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Case No. S155094

IN THE
SUPREME COURT OF THE
STATE OF CALIFORNIA

SUPREME COURT
FILED

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EPISCOPAL CHURCH CASES

Deputy

**APPLICATION FOR PERMISSION TO FILE AMICI CURIAE
BRIEF AND AMICI CURIAE BRIEF OF IGLESIA EVANGELICA
LATINA, INC., ET AL. IN SUPPORT OF PETITIONERS**

Court of Appeal, Fourth Appellate District, Division Three
(Appeal Nos. G036096, G036408, G036868)

Orange County Superior Court (J.C.C.P. 4392; 04CC00647)
The Honorable David C. Velasquez

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Adams, Arlin & Hanlon, William <i>Jones v. Wolf: Church Autonomy and the Religion Clauses of the First Amendment</i> (1980) 128 U. Pa. L. Rev. 1291	19
--	----

Anglican Communion, The Communiqué of the Primates’ Meeting in Dar es Salaam (2007), available at http://www.anglicancommunion.org/communion/primates/ resources/downloads/communique2007_english.pdf	16
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Greenawalt, Kent <i>Hands Off! Civil Court Involvement in Conflicts over Religious Property</i> (1998) 98 Colum. L. Rev. 1843	17, 20
---	--------

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Pew Forum,
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APPLICATION FOR PERMISSION TO FILE
AMICI CURIAE BRIEF

TO THE HONORABLE CHIEF JUSTICE:

Pursuant to Rule 8.200(c) of the California Rules of Court, amici curiae Kenneth W. Starr; Robert F. Cochran; Iglesia Evangelica Latina, Inc., a California corporation; Juan A. Reyes; Aida Haydee Reyes; Ahuner Portillo; Audias J. Portillo; Baldemar Contreras; Benjamin Carranza; Camilo Encina; Christian Sical; Edwin Perez; Edwing Morales; Enrique Luna; Esbin Portillo; Beltran Fermin; Francisco Fuentes; Carlos G. Garcia; Henry Portillo; Jose Campos; Jose Alfredo Jiminez; Misael Portillo; Nelson Sosa; Noe Carias; Roberto Estrada; Jonathan Evangelista; Saul Cifuentes; Victor Jacobo; Bildad Coin; Jose Ruben Reyes; Alex Reyes; Jose Antoniõ Menjivar; Amado Morroquin; Epifanio Zepeda; and Jose Luz Araujo hereby apply for permission to file an amici curiae brief in support of Petitioners Rev. Praveen Bunyan; Rev. Richard A. Menees; Rev. M. Kathleen Adams; the rector, wardens, and vestrymen of St. James Parish in Newport Beach, California, a California corporation; James Dale; Barbara Hettinga; Paul Stanley; Cal Trent; John McLaughlin; Penn Reveley; Mike Thompson; Jill Austin; Eric Evans; Frank Daniels; Cobb Grantham; and Julia Houten.

Amici Starr and Cochran are religion and law scholars and are concerned that the adoption of a Hierarchical Deference rule in California

would both undercut the rights of religious freedom of California citizens and create a rule that California courts would be unable to administer in a fair and practical manner.

Amici, Iglesia Evangelica Latina, Inc., a California corporation; Juan A. Reyes; Aida Haydee Reyes; Ahuner Portillo; Audias J. Portillo; Baldemar Contreras; Benjamin Carranza; Camilo Encina; Christian Sical; Edwin Perez; Edwing Morales; Enrique Luna; Esbin Portillo; Beltran Fermin; Francisco Fuentes; Carlos G. Garcia; Henry Portillo; Jose Campos; Jose Alfredo Jiminez; Misael Portillo; Nelson Sosa; Noe Carias; Roberto Estrada; Jonathan Evangelista; Saul Cifuentes; Victor Jacobo; Bildad Coin; Jose Ruben Reyes; Alex Reyes; Jose Antonio Menjivar; Amado Morroquin; Epifanio Zepeda and Jose Luz Araujo are a California religious corporation, its elected board of directors, and a number of other leaders of its 400-700 member congregation (hereinafter, “IEL Church”) are the Appellants in *Iglesia Evangelica Latina, Inc. v. Southern Pacific Latin Am. Dist. of the Assemblies of God* (Second Appellate District, Appeal No. B203800).

IEL Church was founded in or around 1978, and became affiliated with the Assemblies of God in the early 1980s. The Assemblies of God is a Pentecostal denomination, which is congregational in structure; local churches are separately incorporated and own their own property. From both a theological and temporal standpoint, the Pentecostal faith prides

itself on having no “hierarchy.” There are no Pentecostal “bishops” or “dioceses,” and no “canon law” as in the Catholic Church; instead, Pentecostal churches come together in groupings for mutual spiritual support and edification.

In 2005, IEL Church experienced a conflict between its Senior Pastor, Luis Sandoval, and its Junior Pastor, Juan Reyes. The leaders of the Church turned to the regional subdivision of the Assemblies of God denomination – Southern Pacific Latin American District (“SPLAD”) – for spiritual advice and support. The response of SPLAD was to grab IEL Church’s property and corporate control. Amici herein, IEL church and members, brought suit in the Los Angeles County Superior Court, and SPLAD cross-claimed for unlawful detainer. After a three day bench trial in early September 2007, the trial court found in favor of SPLAD, relying on the recently decided Episcopal Church Cases decision.

Because this Court's decision will have a significant effect on faith communities, property belonging to them, and the foregoing interests, *amici* respectfully request leave to file the attached brief.

Respectfully submitted,

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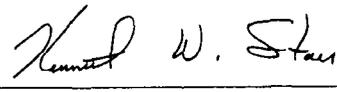
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May 22, 2008

AMICI CURIAE BRIEF IN SUPPORT OF
PETITIONERS

Our constitutional order, at its best, lifts up and protects the profound values of religious liberty and freedom of conscience. Throughout our history, the United States has been a nation populated by freedom-loving dissenters. The storied history of the Pilgrims seeking to escape the state-supported church of their parent country is but the opening chapter of an unfolding experiment in human liberty. Today, the most recent survey shows that fully forty percent of Americans have switched from the religion of their youth. Protecting that freedom demonstrates this country's finest traditions.

Constitutional doctrine has not been immune to Americans' deep-seated attachment to human liberty. From an earlier intrusive stance that led courts into the labyrinthine precincts of religious doctrine, to a freedom-suppressing, unquestioning embrace of hierarchical decision making, now in the ascendancy is a salutary principle of constitutional law – the Neutral Principles doctrine – that both fosters religious liberty and protects courts from enmeshing themselves in theological or ecclesiastical matters. This Court should now align itself fully with the freedom-fostering Neutral Principles doctrine.

ARGUMENT

I. **THE HISTORICAL EVOLUTION OF CONSTITUTIONAL LAW DEMONSTRATES THE SUPERIORITY OF THE NEUTRAL PRINCIPLES DOCTRINE.**

Over the centuries of judicial teaching in the arena of intra-church property disputes, the evolution of constitutional doctrine has progressed from deference to religious hierarchy toward respect for personal autonomy and religious freedom. American law in this realm has progressed in three stages beginning with a period of deference to judicial hierarchies; followed by a time of deference to religious hierarchies; and finally the marking of a new era—an application of “neutral principles” that gives effect to the intent expressed by the parties in legal documents.

A. **Lord Eldon’s “Departure-From-Doctrine” Rule.**

In 1813, England’s Lord Chancellor Eldon fashioned what came to be known as the “departure-from-doctrine” principle. Under this approach, when presented with a dispute over church property, the Lord Chancellor determined which of the warring factions had departed from the church’s original (“true”) doctrine. Based upon that pivotal determination, the property was transferred to the faithful and true faction under the principle of implied trust. *Craigdallie v. Aikman*, 2 Bligh, 529; 1 Dow., 1 (1813); cited in *Watson v. Jones*, 80 U.S. 679, 704 (1872).

Prior to 1969, various courts in the United States, including some California courts, followed Lord Eldon’s rule. These tribunals resolved

doctrinal disputes in order to determine who constituted the “true church.” That judicially determined entity was, by court order, entitled to church property, again under a theory of implied trust. *See also Baker v. Ducker*, 79 Cal. 365, 374 (1889); *Presbyterian Church in U.S. v. E. Heights Presbyterian Church*, 159 S.E.2d 690, 695 (Ga. 1968), *rev’d*, *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440 (1969).

Throughout the nineteenth century and into the twentieth, traces of Lord Eldon’s rule continued to appear in California jurisprudence. In *Horsman v. Allen*, 129 Cal. 131 (1900), for example, the California Supreme Court combined notions of Departure-from-Doctrine with Hierarchical Deference. There, the Court held: “If the radical [branch] is the true church, the plaintiffs are entitled to recover; otherwise not.” *Id.* at 135. If, on the other hand, the governing body’s act “destroyed” the “identity” of the church so that it “thereby became a new and different church,” then the decision of the governing body would not be dispositive. *Id.* at 137-38.

In a watershed decision, the United States Supreme Court in *Watson v. Jones* declined to follow Lord Eldon’s rule and condemned this judicially-intrusive approach as unconstitutional. 80 U.S. at 733. According to the Court, civil courts have no jurisdiction over disputes where the subject-matter is “strictly and purely ecclesiastical in its character.” *Id.* The Court reiterated this position in *Blue Hull*, stating that

allowing courts to “determine matters at the very core of a religion” creates the risk of “inhibiting the free development of religious doctrine.” 393 U.S. at 449-50.

B. Deference to Church Hierarchy.

In the next phase of jurisprudential development, courts in the United States embraced the Hierarchical Deference rule (also known as the “principle of government” or “highest church judiciary” rule). Under this approach, courts presented with church property disputes pigeonholed denominations into one of two categories: congregational or hierarchical. Once that classification was complete, the judiciary applied different rules to each. The United States Supreme Court, in *Watson*, 80 U.S. at 679, rejected Lord Eldon’s rule and adopted the Hierarchical Deference rule. *Watson* arose as a dispute over ownership of property between the trustees of congregational property and the denomination. *Id.* at 684. A majority of the congregation supported the denomination. *Id.* at 684-85. The Court held that if the church form of government is congregational, ownership “must be determined by the ordinary principles which govern voluntary associations. If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property.” *Id.* at 724-25. If, however, the congregation is part of a larger general organization of some religious denomination, then “whenever the questions of discipline, or of faith, or

ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final.” *Id.* at 726-27. “All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.” *Id.* at 729.

In *Wheelock v. First Presbyterian Church*, 119 Cal. 477, 482 (1897), the California Supreme Court held that courts should follow Hierarchical Deference as to spiritual matters, but reserved to courts the determination of property matters. There, this Court deferred to the church hierarchy in its determination that the property at issue should be divided between two factions of a congregation that had split. *Id.* at 484.

C. Neutral Principles.

Finally, under the doctrine of “neutral principles,” courts look to legal documents—to the extent that they can do so without interfering in matters of religious doctrine—to determine property ownership. In particular, courts focus on (i) the deeds to the church property; (ii) the articles of incorporation of the local congregation; (iii) state statutes with respect to property; and (iv) the rules of the general church organization. See *Barker*, 15 Cal. App. 3d at 613; *Jones v. Wolf*, 443 U.S. 595, 600 (1979). Courts ground their decisions on the parties’ understanding of control, as formally recorded in legal documents. In doing so, courts treat religious institutions like other non-profit organizations, deferring to church

hierarchies only as to doctrinal matters. *See also Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal. App. 3d 910, 919-20 (Ct. App. 1979) (holding that although civil courts must accept ecclesiastical pronouncements on doctrinal issues as final, “when the dispute to be resolved is essentially ownership or right to possession of property, the civil courts appropriately adjudicate the controversy”); *Korean United Presbyterian Church v. Presbytery of the Pacific*, 230 Cal. App. 3d 480, 498 (Ct. App. 1991) (“[a] court may resolve disputes over church property through use of neutral principles of law. . . but if the civil court is required to resolve a religious controversy, it must then defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body”); *California-Nevada Annual Conference of United Methodist Church v. St. Luke's United Methodist Church*, 121 Cal. App. 4th 754, 762-63 (Ct. App. 2004).

Since the 1970s, with the encouragement of the United States Supreme Court, American courts have favored a Neutral Principles approach when dealing with religious property disputes. In *Jones*, the Supreme Court held that States may either adopt the “hierarchical deference” approach or apply “neutral principles of law” to determine ownership of church property. 443 U.S. at 602. However, in evaluating the two approaches, the Court clearly indicated its preference for Neutral Principles in situations akin to the present case. *Id.* at 603-04.

In *Jones*, a local congregation voted 164 to 94 to withdraw from its denomination, the Presbyterian Church in the United States (PCUS), and to join a different Presbyterian denomination, the Presbyterian Church in America (PCA). *Id.* at 598. As in the current case, the funds used to purchase and maintain the buildings had come almost entirely from the local congregation. In addition, considerable funding had been directed from the local congregation to the local diocese. *Id.* at 597. The PCUS declared that the minority faction constituted “the true congregation” and sought to have the church property vested in it. *Id.* at 598. Applying “neutral principles of law,” the Georgia trial court granted judgment to the majority group. *Id.* at 599. The Georgia Supreme Court affirmed. *Id.* On review in the United States Supreme Court, the Court did not mandate the Neutral Principles approach, but did take the opportunity to highlight its benefits:

The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general – flexibility in ordering private rights and obligations to reflect the intentions of the parties.

Id. at 603. The *Jones* Court recognized, however, that the Neutral Principles doctrine did not constitute a magical solution:

This is not to say that the application of the neutral-principles approach is wholly free of difficulty. The Neutral Principles method, at least as it has evolved in Georgia, requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

Id. at 604. Yet, in affirming the Georgia Supreme Court's judgment, the U.S. Supreme Court reasoned, "on balance, however, the promise of non-entanglement and neutrality inherent in the neutral-principles approach more than compensates for what will be occasional problems in application." *Id.*

Since *Blue Hull* was decided in 1969, a majority of jurisdictions that have had occasion to examine this issue have embraced the Neutral Principles approach. See Jeffrey B. Hassler, Comment, *A Multitude of Sins? Constitutional Standards for Legal Resolution of Church Property Dispute in a Time of Escalating Intrad denominational Strife*, 35 *Pepp. L. Rev.* 399, 457-63 (2008).

California likewise seems to be in step with the Neutral Principles approach, most notably in *Protestant Episcopal Church in the Diocese of*

Los Angeles v. Barker, 115 Cal. App. 3d 599, 614 (Ct. App. 1981). There, the court rejected “hierarchical theory” and accepted the U.S. Supreme Court’s invitation to embrace the Neutral Principles approach. *Id. Barker* closely parallels the present case. Indeed, the case arose in the very Episcopalian diocese that is the subject of the current dispute. Furthermore, *Barker* involved the very same Diocesan Canon 10.06 that is at the heart of the present controversy. *Id.* at 608. In *Barker*, the church property was titled in the names of the local congregation. *Id.* at 607-11. The Episcopalian hierarchy claimed that Canon 10.06 created an express trust in its favor. *Id.* at 620-21. Applying the Neutral Principles doctrine, the Court of Appeal held that the trust was enforceable as to the one congregation which had incorporated after the hierarchy adopted the trust provision, *but not as to the three congregations that had incorporated prior to the enacting of the trust provision.* *Id.* at 625-26.

Under Neutral Principles, courts apply familiar (and secular) legal doctrines that have been developed over the centuries. In general, these principles require courts to look to legal documents, especially in real property matters. These documents embody a legal record of people’s commitments and expectations. Under this non-entangling approach, judges are empowered to apply a consistent set of standards to determine who owns what and where the parties stand. Neutral standards protect the reliance interests of generations of church members who have contributed

financially to a church, especially in capital campaigns. Importantly, this freedom-maximizing principle treats people of all religious faiths equally. It profoundly respects the diversity of religious faiths that exist in California.

II. THE NEUTRAL PRINCIPLES APPROACH AVOIDS PROFOUND DIFFICULTIES INHERENT IN THE PRINCIPLE OF HIERARCHICAL DEFERENCE.

A. A Hierarchical Deference Standard Would Enable Church Hierarchies to Exercise “Arbitrary Lawlessness” Over Members.

By its own terms, the Hierarchical Deference approach requires courts to defer to the decision of the church hierarchy. This approach imposes on courts a standard of blind deference. It admits no exceptions. As a result, the supreme authority on decisions relating to property ownership is the hierarchy itself, whether it be composed of a single head or a small cohort of clerics. As the Supreme Court of Kentucky noted, “[I]n every case, regardless of the facts, compulsory deference would result in the triumph of the hierarchical organization.” *Bjorkman v. Protestant Episcopal Church in U.S. of America of Diocese of Lexington*, 759 S.W. 2d 583, 586 (Ky. 1988). Such a standard obviously bestows upon the hierarchical head tremendous power. In fact, it is difficult, if not impossible, to identify any other party to litigation in this country that exercises such sweeping control over its own disputes as that which would

be granted to church hierarchies under the Hierarchical Deference approach.

With such power comes the danger of its abuse. As then-Justice Rehnquist stated in his dissenting opinion in a pre-*Jones* case, “If the civil courts are to be bound by any sheet of parchment bearing the ecclesiastical seal and purporting to be a decree of a church court, they can easily be converted into handmaidens of arbitrary lawlessness.” *Serbian E. Orthodox Diocese for U.S. of America & Canada v. Milivojevich*, 426 U.S. 696, 727 (1976). For example, under this approach, the courts would be required to enforce a decree seizing all property owned by local congregations, even if it were clearly stated in church documents and government deeds that the property was in fact owned by members of the local congregation. Whether such a result comports with justice is irrelevant under the Hierarchical Deference approach. The courts would be supine before the supreme authority of the church.

Of course, because courts fashioned this deferential approach before the proliferation of religious denominations in America, jurists did not likely foresee the difficulties of applying such a rule today. In the past, deference-guided tribunals could reasonably assume that such hierarchies would exercise their power for benign purposes. That happy assumption can no longer be indulged. Over the last half century, a wide range of new religious movements has arisen, some with leaders who wield enormous

power but are accountable to no one. It is little wonder that the U.S. Supreme Court—and most state courts—has moved toward embracing Neutral Principles and rules that do not require blind deference to hierarchical control.

Our submission is straightforward: *Church hierarchies should not be exempt from the normal rules for creating and recording property interests.* This Court would do well to exercise caution, lest it establish a precedent that confers broad power upon malevolent religious leaders. Otherwise, congregations which have invested for several decades in their local church may find themselves without a church and without property. The tragic example of the present case illustrates the harm that results when deference to religious hierarchy gives the national denomination the power to make forfeiture of church property a condition of leaving the organization.

B. The Hierarchical Deference Standard Would Require Courts to Make Sensitive Judgments as to Church Organizations.

When the Hierarchical Deference standard was formulated, it was based on an unrealistic view of church organization. The reason: a host of organizational structures exists that do not fit readily into either the congregational or hierarchical mold. *See Hassler, supra*, at 405-407. In fact, many churches bear both hierarchical and congregational characteristics and form a “hybrid” class of church organizations which

itself may be subdivided into countless other types. Consequently, classifying churches into one of two categories will be cumbersome and may very well give rise to serious constitutional issues. As the United States Supreme Court cautioned in *Jones*:

Under [the Hierarchical Deference] approach . . . civil courts would always be required to examine the polity and administration of a church to determine which unit of government has ultimate control over church property. In some cases, this task would not prove to be difficult. But in others, the locus of control would be ambiguous, and “[a] careful examination of the constitutions of the general and local church, as well as other relevant documents, [would] be necessary to ascertain the form of governance adopted by the members of the religious association.” (citation omitted). In such cases, the suggested rule would appear to require “a searching and therefore impermissible inquiry into church polity” (citation omitted). The neutral-principles approach, in contrast, obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes.

Jones, 443 U.S. at 605. The difficulties envisioned thirty years ago by the *Jones* Court have multiplied greatly in the intervening decades. The number of religious traditions represented in the United States, especially in California, has grown dramatically. With this growth, the difficulties of classification have abounded—and will continue to abound—as long as the Hierarchical Deference approach is followed. Such an approach, which is clearly predicated upon an overly simplistic understanding of church organization, can potentially result in injustice.

California courts and others have already struggled with the difficulties of forcing the square peg of church structure into the round hole of Hierarchical Deference. For example, in *Rosicrucian Fellowship v. Rosicrucian Fellowship Nonsectarian Church*, 39 Cal. 2d 121, 133 (1952), a case arose involving a church with *no* organized form of government. Another case involved two competing boards in a Sikh Temple. One board claimed that it was the true authority because it had been elected for *life* in accordance with the proper Sikh tradition. *Singh v. Singh*, 114 Cal. App. 4th 1264 (Ct. App. 2004). In 2005, in *Concord Christian Center v. Open Bible Standard Churches*, 132 Cal. App. 4th 1396 (Ct. App. 2005), two competing parties within the local faith community disagreed over whether the church was congregational or hierarchical in nature. In the view of the court, substantial evidence was adduced by “both sides.” *Id.* at 1409. See also *Malanchuk v. Saint Mary’s Greek Catholic Church of McKees Rocks*, 9 A.2d 350 (Pa. 1939) (examining a dispute where the local church body was composed of merged congregations from denominations with different governing structures) and *Clough v. Wilson*, 368 A.2d 231 (Conn. 1976) (evaluating a local congregation’s level of loyalty to a Plymouth Brethren church leader based on ambiguous evidence). These cases illustrate the highly difficult – and exclusively sensitive – issues inevitably arising under the Hierarchical Deference approach.

Indeed, the Iglesia Evangelica Latina (“IEL”) congregation is in the midst of a theological debate illustrating the difficulty in categorizing religious organizations. Attached is the trial judge’s order, which identified IEL’s congregation, the Assemblies of God, as a hierarchical organization. This is in spite of the fact that the Assemblies of God denominational constitution states that its congregations (called “assemblies”) are to be “independent” and are to enjoy “sovereign rights” to control their property.¹ Despite clear language to the contrary, the trial judge found that Assemblies of God is hierarchical in structure. She based this pivotal conclusion on the existence of a *regional* group coordinating church ministries and support. The upshot: hundreds of families are now without their local church home. In addition, numerous local outreach programs have suffered as a result.

Because virtually all denominations have some form of denominational structure, a danger lurks that the Hierarchical Deference rule will lead to centralized control of myriad congregations. At a minimum, this rule calls upon courts to render exquisitely sensitive judgments as to the nature of intra-denominational structure.

¹ ARTICLE XI. LOCAL ASSEMBLIES

Section 1. General Council Affiliated Assemblies.

c. Right of self-government (sovereign rights). Each General Council affiliated assembly has the right of self-government under Jesus Christ, its living Head, and shall have the power to choose or call its pastor, elect its official board, and transact all other business pertaining to its life as a local unit. It shall have the right to administer discipline to its members according to the Scriptures and its constitution or bylaws. It shall have the right to acquire and hold title to property, either through trustees or in its corporate name as a self-governing unit. The fact it is affiliated with The General Council of the Assemblies of God shall in no way destroy its rights as above stated or interfere with its sovereignty. See www.ag.org.

In fact, the Episcopal Church is itself a hybrid. In this litigation, it claims the mantle of a hierarchical community. Elsewhere, the Episcopal Church sounds a decidedly different note. Indeed, in litigation in which it was sued for alleged clergy negligence or misconduct, it has downplayed its hierarchical nature. *See, e.g., Moses v. Diocese of Colorado*, 863 P.2d 310 (Colo. 1993). In addition, the Episcopal Church claims to be the pinnacle of the ecclesiastical hierarchy. Yet, the Episcopal Church is a part of the worldwide Anglican Communion as well.² The nettlesome question thus arises: To which hierarchy should the courts defer?

C. The Hierarchical Deference Doctrine is Inconsistent With the Expectations of the Parties.

Respondents' theory blithely assumes that donations for the purchase of property represent donations to the *denomination*, rather than the local congregation. Perhaps members of the local congregation understand that their weekly offerings may be used for the benefit of the larger denomination, but capital campaigns are a different matter entirely. These congregational fundraising initiatives unite the members of the local church body under a vision of their congregation's future home. They then give, often sacrificially, of their limited financial resources in order to raise

² In fact, the Anglican Communion has encouraged the Episcopal Church to put all property litigation on hold. *See* The Communiqué of the Primates' Meeting in Dar es Salaam, published February 19, 2007. Available on-line at: http://www.anglicancommunion.org/communion/primates/resources/downloads/communique2007_english.pdf.

the funds necessary to purchase new property. The larger denomination does not oversee this process or assist them financially. Thus, contrary to the respondents' fanciful conclusion, it is far more likely that members' loyalty is directed—in principal measure—to the *local congregation*—the people among whom they are baptized, married, and buried.

In fact, in a seminal article, Professor Kent Greenawalt explained, “Many Protestants now join a local church that seems suitable, with relatively little concern about the general denomination; they switch denominations freely and, regardless of denomination, may consider the congregational government of the local church as most important.” Kent Greenawalt, *Hands Off! Civil Court Involvement in Conflicts over Religious Property*, 98 Colum. L. Rev. 1843, 1875 (1998). The most recent study of American religious practices demonstrates that this tendency has not abated: approximately forty-four percent of Americans have switched religious affiliation since their childhood.³

Thus, it is unlikely that those donating to religious congregations made their gifts—especially the capital campaign gifts mentioned above—with the assumption that the denomination could do with them whatever it pleased, which is one of the underlying assumptions of Hierarchical Deference theory. Instead, such gifts often come with commensurate

³ See the Pew Forum's “U.S. Religious Landscape Survey,” published in 2008 and available online at: <http://religions.pewforum.org/reports>.

responsibilities as to how those gifts may be used and by whom. Clearly, the local church would not be permitted to gamble away money which it had been given by one of its members. Likewise, the church hierarchy should not be able to take from the local church property which it has obtained through the faithful giving of its donors. The intent of the giver should be respected, just as it is in other areas of the law. Otherwise, the principle at work in the Hierarchical Deference approach will potentially result in a host of improprieties.

D. The Hierarchical Deference Rule Creates an Unconstitutional Establishment of Religion.

Under the teachings of the Supreme Court of the United States, courts, in examining establishment clause issues, look to whether the measure (or doctrine) in question is religiously neutral. In our view, automatic judicial deference to the decisions of the highest ecclesiastical authority within a particular denomination is decidedly non-neutral. To the contrary, such deference reflects an untoward judicial preference for the existing church hierarchy over individual congregations. As a result, the Hierarchical Deference rule violates the fundamental principle prohibiting courts from fashioning rules that advance or inhibit religion.

As then-Justice Rehnquist stated in *Serbian Orthodox*, “To make available the coercive powers of civil courts to rubber-stamp ecclesiastical decisions of hierarchical religious associations, when such deference is not

accorded similar acts of secular voluntary associations, would, in avoiding the free exercise problems petitioners envision, itself create far more serious problems under the Establishment Clause.” 426 U.S. at 734 (dissent). In this case, the plaintiff sought to stop the mother church from splitting his diocese into three separate dioceses and defrocking him as bishop. *Id.* at 704. In reversing the Illinois Supreme Court, the United States Supreme Court found that though such decisions may affect property held by the church, it does not necessarily follow that civil property principles will govern. *Id.* at 709.

In a similar strain of thought, the Supreme Court of Louisiana said in *Fluker Community Church v. Hitchens*, 419 So. 2d 445, 447 (La. 1982), “Refusal to adjudicate a dispute over property rights or contractual obligations, even when no interpretation or evaluation of ecclesiastical doctrine or practice is called for, but simply because the litigants are religious organizations, may deny a local church recourse to an impartial body to resolve a just claim, thereby violating its members' rights under the free exercise provision, and also constituting a judicial establishment of the hierarchy's religion. (citation omitted).” Denying some church members the protections afforded to other church bodies is an inappropriately preferential stance. See A. Adams & W. Hanlon, *Jones v. Wolf: Church Autonomy and the Religion Clauses of the First Amendment*, 128 U. Pa. L. Rev. 1291, 1294-95 (1980). Indeed, according to Professor Greenawalt, the

Hierarchical Deference approach “contains an anomaly that is so evidently impossible to justify, it will almost certainly not survive.” Greenawalt, *supra*, at 1866. Professor Greenawalt explains, “The anomaly is the different treatment accorded congregational and hierarchical churches once their polity is determined.” *Id.*

In stark contrast to the Hierarchical Deference approach, the Neutral Principles rule treats all religious and secular organizations equally. It accomplishes this by analyzing disputes under precisely the same neutral legal rules applied to secular parties. Courts are well advised to adjudicate church property ownership disputes under this approach, which relies primarily on secular documents. This methodology not only respects the intent of the parties, but it also avoids the judiciary becoming involved in intra-denominational disputes.

III. THE NEUTRAL PRINCIPLES APPROACH SHOULD BE APPLIED IN A MANNER WHICH ENFORCES THE ACTUAL INTENT OF THE PARTIES.

Although the Supreme Court has praised the Neutral Principles approach and many state courts have embraced it as their preferred method of resolving religious property disputes, the success of the Neutral Principles model has been undermined by a few court decisions which erroneously rely on trusts unilaterally created and imposed by the national denominational hierarchies. This unfortunate throw-back to Hierarchical

Deference threatens to undermine the very purpose and effectiveness of the Neutral Principles approach. As the California Court of Appeal noted in *California-Nevada*, “Although the hierarchical theory has supposedly been rejected in California, it will nevertheless live on under the label of ‘neutral principles of law,’ if a church’s own rules are viewed as trumping state statutes.” 121 Cal. App. 4th at 772. The court continued, “We know of no principle of trust law stating that a trust can be created by the declaration of a non-owner that the owner holds the property as trustee for the non-owner.” *Id.* at 769.

In the current cases, the Episcopal Church seeks to enforce a trust rule which it unilaterally adopted, stating that the local congregation holds the property in trust for the national church hierarchy. Regrettably, some California circuit courts have erred in giving credit to attempts to create such trusts. *See Korean United Presbyterian Church of L.A. v. Presbytery of the Pacific*, 230 Cal. App. 3d 480 (Ct. App. 1991); *Guardian Angel Polish Nat’l Catholic Church of Los Angeles, Inc. v. Grotnik*, 118 Cal. App. 4th 919 (Ct. App. 2004); and *Metropolitan Philip v. Steiger*, 82 Cal. App. 4th 923, 931 (Ct. App. 2000) (stating, in accord with *Korean*, that provisions in the constitution of the national denomination “can override any right the majority of a local congregation might otherwise have to control the local church property.”)

Justice Rehnquist's fears of the "arbitrary lawlessness" which could result from Hierarchical Deference could just as easily apply to the Respondents' unilateral trust theory. *Serbian Orthodox*, 426 U.S. at 727 (dissent). Merely because a trust clause has been issued by a church hierarchy should not mean that it can be enforced contrary to both state law and the will of the true property owner. As the California Court of Appeal noted in *Barker*, "Under neutral principles of law, if a local body affiliated with a national body holds title to property in its own name and later secedes, the national body has little basis to claim that such property is held in trust for it. (citation omitted)." 115 Cal. App. 3d at 622.

When properly applied, the Neutral Principles approach allows for all parties to be held as equals in the eyes of the law. After all, church hierarchies should not be exempt from the normal rules for creating and recording property interests. Allowing a denominational hierarchy to invent and impose an implied trust over a local congregation's property enforces Hierarchical Deference by a different means, defeating the entire purpose of the Neutral Principles approach by giving no effect whatsoever to the actual intention of the parties.

Indeed, in order for an application of Neutral Principles to accord with the Supreme Court's decision in *Jones*, the mutual intent of the parties must be respected and enforced. Again, we quote from the *Jones* opinion:

[N]eutral-principles analysis shares the peculiar genius of private-law systems in general – flexibility in ordering private rights and obligations to reflect the intentions of the *parties*. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the *members*.

Jones, 443 U.S. at 603-04 (emphasis added).

The Supreme Court made it clear that when utilizing Neutral Principles, both the local congregation and the national church hierarchy must reach agreement before the local congregation yields any ownership rights to the hierarchy:

At any time before the dispute 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. The burden involved in taking such steps will be minimal. 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. at 606 (emphasis added). The emphasis on the “parties” (plural) demonstrates the Court’s opinion that the national and local parties should work cooperatively in the modification of those documents which are mutually significant—deeds, trust instruments, corporate charters, and constitutions.

We urge the court to apply the Neutral Principles approach in a manner that enforces the actual intent of the parties and avoids the unfair imposition of unilaterally created trusts. In our view, there are two preferable methods for courts to use in interpreting trusts under the Neutral Principles rule. The first option is a straightforward application of the general state rules of trusts. *See, e.g.*, Cal. Prob. Code § 15201 (West 2006) (stating that a trust is created only if the settlor properly manifests an intention to create a trust); Cal. Prob. Code § 21102 (West 2006) (saying that the transferor’s intention, as expressed in the instrument, controls the legal effect of the dispositions made in the instrument); and Cal. Prob. Code §21122 (West 2006) (giving the “ordinary and grammatical meaning” to the words of an instrument unless the intention to use them in another sense is clear and the intended meaning is ascertainable).

The other option is encompassed in the rule recently adopted by the state of New Hampshire in *Berthiaume v. McCormack*, 891 A.2d 539 (N.H. 2006). Adopting Neutral Principles, the state Supreme Court held that in church property disputes, a court must “first consider only secular documents such as trusts, deeds, and statutes. Only if these documents leave it unclear which party should prevail will we consider religious documents, such as church constitutions and by-laws, even when such documents contain provisions governing the use or disposal of church property.” *Id.* at 547. If the secular documents are clear, courts should not

turn to extrinsic evidence. *See also Severns v. Union Pacific R.R. Co.*, 101 Cal. App. 4th 1209, 1214 (Ct. App. 2002) (holding that extrinsic evidence should be examined only when the deed on its face is ambiguous as to the intent of the parties); *Bjorkman*, 759 S.W. 2d at 586 (relying on a string of historical documents which clearly evince the rights and intents of the parties); *First Evangelical Methodist Church of Lafayette v. Clinton*, 360 S.E.2d 584, 585 (Ga. 1987) (ruling on the basis of straightforward secular documents); and *Trinity Presbyterian Church of Montgomery v. Tankersley*, 374 So. 2d 861, 866 (Ala. 1979) (choosing to examine secular legal documents as the primary method of resolving church property disputes).

These applications of the Neutral Principles approach reflect the efforts by courts to respect and enforce the actual intent of the parties. Through this rule, courts are able to apply familiar secular legal principles in a manner which will likely produce equitable and just results. In addition, the parties to church property disputes are guaranteed an outcome that comports with the intent expressed in their recorded documents. We believe that using a pure Neutral Principles methodology best promotes the fundamental interests of justice.

CONCLUSION

For the foregoing reasons, as well as those stated in the Petitioners' Brief, *amici* IEL and others respectfully submit that the judgment of the Court of Appeal be reversed.

Respectfully submitted,

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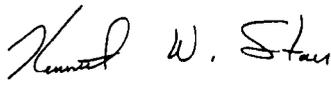
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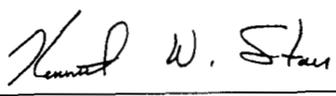
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May 22, 2008

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, Rule 8.520(c), the text in this brief consists of 6,095 words as counted by the Microsoft Word word processing program used to generate this document.

Dated: May 22, 2008



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**LOS ANGELES
SUPERIOR COURT**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SOUTHERN PACIFIC LATIN AMERICAN)
DISTRICT OF THE ASSEMBLIES OF GOD,)
a California non-profit religious corporation;)
IGLESIA EVANGELICA LATINA, INC., a)
California non-profit religious corporation,)

Plaintiffs,

v.

JUAN A. REYES; AIDA HAYDEE REYES;)
AHUNER PORTILLO; AUDIAS J. PORTILLO;)
BALDEMAR CONTRERAS; BENJAMIN)
CARRANZA; CAMILO ENCINA; CHRISTIAN)
SICAL; EDWIN PEREZ; EDWIN MORALES;)
ENRIQUE LUNA; ESBIN PORTILLO;)
BELTRAN FERMIN; FRANCISCO FUENTES;)
CARLOS G. GARCIA; HENRY PORTILLO;)
JOSE CAMPOS; JOSE ALFREDO JIMENEZ;)
MISAEEL PORTILLO; NELSON SOSA; NOE)
CARIAS; ROBERTO ESTRADA; JONATHAN)
EVANGELISTA; SAUL CIFUENTES; VICTOR)
JACOBO; BILDAD COIN; JOSE RUBEN)
REYES; ALEX REYES; JOSE ANTONIO)
MENJIVAR; AMADO MORROQUIN;)
EPIFANIO ZEPEDA and JOSE LUZ ARAUJO)
and DOES 1 through 100, inclusive,)

Defendants.

Case No. BC 352107

**STATEMENT OF DECISION
(TENTATIVE)**

1 This matter came on regularly for trial on August 30, 2007, September 4, 2007 and
2 September 5, 2007. All parties were present and represented by counsel.

3 This case represents the consolidation of three separate actions: Iglesia Evangelica
4 Latina, Inc. v. Southern Pacific Latin American District of the Assemblies of God, Case
5 No. BC 351174, Southern Pacific Latin American District of the Assemblies of God v.
6 Juan A. Reyes, et al., Case No. BC 352107 and Southern Pacific Latin American District of
7 the Assemblies of God v. Juan A. Reyes, Case No. BC 356829.

8 The parties stipulated to bifurcate the trial into two phases. The first phase
9 addresses Case No. BC 351174 and the issue of plaintiff's standing to sue; and assuming
10 standing, liability and damages. The second phase addresses Case Nos. BC 352107 and
11 BC 356829.

12 Iglesia Evangelica Latina shall hereafter be referred to as IEL. Southern Pacific
13 Latin American District of the Assemblies of God shall hereafter be referred to as SPLAD.

14
15 **I. ISSUE TO BE ADDRESSED IN PHASE ONE:**

16 Does IEL have standing as a plaintiff in Case No. 351174?

17 **A. The court makes the following findings of fact with regard to**

18 **Phase One:**

- 19 1. IEL was incorporated in 1975 as a non-profit religious corporation.
20 (Stipulation of Counsel and Exh. 1.)
- 21 2. IEL became affiliated with SPLAD on September 22, 1979 and
22 agreed to be bound by the doctrine of SPLAD. (Exhs. 202 and 211.)
- 23 3. SPLAD is comprised of 281 churches and IEL is one of the affiliated
24 churches. (Testimony of Sergio Navarete.)
- 25 4. A SPLAD-affiliated church operates as either a District Church or a
26 General Council Church. (Testimony of Sergio Navarete.)
- 27 5. A District Church is subject to the governance of SPLAD under
28 SPLAD's Constitution and Bylaws. (Testimony of Sergio Navarete and Exh. 202.)

1 6. A General Council Church may elect its own Board and operate
2 under its own Bylaws and Constitution subject to supervision by SPLAD.

3 (Testimony of Sergio Navarete.)

4 7. From 1980 to December 15, 2005, IEL was a General Council
5 Church and could elect its own Board and operate under its own Constitution

6 (Testimony of Sergio Navarete.)

7 8. Juan A. Reyes (defendant in Case Nos. BC 352107 and BC 356829)
8 served as Pastor of IEL as a credentialed minister until he was removed by SPLAD
9 in or about December 2005. (Testimony of Raul Castro.)

10 9. SPLAD appointed Pastor Sandoval to serve as interim Pastor upon
11 Pastor Reyes' removal. (Testimony of Sergio Navarete.)

12 10. On December 4, 2005, Pastor Sandoval requested that IEL change
13 its status from General Council Church to a District Council Church. (Testimony of
14 Sergio Navarete, and Stipulation of Counsel.)

15 11. On December 15, 2005, Sergio Navarete received a memorandum
16 requesting that IEL be made a District Council Church. (Testimony of Sergio
17 Navarete and Exh. 222.)

18 12. On December 16, 2005, a meeting was held at which formal
19 elections were held to replace the Officers and Board members of IEL. Sergio
20 Navarete, Raul Castro and Jose Espinosa were elected Officers and Board
21 members of IEL. (Testimony of Sergio Navarete.)

22 13. At the December 16, 2005 meeting, SPLAD made IEL a District
23 Council Church. (Testimony of Sergio Navarete and Exh. 58.)

24 14. After SPLAD assumed control of IEL as a District Council Church,
25 control was never relinquished by SPLAD. (Testimony of Sergio Navarete.)

26 15. On January 11, 2006, IEL transferred title to the real property located
27 at 1250 Bel levue Avenue, Los Angeles, California 90026 ("the Church property") to
28 SPLAD. (Court takes Judicial Notice of the Grant Deed, Exhibit 229.)

1 16. On April 23, 2006, over 400 members of IEL held their own election
2 to elect Officers and Board members. (Testimony of Victoria Carias.)

3 17. At the April 23, 2006 election, the following members were elected to
4 the Board and to the following positions: Juan Antonio Reyes–President; Epifanio
5 Zepeda–Vice President; Misael Portillo–Treasurer; Giaconda Lopez–Trustee;
6 Victoria Carias–Secretary. (Testimony of Victoria Carias.)

7 18. Victoria Carias did not request SPLAD's permission to conduct the
8 April 23, 2006 election and does not know if anyone else did. (Testimony of Victoria
9 Carias.)

10 19. Victoria Carias acknowledges that IEL's Constitution, Article 2, sets
11 forth that IEL is affiliated with the Assemblies of God. (Testimony of Victoria Carias
12 and Exh. 85.)

13 20. Victoria Carias did nothing to change IEL's Constitution with regard
14 to Article 2 and does not know if anyone else did. (Testimony of Victoria Carias and
15 Exh. 85.)

16 **B. The court makes the following conclusions of law with regard to**
17 **Phase One:**

18 IEL does not have standing to maintain this action. The party purporting to be IEL
19 consists of members of IEL ("the members") who assert their corporate status by virtue of
20 having conducted elections in the name of IEL and naming themselves as Officers and
21 Directors. (Findings of Fact 16-20.) The meeting held by the members on April 23, 2006
22 was not a corporate meeting of the corporate entity IEL, but rather a meeting of members
23 of the Church calling itself IEL. On December 16, 2005, the duly elected Board of IEL
24 made IEL a District Church under the supervision of SPLAD and subject to SPLAD's
25 Constitution and Bylaws. (Findings of Fact 12 and 13.) SPLAD's control of IEL was never
26 relinquished. Accordingly, the members have no standing to come before the court as IEL
27 since IEL's duly elected Officers and Board members did not so authorize.
28

1 Since the members do not have standing to pursue this action as IEL, no relief can be
2 obtained in Case No. BC 351174 and Judgment is awarded in favor of defendants SPLAD,
3 Sergio Navarete, Raul Castro, Jose A. Espinoza, Moises A. Sandoval, Ernesto Ramirez,
4 and Maria Elia Guzman.

5
6 **II. ISSUE TO BE ADDRESSED IN PHASE TWO:**

7 1. Does SPLAD own the Church property and is it entitled to Judgment on the
8 Second Cause of Action for Quiet Title?

9 2. Did the IEL defendants forcibly enter and detain the Church property as
10 alleged in BC 356829?

11 3. Is SPLAD entitled to damages in BC 356829 or BC 352107?

12 4. Is SPLAD entitled to Injunctive Relief?

13 **A. The court makes the following findings of fact with regard to**

14 **Phase Two:**

15 1. Juan A. Reyes (defendant in Case Nos. BC 352107 and BC 356829)
16 served as Pastor of IEL as a credentialed minister until he was removed by SPLAD
17 in or about December 2005. (Testimony of Juan A. Reyes.)

18 2. SPLAD appointed Pastor Sandoval to serve as interim Pastor upon
19 Juan A. Reyes' removal. (Testimony of Raul Castro.)

20 3. Juan A. Reyes was advised to stay away from the Church Property
21 by SPLAD after he was removed as pastor. (Testimony of Juan A. Reyes and Raul
22 Castro.)

23 4. On January 11, 2006, IEL transferred title to the real property located
24 at 1250 Bellevue Avenue, Los Angeles, California 90026 ("the Church Property") to
25 SPLAD. (Court takes Judicial Notice of the Grant Deed, Exh. 229.)

26 5. Sometime between December 2005 and April 23, 2006, SPLAD
27 attempted to change the locks on the Church property but was prevented from
28

1 doing so when the Police Department intervened at the request of Church
2 members. (Testimony of Noe Carrias.)

3 6. On April 23, 2006, a service was in progress at the Church property
4 with Raul Castro at the pulpit when Juan A. Reyes entered the Church with other
5 members and took the microphone and began speaking to the congregation.
6 (Testimony of Raul Castro, Juan A. Reyes, Misael Portillo and Noe Carrias,
7 Exh. 240.)

8 7. After Reyes took the microphone and started to speak, Raul Castro
9 exited the Church and proceeded to his office, whereupon Church members,
10 including Carlos Garcia, tried to prevent him from leaving the Church property by
11 blocking the door to his office with their bodies. (Testimony of Raul Castro.)

12 8. When Raul Castro was being held in his office, he overheard
13 someone on the other side of the door say, "He's not going to get out unless he
14 leaves in a box." (Testimony of Raul Castro.)

15 9. Raul Castro observed from the window of his office that his car had
16 been blocked in by other cars. (Testimony of Raul Castro.)

17 10. Raul Castro remained in his office unable to leave for one and
18 one-half hours. (Testimony of Raul Castro.)

19 11. A meeting of the Board of IEL was held on April 24, 2006, at which
20 time it was determined that Juan A. Reyes should be disciplined for the actions he
21 undertook at the service of April 23, 2006 and that Moises Sandoval should return
22 to IEL as Interim Pastor. (Testimony of Jose Espinoza and Exh. 242.)

23 B. **The court makes the following conclusions of law with regard to**

24 **Phase Two:**

25 1. SPLAD Owns the Church Property and is entitled to Judgment in the
26 Cause of Action for Quiet Title

27 The facts presented in the within case are similar to those of *Episcopal Church*
28 *Cases* (2007) 52 Cal.App. 4th 808. In that case, members of a parish wished to disaffiliate

1 with the Diocese and take the Church real property with them. The court, in examining a
2 long line of authority, held that parishioners are free to disaffiliate from a particular general
3 church so long as "they do not try to take the parish property with them."

4 The First and Fourteenth Amendments of the United States Constitution and Article I,
5 Section 4, of the California Constitution impose limitations on the jurisdiction of civil courts
6 over the internal affairs and administration of religious institutions. *Concord Christian*
7 *Center v. Open Bible Standard Churches* (2005) 132 Cal.App.4th 1396, 1408. The scope of
8 these limitations depends in part on whether a church is hierarchical or congregational. *Id.*,
9 citing *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 722-727 (1870) and *Rosicruzan Fellow. v.*
10 *Rosicruzan Etc. Ch.*, 39 Cal.2d 121, 131-133 (1952).

11 A hierarchical church is one where individual churches "are organized as a body
12 with other churches having similar faith and doctrine and with a common ruling convocation
13 or ecclesiastical head vested with ultimate ecclesiastical authority over the individual
14 congregations and members of the entire organized church." *Concord Christian, supra*,
15 132 Cal.App.4th at 1409 [citations omitted]. In a hierarchal church, a local congregation
16 which affiliates with the national church body becomes "a member of a much larger and
17 more important religious organization . . . under its government and control, and . . . bound
18 by its orders and judgments." *Ibid.* [citations omitted]. In contrast, a congregational church
19 is defined as one "strictly independent of other ecclesiastical associations and one that so
20 far as church government is concerned owes no fealty or obligation to any higher authority".
21 *Ibid.* [citations omitted].

22 The evidence establishes that AOG, SPLAD and IGL are part of a hierarchical
23 religious organization. AOG's Constitution and Bylaws establish a structure of national and
24 district administration. (Exh. 201.) *Concord Christian Center, supra*, 132 Cal.App.4th at
25 1410. AOG's Constitution professes that "we are a cooperative fellowship of Pentecostal,
26 Spirit-baptized saints . . . whose purpose is . . . to recognize and promote scriptural
27 methods for order of worship, unity, fellowship, work, and business for God; and to
28 disapprove unscriptural methods, doctrine and conduct . . ." (Exh. 201 at p. 79.) Among

1 AOG's constitutional prerogatives is "to approve scriptural teachings and practice and to
2 disapprove unscriptural teachings and practices" (Exh. 201 at p. 80, Art. III.)

3 AOG's Constitution and Bylaws establish regional District Counsels, whose
4 mandate is "supervision over all the ecclesial and sacerdotal activities of the Assemblies of
5 God in its prescribed field" to insure that local churches comply with AOG spiritual doctrine
6 (Exh. 201 at pp. 88-89, Art. X, §§ 2, 6.) This mandate includes the authority to credential
7 local church ministers [*id.* at pp. 86, 88, Arts. VII, X § 4]. Said local churches must accept
8 the tenets of AOG, adopt a constitution and bylaws "compatible with models recommended
9 by the district counsel" and "be subordinate to the district counsel in matters of doctrine and
10 conduct" [Exh. 201 at pp. 89-90, Art. XI, § 1(a)(4), (d)].

11 SPLAD and IEL are part of this structure. SPLAD's Constitution establishes it as an
12 AOG-affiliated district counsel Church whose jurisdiction includes Los Angeles [Exh. 201.,
13 p. 36, Art. II, § 1, 2; pp. 37-38, Art. IV, § 2, pp. 38-39, Art. V, § 4]. SPLAD's authority
14 includes the credentialing of local ministers and the right to decide disputes arising from
15 schisms within a congregation [Ex. 201, pp. 67-71, Art. VI, pp. 87-88, Art. XVI, § 2, 3]. Any
16 SPLAD decision in that regard may be appealed to AOG's headquarters in Springfield,
17 Missouri [*id.*]. AOG's decision is final and binding [*id.*].

18 By affiliating with AOG, a local church agrees to be governed by SPLAD's
19 constitution and bylaws, as a sovereign church [Exh.. 201., p. 50, Art. XIII, § 2(b); Bylaws,
20 pp. 72-73, Art. VII, § 4]. CHURCH has been AOG-affiliated since 1979.

21 Under both AOG's and SPLAD's Constitutions and Bylaws, local churches are
22 classified as sovereign or district-affiliated [Exh. 201., pp. 89-90, Art. XI]. However, a local
23 church may surrender its sovereignty to SPLAD, coming under SPLAD's direct supervision,
24 which may include SPLAD holding title to its real and personal property [Exh. 201, p. 64,
25 Art. V, § 5(b), pp. 74, 76, Art. VII, §§ 10(a), 10(f)]. And, where there is a dispute between
26 factions within a local church, SPLAD has absolute authority to resolve that dispute [*id.*, p.
27 87, Art. XVI, § 2(b)]. SPLAD's assistance in these areas may be brought about at the
28 request of the local church's pastor [*id.*, p. 74, Art. VII, § 8].

1 Based upon the foregoing, the Court will not interfere with the Church's authority to
2 govern itself, including decision regarding its property. Judgment on the Quiet Title Cause
3 of Action is therefore awarded to SPLAD and against IEL and the individually named
4 defendants.

5
6 **2. The IEL Defendants Forcibly Entered and Detained the Church Property.**

7 Civil Code §1159 provides that "every person is guilty of a forcible entry who: [. . .]
8 'after entering peaceably upon real property, turns out by force, threats, or menacing
9 conduct, the party in possessin.'"

10 Findings of Fact 6-10 above establish that Juan Reyes was told not to enter Church
11 property due to his suspension from the ministry. Notwithstanding his suspension, Reyes
12 and other IEL defendants came upon the property, took over the Church service and, by
13 intimidation, urged the appointed Pastor, Raul Castro, out of the Church and forcibly held
14 him in his office. The court finds that the elements of forcible entry and detainer have been
15 established; however, SPLAD put on no evidence of damages. The court thus awards
16 judgment in favor of SPLAD on the forcible entry and detainer cause of action, but awards
17 no damages.
18

19 **3. SPLAD Is Not Entitled to Damages in BC 356829 or BC 352107.**

20 SPLAD put on no admissible evidence of damages. SPLAD's expert, Mary Ellen
21 Sebold, attempted to testify to lost rental income, and other damages, but no prior witness
22 had laid a foundation for her assumptions with regard to those losses, thus her testimony
23 was inadmissible. SPLAD is thus awarded no damages.
24

25 **4. SPLAD's Injunctive Relief is Limited.**

26 The First and Fourteenth Amendments of the United States Constitution guarantee
27 that persons shall have the freedom to worship as they please. The IEL Church members
28 are thus able to attend the Church so long as their attendance does not interfere with
Church operations. Findings of Fact 6-10 above establish that the IEL defendants did in

1 fact disrupt Church operations and further that they prevented SPLAD from exercising its
2 operation rights. Accordingly, injunctive relief is granted only to the following: the IEL
3 defendants shall not disturb Church operations, including worship services, deface or
4 destroy Church property or prevent or inhibit SPLAD from exercising its rights under its
5 Constitution and Bylaws.

6 Dated: 9/11/07

8 
9 _____
10 ELIZABETH ALLEN WHITE
11 Judge of the Superior Court

12 EAW:md
13 9/10/07
14 southern.dec

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PROOF OF SERVICE

Episcopal Church Cases, California Supreme Court Case No. S155094

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 18011 Skypark Circle, Suite L&M, Irvine, California 92614.

On May 22, 2008, I served the documents described as APPLICATION FOR PERMISSION TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF OF IGLESIA EVANGELICA LATINA, INC., ET AL. IN SUPPORT OF PETITIONERS, on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, with postage prepaid, addressed as listed on the attached sheet, and then depositing such envelopes with the U.S. Postal Service.

I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date is more than one day after the date of deposit for mailing in this affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 22, 2008 at Irvine, California.



Rudy Mendoza

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