.
356. The parcel of property conveyed to John W. Rust is noted as Item 5 on the Truro Church main campus plat. *See* DX-TRU241

***D. 1939 Order to Sell Property***

357. In 1939, the Trustees of Truro Church petitioned the Fairfax County Circuit Court to sell property devised to Truro Church by Williamette S. Page. DX-TRU207.0001-0002.<sup>25</sup>
358. The Order recites that the petition was filed after a general meeting of the Church approved the sale. DX-TRU207.0002.
359. Neither the Diocese nor TEC produced any evidence that it was consulted or consented to this sale.

***E. 1952 Kirkpatrick Deed***

360. In 1952, Lyman B. Kirkpatrick and Jeanne G. Kirkpartick donated a ½ acre strip of land to the Trustees of Truro Episcopal Church. DX-TRU006 (1952 Deed); Tr. 1647:21-1648:2 (T. Yates).
361. The parcel is represented by Item 6 on the Truro Church main campus plat. DX-TRU241.

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<sup>25</sup> The property was located in what was at that time the Town of Fairfax. It is not entirely clear the precise location of the property from the 1939 Order. The property is not referenced on the Truro Church main campus plat.

***F. 1956 Prichard Deed***

362. In 1956, E.A. Prichard conveyed a parcel of land to the Trustees for Truro Episcopal Church. DX-TRU007.
363. Although the face of the deed does not disclose the purchase price, it is clear from the vestry's records that Truro Church paid for the parcel. *See* DX-TRU152.0029 (Vestry Minutes dated August 22, 1956 stating that "the deed for the property the church has purchased has been put on record.").
364. This parcel of land is noted as Item 7 on the Truro Church main campus plat (DX-TRU241), where the education building currently sits. Tr. 1654:14-18 (T. Yates); *see also* PX-0490-040-041 (photographs of education building).

***G. 1960 Sale of Property***

365. On October 14, 1960, the Trustees for Truro Church filed a petition in the Circuit Court of Fairfax County to sell property that had been donated to "Truro Church for use in the general purpose of said church in such manner as the vestry of said church might direct." *See* DX-TRU212.0001 at ¶ 2 (Petition to Approve Sale of Property).
366. Neither the Diocese nor TEC joined in the petition.
367. The Court entered an order approving the petition finding that it was the "wish of the duly constituted authorities of said church and of the congregation of said church" to sell the property. DX-TRU212.0004.
368. Following entry of the order, the property was sold for \$4,500.00. *See* DX-TRU156.0010 (Vestry Minutes dated March 22, 1960).

***H. Condemnation Action***

369. In 1967, the State Highway Department of Virginia initiated a condemnation action affecting Truro Church's property. DX-TRU213.0007.



370. The suit was styled *State Highway Department of Virginia v. Thomas P. Chapman, Jr., Trustee of Truro Episcopal Church*, Fairfax County Circuit Court, Chancery No. 29390.
371. During the action, the State Highway Department of Virginia averred that the Trustees of Truro Church were the owners of the property. *See* DX-TRU213.0009.
372. The State Highway Department of Virginia did not name either the Diocese or TEC as parties to the action.
373. The proceeds of the condemnation were ultimately paid to the Trustees of Truro Church and Potomac Bank & Trust Company. *See* DX-TRU213.0022.
374. Neither the Diocese nor TEC produced any evidence that either entity received any proceeds from the condemnation action.

***I. 1982 Eakin Deed***

375. In 1982, LeRoy Eakin and Ruth Eakin conveyed a parcel of land to the Trustees of Truro Episcopal Church for \$189,525.00. DX-TRU008.
376. The parcel was acquired by a contract executed by and between the Eakins and the Wardens for Truro Church. DX-TRU277.0003.
377. Neither the Diocese nor TEC was a signatory to that contract, nor is there any evidence that either entity contributed any funds toward the purchase.
378. The parcel of property is noted as Item 8 on the Truro Church main campus plat (*see* DX-TRU241) and currently serves as a parking lot. Tr. 1657:6-11 (T. Yates).

***J. ICM Building***

379. In 1987, Truro Church executed and entered into a contract to purchase the International Christian Ministry Building (“ICM Building”) for \$1,400,000.00. DX-TRU037.
380. Neither the Diocese nor TEC was a party to that contract, and Truro Church paid the entire purchase price. Tr. 1666:9-11 (T. Yates).

381. The ICM Building, which is used as an office building, Tr. 1668:5-9, sits across Main Street from Truro Church's Main Campus. Tr. 1666:19-21 (T. Yates); *see also* PX-TRU-490-048 (photograph of IMC Building).
382. Truro rents the ICM Building office space to various entities, including non-Episcopal entities such as Mok Yang Presbyterian Church. Tr. 1670:20-1671:11 (T. Yates).
383. Truro Church has never consulted the Diocese or TEC about to whom the space would be rented or the amount of rent. Tr. 1668:21-1669:3; Tr. 1671:22-1672:3 (T. Yates).

***K. Curran Property***

384. By deed dated April 26, 1991, Mary Virginia Curran gifted to the Trustees of Truro Church a parcel of land located approximately one and a half miles away from the main campus of Truro Church near the Fuddrucker's Restaurant on Chain Bridge Road near the I-66 exchange. DX-TRU012; DX-TRU013; Tr. 1672:8-14 (T. Yates).
385. The deed contains a reverter clause stating that if Truro Church were to demolish the house located on the land or "cease[d] to use the principal dwelling house as a rectory or residence for the benefit of clergy of Truro Church" for a period of 35 years, title would revert to the estate of Mary Virginia Curran. DX-TRU012.0002-0003.
386. Under the original deed, Mary Virginia Curran also retained a life estate in the property, but a later deed gifted the life estate to the Trustees of Truro Church. DX-TRU013.

***L. Van Dyck Property***

387. On February 15, 1990, Ann Van Dyck entered into a contract to sell a parcel of property to Truro Church. DX-TRU048.
388. The agreement was executed by Truro's Senior Warden. Tr. 1661:15-17 (T. Yates).
389. Neither the Diocese nor TEC was a party to the contract.
390. The deed was conveyed to the Trustees of Truro Church. DX-TRU009.

391. The property is noted as Item 9 on the Truro Church main campus plat. *See* DX-TRU241; *see also* PX-TRU-0490-045 (photograph of the Van Dyck property).

***M. Prichard Property Acquisition***

392. By deed dated May 31, 2001, the trustee of the E.A. Prichard Trust conveyed to the Trustees for Truro Church a 2.6 acre parcel. DX-TRU010; Tr. 1663:6-8 (T. Yates).

393. Truro paid \$1.25 million for the property (Tr. 1664:6-12 (T. Yates)), financed by a promissory note executed by Truro Church's Rector and Senior Warden. DX-TRU045.0003-0004.

394. Neither the Diocese nor TEC was an obligor under the promissory note and neither contributed any money toward the purchase. Tr. 1664:13-18 (T. Yates).

395. The original acquisition is noted as Items 9 and 10 on the Truro Church main campus plat. *See* DX-TRU241.

***N. Sale of Property to Brinkleys***

396. On December 23, 2002 the Court granted the petition of John A.C. Keith and Mary S. Petersen as Trustees for Truro Church to sell part of the Prichard property. DX-TRU223.

397. Neither the Diocese nor TEC was a party to the petition, which indicated only that a congregational meeting was held to approve the sale pursuant to Diocesan Canon IV. *See* DX-TRU223a.

398. Truro Church did not seek permission or consult with either the Diocese or TEC about the sale. Tr. 1693:1-1696:1 (Proffer from T. Yates); Tr. 4412:13-17 (J. Keith).

399. By deed dated March 26, 2003, John A.C. Keith and Mary Petersen, as Trustees for Truro Church, executed a deed for a portion of the Prichard Property to William and Kingsley Brinkley, and received \$855,000.00 from the sale of the property. DX-TRU014.

400. Mr. Keith executed the deed transferring the property to the Brinkleys without consulting with anyone from the Diocese. Tr. 4412:13-16 (J. Keith).
401. Mr. Keith did not attempt to get the Diocese or TEC to waive their purported trust interest in the property prior to the sale. Tr. 4412:18-4413:2 (J. Keith).
402. None of the proceeds went to the Diocese or TEC. Tr. 4413:6-11 (J. Keith).

***O. Gift of Christ the Redeemer Property***

403. Christ the Redeemer was a mission church of Truro—a church that Truro supported financially. Tr. 1677:17-22 (T. Yates).
404. Christ the Redeemer filed a petition with the Circuit Court of Fairfax County to deed by gift real property to Truro Church. *See* PX-TRU-0001-0040 (recitation in Quitclaim Deed of Gift replaced by Deed of Correction submitted as DX-TRU0015).
405. The original deed contained an error and a corrected deed of gift replaced the original deed. *See* DX-TRU015.

**III. Improvements to Real Property**

406. With the lone exception that the Bruce Fund gave a one-time grant of \$100.00 toward the structure built in 1872. *See* Tr. 1089:9-13 (Bond), neither the Diocese nor TEC introduced any evidence of contributing to the costs of improvement of real property.
407. The evidence introduced at trial demonstrated that nearly all costs of improvements to the real property of Truro Church were funded by the congregation, not the Diocese or TEC.
408. Neither the Diocese nor TEC offered any evidenced that they contributed to the cost of improvements or maintenance of Truro Church's property.

**A. Building the “Historic Chapel”**

409. The 1872 structure continued to be used by the congregation of Zion Church up through the early 1934. *See* PX-TRU-0187-001 noting that the “new church remained in active use from 1875 until what we now call the chapel was built.”<sup>26</sup>
410. At special meeting held on September 31, 1931, the congregation of Zion Church decided to engage an architect to design a new church building with the cost not to exceed \$24,000.00. *See* DX-TRU146.0020.
411. As plans for the new church building progressed, the Vestry decided that the new building would be a brick building near the site of the existing structure and that a separate brick parish hall would be built. DX-TRU146.0028.
412. The congregation adopted the resolution on March 30, 1932. DX-TRU146.0029.
413. After examining the finances of Zion Church and the ability to secure financing to cover additional costs, the Building Committee recommended that the “Vestry proceed as promptly as possible to construct a new Church building ‘which will as closely as possible duplicate the Payne Church....’” DX-TRU146.0038.
414. The Building Committee further recommended that the “present Church building be moved to the rear of the Church lot.” DX-TRU146.0039.
415. The Vestry approved those recommendations on January 12, 1933. DX-TRU146.0040.
416. There is no evidence in the Vestry Minutes or otherwise of any input or involvement by either the Diocese or TEC with respect to the selection of the design for the new church building, its size, or its location.

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<sup>26</sup> The history notes that the Historic Chapel was built in 1933. The other evidence introduced suggests that they began construction in 1933, but that the Historic Chapel was not completed until 1934. *See* DX-TRU-146.0050 (May 7, 1934 Vestry Minutes indicating “sum due the architect on the new church” would be carried over until “a final inspection of the Church and furnace be made.”).

417. In furtherance of the plans to build the new structure, and based upon congregational approval, the Trustees of Zion Church filed a petition in the Circuit Court for Fairfax County to encumber property to obtain a loan of \$5,000.00. DX-TRU222.0001-0003.
418. The encumbrance involved the tract of the Simpson Property remaining after the Trustees of Zion Church deeded off portions to John W. Rust in 1908, 1911 and 1921. *See* DX-TRU222 (description of property to be encumbered).
419. By order dated October 6, 1933, the Circuit Court approved the encumbrance, finding that “it is the wish of the congregation of said Church mentioned in said petition to encumber the Rectory property therein mentioned....” DX-TRU222.0006.
420. Neither the Diocese nor TEC joined in the Petition, and the Vestry minutes from the entire relevant time reveals no indication that the Diocese or TEC was ever consulted regarding the encumbrance of the property.
421. The total cost associated with building the new church building was \$19,051.52, and the evidence suggests that the congregation self-funded \$14,051.52 of the costs with the remaining \$5,000.00 covered by the loan. DX-TRU146.0048.
422. There is no evidence that the Diocese or TEC contributed any funds whatsoever to building the new structure.
423. The new structure was completed in 1934 and sits on the parcel of property originally deeded under the 1874 Rumsey Deed. Tr. 1637:4-6 (T. Yates); *see also* DX-TRU241 at Item 1; PX-TRU-0490-03 (photograph of structure).

***B. 1952 Parish Hall***

424. Because of the growing population in the Fairfax area, Truro Church began planning for expansion in 1951. *See* DX-TRU147.0122 (Special Meeting Minutes dated October 23, 1951 discussing growth in population and need to expand).

425. The Vestry of Truro Church decided to build a parish hall to accommodate increasing numbers of parishioners, and by January 1952, the congregation at Truro Church was actively pledging funds towards construction costs. *See* DX-TRU147.0130 (Vestry Minutes dated December 2, 1952 showing \$24,500.00 in the Parish Building Fund).
426. To fund the additional construction costs, the Trustees of Truro Church filed a petition seeking to encumber both the Rumsey Property and the remaining parcel of the Simpson Property to secure a \$47,000.00 loan. DX-TRU219.0001-0002. Exhibit A to the Petition was evidence of the congregational approval for the encumbrance. DX-TRU219.0003.
427. The Court approved the petition. DX-TRU219.0004-0005.
428. Neither the Diocese nor TEC was a party to the petition.
429. Based upon the pledges from the congregation and the loan, Truro Church built the parish hall on a portion of the Rumsey Parcel (identified as Item 1 on the Truro Church main campus plat), and a portion of the parcel acquired from the Kirkpatricks (identified as Item 6 on the Truro Church main campus plat). *See* DX-TRU241; *see also* PX-TRU-0490-033 (photograph of the parish hall).
430. There is no evidence that the Diocese or TEC contributed to the costs associated with constructing the parish hall.

**C. *The Main Sanctuary***

431. Shortly after constructing the parish hall, it soon became evident that the “Historic Chapel” was simply not large enough to accommodate the growing congregation. As a result, in early 1956 the Vestry of Truro Church began making plans to build a new church building and began interviewing architects for the project. *See* DX-TRU152.0005.
432. After interviewing several architects, the Vestry chose W.H. Thompson to design the building and oversee construction. DX-TRU152.0013 (April 25, 1956, Vestry Minutes).

433. There is no evidence that the Diocese or TEC had any input on these matters.
434. The Vestry, with the assistance of the architect, obtained bids on the actual construction of the new church building, and on October 26, 1957, selected W.A. Sherman, who bid \$253,000.00 to construct the new building. DX-TRU153.0023.
435. There is no evidence that the Diocese or TEC had input on selection of the contractor.
436. In order to finance the construction of the new church building, the Trustees filed a petition in the Fairfax County Circuit Court on November 4, 1957; the petition sought to encumber property in the amount of \$250,000.00. DX-TRU208.
437. Then-Circuit Court Judge Harry L. Carrico entered an order approving the petition upon finding that it was “the desire of the members of the congregation” to encumber the property. TRU208.0004.
438. Approximately one month after entry of Judge Carrico’s order approving the encumbrance, on December 5, 1957, Truro Church requested permission of the Board of the Department of Christian Stewardship to borrow the funds necessary to build the new church building. PX-TRU-048-004-005.
439. The request indicated that ground breaking was to take place the following Sunday. *Id.*
440. The Board approved the request to encumber noting that was approving the request to incur the debt “for the specific purpose of erecting a church on property now owned by that church.” PX-TRU-0048-005.
441. The new structure was completed in 1959. PX-TRU-0189-002.
442. The structure is located on the parcel of property identified as Item 2 on the Truro Church main campus plat. *See* DX-TRU241; *see also* PX-TRU-490-030, PX-TRU-490-032 & PX-TRU-490-067 (photographs of structure).



***D. Education Building***

443. In early 1963, the Vestry of Truro Church began discussions about building an education building on the main campus. DX-TRU159.0003.
444. By June 25, 1963, the discussion matured to the point where the Vestry approved the offer of Arlington-Fairfax Savings and Loan Association to make a loan of \$200,000 for that purpose. DX-TRU159.0012.
445. As with the main sanctuary, the Vestry of Truro Church selected the architect to design the education building and chose the contractor. DX-TRU160.0008 (Vestry Minutes dated June 17, 1964); DX-TRU160.0016 (September 2, 1965, vestry minutes).
446. By 1965, more funds were needed to complete the building and a petition was filed in this Court by the Trustees of Truro Church as the “holders of legal title” to encumber the property with a \$450,000.00 mortgage. DX-TRU214.0001.
447. The Court approved it based on the congregation’s approval. DX-TRU214.0005.<sup>27</sup>
448. The education building sits on the parcel identified as Item 7 on the Truro Church main campus plat. DX-TRU241; *see* PX-TRU-0490-040 & 041 (photographs of education building).

***E. Addition of Transepts to Main Sanctuary and Covered Walkway***

449. In 1982 and 1984, Truro Church expanded the Main Sanctuary by removing the walls on two sides of the structure and adding new seating. Tr. 1646:2-1646:6) (T. Yates).

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<sup>27</sup> There is evidence that Truro Church sought permission from the Diocese to encumber property for the 1965 loan. Yet, no evidence was submitted regarding any approval by the Diocese. In accepting a proffer on real estate transactions, counsel for the Diocese stated merely that consent was sought. Tr. 1696:2-1696:5 (“The second change was the loan was increased in the middle 1960s on the main sanctuary in order to build the Education Building. I think consent was sought then. That was the mid-’60s.”).

450. The addition's cost was self-funded and totaled \$826,229. DX-TRU274; DX-TRU276; Tr. 3444:16-3445:1 (LeMasters) (introducing chart showing amounts Truro paid).

451. The transepts can be seen in the photograph of the Main Sanctuary where the additional seating runs perpendicular to the original seating. *See* PX-TRU-0490-056.

***F. Renovation of Bathrooms and Playground***

452. In 1998, Truro Church renovated the bathrooms in the Main Sanctuary and its playground for a total cost of \$167,559. *See* DX-TRU281 & DX-TRU282.

***G. Renovation of Upper Room and Common Grounds***

453. In 2005, just prior to disaffiliation, Truro Church renovated the upper room in the Main Sanctuary and the Common Grounds area adjacent to the parish offices at a total cost of \$156,683. *See* DX-TRU280 & DX-TRU283.

***H. Undercroft Renovation***

454. In 2010, Truro Church renovated the undercroft of the Main Sanctuary at a total cost of \$171,929. *See* DX-TRU278.

455. A photograph of the undercroft, as renovated, was introduced as PX-490-067.

456. This is the location where the dance was held in 1967. *See* DX-TRU050.

**IV. Contributions to Diocese**

457. The Journals of Annual Council indicate that from 1953 through 2006, Truro Church voluntarily pledged \$4,865,271.00 to the Diocese. *See* DX-TRU293 (chart with cites to source of information in Annual Council Journals).

458. Adjusted based on the CPI, the present value of those voluntary contributions from 1953 through 2006 totals \$9,715,931.31. *Id.* Tr. 4463:15 to 4466:3 (E. Wakeham).

## **V. Trustees for Truro Church**

### **A. DX-TRU197**

459. Throughout the history of Zion/Truro Church, and in accordance with Virginia law, the congregation, and not the Diocese or TEC, have selected trustees to hold the Church's property. Of the various petitions and orders that were located and introduced into evidence there is no evidence that the Diocese or TEC ever exercised any control over the process of appointment of trustees or any actual control or influence over their actions.
460. In November 1866, the Fairfax County Circuit Court, upon motion of the proper authorities, entered an order appointing M.D. Ball and Thomas Moore as Trustees of Zion Protestant Episcopal Church. *See* DX-TRU197.
461. The order specified that the appointment was made and conferred with it the "powers and authorities vested in Trustees by Law." *Id.*

### **B. DX-TRU198**

462. On July 18, 1911, by order of the Fairfax County Circuit Court, R. E. Lee, Jr., was appointed as a substitute trustee in the deed dated December 1, 1882 related to the Simpson Property. *See* DX-TRU198.
463. As set forth in the petition seeking Mr. Lee's appointment, "Samuel Simpson conveyed to the Trustees therein named certain property to be held in trust for the use, benefit, purposes and objects of the religious congregation of Zion Episcopal Church of Fairfax, Va., as rectory." DX-TRU198.0004.
464. A.C. Bleight, one of the Trustees named in the deed, tendered his resignation and "at a duly called meeting of the congregation of said Church held on the 26<sup>th</sup> day of June, 1911, a resolution was adopted providing for the appointment of R. E. Lee, Jr., as a trustee in place and stead of A. C. Bleight." DX-TRU198.0005.

**C. DX-TRU199**

465. The Circuit Court of Fairfax County, during its 1929 January Term, entered an order appointing F. S. McCandlish, F. D. Richardson, and George B. Robey as additional trustees for Zion Episcopal Church, to “hold title to the real estate and other property of the Church in Fairfax, Virginia.” DX-TRU199.
466. The court noting that the appointment was sought following a meeting of the Vestry, “the proper authority of said Church to make application for the appointment of Trustees,” ordered that the aforementioned individuals and J. M. Love “shall constitute the trustees of the said church to hold title to the property of said Church as provided by law.” *Id.*

**D. DX-TRU200**

467. During its 1936 January Term, the Fairfax County Circuit Court entered an order appointing Charles Pickett and Thomas P. Chapman, Jr. as additional trustees for Truro Episcopal Church “to hold the legal title to the real estate and other property of the Church in Fairfax, Virginia, conveyed or devised to said Church.” DX-TRU200.
468. The court noting that the appointment was sought following a meeting of the Vestry, “the proper authority to make application for the appointment of trustees,” ordered that the aforementioned individuals along with F. D. Richardson and George B. Robey are the trustees of Truro Episcopal Church for the purpose of holding “the title to all of the property, real and personal of said Church whether now owned or hereafter acquired.” *Id.*

**E. DX-TRU201**

469. On September 27, 1955, following a regular meeting of the Vestry of Truro Church electing trustees, *see* DX-TRU201.0002, the Fairfax County Circuit Court entered an order appointing Charles Pickett, Thomas P. Chapman, Jr., John W. Rust, James Keith and R.J. Lillard as Trustees for Truro Episcopal Church. DX-TRU201.0001.

**F. DX-TRU202**

470. On July 22, 1963, upon motion of the Vestry of Truro Episcopal Church as the proper authorities, John H. Rust, was appointed as Trustee of Truro Episcopal Church by order of the Fairfax County Circuit Court. DX-TRU202.
471. As specified in the order, the appointment conferred “all the duties and powers and [made the trustee] subject to all the responsibilities conferred on Trustees by the law of the State of Virginia.” *Id.*

**G. DX-TRU203**

472. On February 27, 1980, upon petition of the Truro Vestry, the “proper authorities,” and pursuant to § 57-8 of the Code of Virginia, the Fairfax County Circuit Court entered an order appointing John Keith, A. Hugo Blankingship, Jr., and E. A. Prichard as trustees to “hold title to the real property of Truro Episcopal Church.” DX-TRU203.0002.

**H. DX-TRU204**

473. On July 30, 1986, upon petition of the Vestry, the “proper authorities,” and pursuant to § 57-8 of the Code of Virginia, the Fairfax County Circuit Court entered an order appointing James Keith, Gordon Klooster and E. A. Prichard as trustees to “hold title to the real property of Truro Episcopal Church.” DX-TRU204.0003.
474. While the Petition to appoint John A.C. Keith and Mary S. Petersen as trustees was not located or introduced into evidence, Mr. Keith provided testimony on the process of his and Mary S. Petersen’s appointment and acknowledged that it was Truro Church, not the Diocese or TEC, that filed the petition for their appointment as trustees. Tr. 4410:8-17.
475. As of her appointment Mary S. Petersen was not a Vestry member. Tr. 4410:1-3 (Keith).

## **VI. Additional Examples of Dominion and Control over Real Property**

476. Truro Church autonomously exercised dominion and control over the use of its real property: It not only made decisions regarding the acquisition, sale, and improvements to real property, as demonstrated above, but exercised autonomous control over the use of its facilities in tangible ways and without input or interference by the Diocese or TEC.
477. For example, Truro Church permitted Flint Hill Preparatory School to use its Main Sanctuary for high school graduation ceremonies in the late 1990s. *See* Tr. 3454:10-3455:18 (D. LeMasters).
478. The Flint Hill Preparatory School was started by real estate developer Til Hazel after a dispute with Bishop Lee over St. Stephens and St. Agnes schools. Tr. 3084:19-3085:5; Tr. 3092:20-3093:7 (Rev. MacGowan).
479. Truro Church also allowed its property to be used by outside entities. For example, during the 1970s to 1981 Truro provided space for an independent school, the Fairfax City Montessori Academy. Tr. 3455:15-3458:10 (LeMasters); DX-TRU052-DX-TRU058.

## **VII. Dominion and Control over Personal Property**

480. Truro Church has consistently exercised dominion and control over its personal property.
481. Truro Church's Vestry exercised absolute discretion over the contributions it made to the Diocese. Tr. 1540:2-10 (Julienne).
482. In 1997, the Diocese put forth a proposal to increase pledges from parishes within the Diocese, which the Vestry of Truro Church discussed, but then decided not to increase Truro Church's donation percentage. DX-TRU187.0021-0022; Tr. 1543:12-21 (Julienne).

483. Truro Church held a special congregational on August 10, 2003 and a special Vestry meeting to determine how to respond to the events of the 2003 General Convention. Tr. 1547:14-16 (Julienne); DX-TRU193.0032.
484. Ultimately, the Vestry of Truro Church decided to hold donations to the Diocese in escrow. Tr. 1548:4-1548:5 (Julienne).
485. Dr. Paul Julienne exchanged several letters with Bishop Lee to advise him of the Vestry's decision and the reasons for that decision. DX-TRU027.
486. The first letter, sent August 12, 2003, advised Bishop Lee that 504 of the parishioners of Truro Church who were present at the special meeting signed a statement disassociating themselves from the action of the 74<sup>th</sup> Annual Convention. *Id.*
487. Dr. Julienne also advised Bishop Lee that Truro Church was placing its donations to the Diocese in escrow and immediately beginning a policy permitting members to designate their pledges as being "Truro Only." *Id.*
488. The intent of the "Truro Only" designation was to further reduce the Diocesan pledge by the percentage of parishioner donations that opted for the "Truro Only" designations. Tr. 1549:7-16 (Julienne).
489. Bishop Lee responded to Dr. Julienne's letter on August 18, 2003 and, in acknowledging Truro Church's ability to withhold funds, simply stated that he was "particularly saddened by the **financial weapons that your vestry chose** to exercise in this situation." DX-TRU028.001 (emphasis added).
490. Dr. Julienne in turn responded and advised Bishop Lee that the Vestry of Truro Church in further support of its decision that "[s]ome of our parishioners have already left, and others cannot in good conscience continue to support Truro financially unless no portion of their contribution is sent to the Diocese." DX-TRU029.001.

491. The letter further advised that the Vestry was doing so “to fulfill [the Vestry’s] responsibility as good stewards to our parish while we assess the full damage of the decisions taken by you and the Virginia deputation to General Convention.” *Id.*
492. Truro Church made no further direct contributions to the Diocese.<sup>28</sup> PX-TRU-0043-001; Tr. 1557:10-11 (Julienne).
493. The February 19, 1980, vestry minutes reflect that the Diocese requested a 3% increase in pledges for that year, but after discussion the Vestry declined. DX-TRU017.
494. On September 19, 1987, Bishop Lee attended a Vestry meeting and noted that Truro Church was then the largest parish in the Diocese, that the pledges from parishes were “voluntary,” and that Truro Church’s pledge was an “unhealthy” 16% of the Diocese’s budget, which “causes the diocese to depend too much on” Truro Church. DX-TRU018.001.
495. In the following year, the Rector of Truro Church, the Rev. John W. Howe, advised Bishop Lee that it was reducing the percentage of Truro Church’s budget pledged to the Diocese and moving toward a fixed dollar amount. DX-TRU020.0001.
496. The letter from Rev. Howe also noted that Truro Church was continuing its commitment to the Church of the Epiphany in the amount of \$50,000 in 1987, \$150,000 in 1988, and \$150,000 in 1989. DX-TRU020.0002.
497. Bishop Lee acknowledged Truro Church’s decision noting that Rev. Howe had “prepared [him] for the fact that [the Truro] vestry has chosen to reduce its percentage giving to the diocese, and the result is a substantial decrease in dollar amount.” DX-TRU021.0001.

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<sup>28</sup> Truro Church, was of course, not alone in its decision to reduce or withhold funds. Bishop Lee testified in his deposition that about one-third of the 190 congregations in the Diocese reduced their pledges as well and the percentage of pledges dropped by about thirty percent. Tr. Dep. Bishop Lee 61:20-62:6, 66:9-11.



498. The Diocese attempted to suggest that the parish vestry's discretion on contributions only came about in the 1950s with the advent of the Virginia Plan for Proportionate Giving (Tr. 560:13-561:13 (Bp. Jones)), but there were never any sanctions for failing to pay. Tr. 1099:12-1100:2 (Bond).<sup>29</sup>
499. Diocesan Journals from the 1849 through the 1850s show that Zion Church was routinely "delinquent" in paying their assessments." *See, e.g.*, PX-COM-0085-026 (1849); PX-COM-0089-074 (1853); PX-COM-0091-101 (1855); and PX-COM-0092-105 (1856).
500. Zion/Truro Church routinely did not pay its quota in the 1930s.<sup>30</sup> For instance, the Journal of 138<sup>th</sup> Annual Council in 1934, Zion Church's quota was \$800, but only \$500 was paid. PX-COM-0172-041-044.
501. The Journal of 139<sup>th</sup> Annual Council in 1935 shows that Zion Church was assessed \$500.00 but only paid \$387.00. PX-COM-0173-043-045.
502. Truro Church also had sole control over the funds it spent on outreach, and expends large amounts of money on outreach programs. For example, for the period of 1996-2006, Truro Church spent \$14,074,698.00 on outreach programs. DX-TRU292.<sup>31</sup>

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<sup>29</sup> Tr. 1099:12-1100:2 (Bond):

Q. Now, there's no provision in the canons that made those amounts required, correct?

A. It's what they expect. There's no sanction if they don't pay them.

Q. So when you say "no sanction," I think the only thing that you mentioned was that you could get your name on the list of delinquent parishes from time to time, correct?

A. That's true.

Q. In fact, the Diocese had no power to compel the contributions at the apportioned level that they set, correct?

A. That's true.

<sup>30</sup> Zion/Truro Church constructed the "Historical Chapel" in this time frame at significant cost. So it can hardly be said that Zion/Truro Church did not have funds available at the time because of the Great Depression. It simply chose to use its funds to construct a church rather than to pay the Diocese's "quotas."

503. Examples of the outreach include grants to build an eye clinic in Uganda,<sup>32</sup> support for the Lamb Center, and support for foreign Anglican Dioceses. Neither the Diocese or TEC had any input on how these funds were spent. Tr. 4461:8-4463:14 (E. Wakeham).

## VIII. COUNTERCLAIM

### A. *Bank Accounts*

504. With respect to the bank accounts for Truro Church, the evidence demonstrated that the current funds held in those accounts comprise post-2006 funds.

505. As of November 31, 2006 (just prior to the vote to disaffiliate), Truro Church's bank accounts held approximately \$170,000. DX-TRU295; Tr. 3438:16-17 (D. LeMasters).

506. As of March 31, 2011, Truro Church's bank accounts held approximately \$800,000.00. DX-TRU286; Tr. 3438:12 (D. LeMasters).

507. Truro Church uses funds as quickly as they are received. Tr. 3442:2-12 (LeMasters).

508. Given the nature of Truro Church's spending, it is clear that the funds in the bank accounts as of March 31, 2011 were post-disaffiliation funds. *See id.*

509. The Diocese or TEC's claim for the approximately \$170,000 in Truro Church's bank accounts as of November 31, 2006, however, is also unsupportable given that Truro Church stopped making direct contributions to the Diocese three years earlier. *See* PX-TRU-0043-001; Tr. 1557:10-11 (Julienne).

510. Since the contributions passed through Truro Church's bank accounts so quickly there is little likelihood that any pre-November 2003 donations to Truro Church would have been within the \$170,000 in Truro Church's bank accounts as of November 31, 2006.

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<sup>31</sup> The source of the figures come directly from the audited financial statements introduced as DX-TRU105-DX-TRU115.

<sup>32</sup> *See* <http://www.rugaramahospital.org/pages/history.html>

511. Even if there were any vestiges of pre-disaffiliation funds in Truro's bank accounts, the amount of funds that Truro spent on maintenance post-disaffiliation would have more than exhausted any such funds by several factors. DX-TRU268.0002 (showing post-disaffiliation maintenance costs of \$823,934); Tr. 3442:21-3443:19 (D. LeMasters).<sup>33</sup>

**IX. Disadvantages of Being Affiliated with TEC and the Diocese.**

512. Truro Church lost members in the wake of the 2003 General Convention. Tr. 1560:16-1561:1 (Julienne).

513. Some people left Truro Church because they did not believe Truro Church was taking a strong enough position concerning the actions of TEC. Tr. 4415: 7-13 (J. Keith).

514. Bishop Lee repeatedly acknowledged the difficulty that Truro Church was under in supporting the Diocese and by letter dated October 23, 2003, to Paul Julienne specifically stated that he "would prefer for Truro to take its historic place as [sic] contributing member to the diocesan budget, but I recognize that for some in the congregation of Truro Church, that would be difficult at this time." DX-TRU030.0001.

515. Following the 2003 General Convention, Bishop Lee was disinvited from performing services at several of the congregations and arrangements were made to have the retired Archbishop of Canterbury perform such services at Truro Church, Church of the Apostles and The Falls Church. Deposition of Bishop Lee, pp. 50:19-53:9.<sup>34</sup>

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<sup>33</sup> The maintenance costs were actual funds spent on maintenance and did not include costs that arguably could have been included in the calculation such as the salary of the sexton.

<sup>34</sup> Dep. Tr. 50:19-53:9:

Q. Confirmations; I apologize. Prior to the General Convention of 2003 had you ever been asked by a congregation or parish not to come and perform your official duties?

A. Not to my recollection.

Q. And in fact, you had to have a Bishop from outside the United States come and perform those duties?

MR. DAVENPORT: Objection.

**X. Truro Church's Discernment Process and Disaffiliation Vote**

516. Truro Church began the 40 Days of Discernment in September 2006 with the conclusion coming on October 26, 2006. DX-TRU196.0030.

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A. I invited the retired Archbishop of Canterbury.

Q. George Carrie?

A. George Carrie to come in to Virginia to do that; he did it three times.

Q. What three instances did he do that in?

A. I think in the spring of 2004, again in 2005 and again in 2006, and the locations were at the first at Truro Church, and then I may get the years wrong, 2005 at the Falls Church, and then 2006 at Church of the Apostles in Fairfax my recollection.

Q. So the retired -- is it the retired Archbishop?

A. Retired Archbishop of Canterbury.

Q. The retired Archbishop of Canterbury, Lord Carrie, at your invitation because you had disinvited to perform those duties --

A. Uh-huh.

Q. -- came and performed the official duties of a Bishop --

A. That's correct.

Q. -- at the Truro church, the Falls Church and Christ Church?

A. Church of the Apostles.

Q. Church of the Apostles, I apologize. That never happened at any other time when you were Bishop of the Diocese?

A. No, that's not accurate. There have been several occasions where I have invited Bishops who are not Virginia Bishops to come down, not because I was unwelcome but because of some other, maybe a scheduling problem that a church would want a Bishop at a time when one of the Virginia Bishops were available or in a couple of instances where, you know, particular parish, Bishop's grandchild was ready for confirmation, and I invited the grandfather who is a Bishop from someplace else to come in and perform that function.

Q. Let me rephrase my question. This was the first time that you had ever invited a foreign Bishop to come to your Diocese to perform your duties as your substitute because you had been disinvited from congregations?

A. That's fair.

Q. Do you consider that rather extraordinary measure, do you not?

MR. DAVENPORT: Objection.

A. Yes.

517. On November 19, 2006, the Vestry passed a resolution to call for a congregational vote on disaffiliation and specifically referencing the Protocol for Departing Congregation. DX-TRU196.0038-0039.
518. The Protocol was negotiated by members of the Special Committee appointed by Bishop Lee. Tr. 1704:13-21; Tr. 1702:2-1703:4 (T. Yates).
519. The Special Committee report, authored by Chancellor of the Diocese Russell Palmore (Tr. 2718:14-15), a Diocesan officer (PX-COM-0003-007), treated the CANA Congregations as separate and distinct entities, capable of disaffiliation, for purposes of disaffiliation and the ensuing negotiation over church property. DSTS Ex. 134-01913-01914.
520. The Special Committee debated the percentage of the congregational vote necessary to disaffiliate before arriving at 70%. Tr. 1708:2-11 (T. Yates).
521. Russell Palmore who was the Special Committee chairman and Chancellor of the Diocese, pushed for a higher number. Tr. 1708:5-15 (T. Yates).
522. The ballot incorporated the Protocol's two-vote requirement. TRU196.0040-0041.
523. Jim Oakes, a Truro Church Vestry member, received a call from Col. Jean Reed, President of the Standing Committee requesting that he be allowed to make a presentation to Truro Church on December 3, 2006. DX-TRU196.0044; Tr. 4390:16-17 (Col. Reed).
524. The request was agreed to since the "Protocol established by the Special Committee [allowed] the Diocese to make a statement to the congregation." DX-TRU196.0044.
525. Col. Jean Reed appeared at Truro Church and spoke to the congregation in his capacity as a member of the Standing Committee. Tr. 4391:20-4392:3 (Col. Reed).
526. During his presentation Col. Reed, despite knowing the vote was to occur a week later, did not advise the congregation that the Protocol would not be honored. Tr. 1620:18-1621:1 (Julienne); Tr. 4392:4-13 (Col. Reed).

527. Truro Church conducted its vote from December 10-17, 2006 and with 1,010 members voting for disaffiliation, 85 members voting against disaffiliation (92.1% of the vote) and 1,034 members voting for retaining the property, and 55 members voting against retaining the property (94% of the vote). DX-TRU196.0055-0057.
528. Following Truro Church's vote to disaffiliate, Bishop Lee, the Standing Committee and the Executive Board established the Property Commission to negotiate with the departing congregations. PX-COM-247-93; Tr. 4394:22-4395:14 (Col. Reed).
529. The Diocese approved a "standstill agreement," putting litigation on hold while the parties negotiated property-related issues, at the same time that it set up the Property Commission. Tr. 4394:11-4395:22 (Col. Reed).
530. Truro Church appointed a negotiating committee in response to the Diocese's formation of the Property Commission. Tr. 1714:17-20 (T. Yates).
531. The Diocese appointed Bradfute Davenport and David Charlton to the Property Commission. Tr. 1715:2-9 (T. Yates).
532. Bishop Lee testified at deposition that he believed the Property Commission's establishment was implementing the Protocol, paragraphs (g) and (h). Dep. of Bp. Lee at 174.

#### **XI. Continuity of Congregation**

533. Truro Church is the same church that existed prior to the vote to disaffiliate in December 2006. Tr. 3395:20-3396-8 (J. Petersen).
534. The clergy remained the same both before and immediately after the vote to disaffiliate. Tr. 3396:9-15 (J. Petersen).
535. The Vestry remained the same both before and immediately after the vote to disaffiliate and the Vestry continued to be recognized as the lay authority for Truro Church. Tr. 3396:16-3397:1 (J. Petersen); Tr. 1561:2-1562:8 (Julienne).

536. A comparison of the giving units for Truro from before the vote and 2010 revealed that nearly 80% are still attending. DX-TRU299; Tr. 4473:10-15 (E. Wakeham).<sup>35</sup>
537. Truro Church incorporated prior to the vote to disaffiliate on February 14, 2006, and the incorporated body continued to act as the Church. DX-TRU290.0001.
538. The Articles of Incorporation show that the “Board of Directors” for the corporation “shall be known as the Vestry.” The Vestry continued to have the same powers it had over the real and personal property that it did before incorporation. *See* §4.6 of Bylaws adopted May 23, 2006. DX-TRU291.0004.

## **XII. Instruments of Donation**

539. Unique to Truro Church are the two instruments of donation (“IOD”), *see* PX-TRU-003 & PX-TRU-004, one from June 14, 1934 and the other from April 16, 1974. The first IOD commemorates the consecration of Truro Church’s “Historic Chapel” after it was constructed. The second IOD commemorates the consecration ceremony for the Main Sanctuary which was originally built in 1959. *See* PX-TRU-369 (Truro program for dedication and consecration dated April 16, 1974).
540. Neither of the IODs are signed by the Trustees of Truro Church, neither appears in the recorded land records, neither was voted on by the congregation, and neither was subject to a petition pursuant to Virginia Code § 57-15 to transfer or convey property.
541. The Diocese’s own expert testified that the 1934 IOD was a liturgical document and that he, lacking liturgical training, could not interpret it. Tr. 1120:3-1121:5.
542. Moreover, the program ceremony for the dedication and consecration in 1974 of the Main Sanctuary confirms that the entire ceremony was merely spiritual in nature; nothing with-

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<sup>35</sup> Like most religious entities, attendance is not taken at church services. One universal way to track active membership is through giving.

in the program that even hints that the congregation of Truro Church, or its Trustees, were conveying legal title to the Bishop of the Diocese. PX-TRU-369 (Truro program for dedication and consecration dated April 16, 1974).

## **ST. STEPHEN'S CHURCH, HEATHSVILLE**

### **I. Formation of Congregation**

543. On motion of the vestry, on October 2, 1874, pursuant to Virginia Code 1873, Chapter 76, Section 9, the Circuit Court for Northumberland County, Virginia, entered an order appointing nine men to serve as trustees of an unnamed congregation of the Protestant Episcopal Church in Northumberland County (DSTS Ex. 15, ¶¶1-2).

### **II. Acquisition and Improvement of Real Property**

544. As described below, beginning in 1874 and continuing through 1998, the foregoing congregation that came to be known as St. Stephen's Church<sup>36</sup> acquired deeds to four main parcels of real property (and four tiny parcels) and made improvements thereon to three of those parcels (Tr. 3675:4-16).

545. Between 1967 and 1996, St. Stephen's acquired four small parcels of property for the purpose of rounding out its existing land. In 1967, it acquired through two gifts two separate strips of land (DSTS Exs. 8, 9, 90-01428; Tr. 3680:8-3681:8).

546. In 1972, St. Stephen's acquired another small strip of land adjacent to its rectory parcel (DSTS Ex. 10; Tr. 3681:9-18). In 1996, St. Stephen's acquired the fourth small parcel near the church parcel (DSTS Ex. 11; Tr. 3682:4-11).

547. Neither TEC nor DVA contributed funds for the acquisition of any of these four small parcels (Tr. 3681:19-3682:3; Tr. 3683:5-11).

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<sup>36</sup> St. Stephen's was originally named Emmanuel P.E. Church (DSTS Ex. 15, ¶5). On April 30, 1881, the church was consecrated as St. Stephen's Church by the Rt. Rev. Francis M. Whittle, Bishop of the Diocese of Virginia (*id.*).



548. From the outset, legal title to each parcel has always been held by trustees for the benefit of St. Stephen's (DSTS Exs. 5-12, 41) and the Vestry has always unilaterally directed and funded the acquisition of, and all improvements to, each parcel (Tr. 3686:14-18).
549. There is no evidence that the congregation, vestry, or trustees of St. Stephen's Church ever voted to convey a property, trust or contract interest in the property of St. Stephen's Church to either TEC or the Diocese, and the records of the church contain no written deed, trust instrument or contract signed by the vestry, wardens or trustees giving a contract, trust or property interest in St. Stephen's Church property to either The Episcopal Church or the Diocese of Virginia (Tr. 3689:1-16; Tr. 3838:12-3839:9).

***A. 1874 Deed: Historic Church Parcel***

550. Just over a month after the appointment of trustees described above, for the consideration of \$50, by deed dated November 20, 1874, grantors conveyed title to a parcel of land in Heathsville, Virginia, to the trustees for the purpose of "erecting a house for divine worship and such other houses as said congregation may need" (DSTS Ex. 15, ¶¶3-4).
551. The "house for divine worship" was built over a period of several years at a cost of about \$1,100, funded largely by the congregation (DSTS Ex. 15, ¶5; Tr. 3674:18-3675:3).
552. Neither The Episcopal Church nor the Diocese of Virginia contributed financially to the purchase of the 1874 deed parcel (Tr. 3676:11-15).
553. Since completion in or about 1881, the original church building has been continuously used as a church (DSTS Ex. 15, ¶5; DSTS Ex.148-02186-02219).
554. In 2004, St. Stephen's expended \$60,000 for the purpose of expanding the seating capacity of the church, for which the congregation sought no concurrence of the Diocese of Virginia (DSTS Ex. 92; Tr. 3695:14-3696:20). DSTS Ex. 152 is a recent photograph of the historic church.

555. In 1999, St. Stephen's built a new parish hall on the 1874 deed parcel adjacent to the historic church (PX-SSH-0108; Tr. 3684:2-9).
556. At the same time, it put a new roof on the historic church (PX-SSH-0111; Tr. 3685:3-15). The cost of the parish hall construction and the new roof was \$615,276 and \$9,500, respectively (PX-SSH-0117; Tr. 3695:22; Tr. 3686:1-6), and was funded by members of the congregation and friends of St. Stephen's (Tr. 3684:10-13).<sup>37</sup> DSTS Ex. 157 is a recent photograph of the parish hall and the historic church.

**B. 1957 Deed: Cemetery and Original Parish House**

557. In 1957, St. Stephen's purchased for \$9,250 a 2.5-acre L-shaped parcel that encompasses the church cemetery and a frame house (DSTS Exs. 6, 53; Tr. 3677:6-13).
558. Members of both the congregation and of the public may buy plots in the St. Stephen's Church cemetery (Tr. 2650:12-16).
559. Subsequently, St. Stephen's expended \$12,977 (DSTS Ex. 53-01010; Tr. 3677:10-13) to remodel the house so that it could be used as a parish house (*id.*).
560. St. Stephen's funded the project with funds on hand, a \$12,000 loan secured by the deed to this parcel, and a \$3,500 contribution from the Diocese of Virginia (DSTS Ex. 53-01009-10; Tr. 3677:6-3678:1).
561. St. Stephen's secured the concurrence of the Diocese to incur this debt (Tr. 3678:2-4).
562. The cemetery is pictured in DSTS Ex. 153.
563. The frame house, pictured in DSTS Ex. 154, is now used as the Thrift Shop (Tr. 3676).

**C. 1967 Deed: The Rectory**

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<sup>37</sup> Bishop Peter Lee, Bishop of the Diocese of Virginia, contributed \$1,000 to the construction from the Bishop's Discretionary Fund (Tr. 3686:7-13).

564. By deed dated January 12, 1967, St. Stephen's purchased for \$1,200 a vacant parcel for the purpose of building a new rectory in preparation for calling a new rector (PX-SSH-17; DSTS Ex. 7; Tr. 3678:10-3679:1).
565. St. Stephen's vestry authorized the church to borrow \$15,000 from the Bank of Northumberland to build the new rectory and to secure the repayment of the note with the rectory parcel (DSTS Ex. 90-01428). DSTS Ex. 156 is a recent photograph of the rectory.
566. There is no evidence that St. Stephen's sought the concurrence of the Diocese of Virginia to borrow this money or to secure the loan with the rectory parcel (Tr. 3680:3-7).

***D. 1998 Deed: The Parking Lot***

567. By deed dated November 20, 1998, St. Stephen's purchased for \$40,000 a vacant parcel across the street from the church (DSTS Ex. 12; PX-SSH-0097b; Tr. 3682:18-3683:1).
568. This land is used for overflow parking and other outdoor activities (Tr. 3675:14-16).
569. There is no evidence that either TEC or DVA contributed to the acquisition of this parcel (Tr. 3683:5-11).

**III. St. Stephen's Church Ownership Costs**

570. During the period 1942 to 2010, St. Stephen's Church expended in connection with the operation, maintenance, insurance, cleaning and grounds keeping for the above properties the aggregate sum of \$839,830 (DSTS Ex. 54, 55).
571. This translates to \$ \$634,279 in 2010 dollars (DSTS Exs. 54, 55; DX-FALLS Ex. 73A).

**IV. Governance of St. Stephen's Church**

572. Throughout its history, St. Stephen's has had a similar governance structure in that its Rector has always been called by the Vestry, the Vestry has always been elected by the congregation, and together, the Rector and Vestry have overseen the operation of the

church discharging their respective duties as the spiritual and temporal leaders of the congregation (Tr. 3640:12-19).

573. The six-member Vestry serves for staggered three-year terms (Tr. 3640:20-22; Tr. 3641:1-3).
574. Effective October 12, 2006, St. Stephen's was incorporated under the laws of the Commonwealth of Virginia (DSTS Exs. 1, 2; Tr. 3641:4-14).
575. After incorporation, on December 9, 2006, the Vestry adopted new bylaws (Tr. 3641:15-18), which were amended on August 7, 2007 (DSTS Exs. 3, 4; Tr. 3641:15-3643:1).<sup>38</sup>
576. These new governing documents continued in corporate form the foregoing basic governance structure (DSTS Exs. 1-4).

#### **V. Operations of St. Stephen's Church**

577. As of the date of the disaffiliation vote, St. Stephen's had an Average Sunday Attendance of 114 persons (Tr. 3671:17-19).
578. In addition to leading and supporting the worship, ministry and mission of the church, the Rector and Vestry are responsible for managing and overseeing real property with a January 2011 appraised value of \$1.15 million (and an August 2006 appraised value of \$1.23 million) (DSTS Ex. 38, 39), tangible and intangible personal property with an aggregate December 2006 value of \$560,926 (DSTS Ex. 42), an annual budget on the eve of the

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<sup>38</sup> The bylaws adopted by the Vestry in 2006 replaced bylaws adopted by the Vestry in 1994 and amended in 2005 (PX-SSH-0005; Tr. 3646:12-15). The 1994 bylaws originated with St. Mary's Church in Fleeton, Virginia, the nearby church with which St. Stephen's had been "yoked" during the 1990s until 2001 (Tr. 3792:4-6). The St. Stephen's congregation never adopted either the 1994 or 2005 bylaws (Tr. 3643:6-17; Tr. 3646:12-15), and there is no evidence that, except for document production during discovery in this litigation, the 1994 or 2005 bylaws were ever sent to either The Episcopal Church or the Diocese of Virginia (Tr. 3648:9-13; Tr. 3644:14-21). The Vestry determined to eliminate the reference to the trust claim of the denomination in ¶10 of the 1994 bylaws, since it did not accept the claim reflected therein to the congregation's property (Tr. 3644:4-13).

- vote of \$288,000 and \$325,000 at present (Tr. 3673:3-5; Tr. 3740:12-15), and four paid staff members (Tr. 3672:1-6).
579. Prior to disaffiliation, neither TEC nor the Diocese played any role in the decisions relating to the purchase, improvement, management and oversight of St. Stephen's real property (Tr. 3670:10-16; Tr. 3671:1-5; Tr. 3686:14-18), St. Stephen's intangible investment property, donated funds or tangible personal property (Tr. 3695:6-13; Tr. 3705:14-22), or the selection and management of the church's staff (Tr. 3672:20-22; Tr. 3673:1-2).
580. Both before and after disaffiliation, the process used by St. Stephen's Vestry to fill paid staff positions was to determine the need for a position and, after surveying the market regarding similar positions so that the church could offer a "fair, reasonable salary," put a line item in the budget for the position, got the word out about a vacancy mostly by "word of mouth," and interviewed and selected applicants for the position (Tr. 3672:7-19). Neither TEC nor the Diocese played any role in the process (Tr. 3672:20-3673:2).
581. All those decisions were made with full autonomy by St. Stephen's Church Vestry (*id.*).
582. St. Stephen's mission is "to know Christ and to make Him known to others" (Tr. 3648:18-20).
583. To carry out its mission, the church divides its activities into five areas: worship, discipleship, mission, ministry and fellowship (Tr. 3648:20-22).
584. St. Stephen's Church's website features detailed descriptions of its principal activities (see <http://www.ststephen'sva.org/>). The following pages printed from the foregoing website are in evidence: DSTS Ex. 139-2028-2044, 2054-2092).
585. In addition to complete autonomy with respect to its temporal activities, St. Stephen's Church operated throughout its history with the same autonomy with respect to carrying out its mission -- from prescribing its worship, to choosing its spoken and music liturgy,

to establishing and directing the content and nature of all of its Christian education, to selecting and overseeing all of its outreach and mission activities, and finally, to its fellowship activities: prior to the disaffiliation vote, St. Stephen's did not seek the permission of the Diocese of Virginia or receive any direction therefrom before using its property for any of its religious or temporal activities (Tr. 3670:10-16).<sup>39</sup>

**A. Worship**

586. St. Stephen's worship consists of one Sunday and one mid-week service, plus other occasional services (Tr. 3648:22-3649:3).

587. While St. Stephen's has used various editions of the *Book of Common Prayer* as the basic source of spoken liturgy for its worship services (Tr. 3700:13-17), the Rector as spiritual leader of the congregation has always exercised full autonomy in matters of worship.

588. For instance, while it used The Episcopal Church hymnal during worship (Tr. 3699:19-22), the congregation has freely used music from other Christian source, compiling its own songbooks of contemporary Christian songs (DSTS Ex. 143; Tr. 3700:1-5).

589. During his tenure, the Rector routinely created special liturgies, and ecumenical and other worship services not drawn from the *Book of Common Prayer* (Tr. 3700:18-3701:13):

- **Funerals:** Before his death, parishioner Carl Vogt requested that we not have a formal funeral. The service created for Mr. Vogt was styled the "Carl Vogt Memorial Hymn Sing" (DSTS Ex. 147).
- **Commemorative service:** On April 30, 2006, at the service to commemorate the 125<sup>th</sup> Anniversary of St. Stephen's Church, the 1789 edition of the *Book of Common Prayer* was used (DSTS Ex. 118-01679).
- **Ecumenical Services:** St. Stephen's has sponsored hymn sings, music workshops, pulpit exchanges and joint worship with the Heathsville United Methodist Church and three different area Baptist congregations (DSTS Ex. 95-01440-41; DSTS Ex. 115-01567). In 2006, the Maundy Thursday

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<sup>39</sup> The Rector qualified this statement slightly by stating that he was unaware as to whether any permission was sought with respect to the church cemetery (Tr. 3671:2-5).

service was an instructed Seder, using materials prepared by the Rector, including those drawn from the Jewish Haggadah.

- **Prayer and Praise Services:** St. Stephen's holds Prayer and Praise services several times a year. The liturgy for these has varied from time to time.

## ***B. Discipleship***

590. Discipleship at St. Stephen's is principally Christian education in the forms of Sunday School for children and Bible study and educational programs for youth and adults.

591. The overarching purpose of St. Stephen's Church's Christian education is to school people in their faith and nurture their commitment to the mission of the church (Tr. 3650:8-13).

### **1. Sunday School**

592. During the Rector's tenure, St. Stephen's has selected its own Sunday School curricula.

593. While St. Stephen's used Sunday School material published by The Episcopal Church Curriculum for a brief period (Tr. 3699:2-7)), in 2000, it switched to Non-Episcopal Church publishers such as David C. Cook Publishers (DSTS Ex. 144; Tr. 3699:7-9).

594. In 2004, St. Stephen's Sunday School teachers began creating their own curricula (DSTS Ex. 116; Tr. 3699:9-10).

### **2. Youth Education**

595. For older youth, during the present Rector's tenure, St. Stephen's has always created its own curricula (Tr. 3699:11-14).

596. St. Stephens's also sponsors Vacation Bible School, including joint programs with other denominations (DSTS Exs. 113-1534, 117-01659).

### **3. Adult Education**

597. For adult education, during the Rector's tenure, St. Stephen's has virtually always chosen its own curricula (Tr. 3699:15-18).

598. During his tenure, the Rector has developed his own curricula using many non-Episcopal Church resources for Bible Studies, Lenten Series, home groups, Parish Weekends, and special educational series, including a number of rounds of *Disciple: Making Disciples through Bible Study*, a 32-week curriculum published by the Methodist Church (DSTS Ex. 116-01603), and several courses taught by Scott Thompson, at the time a member of the Reformed Episcopal Church (DSTS Ex. 116 -01603).
599. St. Stephen's sponsors eight Bible study groups, six of which meet at the church, and two of which meet in private homes (Tr. 365:14-19).

**C. Mission**

600. St. Stephen's Church mission activities consist of taking the Gospel to the world both nationally and internationally (Tr. 3649:9-18).
601. Prior to the disaffiliation vote, during the Rectors' tenure, only one member of the congregation participated in any mission trip organized by the Diocese of Virginia (Tr. 3701:14-22).
602. The following mission activities occurring in a single year (*see* DSTS Ex. 117-01644-45) are representative of the church's mission activities over the long term:

Sister-church partnership with the Cathedral Church of Sts. Philip and Andrew in Mukono, Uganda, to support each other's missions and ministries through prayer, exchange visits, teaching and financial support (DSTS Ex. 138)<sup>40</sup>

Mission trips with Sharing of Ministries Abroad and Anglican Frontier Missions, separately-funded and managed Anglican entities

Congregation worked with Anglican Frontier Missions to support a mission project in Nigeria

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<sup>40</sup> An example of financial support for this sister church was the 2004 decision to contribute \$3,000 in for the purpose of helping pay school fees for ten orphan children (DSTS Ex. 92-01433)



Mission trips with Teen Missions International, an international Christian mission entity that sponsors short-term building projects and teaching opportunities for teenagers throughout the world

Kairos Prison Ministries, an interdenominational mission (*see, e.g.*, DSTS Ex. 118- 01675-76)

Eighteen members of the congregation traveled to the Dominican Republic to assist an Episcopal school with construction

Prescription eyeglasses collected in conjunction with the Lions Club International and sent to Uganda twice a year

Financial and volunteer worker support of Heifer International, an international mission that provides livestock and animal husbandry training to families and communities and Harvest of Hope, a mission to assist rural Methodist churches in the United States

Travel to St. John's Episcopal Church, Ocean Springs, Louisiana, to provide Hurricane Katrina relief (DSTS Ex. 117-1644)

Youths traveled on mission trip to Virginia's Eastern Shore with "Harvest of Hope"

Individual parishioners went on mission trips to Sudan, Dominican Republic and Ukraine

#### ***D. Ministry***

603. As the congregation uses this term, St. Stephen's Church's Ministry consists of reaching out to people in need principally in the congregation and local community through feeding programs, visitation of the sick, homebound and individuals who express an interest in worshipping at the church (Tr. 3649:19-3650:3).
604. Such St. Stephen's ministries include: Lancaster Jail Ministry; Gleamers and Blenders (food bank); food tub for the local food banks; and Meals on Wheels, none of which are TEC or DVA ministries (DSTS Ex. 117-01638).
605. In addition to its regular worship services, St. Stephen's is also a hub of community activity – a "very busy facility" -- since it has "probably the most desirable meeting space in the county, a 40-by-40 room with a kitchen" (Tr. 3651:22\_3652:5).

606. The blood drive is conducted at St. Stephen's parish hall, social and women's groups meet there; people come there to play games and the parish hall houses a library with "1200 volumes, and people in the community are able to use that library if they wish" (Tr. 3652:6-11).

***E. Fellowship***

607. While aimed at carrying out the mission of the church, St. Stephen's fellowship encompasses all social activities of the church for enjoying time together (Tr. 3650:20-3651:1).

608. Among the fellowship activities are the two annual festivals – the Strawberry and Harvest Festivals – which are craft fairs to which crafters are invited to buy exhibit space for selling their wares, and which feature children's' activities, concerts and prayer time for visitors (Tr. 3651:1-8).

609. The church also operates a Thrift Shop (Tr. 3651:8-11). The festivals and Thrift Shop are ministries of the Women of St. Stephen's the proceeds from which help fund the mission of the church (Tr. 3651:12-18).

610. All of the same activities and operations of St. Stephen's prior to the disaffiliation vote have continued virtually unchanged since the vote (Tr. 3671:11-16).

**VI. St. Stephen's Financial Contributions to and Participation in the Diocese of Virginia**

611. St. Stephen's contributed financially to the Diocese of Virginia for many years (Tr. 3698:6-9). For the period 1987 to 2005, St. Stephen's contributed a total of \$105,661 (DSTS Ex. 57A; Tr. 3704:3-3705:1).<sup>41</sup> This translates to \$135,948 in 2010 dollars (DSTS Ex. 57A; DX-FALLS Ex. 73A).

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<sup>41</sup> During that same time period, St. Stephen's received \$2,500 from the Diocese of Virginia, which was used to defray the salary of a deacon shared by St. Stephen' and St. Mary's Fleton (Tr. 3703:1-9; DSTS Ex. 57A). Two young members of the congregation each received \$150 "scholarships" to attend camp at Shrine Mont (Tr. 3702:1-11). Bishop Peter Lee also provided some \$2,500 to the Rector to help pay for medical expenses (Tr. 3702:17-20).

612. Beginning in 2003, St. Stephen's reduced the amount of its contribution to The Diocese of Virginia from ten to two percent of its budgeted annual income "because of [its] dissatisfaction with the theological innovations that had taken place in The Episcopal Church" (Tr. 3698:10-3699:1).
613. Until the 2003 General Convention of The Episcopal Church, the Rector attended Annual Council meetings of the Diocese each year and served for three years as a member of the Standing Committee (Tr. 3696:21-3697:1-21).
614. He served as a member of the Diocesan Commission on Ministry for several years and attended most of the annual Fall clergy conferences and annual Spring clergy/spouse conferences (Tr. 3697:2-9).
615. He participated on the Committee on the Stewardship of Creation, an environmental awareness committee, and the Constitution and Canons Committee, which reported to the Annual Council (Tr. 3697:11-19).
616. He served as deputy from the Diocese of Virginia to the 2003 General Convention of The Episcopal Church (PX-SSH-127; Tr. 3706:1-4).
- VII. The Impact on St. Stephen's Church of Actions Taken at the 2003 and 2006 General Conventions of The Episcopal Church**
617. Actions taken at TEC's 2003 General Convention ultimately led to the decision of the St. Stephen's Church congregation to vote to disaffiliate (Tr. 3706:5-19).
618. The Rector summarized the 2003 actions: "The first and most significant was the rejection of a resolution that would have affirmed the authority of Holy Scripture as the basis for decisions and actions of The Episcopal Church" (Tr. 3706:9-14).
619. The second was the approval of the consecration as bishop of a man with a homosexual partner and the third was the approval of the blessing of same-sex relationships (*id.*).

620. “[T]he fact that these three actions were considered to be a departure from the traditional positions of the church was instrumental in [St. Stephen’s] decision” (Tr. 3708:2-5).
621. In the period between 2003 and the vote, St. Stephen’s experienced a number of disadvantages or other consequences resulting from its affiliation with The Episcopal Church and the Diocese of Virginia (Tr. 3708:6-20).
622. It had “considerable difficulty” with its mission partnerships abroad, necessitating the adoption of a resolution disassociating St. Stephen’s from the above decisions of the 2003 General Convention (DSTS Ex. 74; Tr. 3708:21-3709:14).
623. St. Stephen’s lost a number of parishioners, but also “became a magnet for orthodox Episcopalians who were looking for a place to go” when they left one of the nine Episcopal churches within a half-hour driving distance from St. Stephen’s and thus “grew substantially during that period” (Tr. 3709:15-3710:6).
624. Some St. Stephen’s parishioners wanted to restrict their giving to be “assured that none went to The Episcopal Church or the Diocese of Virginia” (Tr. 3710:10-13).
625. Another parishioner who disagreed with the direction of the congregation “would give a smaller check than they had pledged to St. Stephen’s with a notation saying that ‘the remainder of my pledge is being sent directly to the Diocese’” (*id.*:22; Tr. 3711:1-6).
626. The Rector explained that the main impact was division in the congregation, “because we had people on one side who were eager to leave the Episcopal Church right away and we had people on the other side who wanted me to stop talking about this, wanted us to stop making an issue out of the actions of the General Convention. And so [keeping] those two points of view together as a congregation was very challenging” (*id.*:10-18).
627. Initially, St. Stephens’ took actions to remain in The Episcopal Church by aligning with orthodox Anglicans, such as joining in 2005 the Anglican Communion Network, an or-

ganization within The Episcopal Church “recognized by Anglicans in those provinces [of the Anglican Communion] that had declared themselves out of communion with The Episcopal Church” (Tr. 3712:4-13).

628. In June, 2005, the congregation passed a resolution called “Clear Choice,” stating that “if the Episcopal Church should decide to walk apart from the Anglican Communion, St. Stephen’s would no go there with them” (Tr. 3712:14-22).

629. St. Stephen’s forwarded its Clear Choice resolution under cover of a letter to the Bishop of Virginia as part of its commitment to remaining in The Episcopal Church and communicating its position to the wider church (Tr. 3712:20-3714:2).

630. On March 26, 2006, the St. Stephen’s Vestry sent a letter to the delegation from the Diocese of Virginia to the upcoming 2006 General Convention, stating its disagreement with the decisions taken at the 2003 General Convention and requesting that the delegation work to reverse those decisions (DSTS Ex. 78-01210).

631. For a time, the St. Stephen’s congregation “hope[d]” that The Episcopal Church would “pull back from the brink” due to “a great deal of action among the leadership element of the Anglican [Communion]” (Tr. 3714:3-11).

632. “[U]p and through June of 2005 it was our hope that things would change” (*id.*).

633. “But then the General Convention of 2006 made it clear that the Episcopal Church was not going to back away from its position on these issues” (*id.*).

#### **VIII. St. Stephen’s Church Discernment Process and Disaffiliation Vote**

634. The response of the St. Stephens Vestry to the 2006 General Convention was “to initiate a program of 40 days of discernment so that the congregation could discern what God’s will was for us as we considered our future as a congregation” (DSTS Ex. 98, ¶3; Tr. 3714:21-3715:11).

635. By letter dated August 2006, the Rector and Vestry advised the congregation of its decision to initiate a 40-day discernment process, which had “four components” of large and small group meetings and systematic study of printed materials prepared by St. Stephen’s and The Falls Church (DSTS Ex. 80; Tr. 3715:12-3716:15):
- Weekly fora of the whole congregation each Sunday after church
  - Six small groups meeting weekly facilitated by a member of the Vestry meeting
  - Study of printed materials containing daily devotions
  - Study of printed materials with guidelines for prayer and fasting
636. Shortly after the congregation initiated its discernment process, on September 23, 2006, a Special Committee appointed by the Bishop to help “congregations continuing in conflict over the decisions of the 2003 General Convention get on with their mission in as close a union as possible with the diocese” published its report (DSTS Ex. 134-01913).
637. The Special Committee reported that “after nine meetings spanning nine months,” for some members of the Diocese “separation from the Diocese and the Episcopal Church is increasingly likely” (*id.* at 01914).
638. In light of that reality, “with a view toward prudence and stewardship, the Special Committee offered a “Protocol for Departing Congregation[s],” setting forth a procedure to be followed by a congregation considering departure (*id.*).
639. That procedure was to include the following specific steps (*id.*):
- A period of reflection and discernment of at least 30 days to include “live” presentations directly to the congregation on behalf of the Diocese by persons appointed by the Bishop
  - A vote of at least a 70% majority of the members of the vestry to recommend to the congregation that it leave The Episcopal Church, with an opportunity for vestry members voting against departure to provide to the congregation an oral or written statement of their reasons for voting not to leave

- A congregational vote at a special congregational meeting called by the vestry with at least 10 days notice of the time, place and purpose of the meeting at which Bishop's appointees may appear
- Disaffiliation must carry by a vote made by ballot and in person by a 70% majority of "[a]ll adult communicants in good standing"
- A second vote must be put to the congregation as to whether the property of the congregation should be offered to the departing congregation
- If both propositions carry by a 70% majority, the amount of any payment to the Diocese "for its claim to the congregation's real and personal property" was to be determined by negotiation between representatives of the departing congregation and the Diocese

640. St. Stephen's Rector described in detail at trial the actions taken by the Vestry and the congregation to follow the Protocol procedures outlined above, beginning with the decision of the vestry to conduct a 40-day period of discernment by the congregation on the question of disaffiliation that included participation by representatives of the Diocese, followed by a unanimous vote of the vestry to recommend disaffiliation (DSTS Ex. 78-01211), followed by a vote of 75% and 72% of all adult communicants in good standing of the congregation, respectively, as to the questions to disaffiliate and to offer the property to the departing congregation (DSTS Ex. 78-01213; Tr. 3715-3721).
641. Both St. Stephen's and the Diocese followed the procedures set out in the Protocol, including the appointment by the Diocese of a "Property Commission" charged with "settling all issues of [the Diocese's] claim to the departing congregation's property" (Tr. 3720:20-3721:1-16).
642. At the congregational meeting at which the results of the disaffiliation vote were announced, there was no suggestion that those who opposed disaffiliation would be unwelcome, but rather, the Rector "made a point of saying" that he "hoped we could all stay together in the congregation" (Tr. 3737:20-3738:4).

643. St. Stephen's suffered detriment as a result of its reliance on the Protocol, including the "conversion" of some \$370,000 in funds by those parishioners wishing to remain in The Episcopal Church (Tr. 3721:21-3723:5), as described by the Rector:

After the vote was taken, the congregation essentially split. A number of our members, despite my urging that we all stay together, left the congregation and formed a new congregation.

We were subjected to some bad publicity. We were sued and have had to . . . expend substantial resources in court. Our funds on deposit and some of our investment accounts were converted by some of our . . . members. So we had substantial complicated issues to deal with.

. . . .

Ultimately, the bank froze the funds . . . and filed an interpleader action in the circuit court seeking [a] court order to determine who should have title to those properties.

## **IX. St. Stephen's Church Since Disaffiliation**

644. St. Stephen's Church continues its affiliation with the Anglican Communion through its membership in the Anglican District of Virginia and the Convocation of Anglicans in North America (Tr. 3738:5-14).

645. Except for minor corrections to its 2007 bylaws, the addition of three more Bible study groups and a sizeable increase in the operating budget, since the vote, St. Stephen's has made "no changes" to its governance, including the method of electing vestry, or to its church services, spoken and music liturgy, vestments, adult education, outreach, mission, congregation size, staff, or other church operations (Tr. 3738:15-3739; Tr. 3720:1-15).

## **ST. MARGARET'S CHURCH, WOODBRIDGE**

### **I. Formation of Congregation**

646. On October 6, 1963, St. Margaret's Church held its first worship service in a classroom at the Fred Lynn Middle School, Longview Drive, Woodbridge, Virginia (DSTM Exs. 6, 7; PX-STMARG-1119-0004; Tr. 3899:20-3900:1).



647. On January 28, 1965, St. Margaret's Church was admitted to the Diocese as a mission (PX-COM Ex. 204-33; Tr. 3900:7-8), and, on January 24, 1971, St. Margaret's Church was admitted to the Diocese as a church (PX-COM Ex. 210-63; Tr. 3900:2-6).

## **II. Acquisition and Improvement of Real Property**

648. St. Margaret's Church owns two parcels of property in Woodbridge, Virginia: (a) the Church Hill Drive property, where the church building is located; and (b) the vacant The Cross Lane property, on which St. Margaret's plans to build a new church. (DSTM Exs. 40, 41).

649. From the outset of ownership of these parcels by St. Margaret's, legal title to each parcel has always been held by trustees for the benefit of St. Margaret's (DSTM Exs. 40, 41).

650. St. Margaret's Vestry appointed its trustees without seeking approval of its appointments from either The Episcopal Church or the Diocese of Virginia (DSTM Ex. 39-00080-82).

651. St. Margaret's trustees take no oath or declaration prior to their service as trustees (Tr. 4050:9-16), and take direction only from the St. Margaret's Vestry, not from The Episcopal Church or the Diocese of Virginia (Tr. 4049:21 4050:10; 17-21).

652. St. Margaret's funded the acquisition of the second parcel and, since taking ownership of the two properties, has funded all land development and improvements to each parcel (Tr. 3924:18-3926:6).

653. Except for the deeds of trust securing Diocesan Missionary Society loans, which have been repaid (*see, e.g.*, DSTM Ex. 125), there is no evidence that the congregation, vestry, or trustees of St. Margaret's Church ever voted to convey a property, trust or contract interest in the property of St. Margaret's Church to either The Episcopal Church or the Diocese of Virginia (Tr. 3928:11-3929:15; Tr. 4052:2-9).

654. Except for the deeds of trust securing Diocesan Missionary Society loans, which have been repaid (*see, e.g.*, DSTM Ex. 125), the records of the church contain no written deed, trust instrument or contract signed by the vestry, wardens or trustees giving a contract, trust or property interest in St. Margaret's Church property to either The Episcopal Church or the Diocese of Virginia (Tr. 3929:17-3930:5; Tr. 4052:10-18).

**A. Church Hill Drive Property**

655. While the fledgling St. Margaret's congregation was holding services in a local middle school, the grandmother of a St. Margaret's parishioner, Ethel Wigglesworth, who owned property adjacent to her Woodbridge residence, donated a 10-acre parcel of land for the church's construction (PX-STMARG-1119-0004; DSTM Ex. 6; Tr. 3900:22-3901:8).

656. Because St. Margaret's was not at that point organized legally to receive real property, the transaction was structured so that Ms. Wigglesworth conveyed the land to Glebe Properties, Inc., a Diocese of Virginia corporation, which, on July 26, 1963, conveyed to the Bishop of the Diocese the 10-acre parcel (*id.*) now located at 13900 Church Hill Drive in Woodbridge (DSTM Ex. 48).

657. On December 1, 1963, while the land was still held by the Bishop (DSTM Ex. 5), ground was broken for construction of an A-frame sanctuary (PX-STMARG-1119-004).

658. Funds for the construction of the A-frame and related start-up expenses were arranged by the Diocesan Missionary Society, which in January and February 1964, borrowed from Perpetual Savings and Loan \$18,250 and \$70,000, respectively (DSTM Ex. 390-00263; Tr. 3901:12-21).

659. On October 11, 1964, the first church service was conducted in the new church building (PX-STMARG-1119-005).

660. By promissory notes dated September 16 and December 4, 1964, and April 10, 1968, respectively, St. Margaret's borrowed from the Diocesan Missionary Society \$28,450, \$4,000, and \$17,200, respectively, to defray start-up expenses (DSTM Ex. 39-00266, 00268). On November 12, 1968, St. Margaret's signed a consolidated promissory note (DSTM Ex. 12) "basically transferr[ing] the loans that the Diocese incurred in getting St. Margaret's started" (Tr. 3902:4-6. *See also* Tr. 3900:22-3901:6; Tr. 3903:11-17).
661. Once organized, the St. Margaret's congregation voted to assume full responsibility for all loans made to or for St. Margaret's by the Diocese (DSTM Ex. 39-00266-68). By order dated June 13, 1972, the selection of trustees by St. Margaret's Vestry and the conveyance to the trustees of the Church Hill Drive parcel were confirmed by the court (DSTM Ex.39-00250-51; DSTM Ex. 39-00256), and on June 19, 1972, the Bishop conveyed the Church Hill Drive property to St. Margaret's Church trustees (DSTM Ex. 5).
662. By that conveyance, St. Margaret's assumed full and sole responsibility for the repayment of the five loans to the Diocesan Missionary Society, the repayment of which was secured by a mortgage on the property (*id.*).
663. Between 1974 and 1975, St. Margaret's added a wing "off to the right" of the A-frame sanctuary (DSTM Ex. 562) to house offices and classrooms (Tr. 3902:18-22), costing \$28,000 (Tr. 3905:18-20) and funded by \$8,000 cash on hand raised from the congregation and another \$20,000 loan, at market rates, from the Diocesan Missionary Society (Tr. 3904:1-8; DSTM Ex. 26; Tr. 3905:10-17; Tr. 715:8-16).
664. The modest construction cost of "11 cents per square foot" is attributable to the fact that "the parishioners built that building, basically. It was done on evenings and weekends" (Tr. 3904:5-8), and by 1998 St. Margaret's had paid off all six of the Diocesan Missionary loans (DSTM Ex. 125; DSTM Exs. 38, 371-02201; Tr. 3930:16-20).

665. In 1988 or 1989, St. Margaret's built a new parish hall costing \$912,000 (DSTM Ex. 520) and paid for by a \$480,000 loan from Piedmont Federal Savings and Loan Bank, with the rest from "cash generated by the congregation" (Tr. 3904, 3905:2-9; DSTM Ex. 336).
666. The Piedmont loan was secured by a first mortgage on the Church Hill Drive parcel (DSTM Ex. 48-00491) with a term of 25 years, but St. Margaret's "actually paid the loan off in a little over seven years" (Tr. 3930:21-3931:9).

***B. Cross Lane Property***

667. In January 2001, St. Margaret's Vestry decided to relocate the church (Tr. 3910:8-11) by purchasing land on which to build a new church and selling the Church Hill Drive property (Tr. 3917:10-15).
668. The Vestry formed a land search committee and, after a nine-month search, found a vacant 40-acre parcel on the Prince William Parkway ("the Cross Lane property"), located 10 miles from the existing church (Tr. 3909:20-3909:15).
669. In or about March 2002, St. Margaret's contracted to purchase the Cross Lane parcel contingent upon the county's approval of a special use permit ("SUP") allowing construction of a church on the property (Tr. 3910:16-3911:1).
670. St. Margaret's obtained the SUP (Tr. 3911:9), and, by deed dated February 13, 2004, closed on the property (DSTM Ex. 4), paying \$500,000 plus \$13,000 in closing costs (Tr. 3911:20-22), for which the "congregation paid cash" (Tr. 3912:1-2).
671. St. Margaret's later sought and received county approval of its site plan (Tr. 3911:2-13).
672. In or about 2005, in response to a request made by the Diocese upon learning of St. Margaret's plans to build a new church in another location, St. Margaret's gave the Diocese a right of first refusal to purchase the original Church Hill Drive Property (DSTM Ex. 39-97; Tr. 3944:3-13).

673. In 2005, St. Margaret's Vestry sent a request for proposal to twenty of the largest builders in the Washington D.C., area, fourteen of whom responded (Tr. 3914:7-14).
674. In response to St. Margaret's follow-on request for the best and final offer from the three highest bidders, Equity Homes offered to purchase the Church Hill Drive property for \$18.5 million, contingent upon securing a rezoning of the property within twelve months (Tr. 3914:14-3915:7).
675. St. Margaret's advised the Diocese of the Equity Homes offer so that the Diocese could determine whether to exercise its right of first refusal; the Diocese declined so to exercise this right and released St. Margaret's from the right (DSTM Ex. 39-97; Tr. 3944:3-13).
676. When Equity Homes failed to meet the contingency, St. Margaret's completed that rezoning and in 2007 obtained Board of Country Supervisors approval (Tr. 3916:3-11).
677. St. Margaret's expended a total of \$1,084,000 to secure both the SUP and site plan approval (Tr. 3912:10-3913:11), a process that entailed extensive work with architectural, engineering, and law firms (Tr. 3899:7-19) and was financed by "cash on hand" and a "construction loan . . . of up to \$600,000" from "Cardinal Bank" (Tr. 3916:12-16).
678. The status of the two properties is as follows:
- The old property is rezoned. It will be really easy to get the site plan approved because the rezoning was so tight. It specifies 148 two-over-two units. So a builder could come in and probably within three months, instead of the normal year, year and a half, get approval to start construction or get . . . their site plan approved and start construction.
- The new property, we're ready to turn dirt and start building . . . contingent on selling the old property as well as the resolution of this litigation.
- (Tr. 3916:17-3917:16).
679. Including the purchase price of the Cross Lane property, the total cost expended on the effort to move St. Margaret's church has been "about \$2.7 million" (Tr. 3926:15-17).

### **III. St. Margaret's Church Ownership Costs**

680. Between 1968 and 2010, St. Margaret's Church expended in connection with the operation, maintenance, improvement, insurance, cleaning and grounds keeping for the above properties the aggregate sum of \$3.16 million in 2010 dollars (DSTM Exs. 69, 560; Tr. 3968:21-3970:6; Tr. 3971:8-3973:4; Tr. 3974:2-3975:10; Tr. 3976-3977; Tr. 3978:22).
681. In 1999, St. Margaret's expended \$31,065 to put a new roof on the sanctuary and fellowship hall (DSTM Ex. 521), authorized \$2,500 to replace a furnace and \$4,000 to repair the stained glass window in the sanctuary (DSTM Ex. 197), and in 2009, St. Margaret's expended \$35,893 to install new air conditioning equipment (DSTM Ex. 75)
682. St. Margaret's expended in 2010 dollars \$1.342 million in property development costs (DSTM Ex. 559; Tr. 3926:7-3927:3; Tr. 3970:10-20).

### **IV. Governance of St. Margaret's Church**

683. St. Margaret's Church has consistently had a similar governance structure: its Rector has always been called by the Vestry, the Vestry has always been elected by the congregation, and together, the Rector and Vestry have overseen the operation of the church discharging their respective duties as its spiritual and temporal leaders (Tr. 3962:17-3963:4).
684. The Vestry serves for staggered three-year terms (Tr. 3963:5-8; DSTM Ex. 2-00013-14).
685. At a special meeting held November 5-12, 2006, an 81% majority of St. Margaret's congregation voted to repeal its constitution and approve incorporation by the filing of new Articles of Incorporation presented to the congregation (DSTM Ex. 138).
686. Effective November 29, 2006, St. Margaret's was incorporated under the laws of the Commonwealth of Virginia (DSTM Exs. 1; Tr. 3641:4-14; Tr. 4045:138).<sup>42</sup>

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<sup>42</sup> Before adopting Articles of Incorporation and bylaws, St. Margaret's was governed by a Constitution (PX-STMARG-0713; CONG000655-658). The congregation voted "overwhelmingly" to replace its constitution with new Articles of Incorporation (DSTM Ex. 138; Tr. 4045:8-

687. “Concurrently with incorporation,” the Vestry adopted new bylaws, which, together with the corporate articles, constitute St. Margaret’s governing documents, continuing in corporate form the foregoing basic governance structure (Tr. 4047:3-8, DSTM Exs. 1-2).

## **V. Operations of St. Margaret’s Church**

688. St. Margaret’s Church has an average Sunday attendance of 131 (DSTM Ex. 518).

689. In addition to leading and supporting the religious activities, the Rector and Vestry are responsible for managing and overseeing real property with a February 2011 appraised value of \$5.94 million (DSTM Exs. 48, 49),<sup>43</sup> tangible and intangible personal property with an aggregate December 2006 value of \$422,410 (DSTM Exs. 52-57; Tr. 3967:22-3968:20; 3969:20-3970:6), an annual budget prior to the vote of \$369,000 and after the vote, 10 percent less (Tr. 3673:3-5; Tr. 3740:12-15; Tr. 3967:15-21), and twelve paid staff members (Tr. 3962:7-12).<sup>44</sup>

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4047:2). When it was governed by a constitution, St. Margaret’s also followed a Policy Manual (PX-STMARG-0725), which was a

collection of documents that basically constituted a manual of how to do things. It was kind of like a set of operating instructions. . . . There were a myriad of topics basically along the line of how do you do operations, building security, how you control the issues of building alarm codes and who is assigned them, how you control the issues of keys and assure that when a person is no longer in a position of requiring access to the building, that you get the keys returned, how the tellers operate in counting the offering and . . . how it gets to the bank, the requirement for children, anyone who works with children has to undergo sexual abuse training.

The authors of the new bylaws used the old Policy Manual as a “checklist” to ensure that any governance provisions it contained were incorporated into the new bylaws (Tr. 4047:12-18). The old Policy Manual, now kept in the church office, continues to be used as a reference for details relating to the “day-to-day operation of the church and is “not a governance document” (Tr. 4048:6-20).

<sup>43</sup> This figure comprises \$4.44 million for the Church Hill Drive property (DSTM Ex. 48-00492), and \$1.5 million for the Cross Lane property (DSTM Ex. 49-00577).

<sup>44</sup> Paid staff positions are the rector, the parish secretary, choir director, organist, worship leader, two additional musicians, bookkeeper, four babysitters and the custodian (Tr. 3973:14-22; Tr. 3964:1-13).

690. Prior to disaffiliation, neither The Episcopal Church nor the Diocese of Virginia played any key role in the decisions relating to the purchase, improvement, management and oversight of St. Margaret's real property (Tr. 3670:10-16; Tr. 3671:1-5; Tr. 3686:14-18; Tr. 3922:13-3923:7), St. Margaret's intangible investment property, donated funds or tangible personal property (Tr. 3980:3-12), or the selection and management of the church's staff (Tr. 3672:20-3673:2; Tr. 3953:9-3954-12)<sup>45</sup>.
691. All of those temporal decisions were made with virtually full autonomy by St. Margaret's Church Vestry (*id.*).
692. St. Margaret's purpose is to spread the Gospel through worship, discipleship, mission, and fellowship (Tr. 4101:15-21).<sup>46</sup>

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Alan Clark, the Senior Warden of St. Margaret's at the time of trial, described the uncompensated work he and other parishioners personally have performed to help maintain St. Margaret's real property (Tr. 3979:8-21):

. . . I've been pretty heavily involved in a lot of the maintenance of the grounds and the building. Grounds maintenance, for example, would be mowing the lawn, tending the gardens, planting new plants. We had at one point in the last few years cleared out about 4 acres of our 10-acre property, hauling away debris, underlying brush, dead limbs, branches, trees.

. . . [F]or building maintenance, we've painted parts of it, interior and exterior. We've built new walls, done basic carpentry, basic electrical work, and basic plumbing. So really kind of the whole range of whatever it takes to keep the church up and running.

<sup>45</sup> The Senior Warden described the process used by St. Margaret's both before and after the disaffiliation vote (Tr. 3964:14-3965:12; Tr. 3965:19-3966:8) to fill paid staff positions: "It begins with the vestry, who really creates and funds the position, any position. And then the rector is, as a practical matter, chiefly in charge of identifying appropriate candidates through his network of friends and associates and others who may be able to recommend someone to us" (Tr. 3964:14-22). "One of the vestry members, who's charged with the area of personnel, initially creates, drafts the contract. And we work closely with the rector, back and forth, in determining what the final employment contract would be" (Tr. 3965:5-12). Neither The Episcopal Church nor the Diocese of Virginia played any role in the process (Tr. 3964:14-3965:12).

<sup>46</sup> St. Margaret's Church's website (see <http://www.saintmargaretschurch.org/>) describes its principal activities (*see, e.g.*, <http://www.saintmargaretschurch.org/content.cfm?id=2088>; Tr. 4103:22- 4104:4).



693. In addition to autonomy with respect to its temporal activities, St. Margaret’s Church operated throughout its history with the same autonomy with respect to carrying out its religious purpose—from prescribing its worship, to choosing its spoken and music liturgy, to establishing and directing the content and nature of all of its discipleship activities, to selecting and overseeing all of its mission activities, and finally, to its fellowship activities.

694. Prior to disaffiliation, St. Margaret’s neither sought nor received the permission or direction of the Diocese before using its property for any of these activities (Tr. 4106:4-7).

**A.     *Worship***

695. Prior to the disaffiliation vote, St. Margaret’s provided three weekly Sunday worship services (Tr. 3963:9-13) and additional “special services” (Tr. 4103:13-16).

696. St. Margaret’s used the *Book of Common Prayer* as the liturgy for some, “but not . . . all services” (Tr. 4110:4-8).

697. St. Margaret’s creates its own service booklets and uses TEC’s hymnal “from time to time” (Tr. 4110:16-19), selecting hymns and songs from other sources (Tr. 4110:20-22).

**B.     *Discipleship***

698. St. Margaret’s discipleship activities include Bible studies, small groups and otherwise “helping people learn about the Bible” (Tr. 4103:5-7).

699. St. Margaret’s has always selected its own Sunday school curricula (Tr. 4110:11-15), using a variety of non-Episcopal Church materials, including the *Teal Curriculum* (DSTM Ex. 431), Augsburg *Proclaim* series (Roman Catholic)(DSTM Ex. 76-00883; DSTM Ex. 364-02184), *Bible Zone* (Cokesbury curriculum) (DSTM Ex. 76-00888), David C. Cook curriculum (Methodist), *Velocity* Bible study program, and Purpose Driven Life (Baptist), *Quest* curriculum, for both children’s and teen education (DSTM Ex.76-00887).

700. For adult education, St. Margaret's has always used many non-Episcopal resources for Bible studies, home groups, and special educational series, including, but not limited to, the *Disciple: Making Disciples through Bible Study* (a 32 week curriculum published by the Methodist Church), *Purpose Driven Life* materials (from Saddleback Church), Willow Creek Church publications, the Alpha course, Stephen Ministry and training, and Emotionally Free Workshops (DSTM Exs. 76; 169-01580; 189-01641; 190-01646).

**C. Mission**

701. For St. Margaret's, mission entails "taking the Gospel to the world" and "compassion . . . programs that offer people food, clothing" (Tr. 4103:9-12).

702. St. Margaret's "most exciting" project is the new health clinic (DSTM Ex. 516), which it formed in partnership with Prince William County to provide medical services to "people below the poverty level" (Tr. 4104:22-4106:3).

703. To accommodate the clinic, St. Margaret's parishioners "renovated the first floor of the parish hall to include exam rooms, waiting rooms, offices for a fully equipped clinic with an M.D. on staff and nurses and other people" (Tr. 4105:4-8).

704. The clinic has "grown so fast and so well" that it will be open two days per week instead of one; the "city even changed the bus routes . . . because so many of the people don't have cars . . . so they get the county buses," which bring them "right to the church" (*id.*).

705. One of the most popular of St. Margaret's mission projects is "MOPS, Mothers of Preschoolers," a national ministry that reaches out to women with preschoolers at home to help them figure how to do "mom work" (Tr. 4104:7-14).

706. St. Margaret's also has a number of active Alcoholics Anonymous groups that meet at the church "six days a week" (Tr. 4104:18-20) and houses a nondenominational Bible church that uses the church on Sunday afternoons (DSTM Ex. 517; Tr. 4104:20-22).

707. In the 1970s, St. Margaret's established and ran a thrift shop (DSTM Ex. 413-02298).
708. St. Margaret's has had a long association with ACTS (Action in Community through Service) in Prince William County (DSTM Ex. 254-01894; PX-STMARG-0214-002) to provide space to house day care for single mothers (DSTM Exs. 312-02073; 341).
709. St. Margaret's developed a homeless shelter in local churches, including housing the homeless in St. Margaret's classrooms during the winter (DSTM Exs. 304-02056; 324-02098; 341; PX-STMARG-0173; PX-STMARG-0183, PX-STMARG-0193).
710. Other St. Margaret's activities have included Boy Scout Troop 857 (DSTM Ex. 262-01935), Girl Scouts, the Elizabeth Project (ministry to young single women expecting children and in need of guidance and mentoring)(DSTM Ex. 154-01524),
711. It is undisputed that all of the foregoing mission activities are initiated by St. Margaret's, with little or no involvement of the Diocese or The Episcopal Church (Tr. 4106:4-7).

***D. Fellowship***

712. St. Margaret's has also participated in a variety of ecumenical fellowship events with Presbyterian, Lutheran, Methodist and other Christian churches throughout Prince William County (*e.g.*, DSTM Exs. 350-02158; 367-02194; 437-02347; 456-02398; PX-STMARG-0305-002).
713. The Rector testified at trial that, should St. Margaret's lose its property in the litigation, the above activities would cease (Tr. 4106:8-10).

**VI. St. Margaret's Financial Contributions to and from, and Participation In, the Life of the Diocese of Virginia**

714. From 1966 to 2005, St. Margaret's contributed a total of \$444,791 to the Diocese (DSTM Ex. 70A; Tr. 3978:3-19).<sup>47</sup> This translates to \$737,842 in 2010 dollars (DSTM Ex. 70A; DX-FALLS Ex. 73A).
715. During St. Margaret's Rector tenure, he was unaware of: (a) any member of St. Margaret's that attended either The Episcopal Church's or the Diocese's schools; (b) any member that received scholarship help from either entity; or (c) any financial help from either The Episcopal Church or the Diocese to St. Margaret's during his tenure (Tr. 4112:1-11).
716. St. Margaret's Rector "did not participate in any activities for the national Church" (Tr. 4106:18-22).
717. Bp. Lee visited St. Margaret's "about once every three to four years" (Tr. 4108:16-20).
718. During the current rector's tenure, there was one bishop visitation to St. Margaret's, which "got off to a bad start" (Tr. 4108:21-22). The bishop missed the first service altogether at which he was supposed to preach (*id.*:1-3). "He simply didn't show, didn't call," so the Rector had to step in (*id.*). The bishop finally arrived late and "didn't introduce himself to the candidates for confirmation or anybody" (*id.*). After the service, there was a question and answer time in the parish hall on the subject of the 2006 General Convention during which the bishop's answers were "evasive and vague and very difficult to follow" (*id.*:1-15).

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<sup>47</sup> During the early years in that time period, St. Margaret's received from the Diocese \$67,672, which included \$5,000 used to pay the salary of a deacon (PX-STMARG-1125-001; Tr. 4052:22-4053:1-8). Funds from the Diocese were used to pay clergy salaries, including clergy salaries for the church plant sponsored by St. Margaret's, Church of the Holy Spirit, which became All Saints' Church, Dale City (DSTM Ex. 70-00838; PX-STMARG-1099).

719. Bishop Lee's pastoral oversight of the Rector was "absolutely nothing," which came as a "shock" to the Rector; Bishop Lee was "distant and so hard to get ahold of. . . . I got one phone call from him in six years. Basically [he] showed no personal interest in any of his clergy, certainly myself" (Tr. 4108:21-4109:6).<sup>48</sup>
720. Even before TEC's 2003 and 2006 General Conventions, the leaders of St. Margaret's Church expressed to the Diocese their concerns about the actions of certain TEC bishops that contradicted traditional teachings of the Anglican Communion (*e.g.*, DSTM Ex. 552) and explaining both the withholding of financial support and the departure of members of the congregation resulting from TEC's actions (DSTM Ex. 551).

## **VII. The Impact on St. Margaret's Church of Actions Taken at the 2003 and 2006 General Conventions of The Episcopal Church**

721. After TEC's 2003 General Convention, St. Margaret's vestry became increasingly active in expressing the view that TEC's actions contravened the historic faith of the Anglican Communion, registering disagreement with Bishop Lee's vote on two General Convention resolutions regarding marriage (DSTM Ex. 539), reporting to the congregation the vestry's position on TEC's actions, and recognizing the members' right to elect not to have their pledges support TEC or the Diocese (DSTM Ex.542).
722. On April 22, 2004, the vestry also met with Bishop Lee to express their strong disagreement with the denomination's leadership and theological positions (DSTM Ex. 531).
723. Notwithstanding these efforts, St. Margaret's attendance dropped (DSTM Exs. 518; 538-02801; Tr. 4113:9-11): St. Margaret's "lost about 38 percent of [its] membership in that three-year period [2001-2004]" (DSTM Ex. 518, Tr. 3932:1-3933:9), and there was a "50

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<sup>48</sup> The Rector contrasted this with bishops in other diocese where he worked: "180 degrees different. Those were warm, rich, wonderful relationships, and it was just not true here in Virginia with Bishop Lee" (Tr. 4109:7-12).

percent” drop in contributions beginning in 2003 (DSTM Ex. 70A; Tr. 3980:13-22, Tr. 3981:1-11); DSTM Ex. 88-01092-95; Tr. 4112:12-19).

724. In response, St. Margaret’s leadership allowed members to “divert their giving”—“away from the national Church and the Diocese” and restricted to “the work of the church at St. Margaret’s” (Tr. 4112:20-4113:4), by “writ[ing] ... a letter or just mak[ing] a notation on their check to that effect, and we would honor that request” (Tr. 3980:13-3981:11).
725. In 2005, while searching for a new Rector, the vestry sent the Search Committee a synopsis of the congregation’s beliefs (DSTM Exs. 544, 545), designed to attract a Rector prepared to uphold Biblical authority and Anglican tradition. DSTM. Ex. 524 (while “St. Margaret’s Episcopal Church ... belongs to the Diocese of Virginia and the Protestant Episcopal Church . . . We are, first of all, followers of Jesus Christ and, secondly, Episcopalians. . . . We worship God . . . always in conformity to Anglican standards embodied in the historic Book of Common Prayer. . . . [and] St. Margaret’s Episcopal Church disassociates itself from false teaching and seeks to encourage the Episcopal denomination to return to its historic Anglican roots in orthodox theology and biblical authority”).
726. On June 22, 2006, after TEC’s General Convention, the vestry reported to the congregation what it viewed as TEC’s refusal to correct its profound theological errors on topics such as the doctrines of man, of salvation, of regeneration, and of the church (DSTM Ex. 524), concluding that TEC “is at war with itself” and suffers from “a crisis of confused leadership that has turned to quoting the Canons of the church more than the Bible” (DSTM Ex. 524-02570).

### **VIII. St. Margaret’s Church Discernment Process and Disaffiliation Vote**

727. After the 2006 General Convention, St. Margaret’s spent an extended period addressing how best to respond to what it viewed as TEC’s break from the historic Christian faith.

728. The process began with four presentations to the congregation by the Rector on Sunday, June 11, July 9, November 6 and 13, 2006—two reporting on the 2006 General Convention and two on the Anglican faith, followed by times for questions and answers about the future of TEC and the Diocese (DSTM Ex. 530-02620).
729. On September 23, 2006, a Special Committee appointed by the Bishop of Virginia published its report (DSTS Ex. 134-01913), recognizing that for some congregations “separation from the Diocese and the Episcopal Church is increasingly likely” (*id.* at 01914) and offering a “Protocol for Departing Congregation[s],” setting forth a procedure to be followed by a congregation considering departure (*id.*).
730. The Special Committee’s report, authored by Chancellor of the Diocese Russell Palmore (Tr. 2718:14-15), a Diocesan officer (PX-COM-0003-007), treated the CANA Congregations as separate and distinct entities, capable of disaffiliation, for purposes of disaffiliation and the ensuing negotiation over church property (DSTS Ex. 134-01913-01914).
731. St. Margaret’s vestry decided to conform to the Protocol’s procedure (Tr. 4114:8-18).
732. In September and October, 2006, numerous groups in the church undertook a seven-week small group study designed to help discover God’s will for St. Margaret’s (*id.*), and copies of the booklet “40 Days of Discernment” on this topic were distributed to the vestry for their personal use (*id.*).
733. On October 30, 2006, the St. Margaret’s vestry voted unanimously “to proceed on the process toward parish discernment and a potential congregational vote,” inviting “Bishop Lee’s thoughts and input during the parish’s discernment process” (DSTM Ex. 139).
734. On November 1, 2006, the vestry sent a letter advising Bishop Lee of the decision to begin a formal discernment process and inviting his participation (DSTM Ex. 530-02622).

735. A congregation-wide discernment was begun on November 12, 2006, based on the “40 Days of Discernment” booklet, which was used for personal study and as a guide in six separate “Town Meetings” held after Sunday church services (*id.*).
736. A video address by Bishop Lee that he provided in response to the vestry’s request for his input was exhibited at two of the Town Meetings (*id.*; Tr. 4114:11-14).
737. At a special meeting on November 18, 2006, the St. Margaret’s vestry voted unanimously to adopt a resolution calling for a congregational meeting for the purpose of voting on the question whether to disaffiliate from The Episcopal Church and the Diocese of Virginia (DSTM Ex. 137; DSTM Ex. 530-02588).
738. Consistent with the Protocol, the vestry created a ballot that presented two questions—disaffiliation and disposition of the property (DSTM Ex.530-02589)—and scheduled a vote for December 10-17, 2006 (DSTM Ex. 137).
739. Written notice of the special congregational meeting, as well as prior informational meetings with a period for discussion, were provided to the congregation on November 20, and again by letter dated November 27, 2006 (DSTM Ex. 530-02624).
740. On December 3, 2006, the Senior Warden delivered remarks to the Sunday worship services reporting the vestry’s decision to recommend disaffiliation from The Episcopal Church (DSTM Ex. 547).
741. By letter dated December 4, 2006, the Senior Warden mailed a copy of his remarks to parishioners, together with other information (DSTM Exs. 530-02629, 549).
742. On December 6, two members of the Diocese’s Standing Committee spoke, expressing views opposing disaffiliation, at a congregational meeting attended by 60 persons (*id.*).
743. Voting by the congregation began December 10 and concluded December 17, 2006 (DSTM Ex. 530-02582).



744. At the conclusion of the vote, the vestry announced and certified the results: 78% for disaffiliation and 84% in favor of the departing congregation retaining its property (DSTM Ex. 530-02590-92).
745. The Rector explained his understanding of the basis of the congregation's vote as follows: "[T]he Episcopal Church had wandered from the foundation of our belief system, which is the ancient teachings of the Anglican Church and the Bible" (Tr. 4114:19-4115:2).

#### **IX. St. Margaret's Church Since Disaffiliation**

746. St. Margaret's Church continues its affiliation with the Anglican Communion through its membership in the Convocation of Anglicans in North America (Tr. 4115:3-11).
747. Since the vote, except for an expansion of its mission activities, a reduction in the size of its vestry, and elimination of one poorly attended worship service, St. Margaret's has made no changes to its governance, church services, spoken and music liturgy, vestments, adult education, mission, staff, or other church operations (Tr. 3965:13-3967:21).
748. A person who attended St. Margaret's before and after the vote would notice no differences in St. Margaret's services or operations as a result of the vote (Tr. 4115:12-17).

### **CHURCH OF THE APOSTLES, FAIRFAX**

#### **I. Formation**

749. At the instance of certain laypersons then belonging to Truro Church, Church of the Apostles ("Apostles") began as a Diocesan mission to be established east of Fairfax City. Tr. 3062:20-3063:22 (MacGowan); PX-APOST-0290.
750. At its inception, Apostles worshipped at Fairhill Elementary School, where it held its first service on March 3, 1968. Tr. 3068:9-15 (MacGowan); Apostles Ex. 013.0007.

751. From the outset, the Apostles congregation emphasized lay leadership and ministry, describing its organization as one of “full-time congregation, part-time clergy.” Apostles Ex. 013.0007. *See also* Tr. 3063:18-22, 3069:1-15 (MacGowan).
752. Rather than use a vicar appointed by the Diocese, the congregation selected Rev. Ken Sowers to serve as part-time chaplain. Tr. 3069:7-10, 3076:2-20 (MacGowan); Apostles Ex. 013.0007.
753. Apart from a \$10,000 gift from Truro Church, Apostles was otherwise self-supporting from the outset. Tr. 3064:1-3065:22 (MacGowan); PX-APOST-0290.
754. At no time did the Church of the Apostles mission receive financial support from the Diocese of Virginia; instead, Apostles consistently contributed money to the Diocese, aiming to provide 25% of its collections to the Diocese. Tr. 3065:15-3066:12; 3078:16-22 (MacGowan); Apostles Ex. 013.0007; PX-COM-0208-087 (Journal of the 174th (1969) Annual Council of the Protestant Episcopal Church in the Diocese of Virginia); PX-COM-0209-069 (Journal of the 175th (1970) Annual Council of the Protestant Episcopal Church in the Diocese of Virginia).

## **II. Acquisition and Improvement of Property**

### ***A. Pickett Road Property***

755. On October 27, 1968, the congregation unanimously approved the purchase of a parcel of land on Pickett Road from the Diocese. PX-APOST-0311.
756. In mid-1969, Apostles reached an agreement to purchase the Pickett Road parcel from the Diocese for \$11,983. Tr. 3067:14-3071:2 (MacGowan); PX-APOST-0319A; PX-APOST-320.
757. Since at least that time, and to this day, an oil tank farm has sat on the adjacent lot. Tr. 3073:17-3075:7; 3082:2-3083:3 (MacGowan); PX-APOST-0289-003.

758. Indeed, in part because of this reason, the Diocese deemed the lot less than desirable for use as a church planting location. PX-APOST-0289-003.
759. The Diocese had tried for several years prior to have the parcel rezoned and sold for industrial use, but was unsuccessful. Tr. 3070:2-13 (MacGowan); PX-APOST-0289. Apostles paid the Diocese for the property by check on June 16, 1969. PX-APOST-0320.
760. The Diocese retained possession of the property until Apostles was able to have trustees appointed for the purpose of holding its property. PX-APOST-0319A.
761. At the time of the purchase, the congregation of Church of the Apostles was still holding services at Fairhill Elementary and did not immediately intend to use the property for worship. Tr. 3068:21-22; 3076:21-3077:3 (MacGowan).
762. Church of the Apostles, however, was motivated by a desire to alleviate the Diocese's financial distress, which was well known and acknowledged by the Diocese, by making the purchase proceeds available to the Diocese quickly. Tr. 3072:1-3073:16 (MacGowan); PX-APOST-306; PX-APOST-321; PX-COM-0207-042 (Journal of the 173d (1968) Annual Council of the Protestant Episcopal Church in the Diocese of Virginia).
763. In addition, Apostles sought to attain parish status, and holding land was seen as a prerequisite to that status. Tr. 3069:1-15; 3075:8-3076:1 (MacGowan); PX-APOST-306.
764. Church of the Apostles attained status as an independent congregation by vote at the Diocese's Annual Council in January 1970. PX-COM-0209-038 (Journal of the 175th (1970) Annual Council of the Protestant Episcopal Church in the Diocese of Virginia).
765. By deed dated April 20, 1971, and signed by Bishop Samuel B. Chilton, "Trustees for The Church of The Apostles, Fairfax County, Virginia" took title to the Pickett Road property "free from all encumbrances." Apostles Ex. 33.

766. Those trustees were duly appointed by Order entered by the Circuit Court of Fairfax County, Virginia, At Law No 4765, on the October 22, 1970. *Id.*
767. When Church of the Apostles was formed, attained parish status, and purchased and took title to the Pickett Road property, neither the Dennis Canon nor Diocesan Canon 15 had been adopted.
768. In 1980, Church of the Apostles finally built a worship space, a pre-engineered structure sometimes called “The Meeting Place” still in use today, on the Pickett Road property. Tr. 3070:19-3071:2 (MacGowan); 3096:7-14 (Harper); Apostles Ex. 013.0032-34.
769. Church of the Apostles raised funds for its construction from its members. Apostles Ex. 013.0032-37.
770. From late 1981 to early 1989, the congregation of Church of the Apostles held its regular worship services at Fairfax High School, since it had outgrown the sanctuary at Pickett Road. Tr. 3096:7-3097:4 (Harper); Apostles Ex. 013.0037, 59-60.
771. In 1988, with contributions from its members, and with no financial support from the Diocese or TEC, Apostles expanded its sanctuary. Tr. 3097:5-15 (Harper).
772. Apostles communicated with the Diocese about its physical expansion because it recognized the possibility that it would need to borrow to cover expenses in the short term, and it sought the approval of the Bishop and the Standing Committee to establish a line of credit with The Meeting Place as collateral. PX-APOST-0329.
773. In Apostles’ discussions with the Diocese and within its own congregation in connection with its physical expansion, there was no discussion about who owned The Meeting Place. Tr. 3097:19-3098:3 (Harper); PX-APOST-0329.

774. The Apostles congregation never voted to give the Diocese any interest in the Pickett Road property, or otherwise ceded any claim by the Diocese or TEC to that property. Tr. 3079:1-5 (MacGowan); Tr. 3134:20-3135:1 (Harper); Tr. 3358:6-17 (Rooney).
775. Members of the congregation did not consider Apostles to be holding this property in trust for the Diocese or TEC. Tr. 3079:6-9 (MacGowan).

***B. Braddock Road Properties***

776. In the late 1990s, Church of the Apostles considered further expansion—to a new property altogether. Tr. 3098:12-16; 3121:4-13 (Harper).
777. On November 15, 1998, at a full meeting of the congregation, Apostles voted to authorize the sale of the Pickett Road property and application of the proceeds of that sale toward the construction of a new facility. Tr. 3134:2-11; 3171:19-3172:3 (Harper); PX-APOST-0116; PX-APOST-0333; PX-APOST-474.<sup>49</sup>
778. With no contribution of funds from the Diocese or TEC, Apostles later purchased two properties on Braddock Road that it hoped would serve as the site of a new facility. Tr. 3135:2-20; 3172:17-3173:2 (Harper).
779. In November 1999, the Apostles congregation approved the purchase of the first lot on Braddock Road, a 10-acre tract known as the Spencer property. Apostles Ex. 56.
780. By deed dated November 17, 1999, Trustees for Apostles took title to the Spencer property, at 11814 Braddock Road. Apostles Ex. 34.
781. In September 2000, the Apostles congregation approved the purchase of a second, adjacent 32-acre parcel on Braddock Road, known as the Swart property. Tr. 3176:9-17 (Harper); Apostles Ex. 57.

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<sup>49</sup> PX-APOST-0474 was previously mis-identified as PX-APOST-0475, but it also corresponds to Apostles Ex. 138. See Tr. 3130:12-15; 3280:21-3281:18.

782. By deed dated May 8, 2001, Trustees for Apostles took title to the Swart property, at 11924 Braddock Road. Apostles Ex. 35.
783. The Diocese was aware of these planned purchases but did not ask for any deed language asserting its supposed interest in the properties. Tr. 3136:17-3137:22 (Harper).
784. Indeed, consistent with the canons for consecrated property, Apostles requested permission of the Diocese to sell Pickett Road, and it apprised the Diocese of its intention to acquire and move to new property. Tr. 3172:7-12 (Harper); PX-APOST-0334.
785. Apostles purchased the two lots on Braddock Road before it could sell the Pickett Road property, and it purchased the two Braddock Road lots, one on an installment contract basis, ultimately taking out a mortgage on those two properties in 2003. Apostles Ex. 59.
786. Apostles did not, however, request the permission of the Diocese to take out the mortgage on the Braddock Road properties. Tr. 3140:18-3141:6 (Harper).
787. The congregation did seek and obtain permission from the Circuit Court for the initial installment contract and the later mortgage. Apostles Exs. 39, 41.
788. Although there was a great deal of interest in its Pickett Road property, Apostles never found an acceptable offer. *See, e.g.*, Apostles Ex. 144.
789. Nor was Apostles able to build on and move to Braddock Road, mostly for fundraising reasons. Tr. 3175:11-20 (Harper).
790. Into 2006, Apostles tried to sell some excess 20 acres of land on Braddock Road it did not need, but it never got the right deal. Apostles Exs. 76 (minutes of July 2006 congregational meeting), 148 (June 2006 notice of congregational meeting to vote on selling portion of Braddock Road property).
791. Apostles' efforts to sell the excess 20 acres of land on Braddock Road ended when the Diocese's *lis pendens* was applied. Tr. 3347:4-3348:1, 3348:20-3349:7 (Rooney).

792. The cost of the initial construction of The Meeting Place in 1980 has a present value of approximately \$1.4 million, while the 1988-89 expansion has a present-day cost of about \$1.5 million. Tr. 3346:8-18 (Rooney); Apostles Ex. 134A.
793. The Pickett Road property as improved was appraised at \$3.4 million. Apostles Ex. 53.
794. The cost of acquiring the Braddock Road properties is \$2.9 million. Apostles Ex. 134A.
795. Apostles owes about \$1.9 million on the Braddock Road properties, which have been appraised at \$1.7 million . Tr. 3350:11-13 (Rooney); Apostles Ex. 52.
796. The Apostles congregation never voted to give the Diocese any interest in the Braddock Road property, or otherwise ceded any claim by the Diocese or the Episcopal Church to that property. Tr. 3134:20-3135:1 (Harper); Tr. 3358:6-17 (Rooney).

### **III. Apostles' Autonomy in Operation and Over Its Property**

#### ***A. Church of the Apostles exercised independence in its leadership.***

797. The Vestry, elected by the congregation, selected Church of the Apostles' rectors, including the current rector, Rev. David Harper. Tr. 3095:22-3096:6.
798. The selection of the rectors, and the attendant negotiations, were conducted independent of the Diocese and its bishop. *Id.*
799. Apostles' leaders also included "Design Team Chairs," who planned and coordinated the framework of the life of the church: Worship, Membership, Discipleship, Ministry, and Mission. Apostles Ex. 147.

#### ***B. Apostles also had independence in holding and managing its property.***

800. The trustees who held property for the benefit of the congregation were selected by the Vestry and rector and approved by the Circuit Court (Apostles Exs. 37, 38), and the Diocese and TEC had no input in this process. Tr. 3178:17-3179:1 (Harper).

801. Apostles has granted easements on and allowed outside persons and organizations, including a home owners' association and the U.S. Postal Service, to use its property without seeking consent of the Diocese. Tr. 3142:7-3143:8 (Harper); Apostles Ex. 58 (congregational resolution to allow easements on Braddock Road property); Apostles Ex. 40 (Order Granting and Petition for Leave for Easements on Braddock Road property).
802. Apostles obtained a special use permit for the Braddock Road property to allow development of a portion of the property, and it obtained no permission or financial support from the Diocese in that costly undertaking. Tr. 3141:7-17 (Harper); Apostles Ex. 115.
803. Further incident to this autonomy, Church of the Apostles incorporated as a separate entity on February 24, 2006. Apostles Exs. 377-79.
804. Prior to that, in the late 1990s, at the suggestion of Bp. Lee, Apostles considered setting up a 501(c)(3) non-profit foundation, whose purpose would be to hold the congregation's property and acquire new property. Tr. 3111:10-3121:2 (Harper); Apostles Exs. 105-106.
805. After considering the idea of holding property through a 501(c)(3) organization, Apostles ultimately concluded that it was not feasible, for a number of reasons. *See* Tr. 3114:4-3117:3, 3123:2-12, 3124:9-16, 3126:8-3128:1, 3138:1-3140:1 (Harper); PX-APOST-055-004 – 006, PX-APOST-474; Apostles Exs. 68, 107.
806. Members of the congregation did not consider Apostles to be holding its property in trust for the Diocese or TEC. Tr. 3079:6-9 (MacGowan).
807. Congregation members understood that Church of the Apostles owned its property. Tr. 3358:3-5 (Rooney).



#### **IV. Ownership Costs**

808. During the period 1999-2010, Apostles expended a total of \$4,318,358 in connection with the operation, maintenance, repair, insurance, cleaning, and grounds keeping for its properties. Tr. 3339:17-3345:10 (Rooney); Apostles Exs. 134A.

#### **V. Personal Property**

809. As of the date of the vote to disaffiliate, December 16, 2006, Apostles held \$1,202,430.47 in intangible personal property. Tr. 3337:6-3339:14 (Rooney); Apostles Exs. 135.

810. By the end of 2006 all funds in Apostles' bank accounts consisted solely of funds contributed after 2003, when the Apostles congregation ceased giving to the Diocese. Tr. 3338:22-3339:14 (Rooney); Apostles Ex. 135. At the end of 2006, the cost basis value of Apostles' personal property totaled \$474,618. Apostles Ex. 136.

#### **VI. Financial Contributions**

811. Apostles was a longtime and generous financial supporter of the Diocese and TEC.

812. Apostles did not make direct contributions to TEC, instead passing on any support of the Episcopal Church through the Diocese. Tr. 3310:10-3311:3 (Rooney).

813. Between 1968 and 2003, Apostles contributed to the Diocese almost \$2.4 million, or over \$4 million in today's dollars. Tr. 3322:18-3324:4 (Rooney); Apostles Ex. 89A.

814. In late 1996, as a result of a disagreement with TEC over an issue of doctrine, Apostles changed its giving to the Diocese such that a substantial portion of its contribution would not be passed on to TEC. Tr. 3309:8-3312:22 (Rooney); Apostles Ex. 89.0001.

815. This program, termed the "General Fund Designated Account" or "GFDA," allowed Apostles to continue supporting the Diocese without that financial support going on to TEC. Tr. 3311:22-3315:1 (Rooney).

816. Individual congregations participated in this program by completing a form. Tr. 3315:2-13 (Rooney); Apostles Ex. 91.
817. Apostles used the contributions from congregation members who elected to participate in GFDA to determine how much it would contribute to three specified funds (the Bishop's Discretionary Fund, the Diocesan Fund for Human Need, and the Diocesan Missionary Society) outside the Diocese's general operating budget, which would prevent them from being passed on to TEC. Apostles Ex. 96. *See also* Apostles Ex. 381.
818. Only contributions not designated GFDA would be used to contribute to the Diocese's general operating budget—such that how much Apostles contributed to that budget and how much it gave to the Bishop's Discretionary Fund and other designated funds was based on its individual members' wishes and designations. *Id.*
819. More than 90% of the Apostles congregation availed itself of this GFDA option. Tr. 3104:1-13 (Harper); Tr. 3312:11-3313:2; Apostles Exs. 96.0002, 104.
820. In late 2003, as a result of actions taken by Bishop Lee at the General Convention, Apostles ceased giving to Diocese entirely. Tr. 3316:10-3317:6 (Rooney); Apostles Ex. 100.
821. This decision was publicized throughout the congregation, in bulletins, at the annual meeting of the entire congregation and from the pulpit during services. Tr. 3319:11-3320:9 (Rooney); Apostles Ex. 101.
822. The Apostles Vestry recognized that some congregation members might have a different opinion as to supporting the Diocese and TEC, so Apostles offered to put any such members in touch with the Diocese or TEC. Tr. 3317:9-19 (Rooney); Apostles Ex. 100.
823. Very few, if any, congregation members contacted the Apostles' finance office staff for that information. Tr. 3317:20-3319:10 (Rooney).
824. In 2004 through 2006, Apostles supported other causes related to the Diocese, but it did

not contribute to it directly. Tr. 3321:14-3322:17 (Rooney); Apostles Ex. 89.0001.

825. Apostles supported other causes with closer spiritual connections to the congregation, including missionary work in Africa and the study of seminarians at schools not affiliated with the Diocese. Tr. 3330:2-3332:15 (Rooney); Apostles Ex. 89.0012-15.

## **VII. Impact on Church of the Apostles of Actions Taken by The Episcopal Church**

826. In the late 1990s, members of Church of the Apostles, unhappy with the direction of the Episcopal Church and believing it to be in crisis, expressed a desire to leave the Episcopal Church. Tr. 3099:5-14 (Harper); PX-APOST-0354.

827. Although Rev. Harper counseled the congregation at that time that it should remain with TEC, some members left Church of the Apostles as a result of its continued affiliation with TEC. Tr. 3099:18-3100:13 (Harper); PX-APOST-0354.

828. As discussed above, in order to allow remaining congregation members to exercise their conscience on this issue, Apostles began to restrict its giving to the Diocese so as to prevent any portion from going on to TEC. Tr. 3104:1-3105:5 (Harper); Apostles Ex. 104.

829. The Diocese offered Apostles a mechanism for this, allowing Apostles to contribute to certain designated funds, proceeds from which would not be passed on to TEC. Tr. 3105:11-3108:11 (Harper); Apostles Ex. 381.

830. Between 1996 and 2006, Church of the Apostles lost members as a result of its affiliation with the Episcopal Church. Tr. 3326:18-3327:14 (Rooney).

831. During that period individual members stated that Apostles' continued affiliation with TEC had compelled them to leave Apostles, or that Apostles' stance against TEC and the Diocese had encouraged them to return to the congregation. Apostles Exs. 81, 82.

832. Following the 2003 General Convention, Church of the Apostles believed that the Episcopal Church had failed to honor the historic faith of the Church, setting Apostles on the

path toward disaffiliation. Tr. 3143:9-3144:3 (Harper).

### **VIII. Reliance on the Protocol and Disaffiliation**

833. The Apostles Vestry decided to follow the “Protocol for Departing Congregation[s]” contained in the report of the Special Committee appointed by Bishop Lee because it “identified a path . . . [for] achiev[ing] an amicable separation from the Diocese [of Virginia and] the Episcopal Church” (Tr. 2215:6-22, Tr. 2216:102).
834. By unanimous vote of the Vestry, Apostles undertook a 40-day period of discernment to consider the issue of how to reconcile divisions within the Diocese, as outlined by the Protocol. *See* Apostles Ex. 149; PX-APOST-0203-002; PX-APOST-0279, 0279A.
835. The Protocol also called for congregational votes on whether to sever ties with TEC and the Diocese. *See* PX-APOST-0279, 0279A.
836. Believing “a division ha[d] occurred within the Anglican Communion, TEC, and the Diocese” and that “[t]he majority in TEC, whose doctrine is reflected in the decisions of the 2003 and 2006 General Conventions, ha[d] walked apart from the majority of the Communion and from [Apostles] congregation,” the Vestry resolved that, in order “[t]o preserve [the congregation’s] witness as faithful followers of Jesus Christ, [they could] no longer maintain a denominational affiliation with TEC.” PX-APOST-0279, 0279A.
837. The Vestry called “for a special meeting of the congregation to take place at Church of the Apostles, beginning December 9, 2006, at which the congregation [would] vote on [whether to disaffiliate].” PX-APOST-0279, 0279A.
838. Apostles undertook the vote called for by the Protocol, voting overwhelmingly to disaffiliate and to offer the property to the departing congregation, with 97% and 98% of all adult communicants in good standing of the congregation so voting, respectively. Exhibit 19 to Report of Congregational Determination Pursuant to Va. Code § 57-9, filed De-

ember 18, 2006, by Church of the Apostles in Case No. CL 2006-15793 (citation permitted by July 4, 2011 Order).

839. Apostles relied in good faith on the Protocol, believing that it “would actually provide . . . a way through where [the congregation could work with the Diocese without having to go through this process [of litigation].” Tr. 3262:7-9 (Harper).
840. Apostles lost membership as a result of the Protocol’s collapse, and the congregation’s reliance on the Protocol, and on the good faith of TEC and the Diocese more generally, caused it to purchase and hold on to the Braddock Road properties . PX-DEP-015-0033 – 0037 (Designation of Dep. Of Gary French 33:17-18, 34:2-37:14 (March 15, 2011)).
841. Because of the *lis pendens*, the Braddock Road property is a tremendous burden on Apostles, which is now saddled with a property expensive to maintain and with which it can do nothing. *Id.*; Tr. 3347:20-3348:8 (Rooney).

## **CHURCH OF THE EPIPHANY, HERNDON**

### **I. Formation of Congregation**

842. Church of the Epiphany was founded in 1986 as a mission of Truro Church, Fairfax, Virginia, when Rev. William Reardon and a group of some 30 Truro parishioners joined together to plant a new church in Herndon, Virginia (Tr. 2074:3-12; DCOE Ex. 438).
843. On February 1, 1986, Church of the Epiphany held its first worship service at the Franklin Intermediate School and continued to worship there while it found and acquired a vacant parcel of land on which it built the first section of its present building (*id.*; Tr. 2075:10-19; Tr. 2078:12-21; PX-EPIPH-165-001).
844. In 1986, the Diocese of Virginia admitted Epiphany as a mission (DCOE Ex. 462; PX-COM-227-123, at p. 202; Tr. 2074:19-2075:3).

845. On January 30, 1987, the Diocese of Virginia admitted Epiphany as a church (PX.COM-227-123, at p. 202; DCOE Ex. 52-00382; Tr. 2074:3-18).

## **II. Epiphany's Acquisition and Improvement of Real Property**

846. While Epiphany was still holding services at the Franklin Intermediate School, the Epiphany vicar, Rev. Reardon, invited one of the founding members, Murray Black, to look at several vacant parcels (Tr. 2075:10-19).

847. Together, they identified the "parcel of land that was at Franklin Farm" as the most "suitable" (Tr. 2075:10-19).

848. By deed dated August 25, 1987, after Epiphany had been admitted as a church, the parcel in question was conveyed to Epiphany (DCOE Ex. 497).

849. Epiphany's consideration, described by Rev. Reardon, was that the land would be conveyed to Epiphany "without cost to us now with the agreed understanding that our Parish would become firm financial supporters of the Diocesan efforts to secure additional land, and develop new congregations. The Vestry and I have discussed this, and agree with enthusiasm" (DCOE Ex. 520).

850. Mr. Black concurred that Epiphany's consideration was that it "would become financial supporters of the Diocesan efforts to secure and develop new congregations" (Tr. 2077:17-2078:3; Tr. 4128:1-4129:3).

851. When conveyed to Epiphany, this parcel had an assessed value of \$153,900 (Tr. 2090).

852. Once the parcel was conveyed to it, Epiphany borrowed \$730,000 from George Mason Bank and \$500,000 from the Diocesan Missionary Society to fund construction of a first phase of its new church and related expenses (DCOE Ex. 483-02568; -02570; Tr. 2080).

853. The first phase entailed building a parish hall to be used as a sanctuary and an administrative wing with offices and classrooms (Tr. 2078; DCOE Ex. 527 (red brick buildings)).

854. These construction loans were secured by first and second mortgages, respectively (Tr. 2080:1-22; DCOE Exs. 477, 479), and certificates of satisfaction were signed in June 2004 and recorded, reflecting full repayment (DCOE Ex. 483-02568; -02570).
855. In 2005, Epiphany completed the second phase of construction, which entailed building a three-story classroom building and a sanctuary that seats 600 people (Tr. 2339:5-19; DCOE Ex. 390; DCOE Ex. 527 (beige portion of buildings)).
856. To finance the \$6 million construction and related costs, Epiphany used \$2 million from Epiphany's own funds and borrowed \$5.9 million from the James Monroe Bank, with which it paid off the remaining \$570,000 pre-existing debt on the property (DCOE Ex. 483-02568, -02570; Tr. 2341:18-22).
857. The new mortgage was secured by a deed of trust on Epiphany's real property (DCOE Ex. 482-02523).<sup>50</sup>
858. Except for the deed of trust to the Diocese, which has been released, neither the Epiphany vestry, congregation, nor trustees at any time "vote[d] to give a property, trust, or contract interest in Epiphany property to either The Episcopal Church or the Diocese of Virginia" (Tr. 2094:5-11).
859. Except for the deed of trust to the Diocese, which has been released, the business records of Epiphany contain no "written deed, trust instrument, or contract signed by the Epiphany vestry, wardens, or trustees giving either the Episcopal Church or the Diocese of Virginia a property, trust, or contract interest in Epiphany's property" (*id.*).<sup>51</sup>
860. The Epiphany deed neither created nor defined any duty for the trustees or restricted what

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<sup>50</sup> Epiphany secured the concurrence of the Diocese of Virginia to borrow this sum and to secure repayment with Epiphany's real property (Tr. 2343:19-2344:6).

<sup>51</sup> One of Epiphany's trustees testified that the Diocese never asked to have the Diocese's claimed interest in Epiphany's real property included in the deed (Tr. 4133:14-18)

Epiphany could do with its real property (Tr. 4134:4-7).

861. The trustees took direction only from the Epiphany vestry and never received any direction concerning the real property from either The Episcopal Church or the Diocese of Virginia, signed nothing agreeing to be bound by the Constitution and Canons of either The Episcopal Church or the Diocese of Virginia, and viewed the disaffiliation vote as having no effect on their duty to take “direction from the vestry elected by the congregation” (Tr. 4134:4-4135:20).

### **III. Church of the Epiphany Ownership Costs**

862. Between 1988 and 2010, Church of the Epiphany expended in connection with the management, insurance, mortgage interest, and grounds keeping costs for the above properties the aggregate sum of \$3.97 million (DCOE Ex. 30; Tr. 2352:20-2355:15), or \$4.84 million in 2010 dollars (DCOE Ex. 30; DX-FALLS-Ex. 73A).

863. During the same period, Epiphany expended over \$7 million improving its real property (DCOE Ex. 483-02568; -02570; Tr. 2341:18-22).

864. Since 2007, Epiphany has expended in excess of \$1.4 million in principal and interest payments on the current mortgage on its property (DCOE Ex. 42; Tr. 2355:17-2356:13).

### **IV. Governance of Church of the Epiphany**

865. At the time of Epiphany’s first vestry meeting on May 18, 1986 (DCOE Ex. 43), Epiphany was a mission of Truro Church and had no governing documents (PX-EPIPH-14).

866. In 2001, Epiphany adopted bylaws that were amended from time to time and contained a reference to the Diocese’s asserted trust interest in congregational property (DCOE Ex. 463), but there is no evidence, apart from document production during discovery, that the 2001 bylaws were ever sent to, or received by, TEC or the Diocese (Tr. 3832:4-9, 14).

867. Effective January 11, 2007, Epiphany was incorporated under the laws of the Common-



wealth of Virginia (DCOE Ex. 498; Tr. 2287:5-21), and the following day replaced the 2001 bylaws entirely with new bylaws (DCOE Ex. 526; Tr. 2288:18-20; Tr. 2289:1-5).

868. Epiphany's 2007 governing documents continued in corporate form the basic governance structure Epiphany had employed throughout its existence—namely, that its Rector has always been called by the Vestry, the Vestry has always been elected by the congregation, and together, the Rector and Vestry have overseen the operation of the church discharging their respective duties as the spiritual and temporal leaders of the congregation (Tr. 2286:11-22).
869. Epiphany's twelve-lay-member Vestry serves without compensation for staggered three-year terms (DCOE Ex. 499-02662; Tr. 2286:2; Tr. 2287:1).

#### **V. Operations of Church of the Epiphany**

870. As of the date of the disaffiliation vote, Epiphany had an average Sunday attendance of 366 persons (DCOE Ex. 286-01108).
871. In addition to leading and supporting the worship, ministry, and mission of the church, the Rector and Vestry are responsible for managing and overseeing real property with a January 2011 appraised value of \$9.5 million (and an 2003 appraised value of \$9.5 million) (DCOE Exs. 3, 4), tangible and intangible personal property with an aggregate value as of the vote of \$1.171 million (DCOE Exs. 31-40; Tr. 2373:5-19; Tr. 2374:7-2376:14), annual operating expenses as of the vote of \$1.3 million (DCOE 25-00321), and nine paid staff members (Tr. 2285:12-20).
872. With the exception of an initial Diocesan loan and concurrence regarding encumbrance (DCOE Exs. 471-473), neither The Episcopal Church nor the Diocese of Virginia has played any role in Epiphany's decisions relating to the improvement, management, and oversight of Epiphany's real property (Tr. 2340:14-2341:8), its intangible investment

property, its donated funds or tangible personal property (Tr. 2356:16-2357:6, Tr. 2352:8-19), or the selection and management of its church staff (Tr. 2285:21- 2286:10; *see* DCOE Exs. 395-415); all of those temporal decisions were made with full autonomy by Church of the Epiphany Vestry (*id.*).

873. Epiphany’s mission is “[t]o stand for Jesus Christ, grow together as God's family and make Him known through the power of the Holy Spirit” (DCOE Ex. 329; *see also* DCOE Exs. 330-333).

874. To carry out its mission, the church conducts regular worship and a variety of ministries (Tr. 2291:8-11; Tr. 2292:17-2293:18).

875. Epiphany has operated throughout its history with full autonomy with respect to carrying out its mission—from prescribing its worship, to choosing its spoken and music liturgy, to establishing and directing the content of all of its Christian education, to selecting and overseeing all of its outreach and mission activities (Tr. 2293:19-2294:3).

876. Prior to disaffiliation, Epiphany did not seek the permission of the Diocese or receive any direction therefrom before using its property for its religious activities (Tr. 2293:19-22).

877. Should Epiphany lose its property in this litigation, the outreach activities conducted at its church property, which include operation of a pre-school, would cease (Tr. 2294:1-3).

**A. *Worship***

878. Epiphany’s regular worship consists of two Sunday services (Tr. 2291:8-11; Tr. 2284).

879. Although Epiphany used the *Book of Common Prayer* and The Episcopal Church hymnal in its worship services (Tr. 2291:18-22; Tr. 2292:7-9), Epiphany also created its own spoken and sung liturgies (DCOE Exs. 301-307, 326, 327; Tr. 2291:18-2292:11): “[W]e bought copyrights for other worship music that we used to project on the screen and also printed in our worship booklets which we created for use on Sunday worship.”

**B. Christian Education**

880. **Sunday School.** During the Rector’s tenure, Epiphany never used Sunday School material supplied by either The Episcopal Church or the Diocese of Virginia (Tr. 2291:15-17), but instead chose its own curriculum, such as the Catechesis of the Good Shepherd for children aged 3 years old to fourth grade (DCOE Exs. 314, 332) and “Walk-thru-the-Bible” for 5th and 6<sup>th</sup> grades (*see, e.g.*, DCOE Exs. 312, 313, 333).
881. **Youth Education.** Epiphany also operates a 50-student preschool (Tr. 2293:5) and, for older youth, creates its own curricula (*e.g.*, DCOE Exs. 317- 325).
882. **Vacation Bible School.** Each summer, Epiphany conducts Vacation Bible School and develops its own curriculum for this program (*e.g.*, DCOE Exs. 315, 316).
883. **Adult Education.** For adult education, Epiphany sponsors Sunday morning classes, Bible study, small groups, woodworking and men’s and women’s groups (DCOE Exs. 292, 295).

**C. Mission**

884. Pursuant to its own initiative, Epiphany supports the following local, national, and international mission activities (DCOE Ex. 331):

Prague Christian Library	Prague, Czechoslovakia
Eastern European Evangelistic Ministries	Concord, North Carolina
Missionary to Sudan	Annandale, Virginia
SIM	Goure, Niger
Five Talents	Vienna, Virginia
Just Food	Ching Mai, Thailand
Young Life	Fredericksburg, Virginia
Alabaster Ministries	Philadelphia, Pennsylvania
Fellowship of Christian Athletes	Fairfax County, VA & Madagascar
Young Life	Prague, Czechoslovakia
Inn Ministries	San Cristobal Verapaz, Guatemala
Iskander Evangelistic Association	Mayflower, Arkansas
Religious asylees	Annandale, Virginia
United World Missions	Antheit, Belgium
Chinese Internet Ministries	George Mason University

Int'l Institute of Christian Studies	Overland Park, Kansas
Uganda Christian University	Mukono, Uganda
Indian National Inland Mission	Roanoke, Virginia
Campus Crusade for Christ	Hanahan, South Carolina

***D. Ministry***

885. Epiphany's Ministry, conducted on its own initiative, consists of reaching out to people principally in the congregation and local community through: (a) FACETS – the Fairfax Area Christian Emergency and Transitional Services hot meals program that supplies dinner each night to needy families in the Fairfax area; (b) Angel Tree, a Christmastime project to provide help in the form of food and gifts to families in need; (c) support to residents of Ragan Oaks, nearby public housing, such as tutoring for children in school subjects and counseling adults in life skills; (d) Hypothermia Response Program that houses the homeless during winter; and (e) Western Fairfax Christian Ministries that provides those in need with assistance for food, clothing, transportation, utilities, rent and medical expenses (DCOE Ex. 287 at 9-21; DCOE Ex. 289 at 6-20; DCOE Exs. 299, 329).<sup>52</sup>
886. Epiphany also conducts outreach through an annual Halloween party for the neighborhood; Pack 1257 Scout Troop meets regularly at the church; area school events such as the Chantilly Choral Society give concerts there; the Franklin Farms Association holds meetings there; groups studying and preparing for SAT tests use the church; and a Korean church holds its services there (Tr. 2293:5-18).

***E. Fellowship***

887. Epiphany's fellowship, designed to further its mission, encompasses all of the church's

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<sup>52</sup> At trial, the Rector described how Epiphany's facilities support some of these activities (Tr. 2292:20-2293:4): "[W]e have a kitchen which we use to prepare hot meals for distribution to homeless people who are living in shelters along the Route 50 corridor in Fairfax. We also take in people who live on the street in the wintertime and have them sleep in the parish hall and feed them hot meals during that period of time."

social activities (*e.g.*, DCOE Ex. 289, at 31-39; DCOE Ex. 317), including greeters for, and coffee hour after, worship services; dinners throughout the year among parishioners; ministries aimed at strengthening families; events for assimilating newcomers; softball games and other sports; men's and women's ministries; and various youth group activities (*id.*; DCOE Ex. 508).

## **VI. Epiphany's Financial Contributions to and Participation in the Diocese of Virginia**

888. Epiphany contributed financially to the Diocese each year of its affiliation, 1986-2006, (DCOE Ex. 41; Tr. 2377:21-2378:21), in an amount totaling \$337,871 (DSTS Ex. 41).<sup>53</sup>

That sum equates to \$453,318 in 2010 dollars (DCOE Ex. 41; DX-FALLS Ex. 73A).

889. In 2003, Epiphany reduced its contribution to the Diocese by over 50% and redirected half of its prior contribution to the South Riding church, a mission of the Diocese (DCOE Exs. 41, 524; Tr. 2297:8-15, 2379:4-2382:22).

890. No member of the Epiphany congregation received scholarship aid from either The Episcopal Church or the Diocese of Virginia "with the possible exception that there may have been some youth who got vouchers for mission trips" (Tr. 2296:15-20).

891. By letter dated August 11, 1998, Epiphany's Vestry wrote to Bishop Lee supporting the Virginia Plan of voluntary contributions to the Diocese and emphasizing that "[t]he current moral climate surrounding the Episcopal Church in America is cause for feelings of frustration, anxiety, fear and genuine concern among our Vestry and parishioners. This climate makes it difficult to generate enthusiasm and support for increased monetary commitments to the Diocese and the National Church." (DCOE Ex. 514-02781)

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<sup>53</sup> Between 1986 and 1990, Epiphany received \$48,867 from the Diocese of Virginia (DCOE Ex. 41).

## **VII. The Impact on Church of the Epiphany's of Actions Taken at the 2003 and 2006 General Conventions of The Episcopal Church**

892. Before TEC's 2003 General Convention, Epiphany's Rector wrote Bishop Peter Lee, urging him to adhere to the Diocese's policy of upholding the sanctity of traditional marriage and predicting the adverse effect on congregations of failing to do so (DCOE Ex. 427)—“a significant cost in attendance as well as the distraction to what are good, growing ministries in mission and ministry” (DCOE Ex. 432).
893. After TEC's 2003 General Convention, at which Bishop Lee took a position contrary to that urged by Epiphany's rector, the rector wrote Bishop Lee reporting his and the Epiphany vestry's strong disapproval of such actions and discussing the negative effects of that decision on the congregation and others (DCOE Ex. 432).
894. As anticipated, Epiphany thereafter experienced a number of disadvantages from its affiliation with TEC and the Diocese, including the loss of old members, the loss of potential new members, and the loss of contributions (Tr. 2296:21-2297:7).
895. Epiphany then redirected its giving “to support South Riding mission church, which was a mission of the Diocese” “in lieu of a contribution made to the Diocese in the same amount” (Tr. 2297:8-15; Tr. 2299:13-15).
896. In late 2003 (DCOE Ex. 512; Tr. 2298:21-2299:4), Epiphany changed the pledge cards used by parishioners to provide “two options for people to give. One is option A in which their giving would only go to Epiphany operations and mission . . . and option B, which says that it would go to Epiphany operations and missions and it would support the Diocese of Virginia and The Episcopal Church” (Tr. 2298:2-12; Tr. 2379:4-2381:4) (by de-

fault, gifts not designated for either Option A or B were contributed to support the Diocese and The Episcopal Church (Tr. 2298:13-16)).<sup>54</sup>

897. For the period 2004-2006, 55%, 61% and 54%, respectively, of the dollars contributed were designated for Option A – Epiphany only (DCOE Ex. 524; Tr. 2381:18-2382:16).

### **VIII. Church of the Epiphany’s Discernment Process and Disaffiliation Vote**

898. On September 23, 2006, a Special Committee appointed by the Bishop of Virginia to help “congregations continuing in conflict over the decisions of the 2003 General Convention get on with their mission in as close a union as possible with the diocese” published its unanimous report (DSTS Ex. 134-01913).

899. The Special Committee report recognized that for some congregations “separation from the Diocese and the Episcopal Church is increasingly likely” (*id.* at 01914) and offered a “Protocol for Departing Congregation[s],” setting forth a procedure to be followed by a congregation considering departure (*id.*).

900. The Special Committee’s report, authored by Chancellor of the Diocese Russell Palmore (Tr. 2718:14-15), a Diocesan officer (PX-COM-0003-007), treated the CANA Congregations as separate and distinct entities, capable of disaffiliation, for purposes of disaffiliation and the ensuing negotiation over church property. DSTS Ex. 134-01913-01914.

901. The procedure set forth in the Protocol for Departing Congregations was to include the following specific steps (*id.*):

- A period of reflection and discernment of at least 30 days to include “live” presentations directly to the congregation on behalf of the Diocese by persons appointed by the Bishop;
- A vote of at least a 70% majority of the members of the vestry to recommend to the congregation that it leave The Episcopal Church, with an opportunity for ves-

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<sup>54</sup> Before adopting the pledge card method, Epiphany used “an informal process in which people would give directly to a line item in the budget, such as outreach only” (Tr. 2299: 2-4).

try members voting against departure to provide to the congregation an oral or written statement of their reasons for voting not to leave;

- A congregational vote at a special congregational meeting called by the vestry with at least 10 days notice of the time, place and purpose of the meeting at which Bishop's appointees may appear;
- Disaffiliation must carry by a vote made by ballot and in person by a 70% majority of "[a]ll adult communicants in good standing";
- A second vote must be put to the congregation as to whether the property of the congregation should be offered to the departing congregation;
- If both propositions carry by a 70% majority, the amount of any payment to the Diocese "for its claim to the congregation's real and personal property" was to be determined by negotiation between representatives of the departing congregation and the Diocese.

902. Shortly after publication of the Protocol, in October 2006, Epiphany entered a 40-day period of discernment, after which the congregation was to vote on the question of disaffiliation, and so advised Bishop Lee by letter dated October 27, 2006 (DCOE Ex. 431).

903. Epiphany used material from the Diocese during the discernment process (Tr. 2301:16-21) and followed the Protocol as closely as possible in hopes that it would lead to an amicable settlement of the differences and a way to go our separate ways while still maintaining a Christian relationship with each other. (Tr. 2300:1-7)

904. On December 20, 2006, the Epiphany Vestry passed a resolution with a greater than 70% majority vote calling for disaffiliation (DCOE Ex. 505-02753-54).

905. The congregational vote took place at a meeting beginning January 7, 2007, and concluding January 14, 2007, on the two questions required by the Protocol—disaffiliation and whether the departing congregation should retain the property (DCOE 505-02758).

906. A 78% majority voted in favor of disaffiliation and an 89% majority voted in favor of the departing congregation retaining the property (DCOE Ex. 505-02758-59).

907. Both Epiphany and the Diocese initially followed the procedures set out in the Protocol,



including the appointment by the Diocese of a “Property Commission” (Tr. 2301:10-15).

908. Epiphany was “stunned and discouraged that [the] whole process stopped” (Tr. 2300:11-12), believed that the Diocese failed to “honor its duties under the [P]rotocol” (Tr. 2301:2-4), felt that it had been betrayed, and that Bishop Lee had essentially given up his leadership of the Diocese and ceded the situation over to TEC. (Tr. 2300:1-7).


#### **IX. Church of the Epiphany Since Disaffiliation**

909. In connection with the disaffiliation vote, Church of the Epiphany elected to leave The Episcopal Church and the Diocese of Virginia and to affiliate with the Anglican Communion through its membership in the Anglican District of Virginia and the Convocation of Anglicans in North America (DCOE Ex. 505-02754-02759).
910. The activities and operations of Epiphany described in Parts IV and V above in which Epiphany engaged prior to the disaffiliation vote have continued virtually unchanged since the vote (Tr. 2294:7-2295:14): “Anyone before that period coming in now would not recognize any difference” (Tr. 2294:14-16).
911. A review of Epiphany’s “giving units” both before and after the vote shows that 216 out of 260 or 83% of those units that gave prior to the vote continued to give after the vote (DCOE Ex. 525, Tr. 2383:9-2384:19), and that, after the vote, the number of giving units increased by 20 (*id.*).


Dated: August 12, 2011

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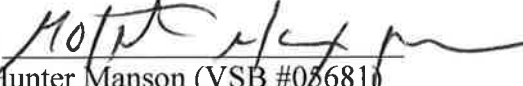
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