

CASE NO. S155094

SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

EPISCOPAL CHURCH CASES

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PETITIONERS' OPENING BRIEF ON THE MERITS

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, Coordination Trial Judge

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STATEMENT OF ISSUES

1. Should California courts use the “neutral principles of law” method commended by the U.S. Supreme Court (and followed by at least six modern California Court of Appeal decisions) in resolving church property disputes, or revert back to the “deference to hierarchy” approach of older cases (followed in the present case by the Fourth Appellate District, Division Three)?

2. Does Corporations Code section 9142(c) permit a religious denomination, which does not hold title to property, to create a trust in its favor over property owned by a separate religious corporation, without the latter’s knowledge or express agreement? On this issue the present Opinion is expressly in conflict with *California-Nevada Annual Conference v. St. Luke’s United Methodist Church* (2004) 121 Cal.App.4th 754.

3. If so, does Corporations Code section 9142(c) violate the establishment and equal protection clauses of the United States and California Constitutions by permitting religious organizations, and only religious organizations, to create trusts over property they do not own without the express consent of the owner?

4. When a corporation speaks out about the actions of a religious denomination by voting to disaffiliate from it, and the denomination then challenges the validity of the disaffiliation and claims ownership of the corporation’s property, do those claims “arise

from . . . act[s] in furtherance of the right of free speech in connection with a public issue” within the meaning of Code of Civil Procedure section 425.16?

INTRODUCTION AND SUMMARY OF ARGUMENT

How is the ownership of disputed real property determined? How are trusts in real property created? The well-established rules are that (1) the record titleholder is presumed to be the owner; and (2) only the owner can create a trust in the property in favor of another.

The Plaintiffs in the current action – the Episcopal Diocese of Los Angeles and the national Episcopal Church – seek to have certain religious denominations specially exempted from these rules. They seek a rule that allows “hierarchical churches” to unilaterally appropriate for themselves property purchased by and held in the name of other, legally separate entities, on the ground that the “hierarchical church” is somehow endowed with preeminent rights.

Such an approach, however, necessarily entangles courts in disputed questions of religious authority (e.g., what is an “hierarchical church”), and inevitably fosters the establishment of and preference for certain religious denominations. Although some anachronistic holdings – rooted in disputes over religious doctrine or discipline that are not property disputes *per se* – might seem to support such an approach, modern concepts of church property law and the separation of church and state properly reject special rules for religious denominations. Instead, the current and preferable approach is to apply “neutral principles of law” to church property disputes.

“Neutral Principles of Law” Should Determine Church Property Disputes. Ever since the United States Supreme Court commended a “neutral principles of law” approach to resolving church property disputes three decades ago, California courts have consistently followed that approach – until this case. The “neutral principles” method examines deeds, articles of incorporation, and other documentary evidence to determine ownership, just as in a dispute involving non-religious parties. The alternative proffered by the Court of Appeal in the present case is an antiquated “deference to hierarchy” approach (which the Opinion labels the “principle of [religious] government” method) in which the opinions or decrees of a supposedly superior religious body trump the civil law of property and trusts.

The “neutral principles” approach should be confirmed, as it is the preferred legal paradigm. Beyond its express recommendation by the U.S. Supreme Court, “neutral principles” requires no examination of church government, structure or organization and, thus, protects courts from entangling themselves in internal church matters. In addition, “neutral principles of law” produces a just result consistent with the citizenry’s settled expectations.

By contrast, the “deference to hierarchy” rule (or “principle of government” standard) is an unfair and disfavored rule in California. That approach has its roots in disputes over religious doctrine, discipline or polity and should be limited to such cases. When the “deference to hierarchy” rule is distorted to apply to property disputes between formerly affiliated, but separate, religious entities, a myriad of problems ensues.

The “deference” rule’s essentially irrebuttable presumption in favor of religious denominations has the unjust effect of undermining people’s settled expectations as to ownership, and stripping property from the persons who bought, improved and maintained it, solely because they chose to end their spiritual affiliation with a larger religious institution. This unexpected forfeiture aspect militates against such “deference.”

The “deference” rule also requires a secular court to determine whether a church is “hierarchical” and how it internally governs itself. These are intensely religious questions from which courts should abstain.

To the extent that some outdated California decisions may be read to support a “deference to hierarchy” approach to church property disputes (or to import consideration of religious hierarchy into the “neutral principles” analysis), they should be disapproved.

Corporations Code Section 9142 Does Not Authorize Religious Denominations to Unilaterally Create Trusts Over Property They Do Not Own. Nothing in Corporations Code section 9142, subdivision (c), is contrary to the “neutral principles” approach; neither is it contrary to the well-established rule that only the owner of property can subject it to a trust in favor of another.

Section 9142(c) actually *limits* the creation of trusts over a religious corporation’s property. The statute recognizes that the governing instruments of a religious denomination (e.g., constitution, charter or canons) might allow for such trusts with the owner’s consent, but nowhere does it state that a denomination’s unilateral

enactment of an internal “rule” can appropriate property belonging to other separately incorporated religious entities.

Indeed, any such interpretation of the statute would unconstitutionally establish certain religious denominations with the power to appropriate the property of their adherents without even the offset of just compensation. Such an interpretation of section 9142(c) would elevate the denominational leadership’s decrees above the normal rules of law and property, and would be the essence of establishment of religion.

When a Denomination Pleads a Church’s Disaffiliation As the Genesis of Claims to Confiscate Its Property, Those Claims “Arise From” Acts in Furtherance of the Right of Free Speech Within the Meaning of the Anti-SLAPP Statute. A corollary of applying “neutral principles of law” to church property disputes is that religious denominations have no special dispensation from Code of Civil Procedure section 425.16 – California’s anti-SLAPP¹ statute. When a denomination brings claims that are based on a local church’s exercise of corporate democracy to disaffiliate from the denomination over a public issue, those claims trigger anti-SLAPP scrutiny.

The operative First Amended Complaint here expressly challenges, and seeks a judicial decree setting aside, the local church’s corporate disaffiliation from the Episcopal Church over a widely reported public issue. The Complaint also alleges that the disaffiliation triggered the right of the Plaintiff Diocese to claim

¹ “SLAPP” is an acronym for “Strategic Lawsuit Against Public Participation.”

ownership of the property. Under this Court's precedents, these claims "arise from" acts in furtherance of the right of free speech in connection with a public issue.

The Court of Appeal here misapplied "blue pencil" editing to remove express allegations of protected activity from the Complaint, and mused that the Complaint could have raised other claims not based on protected activity. This is improper. If a court can simply "blue pencil" away pleaded language indicating that the claims are based on protected activity, virtually every SLAPP suit can be converted into a non-SLAPP.

The Opinion of the Court of Appeal should be reversed and the Order and Judgment of the trial court should be reinstated.

STATEMENT OF FACTS²

A. The Corporation and Property of St. James Church.

On March 1, 1949, several Newport Beach residents incorporated a California nonprofit religious corporation called "The Rector, Wardens and Vestrymen of St. James Parish in Newport Beach, California" ("St. James Church" or the "Corporation"). (8

² This appeal is from the trial court's grant of an anti-SLAPP motion and the facts, therefore, are limited to those allegations in the complaints which are not in dispute, judicially noticeable documents, and the two declarations submitted in support of the motion.

RA³ 1540-45.) None of the Plaintiffs were among the incorporators of St. James Church. (*Id.*)

Since incorporation, St. James Church has been governed by a board of directors elected by its voting members in accordance with its bylaws and the Corporations Code. (4 AA 720; Cal. Corp. Code §§ 9210(a), 9220(a), 9310(a).) The twelve volunteer directors of St. James Church, sued individually in this action, are James Dale, Barbara Hettinga, Paul Stanley, Cal Trent, John McLaughlin, Penny Reveley, Mike Thompson, Jill Austin, Eric Evans, Frank Daniels, Cobb Grantham, and Julia Houten (the “Board”). (1 AA 1, 74.) The Board was elected by the voting members of St. James Church well before this dispute erupted. (4 AA 720-721.)

Since 1950, St. James Church has held record title to its property. The original parcel on which the church sanctuary sits was donated by a private business for the use of the soon-to-be incorporated church. This donation was made through “The Protestant Episcopal Bishop of Los Angeles, a Corporation Sole,” which then deeded the property directly to St. James Church for consideration, without any statement of trust in favor of the Diocese or the Episcopal Church. (4 AA 721; 8 RA 1706, 1708.)

Over the next fifty years, the Corporation purchased additional parcels of property in its own name, with funds donated exclusively

³ AA and RA refer to “Appellants’ Appendix” and “Respondents’ Appendix” filed in Appeal Nos. G036096 and G036408, with the preceding number as the volume and the following number the page.

by its members. (4 AA 721-22.) St. James Church has never settled a trust with respect to any parcel of its property. (4 AA 722.)

B. The Corporation's Affiliation With the Episcopal Church.

As with many religions, local churches affiliated with the Episcopal Church are composed of individual members who, through their monetary donations, pay for a priest and a church building. (5 AA 981.)

An Episcopal diocese is a group of congregations within a particular geographical area. A diocese is headed by a diocesan bishop and any assistant bishops, and holds an annual convention of delegates from congregations falling within its boundaries. (4 AA 737, 740.)

Plaintiff-in-Intervention The Episcopal Church ("Episcopal Church") is an unincorporated association, headquartered in New York City, comprised of all Episcopal dioceses in the United States. (2 IA⁴ 345-46.) Both the Episcopal Church and its dioceses promulgate internal rules called "canons." (2 IA 346.)

From its founding until mid-2004, St. James Church was affiliated with the national Episcopal Church and Plaintiff The Protestant Episcopal Church in the Diocese of Los Angeles ("Diocese"), as reflected in its original articles of incorporation. (8 RA 1540-45.)

⁴ IA refers to the Appendix filed by the Plaintiff-in-Intervention Episcopal Church, in Appeal No. G036868.

However, unlike churches in the Roman Catholic Church or Mormon Church, this affiliation *did not* entail the titling of the property of St. James Church in the name of the denomination or the Diocesan bishop. Rather, at all times since 1950, St. James Church has held record title to all of its property. (4 AA 721-22; 8 RA 1706, 1708.) In addition, the members of St. James Church have borne all expenses connected with the ownership and maintenance of its property, and have not taken funds from the Diocese for any purpose. (4 AA 721.) In fact, the Diocese complained about the loss of significant income from St. James Church in its original Complaint. (1 AA 24, ¶110.)

C. St. James Church’s Dual Status as Spiritual “Parish” and Temporal “Corporation.”

Prior to the incorporation of St. James Church, a group of individuals in Newport Beach had worshipped as an Episcopal Church “mission,” or fledgling congregation, of the same name. (4 AA 721; 8 RA 1542.) Once the group had grown, it sought to be recognized by the Diocese as a “parish” – an Episcopal Church term meaning a self-supporting congregation in good standing. (6 AA 1124-26.) Notably, retitling its property in the name of the Diocese, or settling an express trust in its favor, was not one of the obligations of “parish” recognition.

Whether the Diocese recognizes St. James Church as a parish of the Episcopal Church is distinct and separate from whether the church

is a California corporation in good standing, governed by its board of directors and entitled to own its property. (4 AA 888-89.)

D. St. James Church Votes to Publicly Disassociate From the Diocese and Episcopal Church.

Over the past five years, the theological turmoil of the Episcopal Church over whether to reassert core doctrines of the Christian faith or reappraise those doctrines in light of modern social developments has become a matter of increasing public visibility. (4 AA 723.)

Unfortunately, St. James Church found itself in significant disagreement with the Diocese over the theological direction of the Episcopal Church. As a result, in 2004, St. James Church decided to publicly express its disagreement by disassociating from the denomination and affiliating with the Anglican Church of Uganda – another national member church of the thirty-eight member worldwide Anglican Communion. (4 AA 723-24.) St. James Church affiliated with the Anglican Church of Uganda to allow it to maintain its connection with the worldwide Anglican Communion.

On July 22, 2004, the Board of St. James Church unanimously resolved to end all relations with the Diocese and the Episcopal Church. (4 AA 723, 916-18.) On August 16, 2004, at a special meeting, the voting members of St. James Church ratified and approved the change of affiliation by a vote of over 95% in favor. (4 AA 724, 920-22.)

At a second special meeting one week later, the members approved an amendment to the articles of incorporation deleting all references to the Diocese and the Episcopal Church, and their constitutions and canons, by a vote of 341 to 4. A duly-approved amendment to the Corporation's articles was accepted for filing by the Secretary of State on August 17, 2004. (4 AA 725, 924-26.)

The media coverage of St. James Church's disaffiliation from the Diocese and Episcopal Church has been extensive, including over 300 print and wire stories, as well as national network television coverage. (4 AA 930-31.)

STATEMENT OF THE CASE

A. The Diocese and Episcopal Church Sue St. James Church to Reverse the Disaffiliation and Confiscate the Church's Property.

In the wake of the disaffiliation, Plaintiffs, which include the Diocese, two of its bishops, and a single former lay member of the Corporation (collectively, "Diocese"), filed suit against St. James Church, its volunteer directors, and three of its clergy (collectively, "St. James Church").⁵

⁵ The Diocese also filed suit against All Saints' Church, Long Beach, and St. David's Church, North Hollywood, their volunteer directors, and three of their clergy. All three cases were coordinated in the Orange County Superior Court as Judicial Council Coordination Proceeding No. 4392.

Both the Diocese's original Verified Complaint and its First Amended Complaint allege that St. James Church has forfeited its property because of the disaffiliation. (1 AA 3-4; 1 AA 75.) Both Complaints also seek judicial declarations reversing the disaffiliation and forcing St. James Church to remain Episcopalian notwithstanding the will of over 95% of its members. (1 AA 20, 27; 1 AA 94-95, 100.) Both Complaints also allege that the volunteer directors of St. James Church breached their fiduciary duty by disaffiliating from the Diocese and Episcopal Church. (1 AA 22, 98-99.) The Verified Complaint even sought punitive damages against St. James Church's volunteer directors. (1 AA 26.)

The national Episcopal Church thereafter filed a Complaint-in-Intervention seeking a judicial declaration that all property held by St. James Church is impressed with a trust in favor of the denomination. (2 IA 351.)

B. St. James Church's Successful Anti-SLAPP Motion and Demurrer.

St. James Church and the individual defendants filed a special motion to strike the First Amended Complaint as a strategic lawsuit against public participation. (3 AA 695.) In opposition, the Diocese submitted three lengthy declarations purporting to opine on the supposedly "hierarchical" nature of the Episcopal Church and the allegedly binding nature of its internal canon rules. (2 AA 203-487; 3 AA 488-506.)

The trial court granted the special motion, struck the First Amended Complaint without leave to amend, and entered a Statement of Decision. (7 AA 1427; 1489-1502.) The trial court ruled that “defendants . . . are being sued for . . . voting to break ties with the Church, [] amending the parish’s articles of incorporation, and submitting a press release announcing the reasons for the separation.” The trial court ruled further that “California courts are not bound by Canon law [a]nd the hierarchical theory of resolving disputes over church property has been repudiated by California courts. Instead, California follows neutral principles of law in resolving church disputes over church property . . .” (7 AA 1496, 1498.)

The court also sustained without leave to amend St. James Church’s demurrer to the First Amended Complaint-in-Intervention filed by the Episcopal Church as Plaintiff-in-Intervention. (4 IA 857.) The trial court entered a judgment of dismissal as to the Episcopal Church on February 24, 2006. (4 IA 860-61.)

C. The Court of Appeal Reverses, Employing a Rule of Blind Deference to Denominational “Government.”

The Diocese and the Episcopal Church timely appealed. The Fourth Appellate District, Division Three, reversed in full.

Disagreeing with almost thirty years of appellate precedent, the Fourth Appellate District held that church property disputes in California are governed by a “deference to hierarchy” or “principle of government” approach that allows an “hierarchical” religious denomination to unilaterally create rules by which it can override civil

property law. (Opinion, p. 2.) In so doing, the Fourth Appellate District rejected the “neutral principles of law” approach commended by the United States Supreme Court.

Disagreeing with *California-Nevada Annual Conference v. St. Luke’s United Methodist Church* (2004) 121 Cal.App.4th 754 (“*St. Luke’s*”), the Opinion held that Corporations Code section 9142, subdivision (c), permits a religious denomination to create a trust for its benefit over property it does not own, merely by enacting an internal rule to that effect. (Opinion, p. 58.)

Finally, the Fourth Appellate District held that the Diocese’s lawsuit did not “arise from” acts in furtherance of the right of free speech under Code of Civil Procedure section 425.16. (Opinion, p. 8.)

STATEMENT OF APPEALABILITY

This appeal is from a decision of the Court of Appeal in Case Nos. G036096, G036408, and G036868, which reversed in full: (1) the trial court’s Order striking without leave to amend the Diocese’s First Amended Complaint as a strategic lawsuit against public participation. (Cal. Code Civ. Proc. §§ 425.16(j) and 904.1(a)(13)); and (2) the trial court’s Order granting without leave to amend St. James Church’s demurrer to the Episcopal Church’s First Amended Complaint-in-Intervention and the ensuing Judgment thereon (*Id.*, § 904.1(a)(1).)

LEGAL DISCUSSION

I. CALIFORNIA COURTS SHOULD APPLY PURE “NEUTRAL PRINCIPLES OF LAW” TO DECIDE CHURCH PROPERTY DISPUTES.

The fundamental issue facing courts in resolving disputes involving churches is to apply a standard that neither infringes upon the exercise of, nor establishes, religion. In certain circumstances, courts must abstain from the decision-making process – for example, when a party challenges religious doctrine or discipline – and the courts have historically deferred to the denomination on these issues. However, in property disputes, courts may apply religion-neutral rules of decision – “neutral principles of law” – to resolve ownership.

In the present case, the Diocese and Episcopal Church conflate the two approaches to claim a preeminent right to self-determine property disputes with former local churches. Asserting that they have passed an internal rule that supervenes California property and trust law, the denomination argues that civil courts must simply “defer” to that internal rule, permitting the denomination to strip formerly affiliated religious corporations of their property.

The modern approach rejects this circular and distorted application of “deference,” and favors the application of “neutral principles of law” as the best means of resolving disputes between religious entities over property without entangling courts in religious disputes, favoring or establishing any particular religious form, or interfering with the free exercise of religion by any group, large or

small. Under “neutral principles,” the disputed property in this case is owned by the entity which paid for, acquired and has held unblemished title to it: St. James Church.

A. The “Neutral Principles of Law” Approach Is the Preferable Method of Resolving Church Property Disputes.

1. For the Past 40 Years, the United States Supreme Court Has Commended the “Neutral Principles” Method Over the “Deference to Hierarchy” Rule.

In its most recent decisions on the topic, the U.S. Supreme Court has strongly favored resolution of church property disputes by use of the same “neutral principles of law” applicable to all other disputes. “Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. *And there are neutral principles of law, developed for use in all property disputes, which can be applied without ‘establishing’ churches to which property is awarded.*” (*Presbyterian Church v. Hull Church* (1969) 393 U.S. 440, 449 [emphasis added].)

According to the U.S. Supreme Court, these “neutral principles of law” are deeds, local church charters, state statutes, and provisions in the constitution of the general church concerning the ownership and control of church property. (*Maryland & Va. Churches v. Sharpsburg Church* (1970) 396 U.S. 367, 368.)

In the leading case, *Jones v. Wolf* (1979) 443 U.S. 595, the court addressed a dispute virtually identical to the one at bar.

Rejecting the denomination’s claim that its own hierarchy trumped the normal civil law precepts of property ownership, the court laid out a persuasive case for the use of “neutral principles.” The method’s “primary advantages” include that “it is *completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity*” and “relies exclusively on *objective, well-established concepts of trust and property law* familiar to lawyers and judges.” (*Id.* at 603 [emphasis added].) As a result, the “neutral principles” approach “promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.” (*Id.*)

In addition, *Jones* confirmed that courts need not “defer” to the denomination in property disputes that do not turn on disputed issues of religious doctrine. “We cannot agree, however, that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved.” (*Jones*, 443 U.S. at 604-05.)

In short, the U.S. Supreme Court commended the “neutral principles” method as one which would allow courts to set aside entirely the thorny and constitutionally-problematic questions of religious doctrine, discipline and church polity in resolving church property disputes.

2. A Generation of California Courts Has Upheld the “Neutral Principles” Approach, Epitomized by the Seminal Decision in *Protestant Episcopal Church v. Barker*.

Just two years after *Jones*, the California Court of Appeal decided *Protestant Episcopal Church in the Diocese of Los Angeles v. Barker* (1981) 115 Cal.App.3d 599 (“*Barker*”), an exhaustive decision both adopting and applying “neutral principles of law.”

In *Barker*, four Episcopal churches disaffiliated from the same Episcopal Diocese of Los Angeles that is Plaintiff here. (*Barker*, 115 Cal.App.3d at 604.) The Diocese and the Episcopal Church sued the four, claiming ownership of the property of each church.

The facts as to three of the four *Barker* churches were identical to those of St. James Church. Each church (i) had started as an unincorporated Episcopal “mission,” during which its property remained in the name of the bishop of the Diocese; (ii) eventually applied for recognition as an Episcopal “parish,” which entailed making a number of loyalty oaths and promising to conform to the “canons” of the Diocese and Episcopal Church; (iii) incorporated as a California nonprofit religious corporation; (iv) acquired title to its property in its own name; (v) incorporated prior to any Episcopal “canon rules” purporting to place local church property in trust; and (vi) disaffiliated from the denomination. (*Barker*, 115 Cal.App.3d at 609.)

As here, the Diocese in *Barker* argued that the court must defer to its own determination of the property dispute, which it argued

trumped the result mandated by civil law. (*Id.* at 611.) The *Barker* court disagreed. Reversing a judgment for the Diocese, the court “conclude[d] that California has adopted neutral principles of law as the basis for resolution of church disputes . . . [and] that property disputes between ecclesiastical claimants, like property disputes between temporal claimants, must be resolved by neutral principles of law.” (*Barker*, 115 Cal.App.3d at 615.) The Court of Appeal expressly rejected the “deference to hierarchy” rule as having any applicability to church property disputes, and restricted it only to cases involving disputed doctrinal matters. “[U]se of the hierarchical theory is restricted to doctrinal and ecclesiastical controversies and does not extend to property disputes . . . We, therefore, reject and disapprove the reliance placed by the trial court on hierarchical theory as a means of adjudicating this cause.” (*Id.*)

Barker was not alone. That watershed decision followed *Presbytery of Riverside v. Community Church of Palm Springs* (1979) 89 Cal.App.3d 910, *cert. denied*, 444 U.S. 974 (1979) (“*Presbytery of Riverside*”), another church property dispute ensuing after a local church voted overwhelmingly to disaffiliate from a denomination. (*Id.* at 914, 916-18.) In *Presbytery of Riverside*, Justice Kaufman explained why “neutral principles” applied to the dispute despite the alleged “hierarchical” structure of the Presbyterian denomination: “[T]he dispute to be decided by the court in this case is essentially a property dispute; the only relationship between the religious controversy and the dispute in the case at bench is that the latter arose out of the former.” (*Id.* at 923.) Because the property dispute could “be resolved without the necessity of becoming involved with or

attempting to resolve the underlying ecclesiastical controversy,” the court held that “the trial court acted with propriety in determining the case on the basis of ‘neutral principles of law’ and the ‘formal title’ doctrine.” (*Presbytery of Riverside*, 89 Cal.App.3d at 923.)

Presbytery of Riverside itself followed even earlier California decisions using “neutral principles of law.” (See, e.g., *Samoan Congregational Christian Church in the United States v. Samoan Congregational Christian Church in Oceanside* (1977) 66 Cal.App.3d 69, 77 [invoking “the neutral principles of law developed for use in all property disputes,” and “examin[ing] the corporate articles, bylaws and pertinent state law” to resolve denomination’s claim to own local church property].)

From *Presbytery of Riverside* and *Barker* until the Opinion at issue here, every published church property case has reaffirmed that the “neutral principles” approach is the law of California, with review consistently denied by this Court. (*Korean United Presbyterian Church v. Presbytery of The Pacific* (1991) 230 Cal.App.3d 480, 496 [*Barker* is “the most definitive appellate consideration of the legal principles concerning church property disputes in California”], *rev. denied*, 1991 Cal. LEXIS 4085 (Cal. Aug. 29, 1991); *Guardian Angel Polish Nat’l Catholic Church v. Grotnik* (2004) 118 Cal.App.4th 919, 930 [“In settling a church property dispute, such as that currently before us, courts must apply neutral principles of law . . .”]; *St. Luke’s*, 121 Cal.App.4th at 762 [*Barker* is “the leading case”]; *Concord Christian Ctr. v. Open Bible Standard Churches* (2005) 132 Cal.App.4th 1396, 1408 [“[W]e must apply neutral principles of law de novo.”].)

California's Court of Appeal was not alone. Since the U.S. Supreme Court's decision in *Jones*, at least eleven states have adopted the "neutral principles of law" method – a majority of states which have reported church property decisions. (Natalie W. Yaw, *Cross Fire: Judicial Intervention in Church Property Disputes After Rasmussen v. Bunyan*, 2006 Mich. St. L. Rev. 813, 825-26 (2006).)

More than a generation of church members, attorneys and judges have relied upon "neutral principles" in structuring their affairs. St. James Church respectfully requests that this Court explicitly confirm that "neutral principles" is the law of California with respect to church property disputes.

B. The "Deference to Hierarchy" Rule Is Properly Limited to Cases That Turn on Religious Doctrine, Discipline or Polity, Not Property Disputes Ensuing After a Disaffiliation.

The Diocese and Episcopal Church advocate a purported alternative method for resolving this and other church property disputes: the "deference to hierarchy" approach (or in the language of the Opinion, the "principle of [religious] government" standard). (Opinion, p. 5.) This, however, misapplies "deference." In fact, the "deference to hierarchy" approach addresses a different kind of case – disputes over religious doctrine, discipline or polity (organization), *not* church property. In addition, a number of this Court's ancient decisions cited by the Opinion as support for the "deference" rule in fact do not do so, and in some cases, stand for the precise opposite.

1. “Deference” Only Applies When a Suit Directly Challenges or Cannot Be Resolved Without Deciding a Religious Question.

The undisputed genesis of the “deference to hierarchy” rule is *Watson v. Jones* (1872) 80 U.S. 679. In *Watson*, the United States Supreme Court confronted a dispute between two groups, each claiming to be the true “Third or Walnut Street Presbyterian Church.” (*Id.* at 717.) In ruling on this “controversy, essentially ecclesiastical,” the court held that “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, and as binding on them, in their application to the case before them.” (*Id.* at 713, 727.) *Watson*’s approach came to be known as “hierarchical theory” or the “deference to hierarchy” rule.

Importantly, *Watson* did not hold that deference is necessarily required when a court is confronted with a dispute over property ownership. Indeed, as *Jones v. Wolf* held, the First Amendment does not “require[] the States to . . . defer[] to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved.” (*Jones*, 443 U.S. at 604-05.)

In the wake of *Jones v. Wolf*, *Watson*’s “deference to hierarchy” approach retains vitality only as to “questions of discipline, or of faith, or ecclesiastical rule, custom, or law” – the context in which it was decided. Two leading examples of such circumstances are *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, and

Gonzalez v. Roman Catholic Archbishop of Manila (1929) 280 U.S. 1. Each involved a dispute that could not be resolved without *necessarily* deciding a purely religious question.

In *Milivojevich*, the plaintiff asked the civil courts to prevent the mother church from dividing his diocese into three dioceses and defrocking him as bishop. (*Id.* at 704.) The Illinois courts held that the reorganization and defrocking were “procedurally and substantively invalid” under the denomination’s own rules. (*Id.* at 708.) The U.S. Supreme Court reversed. Civil courts may not adjudicate how the church should be structured. (*Milivojevich*, 426 U.S. at 708.) That such decisions might incidentally affect property held by the church, did not mean that normal civil property principles might govern; “this case essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals.” (*Id.* at 709.)

In *Gonzalez v. Roman Catholic Archbishop of Manila* (1929) 280 U.S. 1, the plaintiff asserted that he was heir to a “chaplaincy” – an endowed, income-producing position – under a civil law will. (*Id.* at 12.) The plaintiff demanded that the Archbishop of Manila appoint him a Catholic “chaplain” so that he could enjoy the income. The Archbishop refused, citing the plaintiff’s lack of religious qualifications. (*Id.*) The U.S. Supreme Court applied the deference rule in holding that the Archbishop’s decision was not open to civil challenge. (*Id.* at 16.) There was no other constitutionally acceptable alternative as the court could not resolve the dispute without becoming entangled with church governance and structure. Taken together, these cases illustrate that a “deference” approach is

appropriate *only* where the dispute cannot be determined without making a religious determination.

2. Taken as a Whole, California Precedent Holds That the Deference Rule Is Not Applicable to Property Disputes That Do Not Implicate Religious Doctrine, Discipline or Polity.

The Opinion hypothesized that this Court has “consistently used a ‘principle of government’ or ‘highest church judicatory’ approach to resolve disputes over church property . . .” (Opinion, p. 2.) That is not the case. Careful examination of the cited cases demonstrates that California law understands the difference between a *Milvojevich*-style dispute over ecclesiastical issues, and a *Jones v. Wolf*-style property dispute.

Perhaps the earliest California case is *Wheelock v. First Presbyterian Church of Los Angeles* (1897) 119 Cal. 477. There, the Presbyterian denomination, acting under its internal rules, divided the First Presbyterian Church’s congregation into two new churches – the Westminster Presbyterian Church and the Central Presbyterian Church – and ordered an equitable split of property. (*Id.* at 480.) The Westminster church refused to release any of its property, giving rise to the suit. (*Id.*)

This Court recognized that it should defer to the *ecclesiastical* decision of the denomination to divide the congregation into two churches, but reserved the property issue for itself: “It may be conceded, for the purposes of the case, that neither the Presbytery nor

the commission appointed by it had the power to divide and apportion the money held by the church corporation; and that *the disposition of those moneys were matters for civil courts, and that ecclesiastical decrees bearing upon such disposition are not binding upon judicial tribunals.*" (*Wheelock*, 119 Cal. at 482 [emphasis added].)

This Court then applied its own notions of equity to conclude that the funds and property of the former First Presbyterian Church should be divided *pro rata* among the two new Presbyterian churches formed out of it. (*Id.* at 483-86.) This Court's independent judicial assessment coincidentally concurred with the denomination's conclusion; however, the Court did not simply "defer" to the denomination's division of the property. To the contrary, *Wheelock* jealously guarded the right of civil courts to adjudicate property disputes without any deference to ecclesiastical pronouncements. (*Id.* at 482.)⁶

⁶ Several decisions almost as ancient as *Wheelock* adopted the position of the denomination as to which faction of a split local church should enjoy the property. However, contrary to *Watson* and *Wheelock*, these cases employed no "deference" rule, *but actually delved into evaluating the validity of the denomination's decisions under the church's own rules.* (*Horsman v. Allen* (1900) 129 Cal. 131, 136, 140 [court evaluated whether the United Brethren in Christ's adoption of a new constitution was so "radical in nature as to affect the identity of the original organization, or of the original faith," ultimately holding that it was "valid and binding"]; *Permanent Committee of Missions v. Pacific Synod of the Presbyterian Church* (1909) 157 Cal. 105, 127-28 [when plaintiff challenged the denomination's merger with another, this court embarked on a far-ranging consideration of the Cumberland Church's ability to merge].)

Other California courts have also limited *Watson*'s "deference to hierarchy" rule to doctrinal cases, and declined to apply it to property disputes between two formerly-affiliated, but separate religious entities. In *Presbytery of Riverside*, Justice Kaufman marked the dividing line: "*When the dispute to be resolved is essentially ownership or right to possession of property, the civil courts appropriately adjudicate the controversy even though it may arise out of a dispute over doctrine or other ecclesiastical question, provided the court can resolve the property dispute without attempting to resolve the underlying ecclesiastical controversy.*" (*Presbytery of Riverside*, 89 Cal.App.3d at 919 [emphasis added].)

When a local church ends its affiliation with a denomination, and a church property dispute ensues, the situation is qualitatively different than in *Watson* (where two groups vied for control over a church that all parties agreed was Presbyterian), *Milivojevich* (where the suit sought to prevent the denomination from organizing as it saw fit), or *Gonzalez* (where the plaintiff demanded that the Catholic Church appoint him as a chaplain). In the disaffiliation setting, there is no "intrachurch dispute" – rather, one church has parted ways entirely with another. (*Presbytery of Riverside*, 89 Cal.App.3d at 923-24 ["In truth, there is no existing religious or ecclesiastical controversy . . . Community Church ended that controversy when it

Far from supporting an extension of the "deference" rule to church property disputes ensuing after a change of affiliation, *Horsman* and *Permanent Committee* dealt with *direct challenges to purely religious issues*: church identity, character and faith. In this regard, they are similar to *Milivojevich*. They certainly do not stand for unbridled application of the "deference" rule in all settings.

withdrew from UPCUSA and terminated its relationship with the Presbyterian denomination.”]; *see also Barker*, 115 Cal.App.3d at 615 [no need to apply hierarchical theory to property disputes].) There is no basis for applying the “deference” rule to a property dispute when the local church simply wishes to be left alone. As in *Presbytery of Riverside, Barker* and here, there is no question of religious doctrine, discipline or polity at issue that would invoke the need for “deference.”

3. The Mere Existence of Religious Controversy Does Not Transform a Property Dispute Into a Religious One.

Typically, church property disputes occur in the context of broader disagreements amongst the parties over religious issues. Often, the disputants may excommunicate each other or otherwise purport to declare each other without authority. However, the mere existence of such disagreements and declarations does not trigger necessary use of the “deference” rule.

For example, denominations facing a church disaffiliation often purport to remove and replace the local religious corporation’s board or disenfranchise its members under the guise of a “doctrinal” determination. But there is no need for courts to take sides as to such maneuvers to resolve the property issues. To determine whether any “deference” is needed, “[t]he relevant inquiry must be whether the court *can* resolve the property dispute on the basis of neutral principles of law which do not involve the resolution by the court of

ecclesiastical issues . . .” (*Presbytery of Riverside*, 89 Cal.App.3d at 923 [emphasis added].)

Neither side should be entitled to deference to its position simply by declaring that it has decided on its own how the dispute should end, or by purporting to declare who the “real” local church corporation or the “real” denominational leadership is comprised of. Otherwise, courts are placed in the untenable position of deciding competing claims to religious deference.⁷

The better approach is to ignore such self-serving “determinations” entirely when a dispute can be resolved by “neutral principles.” Thus, *Presbytery of Riverside* paid no attention to the denomination’s claim to have “suspended” the local church’s leadership after the disaffiliation. (*Presbytery of Riverside*, 89 Cal.App.3d at 924.) Recognizing the creeping religious entanglement posed by this tactic, another Court of Appeal likewise refused to permit a property dispute to be converted into a religious dispute merely because one side or the other had sprinkled the case with excommunications or religious pronouncements: “A general church may certainly view a local church’s board of directors as being ‘unauthorized’ and not in compliance with the general church’s rules. This is an ecclesiastical matter, and not a matter with which a civil

⁷ For example, here, St. James Church has affiliated itself with the Anglican Church of Uganda. If that church – or an organ of the worldwide Anglican Communion – decrees that St. James Church owns the property or that some particular group within it is entitled to corporate control, to which declaration would a court attempting to apply the “deference” rule defer? Any answer necessarily entangles the court in disputed issues of religious authority.

court would interfere. But we respectfully disagree with the view that acts of a board of directors of a lawfully formed corporation may be viewed by a civil court to be a nullity simply because those acts are deemed unauthorized not by any recognized rule of state law, but rather only by the general church's own rules." (*St. Luke's*, 121 Cal.App.4th at 771.)

Nevertheless, some lower courts have unadvisedly considered the particular denomination's "hierarchical" pronouncements as a part of the "neutral principles" analysis. For example, *Korean United*, a straightforward church disaffiliation case, while purporting to apply "neutral principles," undermined that approach by relying upon a supposedly-hierarchical denomination's determination as to who were the "true members" of the local church corporation. (230 Cal.App.3d at 500-02.)⁸ Cases like *Korean United* recognize the correct standard but then misapply it. A property dispute cannot morph into a religious dispute by the mere expedient of one side excommunicating the other, as *Presbytery of Riverside* and *St. Luke's* have recognized.

In summary, the "deference to hierarchy" rule is limited to cases which directly challenge, or cannot be resolved without entanglement in, questions of religious doctrine, discipline or polity. It is not a carte blanche for civil courts to act as the enforcers of the

⁸ Similarly, in *Metropolitan Philip v. Steiger* (2000) 82 Cal.App.4th 923, and *Guardian Angel Polish Nat'l Catholic Church v. Grotnik* (2004) 118 Cal.App.4th 919, the appellate courts again considered – in the context of the "neutral principles" analysis – whether the denomination in question was hierarchical. (See, e.g., *Guardian Angel*, 118 Cal.App.4th at 921 ["The Polish National Catholic Church is and always has been a hierarchical church."].)

will of denominational religious hierarchies. The “deference” rule has no application to property disputes which can be resolved by “neutral principles of law.”

C. “Neutral Principles” Is a Far Better and More Constitutionally Sound Method to Resolve Church Property Disputes Than “Deference to Hierarchy.”

Although the U.S. Supreme Court in *Jones* theoretically left the “deference to hierarchy” rule on life support for potential use in property disputes, this Court should adopt “neutral principles” for two compelling reasons. First, despite providing the illusion of non-entanglement, the “deference” rule actually leads civil courts straight into the constitutional quagmire of deciding religious questions preliminary to the rule’s application, and of furthering certain forms of religion over others. Second, the “deference” rule is fundamentally unpredictable for lawyers and clients alike, and is unfair from a practical standpoint; the “neutral principles” approach produces just and predictable results consistent with the public’s expectations.

1. The “Deference to Hierarchy”/“Principle of Government” Rule Is Unconstitutional as Applied to Property Disputes.

There are at least three constitutional problems with applying a “deference to hierarchy” approach to church property disputes.

First, the “deference” rule requires civil courts to make “an initial decision about the nature of a church’s government.” (Kent

Greenawalt, *Hands Off! Civil Court Involvement in Conflicts Over Religious Property*, 98 Colum. L. Rev. 1843, 1877 (1998).)

Specifically, under the traditional formulation, a court must initially decide whether the local church was formerly a member of a congregational or hierarchical denomination.

This inquiry is constitutionally problematic because, in many cases, whether the denomination is “hierarchical” is hotly contested. Rarely are the players as clear cut as Quaker (congregational) or Roman Catholic (hierarchical). Many Protestant denominations fall somewhere in the middle, like the Episcopal Church: hierarchical in matters spiritual (such as the establishment of doctrine, ordination of ministers, etc.) but profoundly congregational in terms of how local churches minister, raise funds, and bear the burdens of property ownership. Some courts have recognized this fact. “A church may, however, be hierarchical in some matters and congregational in others. For example . . . a church may be hierarchical in terms of internal administration and discipline, and yet congregational as far as control and use of its property is concerned.” (*The Primate & Bishops’ Synod of the Russian Orthodox Church Outside Russia v. The Russian Orthodox Church of the Holy Resurrection, Inc.* (1993) 35 Mass.App.Ct. 194, 196-97, 617 N.E.2d 1031 [internal quotations omitted], *aff’d*, 418 Mass. 1001, 636 N.E.2d 211 (1994).)

Even if it is agreed that the denomination is “hierarchical,” just what organ is the “highest judicatory” may also be contested. For example, the Episcopal Church is but one of thirty-eight national member churches comprising the worldwide Anglican Communion led by the Archbishop of Canterbury. Is the “highest judicatory” the

triennial General Convention of the Episcopal Church, as the Diocese argues? Or is it the decennial Lambeth Conference, in which the heads of *all Anglican national churches* meet to promulgate statements of doctrine and discipline? Or is it the Archbishop of Canterbury himself? Indeed, in this case, the Diocese and Episcopal Church have pressed their claims despite the fact that the former Archbishop of Canterbury, Lord George Carey, instructed them to cease.⁹ Deciding what is the “highest judicatory” in a denomination is thus just as difficult and constitutionally problematic for a civil court as deciding whether it is “hierarchical” in the first place.

The second constitutional problem is that the “deference” rule “contains an anomaly that is so evidently impossible to justify, it will almost certainly not survive. The anomaly is the different treatment accorded congregational and hierarchical churches once their polity is determined.” (Greenawalt, *supra*, 98 Colum. L. Rev. at 1866.)

When confronted with disputes within a congregational church (i.e., one governed by a majority of its members), courts enforce “democratic rules of governance” and terms of local church bylaws that ensure *due process* for dissenting members. (*Id.* at 1867-68, quoting *Kennedy v. Gray* (Kan. 1991) 807 P.2d 670, 677.) However, when confronting disputes involving an allegedly hierarchical church, such due process protections are not extended under the “deference”

⁹ “He [Plaintiff J. Jon Bruno] should recognize that the Bishop of Uganda is part of the Anglican Communion. There’s room, therefore, for understanding and generosity without going to the law.” (Lord George Carey, quoted in *The Christian Challenge*, Sept. 16, 2004.)

rule. Indeed, when “deference” is applied, a party seeking to protect its property may be silenced from arguing that the denomination violated its own rules in reaching its decision, *or even that the church rule in question was never validly adopted*. (See Louis A. Sirico, *Church Property Disputes: Churches As Secular and Alien Institutions*, 55 Fordham L. Rev. 335, 349 (1986) [“Even if the local church believed that the denomination had exceeded its jurisdiction or acted arbitrarily, it could not make this argument successfully before a court. The denomination would respond that, according to the Supreme Court, these claims require an unconstitutional examination of church polity.”].)

“Observers have recognized that this difference constitutes a kind of favoring of the institutional authorities of hierarchical churches.” (Greenawalt, *supra*, 98 Colum. L. Rev. at 1868.) This favoring of one form of religious organization over another is constitutionally impermissible. (Michael William Galligan, *Note: Judicial Resolution of Intrachurch Disputes*, 83 Colum. L. Rev. 2007, 2021 (1983) [“That courts treat congregational and hierarchical churches differently is further evidence that the deference rule violates the constitutional prohibition of establishment.”].) Further, the rule inherently favors the existing, religious establishment over the local church’s freedom to forge new relationships based on common belief rather than historical structure. This favoring, too, tends toward establishing one form of religion over another.

The third constitutional problem is a show-stopper. The Court of Appeal here consigned *all religious organizations* to a “principle of government” rule. (Opinion, p. 11 [“But we hasten to add that the

‘hierarchy’ description is a technical misnomer . . . [The] ‘principle of government’ is in point of fact neutral toward any kind of church organization.”].) Under the Opinion, civil courts must determine where the “government” of a church is located. This rule places courts in the untenable position of surveying church relationships and determining whether they rise to the level of binding “government,” or are merely alliances based on common beliefs. The courts are thus placed in the untenable role of being cataloguers and determiners of church faith and order.

For example, Baptist churches traditionally pride themselves on congregational government and control of property. (*See, e.g., First Independent Missionary Baptist Church v. McMillan* (Fla. App. 1963) 153 So.2d 337, 342 [noting that each Baptist church is a “pure democracy” with no “organic” connection to any higher ecclesial body].) Yet, Baptist churches belong to “Conventions,” which meet periodically for mutual guidance and support. Despite the long history and self-understanding of Baptist churches as independent, a court mistaking the Convention for a “principle of government” could decide that it must defer to a Convention resolution confiscating local church property.¹⁰ Under a “principle of government” rule, *any affiliation of any kind by any religious corporation with any greater body* puts that corporation’s property in jeopardy.

¹⁰ Indeed, this disturbing result has already been reached by the Sixth Appellate District in *Central Coast Baptist Ass’n v. First Baptist Church* (2007) 154 Cal.App.4th 586, which stripped a local Baptist church of its property despite its separate corporate identity and holding of record title.

Conferring on denominations (and voluntary associations) the ability to take local church property of congregations that have understood themselves to be corporately independent is deeply problematic from a constitutional standpoint. “The rigid deference component of the polity approach should be declared unconstitutional as insensitive to the diversity of American religions. Rigid deference is constitutionally acceptable only if a denomination is organized so that the highest church authorities are legally unconstrained; it is not acceptable for denominations that have a balance of local and general authority, or that provide significant restrictions on the decisions of higher authorities.” (Greenawalt, *supra*, 98 Colum. L. Rev. at 1904.)

2. The “Neutral Principles” Approach Avoids Constitutional Concerns and Is More Just and Predictable Than the “Deference to Hierarchy”/“Principle of Government” Rule.

As the U.S. Supreme Court recognized in *Jones v. Wolf*, the “neutral principles” approach frees courts “completely from entanglement in questions of religious doctrine, polity, and practice.” (*Jones*, 443 U.S. at 603.) Courts need not locate the proper “judiciary” of the denomination, or decide whether the church is “hierarchical” or “congregational,” or determine its “principle of government.” Under “neutral principles,” the court need only look at the same indicia, such as deeds, statements in articles of incorporation, and state law, that determine property ownership in the secular setting, and reach the same result.

The neutral principles method favors neither large nor small, new nor old churches. It favors neither hierarchical denominations nor local church congregations. If anything, it favors the party with record title, just as in any non-religious property dispute. The record titleholder is the person most likely to have paid for the property's improvement, maintenance, repairs and utilities. In doing so, it generates a result consistent with the reality and fairness: the legal owner of the property typically bears the burden of ownership and should reap the benefits, regardless of religious affiliation or disaffiliation.

One need look no further than the undisputed facts of the case at bar to reach the conclusion that this is a *just* result. It was the Corporation of St. James Church, comprised of its voting members, who acquired, built, improved, maintained, repaired, cared for and used the real and personal property at issue for over fifty years. (4 AA 721-22; 8 RA 1706-21.) It is undisputed that with the exception of serving as a mere conduit for the donation of one parcel of property by a private Newport Beach business, neither the Diocese nor the Episcopal Church contributed any funds to the operation of St. James Church for over fifty years. The "neutral principles" approach, correctly applied, justly prevents a religious corporation from losing its property simply because it has changed its *spiritual* affiliation.

Equally importantly, the "neutral principles" method is consistent with normal expectations. If a local church is incorporated and holds record title to its property, the deeds disclose no reversionary or trust interest in favor of the denomination, and the corporation has not made any express declaration of trust, under

“neutral principles” the world is entitled to presume that the local church owns the property. Church members, donors, vendors, lenders, insurers, and lay lawyers advising them can rest assured that regardless of whatever religious differences may arise, the local church retains its property ownership. This certainty is critical to a religious corporation’s ability to raise funds, grow, construct new buildings, and attract donors – without fear the property or funds donated to the local church and for its benefit may later be taken by some former denomination’s far-off headquarters.

On the other hand, the “deference” rule’s unpredictability is disruptive to local church operations. Although the rule might appear predictable once a dispute has arisen (i.e., the denomination wins), the rule is fatally unpredictable for local church operations and planning *prior* to any dispute. Under the “deference” rule, when a donor inquires of his or her local church or attorney whether a donation will stay with the local church in the event of a future change of affiliation, there is no ready answer, and ostensible appearances may be misleading. Local church members with limited resources are simply not in a position to monitor and analyze the legal effect of the minutes of every denominational organ that might (at some point in its history) have enacted a rule or policy that purports to affect property ownership. If the “deference” rule is adopted for use in church property disputes, thousands of California churches and millions of California churchgoers will no longer be certain whether their property and gifts belong to the local church or to some larger religious organization. This uncertainty could prove crippling for

these nonprofit entities which depend on voluntary donations for their very lifeblood.

Further, there is nothing in the “deference” rule to limit it to *church* property. 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. Under the “deference” rule, there is no reason why a denomination’s assertion of ownership of an individual adherent’s property would not also be deferred to by a civil court.

These problems validate Justice Rehnquist’s concern about the propensity for top-down injustice inherent in the “deference” rule: “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.” (*Milivojevich*, 426 U.S. at 727 [Rehnquist, J., dissenting].) The “neutral principles” approach, applying commonly understood civil law property and trust principles, obviates these concerns.

In sum, “neutral principles,” not “deference to hierarchy,” affords the proper method for courts to adjudicate church property disputes. As we now demonstrate, under neutral principles, St. James Church is the rightful owner of the property held in its name.

D. As Applied Here, “Neutral Principles of Law” Indisputably Support the Trial Court’s Conclusion That St. James Church Prevails in This Case.

The trial court determined that “neutral principles” vested property ownership in St. James Church, and that the Diocese and Episcopal Church could not state legally viable claims. (7 AA 1497; 4 IA 858-59.) This determination was undoubtedly correct.

1. The Property Deeds Support St. James Church’s Ownership.

In California, the starting point in any property dispute is the statutory presumption that property belongs to the party in whose name title is held, absent clear and convincing contrary evidence. (Cal. Evid. Code § 662; Civ. Code § 1105.)

As in *Barker*, the judicially-noticed deeds in this action document that St. James Church, and that Corporation alone, is the record titleholder of the property in dispute. (8 RA 1706-21; *Barker*, 115 Cal.App.3d at 621 [“[t]itle to the disputed church property at bench is held in the names of the local churches”].) Under “neutral principles,” this fact “carries the risk [to the denomination] that congregations which disaffiliate will take their property with them.” (*Id.*; see also *Presbytery of Riverside*, 89 Cal.App.3d at 931 [property conveyed by the denomination to the local church “in fee simple absolute with no restrictions, conditions, or reservations relating to any trust”].)

2. The Articles of Incorporation Do Not Contradict the Deeds.

There is no clear and convincing evidence to the contrary in the articles of incorporation of St. James Church. Until the change of affiliation, the articles of the Corporation contained only the same language as that of the three victorious churches in *Barker*. (8 RA 1540-43.) The articles stated only that St. James Church was a “constituent part” of the Diocese and incorporated the constitution and canons of the Diocese and Episcopal Church by reference. (*Id.*) The articles do not state or create any express trust over the property of the Corporation. (*Id.*)

The *Barker* court expressly held that such statements neither create any trust nor restrict the Corporation’s right to disaffiliate: “We think such declarations no more restrictive of future amendments to the articles of incorporation than would be similar statements in an automobile dealer’s articles that it would always distribute General Motors products and always be bound by General Motors rules and policies . . . As in matrimony, always and forever do not preclude a change in heart and do not create an express trust in another’s property.” (*Barker*, 115 Cal.App.3d at 623.)

3. The “Constitutions of the General Church” Do Not Create a Trust Over St. James Church’s Property.

Like the three victorious churches in *Barker*, St. James Church was formed and incorporated decades before the Episcopal Church

enacted its purported “trust rule” in 1979. (8 RA 1540-43.) As such, under “neutral principles,” this rule does not support a trust over the Corporation’s property. (*Barker*, 115 Cal.App.3d at 624.)

The general statements of loyalty and acceptance of the Episcopal Church’s “canons” in the former articles of incorporation of St. James Church did not constitute an “open ended agreement by the local church[] to accept in advance any and all rules and regulations which might thereafter be put in effect by the general church.” (*Id.*)

Further, under *Barker* and *St. Luke’s*, a denomination’s *ex post facto*, unilateral enactment of a “trust rule” is not legally cognizable, especially as against a church that affiliated with the denomination prior to its enactment. (*St. Luke’s*, 121 Cal.App.4th at 757 [California law “does not authorize a general church to create a trust interest for itself in property owned by a local church simply by issuing a rule declaring that such a trust exists.”].) No legal principle permits a putative beneficiary to create a trust in its own favor. Rather, “[a] trust is created only if the settlor properly manifests an intention to create a trust.” (Cal. Prob. Code § 15201; *see id.*, § 15200 [trust created by property’s *owner* so declaring or transferring property].) The settlor must clearly and unambiguously manifest an intent to create a trust, and “words of desire, hope or recommendation that a devisee use the property for the benefit of another do not create a trust. The direction must be imperative.” (13 Witkin, Summary of Cal. Law (2005) Trusts, § 33.) St. James Church never created a trust to benefit the Episcopal Church.

Thus, under “neutral principles,” the “constitutions of the general church” do not provide clear and convincing evidence to overcome the presumption of ownership in St. James Church.

4. Former State Statutes Do Not Support the Diocese or Episcopal Church.

The final “neutral principles” factor – state statutes – does not support the claims of the Diocese or Episcopal Church. As *Barker* noted, the Corporations Code formerly provided a scheme under which corporations might be formed as “subordinate bodies” of a national organization. (*Barker*, 115 Cal.App.3d at 624, *citing* Corporations Code §§ 9203, 9802.) St. James Church never incorporated as a “subordinate body” under these statutes, which have since been repealed. (8 RA 1540-43.) As separately discussed in Section II below, Corporations Code section 9142 also does not support the unilateral imposition of a trust over the property of St. James Church.

5. The Trial Court Correctly Concluded That “Neutral Principles” Favor St. James Church.

Application of “neutral principles of law” here leads to one inescapable conclusion: ownership of the property at issue is vested fully and exclusively in St. James Church. There is no evidence, let alone clear and convincing evidence, that St. James Church ever

settled a trust with respect to its property.¹¹ The trial court identified and properly applied the correct legal approach in this action, and its Order and Judgment should be affirmed. The Opinion of the Court of Appeal should be reversed.

II. CORPORATIONS CODE SECTION 9142(C) DOES NOT AUTHORIZE DENOMINATIONS TO SETTLE TRUSTS IN THEIR FAVOR OVER PROPERTY THEY DO NOT OWN.

Faced with the inexorable logic of “neutral principles,” the Diocese and Episcopal Church asserted (and the Court of Appeal agreed) that Corporations Code section 9142, subdivision (c), affords religious denominations a special dispensation to unilaterally create trusts in their favor over property they do not own. In reality, section 9142(c) does no such thing; instead, it *limits* trusts in church property, requiring a number of minimum evidentiary facts before any trust may be found.

¹¹ To the extent any action by St. James Church during its history could be construed to settle a trust over its property, that trust has been revoked by the Corporation’s disaffiliation from the Diocese and amendment of its governing documents. “[A] local church’s creation of a trust interest in favor of the general church, including a trust interest created by the local church’s agreement to a general church’s rule calling for the local church to hold property in trust for the general church, may be revoked by the local church unless the local church has expressly declared that trust to be irrevocable.” (*St. Luke’s*, 121 Cal.App.4th at 757; Cal. Prob. Code § 15400 [“Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the settlor.”].)

A. Section 9142(c) Cannot Be Read as Authorizing Religious Denominations to Unilaterally Create Trusts Over Property They Do Not Own.

Section 9142(c) provides that “[n]o assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at common law . . . [u]nless, 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. (Cal. Corp. Code § 9142(c).)

The plain language of the statute, its legislative history, and basic principles of trust and property law, support the conclusion that this statute merely provides a minimum evidentiary floor of facts which must be present before the assets of a religious corporation may be deemed impressed with a trust. There is no support in the language, legislative history, or related areas of law, for the notion that section 9142(c) would authorize a general church to create a trust interest for itself in property owned by a local church simply by issuing a rule declaring that such a trust exists. (*See St. Luke’s*, 121 Cal.App.4th at 757 [holding that section 9142(c) does not so authorize].)

First, the plain language of section 9142(c) is phrased not as a positive declaration, but as a *negative conditional*: “No assets . . . shall be deemed . . . unless . . . and only to the extent that . . .” The plain language does not say, “If a trust rule is present, then a trust exists,” but rather “No trust will exist, unless a trust rule is present.”

Logically speaking, the statute is not, “If X, then Y,” but rather, “No X, unless Y.” The latter is fundamentally different than the former, because it does not exclude the possibility that other conditions – *such as the local church’s express consent to the rule* – are required before a trust is created. In fact, such a reading properly gives effect to all of the language of the statute.

Second, the legislative history of the statute¹² shows a clear legislative intent to limit trusts. Introduced by a lobbying group known as “First Freedom,” the statute was intended to “provide that no asset of a religious corporation would be deemed to be the corpus of a trust unless the board of directors, the articles or bylaws of the corporation, or the written intention of the donor imposed a trust over the property.” (Leg.Hist., p. 15.) The Senate Committee on Judiciary stated: “The purpose of the bill is to limit the property of a religious corporation subject to a charitable trust.” (*Id.*, p. 26.) This limiting purpose is repeated over and over in the legislative history. (*See, e.g., id.*, pp. 23 [“bill is intended to limit the property . . . subject to a charitable trust . . .”]; 42 [“The bill’s purpose is to limit a religious corporation’s property subject to a charitable trust.”].)

Nothing in the legislative history supports the “presumption” hypothesized in *Korean United* that local church property is held in trust if a denomination unilaterally enacts an internal trust rule.

¹² The legislative history was lodged by the Respondents in the companion Appeal No. G036767 and is part of the record on appeal. In addition, St. James Church has filed a separate Motion for Judicial Notice, which attaches the legislative history materials, which have been tabbed and consecutively numbered. Herein, they are cited as “Leg.Hist., p. ___.”

(*Korean United*, 230 Cal.App.3d at 508.) Rather, every indication in the legislative history is that the Legislature’s intent was to *limit* the circumstances under which a local church’s property would be subject to a trust – a fact that the former general counsel of the Diocese actually recognized and campaigned against.¹³

Third, the statute must harmonize with other basic principles of trust and property law. Courts cannot “construe statutes in isolation, but rather [must] read every statute with reference to the entire scheme of law of which it is a part so that the whole may be harmonized and retain effectiveness . . . [They must] choose the construction that comports most closely with the Legislature’s apparent intent, endeavoring to promote rather than defeat the statute’s general purpose, and avoiding a construction that would lead to absurd consequences.” (*Smith v. Superior Ct.* (2006) 39 Cal.4th 77, 83 [citations omitted; internal quotations omitted].)

The interpretation of section 9142(c) advanced by the *St. Luke*’s decision harmonizes the statute with other basic principles of trust and property law – *foremost among them the axiom that only the owner of property may create a trust with respect to it*. “A trust can be created by a ‘declaration by the owner of property that the owner holds the property as trustee.’ We know of no principle of trust law stating that a trust can be created by the declaration of a nonowner

¹³ The legislative history discloses that the Diocese’s former chancellor, or general counsel, R. Bradbury Clark, Esq., lobbied strongly against the passage of section 9142(c), arguing that it would actually “would negate the existence of a trust upon assets of a religious corporation and would permit the termination of trusts in other circumstances.” (Leg.Hist., pp. 72-73.)

that the owner holds the property as trustee for the nonowner.” (*St. Luke’s*, 121 Cal.App.4th at 769, *citing* Cal. Prob. Code § 15200(a) and Restatement 2d (Trusts), § 17.) Reading section 9142(c) as the Diocese proffers it would radically remake the law of trusts in California, and by implication at that. Such a reading is disfavored.

Given this trifecta of plain language, legislative history, and basic axioms of law, this Court should hold that section 9142(c) does not authorize a religious denomination to create trusts in its favor over property it does not own, but rather establishes a minimum evidentiary floor which must be present before any trust can be found in church property.

B. Any Other Interpretation of Section 9142(c) Would Unconstitutionally Promote and Establish Denominational Religion.

One of the fundamental rules of statutory interpretation is that unconstitutional and even constitutionally questionable interpretations are to be avoided. (*Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23, 43.) The Court of Appeal here read section 9142 as meaning that “a general church is, functionally, the trustor in a subdivision (c)(2) situation” (Opinion, p. 58), empowering a religious non-owner of property to settle a trust over property it does not own, something unprecedented in California law. Under such a reading, a denomination may do so without providing consideration to the owner, a power greater than even eminent domain. (U.S. Const.,

Amend. V [“Nor shall private property be taken for public use, without just compensation.”].)

By providing religious denominations with such a unique and far-reaching power, such a construction of section 9142(c) would violate the First Amendment’s prohibition on establishment of religion¹⁴ and the Fourteenth Amendment’s guarantee of equal protection.¹⁵ It would statutorily confer on certain “superior [religious] bod[ies] or general church[es]” having the power to enact “governing instruments” (i.e., those determined to be “hierarchical” by the courts) the unique power to unilaterally create trusts over property they do not own, without the express consent of the owner.

This specially conferred power prefers certain religious denominations over all other actors in the civil law arena. Such a “statute . . . that solely benefits religion would be unconstitutional.” (Rena M. Bila, *Note: The Establishment Clause: A Constitutional Permission Slip for Religion in Public Education*, 60 Brooklyn L. Rev. 1535, 1576 (1995).)

But the constitutional problems do not end there. Such a reading of section 9142(c) simultaneously deprives religious corporations affiliated with larger organizations, and their members, of the rights held by all other, non-religious, property owners. Thus, interpreted as the Diocese argues and the Opinion holds, section

¹⁴ U.S. Const., Amend. I [“Congress shall make no law respecting an establishment of religion . . .”].

¹⁵ U.S. Const., Amend. XIV, § 1 [“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”]

9142(c) would unconstitutionally advance religion by preferring certain churches over others in enabling them to settle trusts in their favor without conforming to the normal mandates of property and trust law. So interpreted, section 9142 would violate the rule that a statute must not have a “principal or primary effect” of “advanc[ing]” or “inhibit[ing]” religion. (*Lemon v. Kurtzman* (1971) 403 U.S. 602, 613.) Further, interpreted in this manner, the statute violates equal protection by depriving local churches (affiliated with larger organizations) of the property rights enjoyed by all other nonprofit entities.

To avoid these constitutional landmines, section 9142(c) must be interpreted – consistent with its plain language, legislative history, and statutory context – as merely limiting the property of a religious corporation subject to a trust, and not as creating some new and hitherto-unknown power on the part of certain religious non-owners to create trusts in their favor over property they do not own.

III. THE CLAIMS MADE AGAINST ST. JAMES CHURCH ARE FACTUALLY BASED ON ITS EXERCISE OF FREE SPEECH AND THEREFORE FALL WITHIN CALIFORNIA’S ANTI-SLAPP STATUTE.

California’s anti-SLAPP statute provides early scrutiny of claims “arising from an[] act . . . in furtherance of the . . . right of petition or free speech under the United States or California Constitution in connection with a public issue . . .” (Code of Civil Procedure section 425.16(b)(1).)

The claims contained in the Diocese’s pleadings are based on, and would not exist but for, St. James Church’s disaffiliation. Because the disaffiliation process – which included corporate meetings, debate, votes and press releases – was an act in furtherance of free speech in connection with a public issue, the claims are subject to scrutiny under the anti-SLAPP statute.

A. Under This Court’s Precedent, the Diocese’s Claims Fall Within the Anti-SLAPP Statute as They Are Factually “Based On” Acts in Furtherance of Free Speech on a Public Issue – St. James Church’s Public Disaffiliation From the Diocese.

The Diocese’s claims here fall squarely within the anti-SLAPP statute: (1) they arise out of (2) acts in furtherance of free speech, (3) on a public issue.

First, in determining whether claims “arise from” protected activity so as to fall within the anti-SLAPP statute, “the critical consideration is whether the cause of action is *based on* the defendant’s protected free speech or petitioning activity.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 [emphasis added].) Put another way, “the defendant’s act underlying the plaintiff’s cause of action must itself have been an act in furtherance of free speech.” (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) A claim need not directly attack the act of free speech to qualify for anti-SLAPP scrutiny; rather, the relevant question is *whether the plaintiff’s claims would exist but for the protected act*. (*Navellier*, 29 Cal.4th at 92). It

is enough that the protected activity is the *factual* basis for the cause of action. Nor does the claimed protected activity need to be a legal element of the cause of action. (*Id.* at 90 [fraud and breach of contract claims factually premised on petitioning activities].)

Here, the Diocese’s claims are factually based on and would not exist “but for” the disaffiliation. For example, the Diocese avers that “Defendants have wrongfully seized control” of the church because they “have attempted to affiliate the [church] with a non-Episcopal church in Uganda.” (1 AA 75.) The Diocese pleads that “Defendants . . . violated . . . California laws by pledging their loyalty to the ecclesiastical authority of the Church of Uganda.” (1 AA 89.) The first cause of action in the First Amended Complaint pleads a host of controversies allegedly requiring declaratory relief. The Diocese pleads that each controversy was created by “Defendants[’] . . . withdrawal from the Episcopal Church and abandonment of its doctrine, discipline and communion.” (1 AA 93-94, ¶91(a)-(d).) The Diocese *directly challenged* the disaffiliation itself by seeking to have the court declare the amendments to St. James Church’s articles of incorporation “illegal” and “null and void,” thus returning the Corporation to affiliation with the Episcopal Church. (1 AA 95, ¶91(g).)

The second cause of action in the First Amended Complaint claims that St. James Church breached an agreement with the Diocese to “be bound by the Constitution and Canons of the Episcopal Church and the Diocese”; the breach is obviously St. James Church’s disaffiliation and refusal to acknowledge those canons. (1 AA 96.) The fourth cause of action expressly pleads that “Defendants have

breached their fiduciary duties . . . *by seceding from the Episcopal Church and the Diocese . . .*” (1 AA 98-99, ¶109.) The seventh cause of action for promissory estoppel alleges that “Defendants, by doing the foregoing acts, *including their disaffiliation from the Episcopal Church and Diocese* and affiliation with the Church of Uganda, have breached that promise.” (1 AA 100, ¶123.)

Indeed, even the Episcopal “trust rule” on which the Diocese’s claims are based, does not become effective unless and until a congregation disaffiliates. (2 AA 431 (Canon I.7(4) [“The existence of this trust, however, shall in no way limit the power and authority of the Parish . . . so long as the particular Parish . . . remains a part of, and subject to, this Church and its Constitution and Canons.”].)

Therefore, in view of the Diocese’s own pleading, the claims in the First Amended Complaint clearly “arise from” St. James Church’s disaffiliation.

Second, the acts comprising the disaffiliation – which entailed corporate meetings, speech and debate, voting and press releases – are acts in furtherance of the right of free speech. (4 AA 723-24, 916-18, 920-22, 924-26, 930-31.) The anti-SLAPP statute covers expressive conduct such as demonstrations, encouragement of others to speak, and other acts “in furtherance of” free speech, including voting. (*City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606 [holding that anti-SLAPP statute protected noisy, threatening demonstrations by masked activists at individual’s home]; *Club Members for an Honest Election v. Sierra Club* (2006) 137 Cal.App.4th 1166 [“We have no difficulty concluding that the third cause of action arises from statutorily protected activity because it is

predicated on the voting of directors . . . at the board meeting . . .”]; *Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 183 n.3 [“[V]oting is conduct qualifying for the protections afforded by the First Amendment.”].) Even the act of affiliation or disaffiliation itself contains a substantial speech component. (*NAACP v. Alabama* (1958) 357 U.S. 449, 460.)

Third, the disaffiliation of St. James Church was undertaken “in connection with a public issue.” The theological direction of the Episcopal Church – one of the nation’s preeminent historic denominations – has been a matter of sustained media attention in recent years, a fact of which this Court may take judicial notice.¹⁶ In addition, the operations of a large and powerful religious denomination – such as the 71,000 member Diocese here – is *per se* a matter of public interest. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, *disapproved of on other grounds in Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, n.5; *Macias v. Hartwell* (1997) 55 Cal.App.4th 669, 673-74 [public issue was a union election affecting 10,000 members]; *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 474-75 [public issue where dispute concerned manner in which large residential community would be governed].)

¹⁶ See, e.g., Rebecca Trounson, *Church Divide Over Gays Has Global Audience*, Los Angeles Times, Oct. 14, 2007; Juliet Eilperin, *Episcopal Church Chooses First Female Leader*, Washington Post, June 19, 2006, at A03; Larry Stammer, *Parishes Split Off Over Gay Issues*, Los Angeles Times, Aug. 18, 2004, at B1.

The Diocese's claims, thus, "arise from" acts "in furtherance of" the right of free speech, including the public disaffiliation from the Episcopal Church, in connection with a public issue. Under *Navellier*, the claims fall squarely within the anti-SLAPP statute.

B. The Opinion's Gratuitous "Blue Pencil" Approach Is Contrary to Both the Anti-SLAPP Statute's Language and Evident Intent.

The Court of Appeal applied a new and entirely unprecedented tool to determine whether the "arising out of" prong of the anti-SLAPP statute was met: the "blue pencil." (Opinion, pp. 7-8.) Imported from the contract law arena, where it is used to strike out illegal provisions of a contract, the Opinion used the "blue pencil" to imaginarily remove from the Complaints all allegations that the local church had disaffiliated. "[O]ne could blue pencil all of that background detail out of the complaints and they would still stand on their own: The Diocese claims that the property is held in trust for it, the national church supports the claim, and the local church rejects it." (Opinion, p. 7.) The Court of Appeal found that if a court can reduce a claim to an abstract proposition, divorced from its actual facts, that does not involve speech, the anti-SLAPP statute does not apply. There are three fatal problems with this approach.

First, section 425.16 applies to claims that "arise out of" protected speech. It applies to the claim as pleaded, not to some theoretical abstraction as to a different claim that might have been pleaded under different facts.

Second, for the Court of Appeal’s “blue pencil” to work in this case it must remove entire claims, e.g., the claims directly challenging the validity and efficacy of St. James Church’s corporate disaffiliation from the Episcopal Church, and the predicate to the enforcement of the Episcopal trust rule which forms the basis for the property claims in this case. (*See supra*, pp. 52-53.)

Third, the “blue pencil” approach countermands the Legislature’s command that the anti-SLAPP statute be “construed broadly.” (Cal. Code Civ. Proc. § 425.16(a).) Such an approach would render many a complaint premised on protected speech outside the statute’s protections. What the Opinion denigrates as “background material” are the *facts* necessary to frame *any* legal claim. It is these facts that flesh out *any* legal theory as either premised on protected speech or not, as this Court of Appeal has recognized. (*E.g.*, *Lam v. Ngo* (2001) 91 Cal.App.4th 832, *per Sills*, P.J. [shopkeeper’s run-of-the-mill trespass and nuisance claims fell within anti-SLAPP statute because premised on demonstrators picketing his business over the display of a North Vietnamese flag].) The very nature and purpose of the anti-SLAPP statute is to discriminate among “garden variety” tort claims, between those, in fact, involving speech and those not.

The unprecedented “blue pencil” approach to the “arising from” prong of the anti-SLAPP statute would eviscerate the protections of the statute in virtually every case. Every SLAPP complaint could be “blue penciled” to remove the key allegations of protected activity, leaving only the conclusory and ultimate allegations of trespass, defamation, intentional interference, and so forth. This Court should reverse the Opinion in this regard as well, and hold that the Diocese’s

claims against St. James Church “arose from” acts in furtherance of the right of free speech.

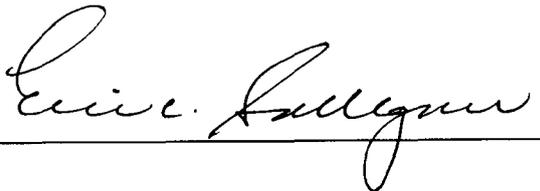
CONCLUSION

For the foregoing reasons, this Court should unequivocally confirm that “neutral principles of law” are to be applied to resolve church property disputes. Applying those principles, it should reverse the Opinion of the Fourth Appellate District, Division Three, filed on June 25, 2007, in its entirety, and remand with directions that the Court of Appeal affirm the Orders of the Superior Court dated August 15, 2005, September 9, 2005, and January 12, 2006, together with the Judgment thereon.

DATED: November 13, 2007

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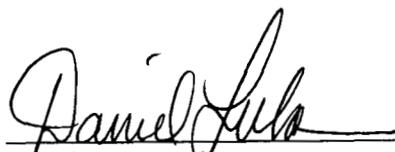
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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, Rule 8.204(c)(1))

The text of this Brief consists of 13,240 words as counted by the Microsoft Word word-processing program used to generate the Brief.

DATED: November 13, 2007



Daniel F. Lula

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PROOF OF SERVICE

Episcopal Church Cases
Appeal 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 Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, California 92614.

I am employed by Payne & Fears LLP. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service and common carriers promising overnight delivery. In the ordinary course of business, such correspondence would be deposited with the United States Postal Service or the common carrier on the same day I submit it for collection and processing.

On November 13, 2007, I served the following document(s) described as **PETITIONERS' OPENING BRIEF ON THE MERITS** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes, addressed as follows:

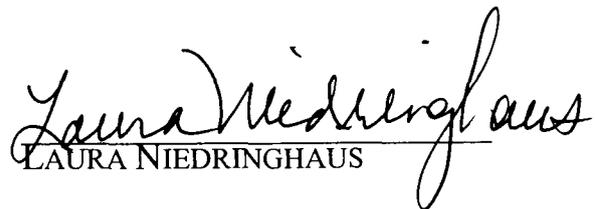
SEE ATTACHED LIST

I then deposited such envelopes, with postage thereon fully prepaid, for collection and mailing on the same day at 4 Park Plaza, Suite 1100, Irvine, California 92614.

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

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

Executed on November 13, 2007, at Irvine, California.


LAURA NIEDRINGHAUS

Episcopal Church Cases
Appeal No. S155094

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