

SUPREME COURT COPY

No. S155094

SUPREME COURT OF THE STATE OF CALIFORNIA

EPISCOPAL CHURCH CASES

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AMICUS CURIAE BRIEF OF THE HOLY APOSTOLIC ^{Deputy}
CATHOLIC ASSYRIAN CHURCH OF THE EAST

Court of Appeal, Fourth Appellate District, Division Three
(Appeal Nos. G036096, G036408, G036868)
Orange County Superior Court (Nos. J.C.C.P. 4392, 04CC00647)
Honorable David C. Velasquez

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Church of the East*

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INTRODUCTION

St. James Episcopal Church joined the Episcopal Church U.S.A. (“The Church”) in much the same way as hundreds of thousands of local churches choose to affiliate with general religious bodies. It made an application for inclusion within the Church in which it promised to “forever” submit to and abide by the Church’s Constitution and Canons in exchange for the benefits of membership. The Church accepted St. James’ application, gave it a parcel of property for \$100, and admitted as a parish of the Church.

When St. James decided to join the Church, and at all subsequent times, the governing Constitution and Canons of the Episcopal Church have controlled ownership and use of local church property. The 1979 canon at issue here imposes an express trust on that property.

Now that one faction of St. James’ parishioners and clergy have a doctrinal dispute with the Church, that faction wants to leave, taking with it the property it “forever” dedicated to the Episcopal Church’s ministry.

Respondents conveniently disregard the facts just summarized describing the Church’s government, focusing instead on the local corporate title to real property, which they contend is dispositive under neutral legal principles. On the contrary, this case does not turn on a

phantom legal engagement between advocates of so-called neutral principles and those favoring a principle-of-government approach. Even a neutral principles approach requires application of *all pertinent legal rules*, including the bodies of contract and voluntary association law which are codified in the Corporations Code and expressly permit religious organizations to provide for general church control of the ownership and use of local church property. Every one of this Court’s decisions from the 19th to the 21st Centuries has so confirmed.¹

Because St. James and the Church have chosen to express the trust character of locally-held Church property in the “legally cognizable form” of the Constitutions and Canons of the Church, civil courts following neutral principles of law are constitutionally required to recognize and enforce the resulting contractually-imposed restriction on that property. (*Jones v. Wolf* (1979) 443 U.S. 595, 606.)

Amicus Curiae the Holy Apostolic Catholic Assyrian Church of the East (“the Assyrian Church”) is a hierarchically-organized church. It, too,

¹ As the Court of Appeal pointed out in its Opinion in this case, a small handful of aberrational appellate decisions regrettably have disregarded the governing neutral legal principles expressed in this Court’s decisions – without ever bothering to analyze or even acknowledge those decisions – something they were not at liberty to do under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.

controls ownership and use of property through centralized rules. It respectfully urges this Court to affirm the comprehensive and powerfully-reasoned opinion of Presiding Justice David Sills of the Fourth District Court of Appeal for the following reasons:

- By ancient tradition, law, and practice, adopted when settlers first arrived on the shores of our nation, hierarchical as well as other church bodies have governed themselves, their officials, and their property by general rules made and enforced by senior denominational authorities. Local entities and church officials have, by custom, practice, and express declaration, accepted and acquiesced in these rules in exchange for the benefits of general church membership.
- A comprehensive and correct application of *all* pertinent neutral principles – including contract and voluntary association law – requires enforcement of bargains made by local church members to submit church affairs and property to the governing authority of senior church bodies. St. James made such a bargain. It has given no legally cognizable reason forbidding its enforcement.

- In both religious and non-religious contexts, contract and voluntary association law often determine ownership of property. Just as a contract for the sale of a house can determine ownership in a manner contrary to the record title, so the rules of voluntary association embodied in an agreement among members can establish beneficial ownership and control of locally-held property.
- A religious association's right to make and enforce rules controlling property that is used for the propagation of its doctrine and theology is vital to the free exercise of religion. The federal and state constitutions require that religious associations must, at a bare minimum, be treated no worse than secular entities which seek to have their agreements enforced in the courts.

STATEMENT OF FACTS

A recurring theme in Respondents' briefs is their refrain that the Episcopal Church is attempting to purloin the real estate of an autonomous, self-governing parish corporation. Nothing could be more at odds with the undisputed facts in the record. For 57 years from the inception of its membership in the Episcopal Church in 1949 until its falling out with the

Church in 2004, St. James Parish submitted to the Church's senior governance authority over its polity and property.

As Amicus will show, the Constitutions and Canons of the Episcopal Church and the Diocese of Los Angeles contain the terms of a binding contract between the Episcopal Church, a voluntary religious association, and St. James Parish, one of its constituent members. The formation and consistent reaffirmation of that contract are revealed in no fewer than six written instruments executed by St. James, including without limitation the following:

- In order to become a member of the voluntary religious association known as the Episcopal Church, St. James Parish submitted an application in which it subscribed to an oath promising to be "*forever held under, and conform to and be bound by, the Ecclesiastical authority of the Bishop of Los Angeles, and his successors in office, the Constitution and Canons of the Church now known as the Protestant Episcopal Church in the United States of America, and the Constitution*

and Canons of the Diocese of Los Angeles.” (6 AA 1119, 1125-1126.)²

- St. James Parish corporation formally adopted “the Constitution and Canons, Rules, Regulations and Discipline of [the Episcopal Church] . . . and the Constitution and Canons in the Diocese of Los Angeles” into its Articles of Incorporation and By-Laws. (6 AA 1119-1120, 1134-1135.) In its original Articles, St. James affirmed that the Constitutions and Canons would *always* be a part of St. James’ Articles. (6 AA 1119-1120; 1134-1135.) The Constitutions and Canons were incorporated into each successive version of the Articles and Bylaws until this dispute arose. (6 AA 1120.)
- St. James Parish’s clergy “solemnly engage[d] to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.” (5 AA 983.)

² All emphasis by way of bold or italic is added unless otherwise stated. Amicus will refer to the Appellant’s Appendix filed in Appeal Nos. G036096 & G036408 as “AA.” A Request for Judicial Notice is also submitted with this brief and will be referred to as “RJN.”

- St. James Parish’s vestry members – the parish corporation’s officers and directors – agreed to “perform the duties of [their] office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised.” (2 AA 434.)

When St. James became a member of the Episcopal Church, the Church’s General Convention was empowered to amend the Constitution or Canons. Indeed, the Constitution and Canons themselves provided the exclusive means by which amendments could be adopted. Amendments are introduced at the General Convention and must be approved by both the House of Bishops and the House of Deputies before they become effective. (2 AA 417.) Parishes are represented at the General Convention in the House of Deputies, which includes clergy and lay persons elected by representatives of each parish at its annual Diocesan Convention. (5 AA 981; 4 AA 739-740.)

In 1979, in accordance with the foregoing rules, the General Convention of the Episcopal Church adopted Canon I.7(4), which provides as follows:

“All real and personal property held by or for the benefit of any Parish, Mission or Congregation is *held in trust for this*

Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.” (5 AA 986, 1039.)

Through the diocesan representation process, St. James and other parishes participated in the enactment of Canon I.7(4). St. James made no objection to it and did not seek to withdraw its membership when it was enacted.

DISCUSSION

Respondents’ reliance on “neutral principles of law” to claim ownership to church property is deceptively selective. Instead of accounting for *all* legal rules applicable to their dispute with the Episcopal Church, Respondents pretend that only two are dispositive: “(1) the record titleholder is presumed to be the owner [of real property]; and (2) only the owner can create a trust in the property in favor of another.” (Opening Brief on the Merits (“OBM”) at 2.)

As Respondents see it, they or their predecessors formed a non-profit religious corporation. The corporation acquired property. The corporation did not deed the property to the Church. Therefore, the corporation retains the property. End of case.

The fallacy of Respondents' myopic legal vision is its conspicuous exclusion of contract and voluntary association law. Under those bodies of law, religious denominations, like other private associations, can enter into binding agreements that affect ownership and control of local churches and locally-held church property. The idea is hardly novel. Contracts of sale, lease, and exchange have been used to control property ownership for centuries.

St. James Parish voluntarily submitted to Episcopal Church control of its property when it promised to forever abide by the Constitutions and Canons of the Church, which expressly included property-use and ownership rules, in exchange for Church membership. In this way, St. James agreed to be bound by Canon 1.7(4) and other Church rules imposing a trust on corporately-held property and confining its use to the *continuing ministry of the Episcopal Church* – and not any other denomination or faction.

Because of doctrinal differences with the Church, St. James now asks judicial permission to renege on its agreement and breach its covenant with the Church so it can use property dedicated to the Church's ministry for its own parochial purposes. Because it offers no cognizable legal defense to its contract, it deserves the same response as any other contract breaker – a decree that enforces the parties' solemnly and voluntarily made bargain.

The Episcopal Church is but one of many hierarchically-organized churches and secular voluntary associations in which corporate and individual members agree to be governed in relation to their association by commonly-shared constitutions, canons, and bodies of rules. When those governing principles restrict control of locally-held property for the benefit of a general or senior church organization, the parties' contract of association trumps bare legal title and corporate formality. Whether under neutral principles of common law, principles of church governance, or California's non-profit religious corporation statutes, Respondents and St. James are bound by the canons and rules to which they repeatedly subscribed. They may stay within or leave the Episcopal Church as they choose, but they may not take with them property they agreed to dedicate in perpetuity to that Church's ministry.

**I. LIKE THE EPISCOPAL CHURCH, CHURCHES ACROSS
THE STATE OF CALIFORNIA EXERCISE RIGHTS OF
VOLUNTARY RELIGIOUS ASSOCIATION THROUGH
INTERNAL RULEMAKING AND ENFORCEMENT UNDER
THE PROTECTION OF THIS COURT'S DECISIONS.**

Like other church bodies, the Assyrian Church and other so-called hierarchical churches exercise their First Amendment rights by assembling groups of persons with similar religious beliefs, developing theological doctrines and teachings, proselytizing, and recruiting and training faithful members. In these ways, they establish particular identities and expand their ministries as distinct expressions of their religious ideas.

In order for modern religious bodies to disseminate their special spiritual and temporal messages, property is required. For the priest, pastor, rabbi, or imam to deliver an inspired sermon that will resonate with the hearts and minds of the faithful, a pulpit is required. But more than just a pulpit, a modern church requires places for the faithful to occupy, a roof to shield their heads, space to carry out religious education, training, and indoctrination for children and adults, and a venue to plan and implement ministries of outreach that serve the poor and the oppressed and serve to propagate the faith in the broader community. To maintain their national

and regional existence and the doctrinal integrity of their messages, churches must therefore be able to establish and enforce their own rules governing church personnel and the use of church property.

The United States Constitution insists that internal church governance and authority be resolved by the church itself, in accordance with the church's own rules, and not by courts who second-guess internal church decisions. Once made, ecclesiastical decisions are respected and enforced in the civil courts. (*Serbian Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 724-725.)

Disregarding both the law and the practical realities of religious exercise, Respondents contend that there is an insurmountable gulf between the "ecclesiastical" and "spiritual" on the one hand and the "temporal" on the other. As they see it, the Constitution only protects a Church's right to establish and enforce ecclesiastical rules governing so-called "spiritual" matters. According to Respondents, property is temporal in character, even when purchased for and used to disseminate a constitutionally-protected religious message and carry on sectarian ministries.

Neither this court nor, to Amicus's knowledge, any other court has taken such a view. Indeed, this Court has consistently acknowledged the

interrelationship between the ecclesiastical and the temporal, and has recognized the constitutional right of voluntary religious associations to create and enforce rules governing *both*. (*Rosicrucian Fellowship v. Rosicrucian Fellowship Nonsectarian Church* (1952) 39 Cal.2d 121, 131 [member of a voluntary religious association contractually bound “by its laws, usages and customs *whether they are of an ecclesiastical or temporal character* ”]; see also decisions discussed in Section II(A).)

Church bodies in California, including the Assyrian Church, have relied upon this Court’s past pronouncements, organizing themselves by agreement to a common governance structure composed of constituent bodies and members. Amicus offers itself as an example of a religious organization that makes and enforces general church rules concerning property held in the name of local corporations in order to preserve and expand a singular and insular ministry.

A. The Holy Apostolic Catholic Assyrian Church of the East.

The Assyrian Church of the East is an ancient hierarchical church originally founded in Baghdad. The Church’s membership is now disbursed worldwide because of intense persecution by successive hostile governments and extremist elements in the Middle East. (RJN Ex. B, 90:17-24.)

The Assyrian Church has been governed since 410 A.D. by the Holy Synod, which is composed of the Catholicos-Patriarch, who always chairs its sessions, and the metropolitans (or archbishops) and bishops of all archdioceses and dioceses. The Holy Synod serves as legislator, interpreter, and final arbiter of the Assyrian Church's canon law, while the Patriarch acts as its supreme administrator. (RJN Ex. B, 90:17-24, 91:7-22, 93:11-15, 120-143, 150-186.)

Canon law constitutes the governing code of each and every diocese and is binding on local bishops and parishes. When a bishop is consecrated by the Holy Synod, he takes an oath of obedience to the Patriarch and to the canon law. Under the canon law, individual bishops are *representatives* of the Patriarch and the Holy Synod within their respective dioceses.

All corporations and property are under the control of the Holy Synod and the Patriarch. The Holy Synod not only appoints and consecrates bishops, it also holds the power to defrock and remove them from office. As necessary it exercises supreme judicial power to resolve all disputes within the Church. (RJN Ex. B, 90:25-91:6, 103:14-26, 106:19-107:16, 111:14-16, 111:25-27, 120-143, 153-154, 159; Ex. C, 219:4-27, 283-286.)

1. Church Corporations

By canon law, each diocese of the Assyrian Church is separately incorporated. The bishop manages diocesan affairs from day to day, but under express patriarchal supervision in accordance with the canon law as interpreted and applied by the Holy Synod. A decree of the Fourth Holy Synod of Patriarch Mar Dinkha IV, held in Baghdad in 1990, mandated as follows:

“Every diocese should be incorporated in a legal corporate structure of its own. *The diocesan bishop shall be the head of that particular corporation, under the leadership of the Catholicos Patriarch, and in accordance to the synodical (canon) law.*” (RJN Ex. B, 108:12-16, 193.)

2. Church Property

Assyrian Church canons also provide for Holy Synod and Patriarchal control over the properties of the Church. From ancient times, canon law has dictated that bishops may not take title to property and pass it on to their heirs or remove property when they leave the Church. (RJN Ex. B, 111:14-27, 120-143; Ex. C, 218:14-18, 281 [Canon No. 5 of the 1984 Holy Synod Decrees states: “This canon is for all the faithful of the Assyrian Church of the East; that whosoever defect [leaves] this Church and associates himself

to another faction [church], shall have neither share nor inheritance to take [acquire] from the Church, even though h[e] may have donated millions of dollars.”.)³

When the Assyrian Church was forced to take legal action in 1985 to retrieve Church property illegally conveyed by a parish in Australia, the Holy Synod authorized a Diocesan Constitution to govern dioceses and parishes. A version of the Diocesan Constitution governing United States dioceses and parishes was signed by the Patriarch and distributed to bishops, dioceses, and parishes in 1987. The Diocesan Constitution provides in detail for both Holy Synod and patriarchal authority over all Church affairs and personnel, including bishops, dioceses, corporations, and property of all kinds. For example, Article Twelve, section 1 of the Constitution provides that the Holy Synod “shall be considered the official board of directors of all Church properties,” each bishop is the synodical

³ In response to losses of Church property sustained in the 6th Century when certain bishops took deeds in their own names, the Holy Synod decreed that all deeds to Church properties “shall be placed in the archives of the church, and they [the bishops] shall quickly write a waiver of the property and place it in the archives of the church.” The Holy Synod further decreed at that time that “bishops are not allowed to take from the resources or from anything belonging to the Church and give it to their relatives, nor for this cause to be negligent of their care for the churches.” (RJN 111:14-27, 141-142.)

“representative” within his diocese. (RJN Ex. B, 95:14-21, 97:5-20, 144-145, 146, 165.)

3. Former Bishop Ashur Bawai Soro

The Assyrian Church’s recent controversy with an ex-bishop – Ashur B. Soro – illustrates the vital interest that it and other hierarchical churches have in this case. When Soro was consecrated a bishop of the Church, he swore an oath of obedience to the Patriarch and the canon law as interpreted by the Holy Synod. At Soro’s request, the Synod later divided the territory of an existing diocese to create a new diocese for Soro to govern as bishop-in-charge. (RJN Ex. B, 104:2-8, 113:6-114:6, 187-188, 201-209,)

In accordance with the 1990 synodical decree quoted above authorizing bishops to form corporations, Soro formed a diocesan corporation named the “Holy Apostolic Catholic Assyrian Church of the East – Western California” and named himself its sole director. At Soro’s request, Assyrian Church properties were then transferred to the Western California corporation. (*Id.*; see also 191-197.) Until his falling out with the Church, Soro had at all times operated church corporations and entities as a representative of the Patriarch and Holy Synod who was subject to their control. He had also admitted many times during his tenure as a bishop of

the Church that his “temporal” authority as a corporate director and officer to administer the Church’s corporations and manage its property was inextricably tied to his “ecclesiastical” authority to administer the diocese as the bishop-in-charge of Western California. (RJN Ex. B, 103:22-106:5, 109:12-110:2, 110:28-111:6, 191-200; Ex. C, 215:17-216:22, 233-286.)

Soro came to disagree with the Holy Synod and the Patriarch on matters of doctrine, discipline, and governance. The differences became irreconcilable; parishioners called for Soro’s removal. When the Holy Synod removed Soro as a bishop of the Church, he refused to relinquish control of the Church’s corporations and to deliver possession of its property – property that was only transferred to those corporations in the first place as instrumentalities of the Church. (RJN Ex. B, 114:20-26, 115:16-116:6.)

The Holy Synod was forced to bring a lawsuit to regain control of its corporations and property and managed to prevail on summary adjudication after two years of litigation.⁴ (RJN Ex. B, 116:29-117:6.) While the trial court initially refused to apply the Assyrian Church’s canon law to Soro’s

⁴ Related lawsuits brought by Soro and the Synod are pending in the Santa Clara County Superior Court under Case Nos. 1-05-CV-054786 (consolidated with 1-05-CV-054812 and 1-06-CV-064289) and 1-07-CV-099701.

control of property, it was eventually overwhelmed by Soro's admissions and this Court's pronouncement in *Wheelock v. First Presbyterian Church* (1897) 119 Cal. 477 (*Wheelock*), that religious corporations are instrumentalities of the more important religious association, and are subject to the rules and decisions of the governing body of that association. (RJN Ex. D, 288:2-289:4, 289:15-22.)

The trial court's refusal to grant preliminary injunctive relief on two occasions before finally granting summary adjudication allowed Soro to use the Church's own funds to pay his legal bills. In this way, the confusion and conflict in post-*Wheelock* appellate caselaw has deprived the Assyrian Church of over \$2 million in charitable religious funds desperately needed to support its worldwide ministry.⁵ (RJN Ex. E, 295:5-305:13.)

⁵ The three aberrational appellate cases giving rise to this confusion are *California-Nevada Annual Conference of the United Methodist Church v. St. Luke's United Methodist Church* (2004) 121 Cal.App.4th 754 (see Section V(C)); *Protestant Episcopal Church in the Diocese of Los Angeles v. Barker* (1981) 115 Cal.App.3d 599 (see Section III(B)); *Presbytery of Riverside v. Community Church of Palm Springs* (1979) 89 Cal.App.3d 910 (see Section V(B)).

II. A CORRECT APPLICATION OF NEUTRAL PRINCIPLES
OF LAW TO CHURCH PROPERTY DISPUTES
DUPLICATES THE RESULT REACHED THROUGH THE
PRINCIPLE-OF-GOVERNMENT APPROACH.

Respondents and their amici would have this Court believe that the principle-of-government and neutral-principles approaches are diametrically opposed, leaving this Court to adopt one and reject the other. (Respondents' Consolidated Reply Brief (PCRB) at 1.) To the contrary, the two are fully compatible. Principles of government tells the court *it must find the center of control* within a religious body. Neutral principles tells the court *how to find that center* without running afoul of the First Amendment.

The neutral principles approach that the United States Supreme Court held to be constitutionally permissible in *Jones v. Wolf* (1979) 443 U.S. 595 (*Jones*), considers several items of evidence as to property ownership and control, including deeds, local church charters, and general church rules. It then applies *all* relevant neutral principles of law to those

items of evidence in order to determine who holds the beneficial interest in disputed property. (See Section VI, below.)⁶

Although Respondents decline to address the point, *Jones* also carefully points out the right of hierarchical churches to control subordinate church bodies and their property through general rules. It affirms that the U.S. Constitution requires the civil courts to accept and defer to the rules of a general church whenever those rules provide “in some legally cognizable form” that the properties of the local church are held in trust for the benefit of the general church. (*Jones*, 443 U.S. at 602, 606, 617 [acknowledging constitutional constraints imposed by *Watson v. Jones* (1872) 80 U.S. 679, 728-729, *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America* (1952) 344 U.S. 94, 114-116, *Presbyterian Church v. Hull Church* (1969) 393 U.S. 440, 449, and *Serbian Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 711]; see Section VI, below.)

In line with U.S. Supreme Court precedent, this Court has consistently held that legal rules governing voluntary associations must inform the analysis of California church property disputes – regardless of

⁶ The Court in *Jones* specifically mentioned trust and property law, but had no occasion there to address other neutral bodies of legal rules that affect the beneficial ownership and control of property including contract, voluntary association, and corporate law.

whether that analysis bears the title “neutral principles” or “principle-of-government.” Indeed, a correct application of the neutral principles approach to a church property dispute necessarily duplicates the result reached through the principle-of-government approach because the provisions in a general church’s constitution constitute *a binding contract* between the general church and its constituent subordinate bodies that controls the bare legal title held in a local corporation.

A. This Court’s Church Property Jurisprudence Has Consistently Recognized That Rules of Voluntary Association Must Inform Any Application of Neutral Principles.

In *Catholic Charities of Sacramento, Inc. v. Superior Court*, this Court recently summarized its historical adherence to legal rules of voluntary association in church property disputes, stating in part that “members of a church, by joining, implicitly consent to the church’s governance in religious matters; for civil courts to review the church’s judgments would ‘deprive these bodies of the right of construing their own church laws’ [citing *Watson* and *Serbian Orthodox*] and, thus, impair the

right to form voluntary religious organizations.” (*Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 542.)⁷

The *Catholic Charities* statement embodies more than a century of this court’s jurisprudence. In *Rosicrucian Fellowship v. Rosicrucian Fellowship Nonsectarian Church* (1952) 39 Cal.2d 121, this Court observed that a religious association and its members come together by “voluntary consent” and their relationship is “one of contract, and . . . exactly what the parties to it make it and nothing more.” (*Id.* at 132.) It held that civil courts “will determine civil and property rights which depend essentially on the *contracts of the parties as evinced by rules, regulations, practices and customs accepted and followed.*” (*Id.* at 131.) As this Court explained, church members covenant to submit to “ecclesiastical or temporal” rules in exchange for the benefits which result from membership. “*The formal evidence of such [a] contract is contained in the canons of the church, the constitution, articles, and by-laws of the society, and the customs and usages which have grown up in connection with these instruments.*” (*Id.* at 132.)

⁷ While technically dictum, this Court’s pronouncement is a solemn and well-considered expression of law entitled to great weight. (*Staff Pro, Inc. v. Elite Show Services, Inc.* (2006) 136 Cal.App.4th 1392, 1403, fn. 9.)

Under this Court’s caselaw, the rights of religious associations to voluntarily associate and to have the association’s rules enforced by civil courts as a binding contract between the members applies whether the religious body is hierarchical, congregational, or a hybrid.⁸ (*Providence Baptist Church of San Francisco v. Superior Court* (1952) 40 Cal.2d 55, 61 [applying neutral principles of contract and voluntary association law to a church property dispute involving a congregational church].) These cases followed a line of venerable California Supreme Court authority which expounded the same principles: *Baker v. Ducker* (1889) 79 Cal. 365; *Wheelock v. First Presbyterian Church* (1897) 119 Cal. 477; *Horsman v. Allen* (1900) 129 Cal. 131; and *Permanent Committee of Missions v. Pacific Synod* (1909) 157 Cal. 105.⁹

⁸ Hierarchical churches vest authority over church personnel and property in general religious bodies senior to local parishes and corporations. (*Concord Christian Center v. Open Bible Standard Churches* (2005) 132 Cal.App.4th 1396, 1409.) In contrast, congregational churches make decisions through majority vote of a local corporate organization operating without general church control. (*Providence Baptist*, 40 Cal.2d at 57.) These two archetypes must be understood as contrasting polar models of authority with multiple levels of hybrids between them. Governing documents and historical custom and usage must be examined using neutral principles to locate authority with particular religious bodies as to particular issues.

⁹ This brief will not attempt to improve upon Presiding Justice Sills’ expert explication of these cases. (Opinion 12-21.)

As this Court recognized in *Wheelock*, the rules of voluntary association can vest control of an otherwise locally-organized and governed corporation in a senior church body or tribunal. (*Wheelock*, 119 Cal. 477.) There, the decision of the Presbytery – a regional legislative body and ecclesiastical court – was enforced over the contrary wishes of a local congregational majority. As this Court explained: “Notwithstanding incorporation the ecclesiastical body is still all important. The corporation is a subordinate factor in the life and purposes of the church proper.” (*Id.* at 483.) And again: “The act of incorporation does not infringe or limit the powers possessed by the Presbytery[.]” (*Id.* at 486.)

Wheelock’s explanation accords with the “unquestioned” First Amendment right of religious organizations “to organize voluntary religious associations” and the concomitant obligation of those who “unite themselves to such a body” to submit to the rules, government, and decisions of the greater church body. (See *Watson*, 80 U.S. at 728-729; *Serbian Orthodox*, 426 U.S. at 711.)

In its Opinion in the present case, the Court of Appeal described the approach followed in this Court’s cases as “principle of government” undoubtedly because of its focus on the law governing voluntary associations. But the approach is also wholly consistent with the neutral

principles approach held to be constitutionally permissible in *Jones v. Wolf*. Principles of contract and voluntary association law are entirely “neutral,” i.e., they apply across multiple types of associations and entities.

B. Faithful and Comprehensive Application of Neutral Principles of Law, Which Include Rules of Voluntary Association, Will Produce the Same Result As the Principle-of-Government Approach.

The correct application of *all* neutral principles of law necessarily establishes the center of control of church property in the same place as the religious body’s principles of governance. As recent appellate decisions explain, this follows because: (1) the provisions in the constitution of the general church form a binding contract between the general church and its constituent parishes; and (2) the enforceable provisions of such a contract with respect to property will “override any right the majority of a local congregation might otherwise have to control the local church property.”

(*Metropolitan Philip v. Steiger* (2000) 82 Cal.App.4th 923, 925, 931; *Guardian Angel Polish National Catholic Church of Los Angeles v. Grotnik* (2004) 118 Cal.App.4th 919, 930.)

In *Metropolitan Philip*, the Court of Appeal affirmed the trial court’s decision that the Antiochian Orthodox Christian Church (Antioch), a

general church organization, was the rightful owner of locally-held real property. (*Metropolitan Philip*, 82 Cal.App.4th at 925.) The trial court awarded the property to Antioch notwithstanding four undisputed facts: (1) title to the parish property was held in the name of a parish corporation formed before the parish joined Antioch; (2) a majority of the parish priests and parishioners had voted to leave Antioch; (3) the local parish declined to adopt Antioch's model constitution when requested to do so; and (4) the parish corporation bylaws did not even mention a higher ecclesiastical authority. (*Id.*)

Rejecting the parish's arguments that the undisputed facts just enumerated were conclusive, the Court of Appeal found dispositive what it characterized as "unequivocal [evidence] that the [local parish] church and its leaders *submitted to the authority of Metropolitan Philip.*" (*Id.* at 932.) The parish's submission was manifested in two ways. It "actually operated under a system like that set out in the model constitution," and the local bishop had referred to the model as "our Parish Constitution." (*Id.* at p. 927.)

Consistent with principles of voluntary association, the Court of Appeal held that, when a local church submits to the authority of a general church, it agrees to be bound by the provisions of the general church's

constitution, which also become part of the local corporation's "bylaws" by operation of law under section 9150(a) of the Corporations Code. (*Id.* at 932.) Consequently, by virtue of contract and statute, "provisions in the 'constitution of the general church' can override any right the majority of a local congregation might otherwise have to control the local church property." (*Id.* at 931 [quoting *Jones*, 443 U.S. at 607-608].)

In *Guardian Angel*, the Court of Appeal followed *Metropolitan Philip*, reversing the trial court's decision in favor of the local parish corporation and holding that the corporation had accepted the authority and Constitution of the Polish National Catholic Church, which vested property in the national body. (*Guardian Angel*, 118 Cal.App.4th at 929, 932.)

Under *Guardian Angel*, by operation of section 9150(a) of the Corporations Code, the constitution of the national church became a part of *Guardian Angel*'s "bylaws." (*Id.* at 925.) Because the national constitution vested parish property in members "who conform[ed] to the provisions of the constitution, laws, rules, regulations, customs and usages of the Polish National Catholic Church," and provided for reversion of the property upon parish "dissolution," the local corporation's decision to disaffiliate from the national church dissolved the parish and triggered reversion. (*Id.* at 923, 930-931.)

This case is governed by the rules of *Metropolitan Philip* and *Guardian Angel*. As in those cases, St. James Parish unequivocally submitted to the authority of the Episcopal Church. Indeed, St. James' manifestations of consent to be bound by the rules of the Episcopal Church are far more abundant than those in *Metropolitan Philip* and *Guardian Angel*. Knowing that the Episcopal Church had rules restricting the ownership and control of parish property, and in order to induce the Church to accept St. James as a parish, St. James' representatives signed an application *under oath* agreeing to be bound in perpetuity by the Church's rules and canons.

St. James received its initial property from the Diocese subject to those rules and canons. It repeatedly reaffirmed its voluntary association with the Church under those rules and canons. And it made no objection and did not seek to disassociate from the Church when Canon I.7(4) was approved. (5 AA 986, 1039.) As was the case in *Metropolitan Philip* and *Guardian Angel*, St. James' voluntary acceptance from its inception of the Church's canon law overrides any right any St. James faction might otherwise have to control locally-held church property.

**III. NEUTRAL COMMON LAW PRINCIPLES OF CONTRACT
AND VOLUNTARY ASSOCIATION LAW MANDATE THE
RESULT REACHED BY THE COURT OF APPEAL IN THIS
CASE.**

Upon becoming a parish of the Episcopal Church, St. James Parish agreed to be bound by the provisions of the Constitutions and Canons of the Episcopal Church and Diocese of Los Angeles, including Canon I.7(4) which was adopted in 1979 *after* St. James became a member of the religious association. In accordance with those Constitutions and Canons, parish property is held in trust for the use and benefit of the whole Church, not any local faction in a particular parish.

**A. St. James Parish is Contractually Bound by the
Amendment to the Canons of the Episcopal Church
Which Added Canon I.7(4).**

As this Court has held: “When a person joins an organized society, such as a church or congregation associated for religious worship, under the supervision and control of higher church courts, he necessarily by that act agrees to abide by its rules of government and the judgments of its courts regularly made, and consents that all his rights, privileges and duties as a member, or in respect to his membership, shall be governed and

controlled by those rules and judgments.” (*Permanent Committee of Missions v. Pacific Synod of the Presbyterian Church* (1909) 157 Cal. 105, 122; see also *Singh v. Singh* (2004) 114 Cal.App.4th 1264, 1276 [rights of voluntary religious associations to the use of church property “must be determined by the *ordinary principles which govern voluntary associations.*”].)

Over more than a century, this Court has consistently explained the basic contractual principles which govern voluntary associations: “[T]he rights and duties of the members as between themselves and in their relation to [a private voluntary] association, in all matters affecting its internal government and the management of its affairs, are measured by the terms of [its] constitution and bylaws.” (*California Dental Assn. v. American Dental Assn.* (1979) 23 Cal.3d 346, 353, quoting *Dingwall v. Amalgamated Assn.* (1906) 4 Cal.App. 565, 569.) Under those principles, the constitution and bylaws of the association, *including provisions adopted after the members joined*, operate as a binding contract between the members of the association. (*Grand Grove of United Ancient Order of Druids of California v. Garibaldi Grove No. 71* (1900) 130 Cal. 116, 119-120 [members of voluntary association contractually bound by existing rules and by rules “*subsequently to be enacted*”]; *Lawson v. Hewel* (1897)

118 Cal. 613, 621 [*“any amendment or change adopted in accordance with the mode provided by the association therefor is binding upon each of the members.”*]; see also *Gear v. Webster* (1968) 258 Cal.App.2d 57, 61-62 [appellant bound by an amendment to the bylaws because, at the time appellant agreed to be bound by the bylaws of the association, the bylaws provided for amendment].)

In *Lawson v. Hewel*, this Court enforced the constitution of the Grand Chapter of the Royal Arch Masons as a binding contract between the members of the association despite the fact that the particular constitutional provision being enforced was adopted after the plaintiff became a member of the association. As this Court explained, the rules of a voluntary association “*constitute their agreement, and, unless they contravene some law of the land, are regarded in the same light as the terms of any other contract.*” (*Lawson*, 118 Cal. at 618-619.) Moreover, as this Court went on to explain, the associational agreement can and often does bind members to rules enacted *subsequent to their affiliation*:

“The contractual relation between the association and one of its members is that which exists by virtue of the rules of the association, and so long as the association acts toward him in accordance with these rules there is no violation of this

contract. *This relation is to be determined, however, by a consideration of the entire body of rules governing the association, and is not limited to those existing at the time the individual became a member. Unless the rules at that time placed a limitation upon the power of the association to make any change or amendment therein, any amendment or change adopted in accordance with the mode provided by the association therefor is binding upon each of the members.*”
(*Id.* at 621.)

In *Gear v. Webster*, the Court of Appeal similarly held that a real estate broker was bound by a subsequent amendment to the bylaws of the realty association because “at the time she signed them, the bylaws provided for amendment.” (*Gear*, 258 Cal.App.2d at 61-62 [quoting this Court’s decision in *Lawson*].)

Canon 1.7(4), adopted by the General Convention of the Episcopal Church in 1979, was “adopted in accordance with the mode provided by the association,” and is therefore “binding upon each of the members,” including St. James Parish. An unbroken line of California cases – nowhere disputed by Respondents – so holds. (*Lawson*, 118 Cal. at 621; *Grand Grove*, 130 Cal. at 119-120; *Gear*, 258 Cal.App.2d at 61-62; see

also *American Society of Composers, Authors and Publishers v. Superior Court* (1962) 207 Cal.App.2d 676, 689-690 [member's rights with respect to royalties "determined by the contract in effect at the time he terminated his membership," i.e., the amended articles]; *East-West Dairymen's Assn. v. Dias* (1943) 59 Cal.App.2d 437, 441 ["An agreement by a member of a cooperative organization to be bound by its by-laws and subsequent amendments is a valid provision and such member is bound by all reasonable amendments to the by-laws that may be *thereafter* adopted."].)

As even Respondents recognize, once Canon 1.7(4) becomes part of their contract of association with the Episcopal Church, it is fatal to their continuing attempt to retain control of the trust property located in St. James Parish. (OBM, 44-45; PCRB, 19-20, 26-28.) That canon controls the parish property and thus determines this case.

B. *Protestant Episcopal Church in the Diocese of Los Angeles v. Barker* Erroneously Disregarded The Neutral Principles of Voluntary Association Law.

As might be expected, Respondents rely heavily on *Protestant Episcopal Church in the Diocese of Los Angeles v. Barker* (1981) 115 Cal.App.3d 599 (*Barker*). There the Court of Appeal rejected two approaches to resolving church property disputes, which it called the

“hierarchical theory” and “implied trust” theory, and instead applied what it termed “express trust” theory – to four local parishes of the Episcopal Church in order to determine whether the church property held by the parishes was held in express trust for the benefit of the Episcopal Church. (*Id.* at 611-621.) A divided panel ultimately held that three of the four parishes held title to the church property free of a trust expressed in Diocesan Canon 10.06 because they joined the Episcopal Church *before* that canon was enacted, while the fourth parish held its property subject to that trust because it joined *after* that canon was enacted and described itself as a “subordinate entity” of the general church. (*Id.* at 625.)

The *Barker* majority misunderstood and thus misapplied neutral principles of voluntary association law. It began by correctly acknowledging that the “existence of an express trust in local church property for the benefit of the general church is determinable by *the same neutral principles of law used to resolve a property dispute between a local and national body of a labor union, a trade association, a disaster relief organization, a charitable trust, or any other entity which operates locally and nationally.*” (*Id.* at 621.) Then, as explained by the *Barker* dissent, the

majority disregarded the very principles of voluntary association law applicable to the kinds of organizations it catalogued. (*Id.* at 612.)¹⁰

Under well-established neutral principles of voluntary association law, this was manifest error. A member of a voluntary association is contractually bound by “the entire body of the rules governing the association” – not simply “those [rules] existing at the time the individual became a member.” (*Lawson*, 118 Cal. at 621; see Section III(A), above.) Consequently, all four parishes in *Barker* should have been subject to the Diocesan Canon despite the fact that it was enacted *after* the incorporation of three of the parishes. Similarly, here, St. James Parish is subject to General Convention Canon I.7(4) even though it was adopted after St. James became a parish of the Episcopal Church.

In contrast to *Barker*, the Court of Appeal in *Korean United Presbyterian Church of Los Angeles v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480, followed neutral principles of voluntary association in holding that a parish corporation was subject to a provision in the

¹⁰ As Presiding Justice Roth explained in dissent, the relationship between all four parishes and the PECUSA “literally oozes the clear intention and ambition of each of the four parishes to severally achieve acceptance as a parish within the embrace of PECUSA with full knowledge that such acceptance meant the subordination of each to the Constitution and Canons of PECUSA and the transfer of the property of each” to the general church upon disaffiliation. (*Id.* at 627-628.)

Presbyterian Church’s Book of Order imposing a trust on local parish property even though the provision was adopted *after* incorporation of the parish. (*Id.* at 512.) As the court explained, the timing of the enactment of the trust provision was immaterial for two reasons: (1) the parish agreed to the system of government of the hierarchically-structured Presbyterian Church – “where authority rises in a series of elected governing bodies from the session, through presbytery to the General Assembly” – and is bound by the rules within that system of government; and (2) the United States Supreme Court in *Jones v. Wolf* expressly invited this sort of provision, which might be enacted at any time before the dispute arose, as long as it was embodied in “legally cognizable form.” (*Id.*)

The *Korean United* court thus faithfully adhered to this Court’s directives that members of voluntary religious associations are bound by the provisions of the constitution and canons of a general church “*as to so many stipulations of a contract.*” (*Rosicrucian Fellowship*, 39 Cal.2d at 132; see also *Providence Baptist*, 40 Cal.2d at 61-62; *Wheelock*, 119 Cal. at 482.) *Korean United* thus reveals *Barker’s* fundamental flaw – an abject disregard for solemn contractual stipulations.

C. Neutral Principles of Contract and Voluntary Association Law Do Not Allow Churches to Abscond With the Personal Property of Unsuspecting Church Members or Make Rules that Bind Members Outside the Life of the Church.

Unable to resist the straightforward application of voluntary association law to property held in the name of St. James Parish, Respondents resort to hyperbole, suggesting with the following horrible that associational rulemaking knows no bounds: “A denomination might very well enact an internal rule decreeing that the *personal* property of every member of the religion is impressed with a trust in its favor.” (OBM at 38; emphasis in original.)

Respondents’ farfetched hypothetical rests on a fundamental misunderstanding of contract law. While a member of a voluntary association is contractually bound by associational rules, including duly-adopted later amendments to those rules, there are self-evident constraints on rulemaking powers. (*Pinsker v. Pacific Coast Society of Orthodontists* (1974) 12 Cal.3d 541, 558; *Mitty v. Oliveira* (1952) 111 Cal.App.2d 452, 459.) An association rule permitting seizure of personal property would be manifestly contrary to public policy and unconscionable because it exceeds

the parties' reasonable expectations in consenting to the association. In contrast, Canon 1.7(4) and other church rules controlling ownership and use of locally-held property are well within the expectations of the contracting parties.

1. An Internal Rule Allowing the Church to Confiscate the Personal Property of its Faithful Would be Manifestly Unconscionable Because It Would Exceed the Mutually-Expected Nature and Purpose of the Association.

The doctrine of unconscionability precludes a civil court from enforcing an internal rule allowing the church to abscond with the personal property of unsuspecting and unconsenting church members.

Unconscionability “has both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results.” (*Gentry v. Superior Court* (2007) 42 Cal.4th 443, 468-469 [internal quotations omitted].)

While both elements must be present for a contract provision to be invalidated, “the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.” (*Id.* at 469,

citing *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.)

Both procedural and substantive unconscionability are present in Respondents' hypothetical involving a religious association's confiscation of the personal property of its faithful. A member whose relationship with the Church extends no farther than attending services on Sunday and otherwise participating in the Church's religious ministries, would undoubtedly be "unfairly surprised" (*Gentry*, 42 Cal.4th at 471) to learn that, by virtue of his or her membership alone, he or she had gifted his or her house or car to the Church. Such a provision would go far beyond the stated religious purpose of the association, the up-front disclosures and communications exchanged between the parties, and the consideration and values exchanged in their relationship. It would be manifestly unconscionable.

**2. Canon I.7(4) is Neither Procedurally Nor
Substantively Unconscionable.**

While it would be unconscionable for a religious association to confiscate the *personal property* of faithful members, it does not follow that such an association could not make and enforce a rule providing for a

trust over *church property* that had been dedicated by common consent to the ongoing ministry of a general religious body.

Local parishes join established religious denominations to receive valuable temporal and spiritual benefits. These often include educational institutions for the clergy training, financial support for local parish ministries, and the opportunity to participate in nationwide and worldwide ministries serving the poor and oppressed, among others. The Episcopal Church provides these kinds of benefits and also makes available publications and other materials for parish education as well as numerous other benefits.¹¹ Many church bodies, including the Assyrian Church, also extend these and other benefits to their member parishes.

As this case reveals, the Church also provides property to local parishes so that their ministry may begin. Indeed, St. James Parish received the property upon which its original church buildings are located from the Diocese of Los Angeles for the nominal sum of \$100 – and only after St. James agreed to be bound by the Constitutions and Canons of the Episcopal Church and Diocese of Los Angeles. (6 AA 1119, 1131.)

¹¹ Many of these are listed and described on the Episcopal Church's web page at <http://www.episcopalchurch.org>.

St. James thus understood that the moment its property became “consecrated” under the Constitutions and Canons, it became dedicated exclusively for worship “in accordance with the doctrine and discipline of the Church.” (5 AA 984-985, 987-988.) St. James also understood that the moment it agreed to be bound by the Constitutions and Canons of the Episcopal Church and Diocese of Los Angeles, and received its first parcel of property from the Diocese, it would hold all of its property in trust for the benefit of the ministries of the Episcopal Church. (6 AA 1119, 1131.)

At the time St. James joined the Church, several canons constrained its use of any property it acquired and placed the Church squarely in control of both the day-to-day use and the disposition of any such property. For example:

- The 1868 Canons of the Church, which remain in force, forbid alienation of parish property “from those who profess and practice the Doctrine . . . of this Church” and prohibit its removal without the Bishop’s consent. (4 AA 806.) Other canons deny parishes the dedication of all parish real property to the Church’s use and proscribe its disposition without diocesan consent. (4 AA 792, 806.)

- Under Canon III.9(5)(a)(2), the rector of the parish determines the use of the parish property in the aid of his or her ministry, “subject to . . . the Constitution and Canons of this Church, and the pastoral direction of the Bishop.” (3 AA 374.)
- Under Canon II.6, no parish may encumber, alienate, or destroy any consecrated real property without the consent of the leadership of the Diocese. Moreover, such consecrated real property must be perpetually “secured for ownership and use” by a parish or other congregation “affiliated with the Episcopal Church and subject to its Constitution and Canons.” (3 AA 374.)

In view of the property-control canons in effect at the time it joined the Episcopal Church, St. James obviously cannot claim unfair surprise from the express trust provision in Canon I.7(4), nor has it attempted to do so. It did not object to the enactment of the express trust Canon, and continued accepting the benefits of being a parish of the Episcopal Church and Diocese for more than 25 years after its adoption. (5 AA 986; 6 AA 1120-1122.) Indeed, St. James amended its Articles in 1991, expressly

retaining the provisions incorporating the Constitutions and Canons, including Canon I.7(4). (6 AA 1120.)

Nor does Canon I.7(4) produce the kind of one-sided result required for substantive unconscionability. St. James Parish received a myriad of valuable benefits by virtue of its membership in the Episcopal Church, including a gift of property from the Diocese of Los Angeles. (6 AA 1119, 1131.) Moreover, for more than 50 years, St. James relied upon the Episcopal denominational “brand” to obtain clergy, attract members, and solicit gifts from the faithful in order to build and maintain its property – all the while unconditionally agreeing to be bound by the Constitutions and Canons of the Episcopal Church and Diocese of Los Angeles. (6 AA 1120.)

Allowing St. James Parish to take from the Episcopal Church all of the benefits received for more than 50 years, and then depart from the Church with all of the property it received by virtue of its membership therein, would make a mockery of St. James’ associational bargain.¹²

¹² That the power to amend rules and canons lies in the discretion of the general church is likewise consistent with neutral principles of contract law. (*Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 923 (*Perdue*); *300 DeHaro Street Investors v. Dept. of Housing and Community Development* (2008) 161 Cal.App.4th 1240, 1253.) As this Court explained in *California Lettuce Growers, Inc. v. Union Sugar Co.* (1955) 45 Cal.2d 474: “Where a contract confers upon one party a discretionary

IV. CORPORATIONS CODE SECTIONS 9150(a) AND 9142

**LIKEWISE MANDATE THE RESULT REACHED BY THE
COURT OF APPEAL IN THIS CASE.**

In addition to the common law of voluntary associations discussed in Section III, two California Non-Profit Religious Corporation sections independently establish the Episcopal Church's ownership of Church property within St. James Parish:

power affecting the rights of the other, a duty is imposed to exercise that discretion in good faith and in accordance with fair dealing.” (*California Lettuce Growers*, 45 Cal.2d at 484.)

California courts will not invalidate a contract on the basis of an open-ended term unless the discretion conferred upon the party setting the term is so arbitrary that it “renders the contract lacking in consideration.” (*Perdue*, 38 Cal.3d at 923.) Moreover, “a contracting party’s discretionary power to vary the price or other performance does not render the agreement illusory if the party’s *actual* exercise of that power is reasonable.” (*Id.* [internal quotations omitted; emphasis in original].)

In exchange for membership in the Episcopal Church, St. James Parish agreed to be bound by the Constitution and Canons of the Episcopal Church. The discretion conferred upon the Episcopal Church to adopt changes in the rules was neither arbitrary nor unreasonable. Any amendment to the rules had to be introduced at the General Convention and approved by both the House of Bishops and the House of Deputies before becoming effective. (2 AA 417.) Through its diocese, St. James Parish was represented at the General Convention in the House of Deputies when Canon I.7(4) was adopted. (5 AA 981; 4 AA 739-740.) Moreover, as already indicated, at the time St. James joined the Church, several canons already constrained its use of church property. Canon I.7(4) merely reaffirmed and amplified these pre-existing canons in a refined legally cognizable form.

Subdivision (a) of Corporations Code section 9150¹³ provides for a distinct definition of “bylaws” applicable only to nonprofit religious corporations. It states: “Bylaws,’ as used in this part means the code or codes of rules used, adopted, or recognized for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.”

Subdivision (c) of section 9142 allows for express trusts on locally-held property to be imposed by a general church’s governing documents. It states:

“No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at common law unless *one* of the following applies: . . . [¶]
(2) *Unless, and only to the extent that, the articles or bylaws of the corporation, or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.*”

Subdivision (d) of section 9142 further provides for trust amendments as follows: “Trusts created by paragraph (2) of subdivision

¹³ All statutory references are to the Corporations Code unless otherwise stated.

(c) may be amended or dissolved by amendment *from time to time to the articles, bylaws, or governing instruments creating the trusts.*”

The provisions of the Corporations Code just quoted allow the governing instruments of a hierarchical religious association to impose trusts upon and to establish control of the property of subordinate members. They mandate the result reached by the Court of Appeal in this case for two reasons:

- Both the articles and the “bylaws” of the St. James Parish corporation, as defined by section 9150(a), incorporate the Constitution and Canons of the Episcopal Church, which are “codes of rules used, adopted, or recognized” for the management of the corporation.
- The same Constitution and Canons, which are also “the *governing instruments of a superior religious body or general church of which the corporation is a member,*” likewise expressly authorize such a trust over St. James Parish’s property.

**A. Section 9150 (a) Incorporates the Canons and
Constitution of the Episcopal Church Into the Bylaws of
St. James Parish.**

This Court has consistently interpreted statutory provisions in accordance with their plain and unambiguous meaning:

“The statutory language itself is the most reliable indicator [of legislative intent], so we start with the statute’s words, assigning them their usual and ordinary meanings, and construing them in context. If the words themselves are not ambiguous, we presume the Legislature meant what it said, and the statute’s plain meaning governs.” (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1190; see also *Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1271.)

There is nothing ambiguous about the language of section 9150. In *Korean United Presbyterian Church v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480, the Court of Appeal explained that section 9150(a) “is designed specially to permit bylaws of a religious corporation to include other types of rules and regulations to be found in various religious documents *such as canons, constitutions, or rules of other religious bodies*;

church traditions if sufficiently ascertainable; rules of a religious superior; and similar sources.” (Id. at 504.)

The Constitution and Canons of the Episcopal Church, which St. James Parish promised to follow in its application for membership and in numerous other governing documents, fit within this definition and thus become “bylaws” of St. James Parish. (6 AA 1119, 1125-1126.)

Moreover, any theoretical ambiguity in the language used to draft section 9150 is resolved by its legislative history. (See *Wells*, 39 Cal.4th at 1190.) As the Assembly Select Committee Report explained, the broad definition of “bylaws” found in section 9150 “*recognizes that certain religions are governed in part by ‘canons’ or other ecclesiastical documents or doctrines not contained in a document labeled ‘bylaws.’*” (RJN Ex. A, Assembly Select Comm. on Revision of the Nonprofit Corp. Code, Rep. on AB 2180 (Reg. Sess. 1978-1979) 1979, p. 58.) The Episcopal Church is one of the “religions” governed by “canons” which section 9150(a) treats as local corporate bylaws.

Respondents do not deny that the Episcopal Church’s Canons and Constitutional provisions governing parish property – including Canon 1.7(4) – cannot be amended by St. James or any other single parish. The express trust and property control provisions of the senior governing

document thus remain in force as “bylaws” of the St. James Parish corporation, unless and until amended through the Constitutional and Canon legal processes of the general church. They have never been so amended. They govern this case.

St. James’ original Articles of Incorporation, filed March 1, 1949, provide that national and diocesan constitutions and canons shall “*always form a part of the By-Laws and Articles of Incorporation of the corporation hereby formed and shall prevail against and govern anything herein contained that may appear repugnant to such Constitutions, Canons, Rules, Regulations and Discipline.*” (6 AA 1119-1120, 1134-1135.) Even under Respondents’ view, these Articles of Incorporation were still in effect in 1979, when the General Convention of the Episcopal Church adopted Canon I.7(4). Therefore, Canon I.7(4) – expressly providing for a trust over St. James’ real and personal property – became part of the Articles of Incorporation and By-Laws of St. James Parish. (See also *Metropolitan Philip*, 82 Cal.App.4th at 932; *Korean United*, 230 Cal.App.3d at 503-504 [Presbyterian Book of Order incorporated in “bylaws”].)

B. Section 9142(c)(2) and (d) Allow the Constitution and Canons to Impose An Express Trust on St. James Parish Property.

Nor is there anything remotely ambiguous about the language of section 9142. Section 9142, subdivision (c), paragraph (2) plainly and unambiguously allows either “the . . . bylaws of the corporation” *or* the “governing instruments” of a “general church of which the corporation is a member” to impose a trust upon the property of subordinate church members. In this case, both the “bylaws,” which incorporate the Constitution and Canons of the Episcopal Church and those “governing instruments” expressly do so.¹⁴

Disregarding the plain meaning of paragraph (2), Respondents maintain that because paragraphs (1) and (3) apply solely to donations to

¹⁴ Respondents contrary suggestion that section 9142(c)(2) is inapplicable because there was neither a board of director’s resolution nor a donor expression of trust under subsections (c)(1) or (c)(3) is inapposite for two reasons. *First*, subsection (c)(2) is independently and alternatively stated. To disregard its plain language would render the entire subsection meaningless surplusage in violation of this Court’s primary rule of statutory construction. (*Hassan v. Mercy American River Hosp.* (2003) 31 Cal.4th 709, 715-716; *Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 274.) *Second*, subsections (c)(1) and (c)(3) also apply here because the St. James founders and Board of Directors, acting for the “donor” parish, expressly imposed a trust on St. James’ property by solemnly promising always to follow and adhere to the Constitution and Canons which establish such a trust.

corporations and do not allow the governing instruments of a superior religious body or general church to impose a trust on the assets of a subordinate religious corporation, then neither does paragraph (2). To the contrary, paragraph (2) plainly states that a trust can be imposed in such a manner. It provides that *either* “the articles or bylaws of the corporation, *or* the governing instruments of a superior religious body or general church of which the corporation is a member” can impose such a trust. (Corp. Code, § 9142(c)(2).)

Moreover, subdivision (d) of section 9142 provides the sole means by which such a trust may be dissolved or amended – by amendment to the “articles, bylaws, or governing instruments *creating the trusts.*” (Corp. Code, § 9142(d).) Here, the Canons of the Episcopal Church created the trust over St. James’ property. Therefore, under subdivision (d), the trust is perpetual according to the terms of Canon I.7(4) unless and until the Canons of the Episcopal Church are amended to dissolve the trust. This Canon has not been so amended. The trust continues and requires St. James to account to the Church for all locally-held property.

V. CONSTRUED IN A VOLUNTARY RELIGIOUS ASSOCIATION CONTEXT, NEUTRAL PRINCIPLES OF PROPERTY AND TRUST LAW CONFIRM THE COURT OF APPEAL'S DECISION.

Respondents claim that they are entitled to the beneficial interest in the property of St. James Parish because legal title is held locally and St. James never executed an instrument stating that its property was held in trust for the benefit of the Episcopal Church. (PCRB at 11.) On the contrary, as this Court has repeatedly confirmed, the courts of this state must enforce the provisions of a binding contract entered into between members of a voluntary association – religious or otherwise. (*California Dental Assn. v. American Dental Assn.* (1979) 23 Cal.3d 346, 353; *Rosicrucian Fellowship*, 39 Cal.2d at 132; *Providence Baptist*, 40 Cal.2d at 61-62; *Wheelock*, 119 Cal. at 482.)

Respondents have a binding contract with the Episcopal Church in which they consented to creation of the trust and subjected their local corporate property to Church beneficial ownership and control. Neutral principles of contract and association thus determine beneficial title and use of parish-held property. (See Section II above.)

A. Neutral Principles of Property and Trust Law Are Often Trumped by Statute or by Neutral Principles of Contract Law.

Legal ownership of property is often determined by contract in spite of title. An enforceable contract to sell real property will overcome bare legal title and result in a trust over the property for the benefit of the buyer. (*Kidd v. Kidd* (1964) 61 Cal.2d 479, 481.) Similarly, an enforceable contract to create a trust will dislodge legal title and result in property ownership in trust. (Prob. Code, § 15200(e) [“A trust may be created by . . . [a]n enforceable promise to create a trust.”]; *Coyle v. Coyle* (1931) 212 Cal. 715, 717-720 [where A transfers legal title to B, and B promises to reconvey to A on demand, a trust results for the benefit of A despite unconditional legal title in B]; *Hillman v. Stults* (1968) 263 Cal.App.2d 848, 868 [“A trust may be expressed in a separate agreement.”]; *Swallers v. Swallers* (1948) 89 Cal.App.2d 458, 461 [same]; *Reiss v. Reiss* (1941) 45 Cal.App.2d 740, 746 [same].) As the Court of Appeal explained in *Korean United*, courts must not look to “each of the [neutral principles] factors separately to see if an express trust was present in any one of them,” but instead must look at “these factors collectively, asking whether under the

totality of the circumstances, they required a finding of express trust.”

(Korean United, 230 Cal.App.3d at 510.)

Here St. James Parish expressly agreed on numerous occasions to abide by the rules of the Episcopal Church. The contract between the Episcopal Church and St. James Parish establishes a trust over local parish property expressed in Canon I.7(4). Moreover, like the express trust found in *Korean United*, the express trust imposed by Canon I.7(4) is valid under section 9142, subdivision (c)(2) of the Corporations Code, became part of the bylaws of St. James Parish by virtue of section 9150, subdivision (a), and cannot be amended or dissolved except by the Episcopal Church as stated in section 9142, subdivision (d).

Consequently, whether viewed in terms of contract law or statutory law, the express trust imposed by Canon I.7(4) exists for the benefit of the Episcopal Church and trumps any right St. James might otherwise have to possess or control locally-held property. (See *Korean United*, 230 Cal.App.3d at 509, 512; *Guardian Angel*, 118 Cal.App.4th at 930; *Metropolitan Philip*, 82 Cal.App.4th at 931; *Concord Christian*, 132 Cal.App.4th at 1412.)

B. The Title Presumption of Section 662 of the Evidence Code is Irrelevant.

As Respondents remind this Court, Section 662 of the Evidence Code provides: “The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.” (Evid. Code, § 662.) No one disputes that St. James Parish is the holder of legal title to the properties in question. The issue is whether St. James holds that legal title in trust for the benefit of the Episcopal Church.

Section 662 is inapposite for two reasons. *First*, the more specific provisions of Corporations Code section 9142 and 9150 prevail over the codified title presumption of section 662. (Cf. *Marriage of Barneson* (1999) 69 Cal.App.4th 583, 593 [Family Code section 852 trumps 662]; *Marriage of Haines* (1995) 33 Cal.App.4th 277, 294-301 [Family Code section 721 trumps 662].) *Second*, Canon I.7(4), when read in conjunction with sections 9142 and 9150 of the Corporations Code and neutral principles of contract law provides clear and convincing evidence rebutting the presumption of section 662 of the Evidence Code.¹⁵

¹⁵ In *Presbytery of Riverside v. Community Church of Palm Springs* (1979) 89 Cal.App.3d 910, relied on by Respondents, the Court of Appeal erroneously neglected to apply *all* relevant neutral principles of law,

C. Even if Respondents Were Correct That Only the Record Owner of Property Could Create a Trust, St. James Parish Expressly Consented to the Creation of a Trust in Favor of the Episcopal Church That Was Revocable Only by the Episcopal Church.

Even if Respondents were correct in their assertion that section 9142 of the Corporations Code did not allow the governing instruments of a general church to impose a trust over the property of subordinate local parish corporations, by entering into a binding contract with the Episcopal Church St. James Parish imposed a trust on its property that could be revoked only by amendment to the Constitution or Canons of the Episcopal Church.

1. A Trust Can Be Created Through Contract.

Trusts can be created by contract. Section 15200 of the California Probate Code provides in part that “a trust may be created by any of the

preferring to disregard contract and voluntary association in favor of one neutral principle – formal title. (*Id.* at 923.) *Presbytery of Riverside* thus contravenes this Court’s precedent mandating enforcement of the provisions of the contract entered into between members of a voluntary religious association. Its approach would render the rebuttable presumption of section 662 of the Evidence Code irrebuttable; it is fundamentally unsound and should be disapproved.

following methods: . . . [¶] (e) An enforceable promise to create a trust.”
(Prob. Code, § 15200(e); *Hillman v. Stults* (1968) 263 Cal.App.2d 848,
868.)

In *California-Nevada Annual Conference of the United Methodist Church v. St. Luke’s United Methodist Church* (2004) 121 Cal.App.4th 754, a case relied on by Respondents, the Court of Appeal incorrectly disregarded the plain language of section 9142 in holding that the United Methodist Church could not impose a trust on St. Luke’s property. Nonetheless, the court held that St. Luke’s, by affiliating itself with the United Methodist Church and agreeing to be bound by the general church’s rules, had agreed to hold its property in trust for the benefit of itself *and* the United Methodist Church. (*St. Luke’s*, 121 Cal.App.4th at 768.)

Similarly here, by affiliating itself with the Episcopal Church and agreeing to be bound by the Constitution and Canons of the Episcopal Church, including Canon I.7(4), St. James Parish agreed to hold its property in trust for the benefit of the Episcopal Church. This Court has repeatedly held that the rules of a voluntary association, religious or secular, form a binding contract between the members of the association. (See Section IV above.) As even the *St. Luke’s* court recognized, this

binding contract qualifies as an “enforceable promise to create a trust” under section 15200(e) of the Probate Code.

**2. Revocation of the Trust Can Be Effected Only by
Amendment to the Constitution or Canons of the
Episcopal Church.**

Because the *St. Luke’s* court misread section 9142, it concluded that St. Luke’s was the settlor of the trust. From this, the court reasoned that since the trust was not “expressly made irrevocable by the trust instrument,” the trust was freely revocable by the settlor, St. Luke’s. (*St. Luke’s*, 121 Cal.App.4th at 767.) The court then held that St. Luke’s revoked the trust when it amended its articles of incorporation to disaffiliate itself from the United Methodist Church. (*Id.* at 768.)

On the contrary, even if the *St. Luke’s* court were correct in its characterization of St. Luke’s as the settlor,¹⁶ the court failed to recognize that a correct application of trust law, in conjunction with neutral principles of contract and voluntary association law, precluded St. Luke’s from unilaterally revoking the trust. By agreeing to be bound by the rules of the

¹⁶ More accurately, the parties’ relationship in a religious body is that of co-settlors of a trust established by mutual agreement that is revocable only by mutual consent with the general church acting under its canon law.

United Methodist Church, including the trust provision of the Book of Discipline, St. Luke's agreed to subject its property to the trust, and simultaneously limited its ability to revoke the trust to circumstances that did not contravene its contract with the United Methodist Church.

California law has adopted section 330 of the Restatement 2d of Trusts which provides: "If the settlor reserves a power to revoke the trust only in a particular manner or under particular circumstances, he can revoke the trust only in that manner or under those circumstances." (*Estate of Lindstrom* (1987) 191 Cal.App.3d 375, 385; *Hibernia Bank v. Wells Fargo Bank* (1977) 66 Cal.App.3d 399, 403-404; *Rosenauer v. Title Ins. & Trust Co.* (1973) 30 Cal.App.3d 300, 303.)¹⁷

By agreeing to be bound by the Constitutions and Canons of the Episcopal Church and the Diocese of Los Angeles, St. James Parish understood that it had no authority to unilaterally revoke any of these rules. The Constitution and Canons of the Episcopal Church could only be

¹⁷ The Restatement rule is embodied in former Civil Code section 2280, which applies to trusts created before July 1, 1987, including Canon I.7(4) and all the other canons at issue here. (See *Huscher v. Wells Fargo Bank* (2004) 121 Cal.App.4th 956, 970; Prob. Code, § 15401(e).) Probate Code section 15401(a)(1), which applies to later-created trusts and requires explicit reference to an exclusive method of revocation, is inapplicable. However, even if it were, the "trust instrument" – the Canons and Constitution – provide for an exclusive right of amendment in the Church, not individual parishes. (2 AA 417.)

amended by the General Convention. (2 AA 417.) This, too, became part of the contract between St. James Parish and the Episcopal Church. Consequently, when Canon I.7(4) was adopted by the General Convention in 1979, St. James Parish was contractually bound to hold its property in trust for the benefit of the Episcopal Church until the General Convention altered or revoked that trust.

VI. CIVIL COURTS ARE CONSTITUTIONALLY REQUIRED TO DEFER TO INTERNAL CHURCH RULES AND DECISIONS THAT ARE EXPRESSED IN LEGALLY COGNIZABLE FORM.

Respondents are apparently under the impression that it would be unconstitutional for the civil courts to enforce the rules of a voluntary religious association concerning church property. (OBM 30-35.) On the contrary, both federal and state constitutions require that religious bodies be given the full benefit of neutral principles of contract and voluntary association law applicable alike to religious and non-religious entities.

**A. Failure to Enforce the Canons of the Episcopal Church
Against St. James Would Deny the Church Its Federal
Constitutional Right to Free Exercise of Religion
Through Voluntary Association.**

As the United States Supreme Court held in *Serbian Eastern Orthodox v. Milivojevich* (1976) 426 U.S. 696:

“[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.” (*Id.* at 724-725.)

The *Serbian Orthodox* Court reaffirmed the principles set forth in *Watson v. Jones* (1871) 80 U.S. 679, 728-729 – specifically, the “unquestioned” right of religious organizations “to organize voluntary religious associations” and the concomitant obligation of those who “unite

themselves to such a body” to submit to the rules, government, and decisions of the greater church body. (*Id.* at 711.)¹⁸

Also consistent with *Serbian Orthodox*, the Court in *Jones v. Wolf* (1979) 443 U.S. 595, was careful to preserve the unquestioned right of religious organizations to voluntarily associate and the concomitant obligation of constituent members to submit to the rules, government, and decisions of the greater church body. It did so in the following passage:

“At any time before the dispute [over control of church property] erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. *Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. . . . And the civil courts will be bound to give effect to the result indicated by the parties,*

¹⁸ Respondents attempt to characterize *Serbian Orthodox* as a non-property dispute. (OBM 23.) But, as the opinion makes clear, the outcome of the ecclesiastical dispute over the office of the bishop determined control of Church corporate entities holding property and ownership and control of a monastery. (*Id.* at 711.)

provided it is embodied in some legally cognizable form.”

*(Jones, 443 U.S. at 606.)*¹⁹

The use of the word “alternatively” indicates that either of the two alternatives would protect a hierarchical church from losing control of its property under neutral principles of law. Either: (1) the deeds or corporate charter could be modified to include a right of reversion or trust in favor of the general church; or (2) if the deeds or corporate charter are not modified,

¹⁹ As the Court of Appeal pointed out in its Opinion, this portion of the *Jones* decision is “not quite dicta” because the holding of the case was that a neutral-principles approach was constitutionally permissible, and the quoted passage serves to “bolster the *permissibility* of using neutral principles analysis.” (Opinion at 32; see also *Tate v. Showboat Marina Casino Partnership* (7th Cir. 2005) 431 F.3d 580, 582 (maj. opn. of Posner, J.) [“the holding of a case includes, besides the facts and the outcome, the reasoning essential to that outcome”].)

Even if not absolutely necessary to the holding, given the 5-4 nature of the *Jones* decision and the vigorous dissent focusing on the “unquestioned” right of churches “to organize voluntary religious associations” and to create their own governmental, disciplinary, and judicial structures – noting that those “who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it” – the above-quoted assurance that a hierarchical church would be able to impose a trust over church property from the top down may very well have been necessary to secure the fifth vote. (*Jones, 443 U.S. at 617-618* (dis. opn. of Powell, J.).)

Finally, even if dicta, “dicta of the Supreme Court have a weight that is greater than ordinary judicial dicta.” (*Zal v. Steppe* (9th Cir. 1992) 968 F.2d 924, 935; see also *IFC Interconsult v. Safeguard International Partners* (3d Cir. 2006) 438 F.3d 298, 311.)

“the constitution of the general church can be made to recite an express trust in favor of the denominational church.” (Id.)

In a hierarchical church, a trust provision in the constitution of the general church will always prevail over contrary provisions in the deeds or local corporate charter. As long as the local church has united itself with the general church such that it is bound to submit to the rules, government, and decisions of the general church, the general church’s constitution becomes a binding contract between the members of the voluntary religious association – *“And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.” (Id.)* Here, the Episcopal Church and St. James used the “legally cognizable form” of binding canon laws to create an express trust by contract. To honor the Church’s rights of free exercise of religion, civil courts must enforce that trust.

B. The Same Result is Required Under the California Constitution.

Article I, Section 4 of the California Constitution provides in relevant part: “Free exercise and enjoyment of religion without discrimination or preference are guaranteed.” (Cal. Const., art. I, § 4.)

Article I, Section 7 provides in relevant part: “A person may not be

deprived of life, liberty, or property without due process of law or denied equal protection of the laws.” (Cal. Const., art. I, § 7.)

Religious liberty is a “fundamental constitutional right” that is included within the “liberty” substantively protected by the due process clause of the California Constitution. (*Hernandez v. Dept. of Motor Vehicles* (1981) 30 Cal.3d 70, 74.) Under the due process clause, the infringement of a fundamental right “can be upheld only if necessary to effect an overriding governmental interest.” (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 914.)

Religion is also a “suspect classification” for purposes of the equal protection clause of the California Constitution. (*In re Marriage Cases* (2008) 43 Cal.4th 757, 76 Cal.Rptr.3d 683, 752; see also *Owens v. City of Signal Hill* (1984) 154 Cal.App.3d 123, 128.) When the law draws a distinction between similarly situated individuals or groups based upon a suspect classification, or where the distinction touches on a fundamental right, including the free exercise of religion, the distinction “will be upheld only if it is necessary to further a compelling state interest.” (*Thompson v. Superior Court* (2001) 91 Cal.App.4th 144, 158.)

In this case, Respondents urge this Court to adopt an approach to resolving church property disputes which “favors the party with record

title” regardless of whether that party has voluntarily consented to becoming a member of a religious association and expressly agreed to be bound by the rules of that association. (OBM at 36.) Their approach to resolving a church property dispute treats voluntary religious associations as if the contract between the association and its constituent members did not exist – a result which would be unfathomable in a property dispute involving a secular association.

The distinction Respondents would have this Court draw between religious and secular associations is based purely upon religion. As a result, it is subject to strict scrutiny. Unless the distinction is necessary to achieve a compelling state interest, the voluntary association rights of religious associations must be coextensive with those of secular associations.

Just as members of a voluntary secular association have the right to enter into a contractual relationship governing their association, including ownership of association property, so, too, must members of a voluntary religious association have the same rights. As Amicus have explained, in order for any religious association to disseminate a religious message, property is required. This is simply a practical reality in the society in which we live. Allowing a religious association to maintain control over

the property of the association through internal rulemaking ensures not only that the association will be able to preach its message, but also that a rogue bishop or parish will not be able to use the association's property to preach a message antithetical to the association's religious doctrine.

Control over church property is therefore vital to both "*the dissemination of the doctrines of a religious organization by preaching from the pulpits*" and "*the right to refuse to state beliefs against the dictates of one's conscience.*" (*Gospel Army v. City of Los Angeles* (1945) 27 Cal.2d 232, 242.) Respondents' approach is subject to strict scrutiny for this reason as well.

Respondents have suggested no state interest – let alone a compelling one – that would allow a local parish to agree to abide by organizational rules in exchange for membership only to renege on the agreement. Their position thus violates the state as well as the federal constitution.

CONCLUSION

St. James Parish members and clergy have an undoubted First Amendment right to dissent and to freely exercise their religion. They may disaffiliate from the Episcopal Church and form their own denomination or join another. But they may not disregard two centuries of California and

federal law by usurping control of property that they themselves agreed to dedicate to the dissemination of the Episcopal Church U.S.A.'s brand of Christianity, not their own. Neutral principles, as well as the agreed upon principle of government of the Episcopal Church, block their way.

DATED: June 18, 2008

LAW OFFICES OF TONY J. TANKE

By: 

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East*

CERTIFICATE OF WORD COUNT

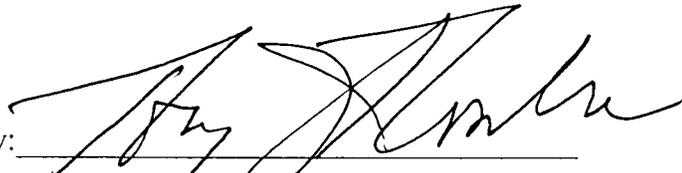
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DATED: June 18, 2008

LAW OFFICES OF TONY J. TANKE

By: _____

A handwritten signature in black ink, appearing to read 'Tony J. Tanke', written over a horizontal line.

Tony J. Tanke, *Attorneys for Amicus Curiae
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PROOF OF SERVICE

STATE OF CALIFORNIA - COUNTY OF YOLO

I am employed in the City of Davis, County of Yolo, State of California. I am over the age of 18 and not a party to this action; my business address is: 2050 Lyndell Terrace, Suite 240, Davis, California 95616.

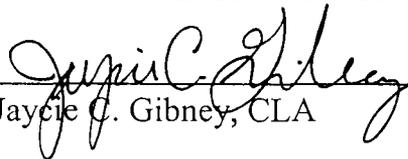
On June 18, 2008, I served the document(s) described as: **AMICUS CURIAE BRIEF OF THE HOLY APOSTOLIC CATHOLIC ASSYRIAN CHURCH OF THE EAST** in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

- (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Davis, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on June 18, 2008, at Davis, California.

- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



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