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SUPREME COURT CO.

IN THE
SUPREME COURT OF CALIFORNIA

EPISCOPAL CHURCH CASES



SUPREME COURT
FILED

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After a Decision by the
Court of Appeal, Fourth Appellate District, Division Three
(Case No. G036868)

Frederick K. Onirich Clerk
Deputy

PLAINTIFF IN INTERVENTION AND RESPONDENT
THE EPISCOPAL CHURCH'S ANSWER BRIEF ON THE MERITS

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STATEMENT OF ISSUES

1. Did the Court of Appeal err in applying the established “principle of government” approach to deciding this church property dispute?
2. Did the Court of Appeal err in holding that the Episcopal Church’s “express trust” canon is enforceable pursuant to California Corporations Code Section 9142(c)?
3. Should the Court of Appeal be affirmed because property held by St. James Episcopal Parish is held for the mission of the Episcopal Church and the Diocese of Los Angeles under neutral principles of law?
4. Should the Court of Appeal be affirmed because the identity of St. James Episcopal parish is an ecclesiastical question on which civil courts are required to defer?
5. May a court properly resolve a legitimate, disputed legal issue on demurrer?

SUMMARY OF ARGUMENT

The Episcopal Church (the “Church”) is a hierarchical denomination governed by a Constitution and “Canons” adopted by the Church’s democratically elected General Convention. This case involves one Episcopal “parish,” St. James’ in Newport Beach, which was formed in the 1940s by the Episcopal Diocese of Los Angeles (the “Diocese”) and past generations of Episcopalians to further the Church’s mission. The ultimate issue is whether a portion of that parish’s current membership is entitled to leave the Church and yet retain its real and personal property for their own use in affiliation with a different denomination.

The Episcopal Church’s Constitution and Canons unequivocally answer this question in the negative: numerous provisions dating back to 1868 make clear that “[a]ll real and personal property held by or for the benefit of any Parish ... is held in trust for this Church and [its] Diocese.” (See *infra* at pp. 8-9.)

After a thorough analysis of applicable authority from both California and the United States Supreme Court, the Court of Appeal concluded that this Court has consistently applied the “principle of government” or “highest church judicatory” approach first articulated in *Watson v. Jones* (1871) 80 U.S. 679 to resolve disputes over church property. (*Op.* at 2, 9-34.) Thus, to the extent that more recent decisions of

the courts of appeal presupposed that “neutral principles” was the required mode of analysis in California, they were misguided. (*Id.* at 2, 48-50.)

Indicating that the result in this case would be the same under a “neutral principles” analysis, the Court of Appeal nevertheless held that it was bound to apply a “principle of government” approach to this case, and that under that approach, the Episcopal Church’s express trust Canon (I.7(4)) is determinative. (*Op.* at 75-76.)

The Court of Appeal also considered the application of California Corporations Code Section 9142, which permits a “general church” to create “a trust against the property of a local church corporation which is a ‘member’ of that general church” through its “governing instruments.” (*Op.* at 4.) The Court held that “the enactment by the national Episcopal Church in 1979 of Canon I.7(4) readily qualifies as a “governing instrument” expressly providing for a trust on property held by local church corporations” and that the statute “*perfectly* conforms with the result that would be otherwise required under a flat-out ‘principle of government’ approach.” (*Id.* at 58.) The Court of Appeal was correct in both respects.

On appeal, Petitioners urge this Court to abandon the straight-forward “principle of government” test in favor of the four-factor “neutral principles” approach to resolving church property disputes. There is no justification for doing so. The “principle of government” test is a constitutionally sound approach that is easy to apply and leads to just and

predictable results. Moreover, the Constitution requires that a court deciding a church property dispute respect a hierarchical denomination's own determinations and rules *whatever* analytical approach it uses. Thus, the overwhelming weight of authority from California and elsewhere confirms that denominational trust provisions are enforceable under "neutral principles." (See *infra* at pp. 30-31 & n.19.) "Neutral principles" and "principle of government" do not establish substantively different legal regimes. "Neutral principles" merely offers a broader and less focused analytical framework that, by failing to provide the courts or the parties with clear guidance, lends itself to a proliferation of disputes and inconsistent results. (See *infra* at pp. 32-33.)

Even if this Court were to adopt the "neutral principles" analysis for resolving church property disputes, moreover, the Court of Appeal should be affirmed. First, all four of the "neutral principles" factors (including the Church's property canons and § 9142, on which the Court of Appeal relied) support the Church's claims in this case, and as the Court of Appeal itself recognized, see *Op.* at 76, the Church prevails under this analysis as well. Second, notwithstanding any use of neutral principles, the identity of a religious entity's leadership and/or membership is an ecclesiastical question on which civil courts are required to defer. Here, the Diocese and the Episcopal Church have confirmed that the Priest-in-Charge appointed by the Diocesan Bishop and the Congregation's remaining loyal members

properly represents St. James' Episcopal Parish, the entity entitled to the ownership and use of the property at issue. The Court of Appeal should be affirmed for these reasons as well.

STATEMENT OF FACTS¹

I. STRUCTURE OF THE CHURCH

The Episcopal Church consists of approximately 7,600 worshipping congregations created to carry out the Church's mission in particular "dioceses." New congregations are usually first formed as "missions." (1 A.A. 131; 3 A.A. 371; 4 A.A. 705-706.)² If a mission meets criteria specified by its diocese, the diocese may admit it as a "parish" of the Church. (4 A.A. 709-712.) Each parish is a subordinate part of the Church and the diocese in which it is located. (3 A.A. 371-372; 3 A.A. 415, 427-428, 432, 435; 4 A.A. 701-702, 709-710.)

All parishes are subject to the Church's three-tiered polity. At the parish level, governance is by a "vestry," consisting of the rector (an ordained Episcopal priest) and lay persons elected by the parish. (3 A.A. 371.)

Each parish is a part of the diocese in which it is located. Each diocese is governed by an "Annual Convention" of elected clergy and lay

¹ The record in this case is limited, given its procedural status. These facts are supported by expert declarations and by the Church's and Diocese's Constitutions and Canons, which were submitted below.

² "A.A." refers to "Appellants' Appendix" filed by the Episcopal Church in Appeal No. G036868.

representatives from each parish. This body adopts and from time to time amends a diocesan Constitution and Canons, and elects a “diocesan bishop” who is the ecclesiastical authority within that diocese. (3 A.A. 371; 4 A.A. 693-698, 700-701.)

All the dioceses together make up the Episcopal Church. The Church is governed by a “General Convention” of most of the Church’s bishops and other representatives elected by each diocese. The General Convention has adopted and amends the Church’s Constitution and Canons. (3 A.A. 371; 3 A.A. 415-417; 3 A.A. 424-426.)

The national and diocesan Constitutions and Canons are binding. (See generally 3 A.A. 369.) All dioceses adopt in their Constitutions “an unqualified accession to the Constitution and Canons of this Church” (Const. Art. V(1), 3 A.A. 419), and diocesan Constitutions in turn require parishes to accede to the rules of the Church and the diocese. (See, *e.g.*, Diocesan Const. Art. XVIII.39, 4 A.A. 701-702.) All clergy at ordination commit in writing to “solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church” (Const. Art. VIII, 3 A.A. 421); and vestry members are required to “perform the duties of [their] office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised.” (Canon I.17(8), 3 A.A. 432.)

The Church's Constitution and Canons govern both temporal and spiritual matters. Thus, the Canons contain numerous provisions restricting the use and control of parish property and the governance of parishes to ensure that both the parish and its property will be used for their intended purposes – the Church's mission.

II. CANONS GOVERNING PROPERTY

Aspects of the Church's policies regarding parish property are expressed in numerous canons.³ Canons II.6(2) and (3), adopted in 1868, prohibit parishes from “encumber[ing] or alienat[ing] . . . , or otherwise dispos[ing] of” consecrated property without the consent of the diocese. (3 A.A. 375; 3 A.A. 435.) Canon II.6(1), added in 1871, makes clear that all consecrated property must be “secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with this Church and subject to its Constitution and Canons.” (3 A.A. 374-375; 3 A.A. 435.) Canon I.7(3), adopted in 1940, provides that a parish may not encumber or alienate any real property, consecrated or unconsecrated, without the consent of the diocese. (3 A.A. 375-376; 3 A.A. 429.)

Further tying parish property to the Church's mission, Canon III.9(5)(a)(2), adopted in 1904, provides that “[f]or the purposes of the office [of rector] and for the full and free discharge of all functions and

³ The Church's policies in this regard pre-date even the earliest canons. (3 A.A. 377.)

duties pertaining thereto, the Rector shall, at all times, be entitled to the use and control of the Church and Parish buildings together with the appurtenances and furnishings” (3 A.A. 374.) Canon III.9(5)(a)(1) makes clear that the rector’s responsibilities must be carried out subject to “the Book of Common Prayer, the Constitution and Canons of this Church, and the pastoral direction of the Bishop.” (3 A.A. 452.)

Finally, in 1979, in response to *Jones v. Wolf* (1979) 443 U.S. 595, which invited hierarchical churches to adopt “express trust” provisions in their governing documents to ensure that, in the event of a dispute, local church property would remain with the denomination and its members, the Church adopted Canon I.7(4), which states: “All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which [it] ... is located.” (3 A.A. 376; 3 A.A. 429.)

III. CANONS CONCERNING PARISH CREATION AND GOVERNANCE

The national Canons leave “[t]he ascertainment and defining of the boundaries of existing Parishes ..., as well as the establishment of a new Parish or Congregation, ... to the action of the several Diocesan Conventions.” (2 A.A. 232.) Accordingly, the Constitution and Canons of the Diocese of Los Angeles set forth the exclusive means for creating or disestablishing a parish in that area.

Canon I requires that a congregation wishing to be recognized by the Diocese as a parish submit an application, demonstrating compliance with stated criteria, for approval by the diocesan bishop and a committee of clergy and lay leaders. (4 A.A. 705.) Applications must include promises to “be forever held under, and conform to and be bound by, the Ecclesiastical Authority of the diocese, and The Constitution and Canons of the National Church, and The Constitution and Canons of the Diocese.” (4 A.A. 701-702, 709-710.) Upon approval of its application, a congregation may become a parish by majority vote of the Diocesan Convention. (4 A.A. 701-702.)

Canon I.14 then requires that members of the parish elect the vestry to act on behalf of the parish and that the rector preside at meetings of the vestry; and Canon I.17(8) requires the vestry to “perform [its] duties ... in accordance with the Constitution and Canons of this Church and of the Diocese” (3 A.A. 431-32.)

The Diocese’s Constitution and Canons also prescribe how a parish’s status may be changed. Article 19 of the Constitution governs the dissolution of a parish, while Canon III provides for reversion of a parish to “mission” status. (4 A.A. 702, 711-712.) Either event necessitates diocesan action and requires that the parish property be transferred to the Diocese. (4 A.A. 711-712.) Parishes may not unilaterally dissolve or disaffiliate, upon a vote of their membership or leadership, or by any other

means. (See 3 A.A. 371, 374-376, 429, 431-432, 435, 452; 4 A.A. 701-702, 705, 709-712.)

IV. HISTORY OF ST. JAMES'

A. St. James' Founding

St. James' was founded as an Episcopal "mission" in 1946, for the purpose of establishing a place of worship for faithful Episcopalians. (4 A.A. 757-758.)⁴ In 1947, the mission petitioned the Diocese for recognition as a parish, promising that it would

"be forever held under, and conform to and be bound by, the Ecclesiastical authority of the Bishop of Los Angeles, ... the Constitution and canons of the [Episcopal] Church ..., and the Constitution and canons of the Diocese of Los Angeles." (3 A.A. 488, 494-495.)

In reliance on this promise, the Diocese established the parish and deeded the parish's first real property to it for "less than \$100." (3 A.A. 488, 500.)⁵

Consistent with diocesan requirements, until at least August 2004, St. James' articles of incorporation provided that the parish would

⁴ As the Court of Appeal recognized, "In a general church that is hierarchically-structured, people do not organize local congregations as *substantively* independent entities. They organize local congregations in the context of membership in the overall church. In contrast to congregational organization, hierarchical organization makes the overall church the prime[] mover." (*Op.* at 59.)

⁵ Petitioners assert that "retitling ... property in the name of the Diocese, or settling an express trust in its favor, was not one of the obligations of 'parish' recognition." (*Pet. Br.* at 9.) However, before becoming a parish, St. James' had no property to "retitle," and *was* required to promise to "forever" abide by Constitutions and Canons that restricted its control of any property.

precedence. This is the approach that lends itself to doubt, disputes, and inconsistent results, as California’s own experience with “neutral principles” irrefutably demonstrates. (Compare *Guardian Angel, supra*, 118 Cal.App.4th 919, with *St. Luke’s, supra*, 121 Cal.App.4th 754.)

F. **The “Principle of Government” Approach Focuses Judicial Analysis And Does Not Alter The Substantive Law.**

Despite Petitioners’ effort to portray the “neutral principles” analysis as fundamentally at odds with “principle of government,” as the above discussion shows, the truth is that the two approaches overlap, and should (and generally do) lead to the same results. Both approaches require a court to look to the governing documents of the general church (in the case of a hierarchical church), and will enforce a trust restriction found therein. (See, e.g., *Guardian Angel, supra*, 118 Cal.App.4th at pp. 930-931 [holding that property belongs to general church because its governing constitution provides for an express trust]; *Korean United, supra*, 230 Cal.App.3d at pp. 511-512 [same].)¹⁸

The overwhelming weight of authority from other jurisdictions confirms this pattern, enforcing trust interests in local church property

¹⁸ Petitioners suggest that under a principle of government rule, hierarchical denominations would be entitled to seize the personal property of church members. (*Pet. Br.* at 38.) The Court may disregard this hyperbole. As just noted, internal church rules are (generally) enforceable under “neutral principles” as well as “principle of government.” Moreover, there are obvious exceptions to this general rule under either approach – for example, in the case of an associational rule that purported to require illegal activity or deprive members of vested rights. No such circumstances are present here.

“form a constituent part of the Diocese of Los Angeles in ... the ... [Episcopal] Church ...; and ... that the Constitution and Canons, Rules, Regulations and Discipline of said Church ... and the Constitution and Canons in the Diocese of Los Angeles, for the time being *shall ... always form* a part of the By-Laws and Articles of Incorporation ... and shall prevail against and govern anything herein contained that may appear repugnant to such Constitutions, Canons, Rules, Regulations and Discipline.” (3 A.A. 503-504, italics added.)

Similarly, until at least August 2004, St. James’ bylaws also incorporated the Constitutions and Canons of the Episcopal Church and the Diocese and specifically prohibited the parish’s leadership from taking any action inconsistent with those Constitutions and Canons. (4 A.A. 758; Cal. Corp. Code § 9150(a).)⁶

Until the present dispute, St. James’ operated as subordinate part of the Church, in conformity with the national and diocesan Constitutions and Canons. (3 A.A. 489, 517-626.)

B. The Present Dispute

In August 2004, St. James’ vestry and a majority of members at a congregational meeting voted to disaffiliate from the Episcopal Church. (4 A.A. 760.) On August 18, 2004, the Diocesan Bishop prohibited St. James’ clergy from functioning as Episcopal priests (*ibid.*; 3 A.A. 633-641), appointed a Priest-in-Charge, and recognized the Parish’s remaining Episcopal members as St. James’ continuing congregation. (3 A.A. 654.)

⁶ In 1991, St. James’ amended its articles, retaining provisions incorporating the Church’s and Diocese’s Constitutions and Canons. (3 A.A. 511-512.)

Although they have left the Episcopal Church, the individual defendants and other disaffiliating members claim the right to retain St. James' property for their own use in connection with a different denomination. (4 A.A. 761.)

STATEMENT OF PROCEEDINGS

On September 7, 2004, the Diocese of Los Angeles and an individual member of St. James' filed suit to recover St. James' property for the benefit of the continuing Episcopal parish. (1 A.A. 1-29.) The Church was granted leave to intervene and filed its complaint on October 18, 2004. (2 A.A. 345-352; 2 A.A. 357-358.)

On Petitioners' motion, the trial court struck the Diocese's complaint under California's "SLAPP" statute. (4 A.A. 659.) The Court sustained Petitioners' demurrer to the Church's complaint with leave to amend (4 A.A. 748-751). The Church filed an amended complaint (4 A.A. 755), and the court sustained a second demurrer without leave to amend, essentially adopting the reasoning contained in its prior ruling (4 A.A. 857).

Consolidating the Diocese's and the Church's separate appeals, the Court of Appeal reversed. This appeal followed.

ARGUMENT

I. THE COURT OF APPEAL CORRECTLY APPLIED THE “PRINCIPLE OF GOVERNMENT” APPROACH.

A. The “Principle Of Government” Approach Follows United States Supreme Court Authority.

In *Watson v. Jones*, *supra*, 80 U.S. at p. 727, the Supreme Court first held that the polity and locus of authority established by a particular denomination would be dispositive in civil litigation involving an issue that the denomination itself had resolved: “[W]henver 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.” Following *Watson*, many state courts adopted what is sometimes called the “hierarchical” approach to deciding church property disputes. (*E.g.*, *Wheelock v. First Presbyterian Church of L.A.* (1897) 119 Cal. 477, 485 [51 P. 841]; *Mt. Zion Baptist Church v. Whitmore* (Iowa 1891) 49 N.W. 81, 83-84; *Hendryx v. People’s United Church of Spokane* (Wash. 1906) 84 P. 1123, 1125.)

As the Court of Appeal in this case explained, however, this moniker is misleading: in fact, the “principle of government” approach is applicable to any form of church polity. (See *Op.* at 11.) Under this approach, courts recognize that churches are free under the First Amendment to establish

ecclesiastical structures and rules to govern their affairs, and that (in accordance with principles generally applicable to voluntary associations as well as constitutional requirements) those rules are binding on that church's component parts and members. (*Id.* at 10-12.) Thus, the courts will not (and may not) interfere with the church's structure or polity, but will defer to the decisions of the authoritative governing body of the church. (See *id.* at 11.)

A century after *Watson*, the Supreme Court held that the "principle of government" analysis is not the only constitutionally permissible way to analyze a church property dispute. (*Jones v. Wolf, supra*, 443 U.S. at pp. 602-603.) Thus, in *Jones v. Wolf*, the Court approved an alternative, "neutral principles" approach, under which courts examine the deeds to property, governing documents of the local church, governing instruments of the general church, and applicable state statutes to determine whether property held by a local church is held, and must be used, for the mission of the denomination. (*Ibid.*)

At the same time, the Supreme Court made clear that, notwithstanding "neutral principles," the First Amendment requires civil courts to respect a hierarchical church's determinations and rules, and to "completely" abstain from resolving "questions of religious doctrine, polity, and practice." (*Jones v. Wolf, supra*, 443 U.S. at p. 603.) Accordingly, the Court explained that under a "neutral principles" analysis,

the outcome of a church property dispute is not foreordained. *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.... [T]he 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 p. 606, italics added.)

(See also, e.g., *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 710 [reversing a ruling that had refused to heed a denomination’s determination affecting the control of property, because “the [First] Amendment ... commands civil courts to decide church property disputes without resolving underlying controversies over ... church polity and church administration”] [citation and internal quotation marks omitted]; *Kedroff v. Saint Nicholas Cathedral* (1952) 344 U.S. 94, 116 [religious organizations have the constitutional right “to decide for themselves, free from state interference, *matters of church government as well as those of faith and doctrine*”] [italics added].)

Thus, the Court of Appeal below correctly concluded that the Supreme Court’s opinion in *Jones v. Wolf* “did not overrule (either expressly or impliedly), or even alter in any way,” the common law approach this Court has consistently applied: “principle of government.” (*Op.* at 3.)

B. The California Supreme Court Has Consistently Followed The “Principle Of Government” Approach.

Since at least 1889, the California Supreme Court has recognized that the “general propositions advanced by [*Watson* are] sound.” (*Wheelock v. First Presbyterian Church of L.A.*, *supra*, 119 Cal. at p. 485; see *Baker v. Ducker* (1889) 79 Cal. 365, 374 [21 P. 764], citing *Watson* with approval. See also *Op.* at 2.)

Wheelock involved a dispute between two factions of a congregation of the Presbyterian Church over the proceeds of a sale of property. (*Supra*, 119 Cal. at p. 479.) The majority faction controlled the corporation in whose name the property was titled. (*Id.* at p. 480.) A tribunal of the Presbyterian Church having “control and supervision of the Presbyterian Churches ... [in] Los Angeles” determined that the funds should be divided between the two factions *pro rata*. (*Id.* at p. 479.) When the majority faction refused to relinquish the funds, the minority faction filed suit.

On appeal from a ruling in favor of the majority faction (and the corporation), the California Supreme Court reversed, holding that courts must follow the rulings of the general church as to the use of the property. (*Wheelock*, *supra*, 119 Cal. at p. 482.) While recognizing that “the disposition of [the] moneys were matters for civil courts,” the Court held that, because the parish “was under the absolute control and dominion” of a hierarchical church, the “decrees [of the general church] are not only

binding upon the church as an ecclesiastical body, *but they are binding and conclusive upon courts wherever and whenever material to pending litigation.*” (*Ibid.*, italics added.) In other words, *Wheelock* held that while church property disputes are “matters for civil courts,” California courts must apply a “principle of government” approach to resolve them.⁷

Three years later, the California Supreme Court decided *Horsman v. Allen* (1900) 129 Cal. 131, 133-134 [61 P. 796], which involved a property dispute between a majority group that had left a hierarchical church, and a minority faction within the “circuit,” or component part of the church, that had remained. (*Id.* at p. 134.) Applying *Watson*, the Court noted that “the seceding body must, in general, be regarded as abandoning the church,” (*id.* at p. 135), and held that the actions of the hierarchical church (to which the dissenters had objected) were conclusive and binding on the Church’s components and the courts. (*Id.* at pp. 138, 140.) Stated differently, the Court used the “principle of government” approach to resolve a property dispute involving a hierarchical church.⁸

⁷ Additionally, *Wheelock* made clear that the facts that the parish was incorporated and that the corporation held the parish property in its own name did not change this analysis. According to the Court, the “function and object [of a religious corporation] is to stand in the capacity of an agent holding the title to the property, with power to manage and control the same in accordance with the interest of the spiritual ends of the church.” (*Supra*, 119 Cal. at p. 483.)

⁸ This analysis and result was consistent with the result reached in *Baker v. Ducker*, *supra*, 79 Cal. 365, which affirmed more generally that church property belongs to the church to which it was given, regardless of whether a majority of the members of that church (and corporation) may join another denomination. The property at issue “was held by the [church]

Finally, in *The Permanent Committee of Missions of the Pacific Synod of the Cumberland Presbyterian Church in United States v. Pacific Synod of the Presbyterian Church, U.S.A.* (1909) 157 Cal. 105 [106 P. 395] (“*Committee of Missions*”), the California Supreme Court again affirmed the “principle of government” approach articulated in *Watson* – noting that it was “the prevailing rule in this country” (*id.* at p. 128) – and held that a decision of the highest body in the hierarchical church relevant to which group controlled the property must be “accept[ed] ... as final, and as binding on [the courts], in their application to the [property dispute] before them.” (*Ibid.*)⁹

The Court of Appeal below relied on this unbroken chain of California Supreme Court cases in holding that resolution of church property disputes must be “centered ... [on the] decision on the proper locus of the ecclesiastical authority” – in other words, on the basis of the “principle of government.” (*Op.* at 21.)

in trust for its members, and . . . even though [it] constituted a majority of the members, [the seceding group] had no right and no power to divert it to the use of another and different church organization.” (*Id.* at p. 374)

⁹ This Court has utilized the same analysis to resolve property disputes involving non-hierarchical churches. (*E.g.*, *Providence Baptist Church v. Superior Court* (1952) 40 Cal.2d 55 [251 P.2d 10] [involving a congregational church]; *Rosicrucian Fellowship v. Rosicrucian Fellowship Non-Sectarian Church* (1952) 39 Cal.2d 121, 133 [245 P.2d 481] [involving “an anomalous class [of church] which fits in none of the three [*Watson* categories]”).)

C. **Most California Courts Of Appeal Have Made Clear That Civil Courts Must Respect A Church's Own Polity And Rules.**

Petitioners correctly note that over the past thirty years, some California courts of appeal have analyzed church property disputes under the four-factor “neutral principles” analysis adopted by some jurisdictions outside of California.¹⁰ Petitioners ignore, however, that in so doing, the courts of appeal have continued to defer to and enforce a hierarchical church’s rules, in accordance with constitutional requirements. (See *Concord Christian Center v. Open Bible Std. Churches* (2005) 132 Cal.App.4th 1396 [34 Cal.Rptr.3d 412]; *Guardian Angel Polish Nat. Catholic Church of L.A., Inc. v. Grotnik* (2004) 118 Cal.App.4th 919 [13 Cal.Rptr.3d 552]; *Korean United Presbyterian Church of L.A. v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480 [281 Cal.Rptr. 396].)¹¹ Thus, despite their use of “neutral principles,” in each of these cases the courts ruled exactly as the Court of Appeal did in this case: local church property must remain with the general hierarchical church.

¹⁰ But see, e.g., *Metropolitan Philip v. Steiger* (2000) 82 Cal.App.4th 923, 931 [98 Cal.Rptr.2d 605] [holding that identity of representatives entitled to control of local church property is an issue on which court must defer to hierarchical church and noting that “consistent with the United States Supreme Court’s language in *Jones v. Wolf*, ... provisions in the ‘constitution of the general church’ can override any right the majority of a local congregation might otherwise have to control the local church property”].

¹¹ Accord *Singh v. Singh* (2004) 114 Cal.App.4th 1264, 1280 [9 Cal.Rptr.3d 4] [although disputes involving control of church property may be decided in accordance with neutral principles, it is clear that internal church rules must be respected in that process, and “the decisions of the highest religious tribunal on questions of discipline, faith, or ecclesiastical rule, custom, or law must be accepted”].

Against this overwhelming and consistent weight of authority, the 2004 decision in *California-Nevada Annual Conference of the United Methodist Church v. St. Luke's United Methodist Church* (2004) 121 Cal.App.4th 754 [17 Cal.Rptr.3d 442] (“*St. Luke's*”) stands as the one recent outlier. However, *St. Luke's* was wrongly decided, and the Court of Appeal directly and decisively refuted its flawed reasoning.¹² (See Part III(D), *infra* at pp. 40-41.)

Thus, the Court of Appeal correctly held that under the “principle of government” approach, the Church’s explicit rules governing the use and control of parish property must be respected.

II. THERE IS NO BASIS FOR ABANDONING THE “PRINCIPLE OF GOVERNMENT” METHODOLOGY.

Petitioners do not dispute the Court of Appeal’s thorough analysis of existing California law, but argue that this Court should break with its prior precedent and formally require the four-factor “neutral principles” analysis for all church property disputes in this State. As shown below, each of Petitioners’ proffered bases for preferring “neutral principles” misses the mark, and this alternative analysis in any event would not alter the result in this case.

¹² One older case involving the Episcopal Church also failed to enforce the Church’s rules as to all of the parishes before it – at least in part, it appears, because of a lack of evidence as to what those rules were (and are). (See *Protestant Episcopal Church v. Barker* (1981) 115 Cal.App.3d 599 [171 Cal.Rptr. 541].) However, *Barker* was soon overtaken by Cal. Corp. Code § 9142 and the Second District’s later decisions in *Korean United* and *Guardian Angel*, and except in *St. Luke's*, has not been followed. (See Part IV(F), *infra* at pp. 50-52.)

A. **The Supreme Court Has Not Favored the “Neutral Principles” Approach.**

Petitioners first claim that the Supreme Court in *Jones v. Wolf* endorsed “neutral principles” over “principle of government.” (*Pet. Br.* at 16.) It did not. The question before the Court in *Jones v. Wolf* was simply whether a state might constitutionally use the four-factor “neutral principles” analysis, rather than the established “principle of government” analysis, to resolve a church property dispute. The Court held that a “neutral principles” analysis was constitutionally acceptable – provided that it did not require the courts to interfere with matters of church doctrine, polity, or government. (*Jones v. Wolf, supra*, 443 U.S. at p. 604.) There was no allegation that the “principle of government” was somehow flawed or inferior to “neutral principles,” nor did *Jones v. Wolf* call into question *Watson*’s statement that “the rule of action which *should* govern civil courts, founded in a broad and sound view of the relations of church and state under our system of laws,” is one of deference to applicable church judicatories. (*Watson, supra*, 80 U.S. at p. 727, italics added. See *Jones v. Wolf, supra*, 443 U.S. at p. 602, citing *Watson* with approval.)

Accordingly, numerous jurisdictions have reaffirmed the use of a principle of government approach since *Jones v. Wolf* was decided in 1979. (E.g., *Bethel AME Church of Newberry v. Domingo* (Fla. Dist. Ct. App. 1995) 654 So.2d 233, 234 [per curium]; *Fonken v. Community Church of*

Kamrar (Iowa 1983) 339 N.W.2d 810, 819; *Bennison v. Sharp* (Mich.Ct.App. 1982) 329 N.W.2d 466, 474-475; *Tea v. The Protestant Episcopal Church* (Nev. 1980) 610 P.2d 182, 184; *The Protestant Episcopal Church in the Diocese of N.J. v. Graves* (N.J. 1980) 417 A.2d 19; *Seldon v. Singletary* (S.C. 1985) 326 S.E.2d 147, 149; *The Schismatic & Purported Casa Linda Presbyterian Church in America v. Grace Union Presbytery, Inc.* (Tex.App. 1986) 710 S.W.2d 700; *Southside Tabernacle v. Pentecostal Church of God, Pacific Northwest Dist., Inc.* (Wash.Ct.App. 1982) 650 P.2d 231, 234 n.2; *Church of God of Madison v. Noel* (W.Va. 1984) 318 S.E.2d 920.)¹³

B. The “Principle Of Government” Approach Is Applicable To Property Disputes.

Petitioners next argue that the “principle of government” analysis has been applied only to “disputes over religious doctrine, discipline or polity (organization), *not* church property.” (*Pet. Br.* at 21.) Again they are wrong. Petitioners misinterpret and mischaracterize key United States Supreme Court decisions – *Watson* and *Milivojevich* – and almost entirely ignore California authority. As the facts of these cases show, the “principle of government” approach is indeed applicable to church property disputes.

¹³ Other states, although not explicitly denominating their approach to these cases as “hierarchical,” continue to recognize a trust interest in a local church’s property upon proof of the church’s connection with a hierarchical denomination. (See, e.g., *Church of God in Christ v. Bd. of Trustees of New Jerusalem Church of God in Christ* (Kan.Ct.App. 1999) 992 P.2d 812, 819; *Church of God in Christ, Inc. v. Middle City Church of God in Christ* (Tenn.Ct.App. 1989) 774 S.W.2d 950, 952.)

As noted above, the “principle of government” approach had its genesis in a classic property dispute case. The issue in *Watson v. Jones* was which of two groups that had constituted a single congregation *controlled the property* after a portion of that congregation had left the denomination. (*Supra*, 80 U.S. at p. 726.) Petitioners’ characterization of *Watson* as an “essentially ecclesiastical” controversy distinct from this – or any other – church property dispute is simply incorrect. Most, if not all, such disputes, including this one, involve ecclesiastical issues.

Milivojevich also involved a dispute over the assets of a subordinate part of a hierarchical church (in that case a diocese) in the context of an underlying ecclesiastical controversy. (*Supra*, 426 U.S. at pp. 698-699.) The Supreme Court considered the decision of the highest judicatory in the hierarchical church to demote and defrock a bishop and to divide the diocese into three dioceses, as well as the issue of “control of [the diocese’s] property and assets.” (*Id.* at pp. 697-699.) Like *Watson*, *Milivojevich* made clear that in such disputes, the relevant decisions of the general church must be respected by the civil courts. (*Id.* at pp. 724-725.) The Court of Appeal accordingly characterized *Milivojevich* as a “ringing affirmation of the *Watson* highest judicatory tribunal rule, quoting large swaths of the *Watson* opinion with gusto.” (*Op.* at 28.)

In addition to miscasting *Watson* and *Milivojevich* as non-property cases, Petitioners all but ignore the long line of California Supreme Court

precedent relied upon by the Court of Appeal. Petitioners appear to acknowledge that *Wheelock*, *Horsman*, and *Committee of Missions* involved property disputes (*Pet. Br.* at 25 & n.6), but suggest that they did not apply a rule of deference. In doing so, however, Petitioners ignore the language of the cases themselves. As the *Wheelock* Court expressly stated, a hierarchical church’s “decrees are not only binding upon the church as an ecclesiastical body, but they are binding and conclusive upon courts wherever and whenever material to pending litigation.” (*Supra*, 119 Cal. at p. 482. See also *Op.* at 14.)¹⁴

C. The “Principle Of Government” Approach Is Constitutional.

Petitioners argue that respecting the decisions and polity of a hierarchical church in a property dispute is unconstitutional because it (1) requires civil courts to “make ‘an initial decision about the nature of a church’s government’” (*Pet. Br.* at 30), “plac[ing] courts in the untenable position of surveying church relationships and determining whether they rise to the level of binding ‘government,’” (*id.* at 34); and (2) treats hierarchical and congregational churches differently. (*Id.* at 32). These arguments mistake both the law and the facts.

¹⁴ *Horsman* and *Committee of Missions* similarly deferred to the decisions of a hierarchical church’s governing body. Although the Court in those cases may have satisfied itself that the church’s governing body had the authority under its structure to make the decision it did, the fact remains that both *Horsman* and *Committee of Missions* in fact enforced and applied the hierarchical church’s decisions insofar as they were relevant to the litigation before them. (See *Op.* at 17-19; *Horsman, supra*, 129 Cal. at p. 139; *Committee of Missions, supra*, 157 Cal. at pp. 128-129.)

As discussed above, the Supreme Court has specifically approved the constitutionality of deferring to duly constituted church authorities concerning matters of church doctrine, polity, or internal government under either the “principle of government” or the “neutral principles” approach. (*Op.* at 10-12. See, *e.g.*, *Jones v. Wolf*, *supra*, 443 U.S. at pp. 602-606; *Milivojevich*, *supra*, 426 U.S. at pp. 710-711.) Indeed, such deference is constitutionally *required*.

While this may require courts to identify the ecclesiastical authority to which deference is due, this is a routine task that courts have been performing at least since *Watson* in 1871. (See, *e.g.*, *Wheelock*, *supra*, 119 Cal. at p. 485; *Horsman*, *supra*, 129 Cal. at 136; *Committee of Missions*, *supra*, 157 Cal. at pp. 127-128.) The issue of whether a church is truly a part of and subject to the authority of a larger organization will, as here, generally be obvious from the most cursory review of the facts.

There can be no question, for example, that the Episcopal Church is hierarchical in structure and is governed by the Constitution and Canons adopted by its General Convention (*e.g.*, 3 A.A. 370-371), and no court has ever suggested otherwise. (See, *e.g.*, *Barker*, *supra*, 115 Cal.App.3d at pp. 606-607 [describing hierarchical structure of the Episcopal Church].)¹⁵

¹⁵ Countless other cases have uniformly reached the same conclusion. (See, *e.g.*, *Dixon v. Edwards* (4th Cir. 2002) 290 F.3d 699, 716; *The Rector, Wardens & Vestrymen of Trinity-St. Michael's Parish, Inc. v. The Episcopal Church in the Diocese of Conn.* (Conn. 1993) 620 A.2d 1280, 1285; *The Parish of the Advent v. The Protestant Episcopal Diocese of*

Although Petitioners belatedly suggest that the locus of authority within the Episcopal Church may lie somewhere else within the “Anglican Communion” (see *Pet. Br.* at 31-32), this is frivolous. Petitioners themselves accurately (albeit tersely) describe in their statement of facts the Church’s structure as consisting of “parishes,” “dioceses,” and the national Episcopal Church (*Pet. Br.* at 8-9), and the record is devoid of evidence of any alternative structure.¹⁶

As the Court of Appeal noted, “there is only one case in our entire survey of the case law in the area where organizational structure was an actual matter of *controversy*. [Citation omitted.] And in that case the appellate court easily surmounted the issue without involvement in religious dogma” (*Op.* at 45. See also *id.* at pp. 74-75.)

In any event, courts would not escape the difficulties complained of by Petitioners using “neutral principles.” If the structure of a church is

Mass. Episcopal Church (Mass. 1997) 688 N.E.2d 923, 931; *The Protestant Episcopal Church v. Graves*, *supra*, 417 A.2d 19, 24; *Episcopal Diocese of Mass. v. DeVine* (Mass.App.Ct. 2003) 797 N.E.2d 916, 923; *Daniel v. Wray* (N.C.Ct.App. 2003) 580 S.E.2d 711, 718; *Bennison v. Sharp*, *supra*, 329 N.W.2d 466, 472; *Tea v. Protestant Episcopal Church*, *supra*, 610 P.2d 182, 183; *In re Church of St. James the Less* (Pa.Commw.Ct. 2003) 2003 Phila. Ct. Com. Pl. LEXIS 91, *affd.* 833 A.2d 319, *affd.* in pertinent part, 888 A.2d 795 (2005).)

¹⁶ The Constitution and Canons set forth the governmental structure of the Episcopal Church without reference to the Anglican Communion, which is pointedly described in the preface to the Constitution as a “fellowship” of autonomous regional churches around the world. (*E.g.*, 3 A.A. 380, 415.) Moreover, Petitioners’ first raised this issue in a petition for reconsideration of the Court of Appeal’s decision; it thus has been waived. (See *Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1092 [32 Cal.Rptr.3d 483].)

challenged under a “principle of government” analysis, the court must review sources such as the constitution, canons, and rules of the general church – in other words, the same sources that a court must examine under a “neutral principles” approach to determine the church’s rules governing property. There is no authority for the notion that such a marginal review or acknowledgment of church polity or rules raises any constitutional concerns.

Petitioners’ assertion that the “principle of government” leads to unconstitutionally different treatment of congregational and hierarchical churches also is mistaken. (*Pet. Br.* at 32-33.) As noted, under both the “principle of government” and “neutral principles” approaches, the court must consider the church’s own rules and decisions. In the case of a congregational church, the majority vote of the congregation may well be dispositive as to many or all ecclesiastical issues – not because that is the rule established by the *court*, but because *that is what the church’s own polity and rules will generally require*. (See *Watson, supra*, 80 U.S. at p. 725 [“If the principle of government in such cases is that the majority rules, then the numerical majority of members must control If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property.”].)

Far from treating congregational and hierarchical churches differently, then, the “principle of government” approach applied by the Court of Appeal treats them precisely the same. Indeed, Petitioners appear to concede as much in their very next breath: the “principle of government” approach would apply to “*all religious organizations.*” (*Pet. Br.* at 33-34.)

D. The “Principle Of Government” Approach Leads To Just Results.

Petitioners also contend that “neutral principles” is “more just” than “principle of government.” (*Pet. Br.* at 35-38.) Petitioners ignore the contributions of the Diocese and the Episcopal Church to the parish and its property, including the fact that the property was initially deeded to the congregation *by the Diocese itself, for less than \$100.* (3 A.A. 488, 500.) They also ignore that the property at issue here – including the real property just mentioned – has been acquired and maintained through the charitable gifts of generations of donors who gave to support the mission and ministry of an *Episcopal* parish, under rules that restricted local church control of that property for the Church’s mission. (See *supra* at pp. 7-11.) Permitting a majority of St. James’ current membership to confiscate the efforts and sacrifices of those who came before and retain this property for their own personal use in association with a different church is hardly a “just” or “equitable” result. Indeed, these considerations point in precisely the opposite direction.

E. The “Principle Of Government” Approach Leads To Predictable Results.

Finally, Petitioners implausibly argue that “neutral principles” is more predictable than “principle of government.” (*Pet. Br.* at 36-37.)

There can be no real dispute that the “principle of government” approach is *totally* predictable in church property disputes involving hierarchical churches. Petitioners claim that the rule is “fatally unpredictable” at the time when property is donated to a church (while admitting that it is “predictable once a dispute has arisen”), but fail to offer any explanation for this assertion. (*Pet. Br.* at 37.)

Local congregations of a hierarchical church like the Episcopal Church are subject to the rules and authority of higher governing bodies, and donations are given and received under those conditions. In this case, the Episcopal Church’s rules – and California law – made clear well before St. James’ was formed or acquired any property that local church property was restricted for the Church’s mission, and could not be unilaterally diverted to other purposes by the congregation’s current membership. (See *supra* at pp. 7-8, 15-18.) A “principle of government” rule makes clear that such rules indeed will be enforced. This is the essence of predictability.¹⁷

The “neutral principles” approach, on the other hand, directs courts to look to four different factors, with no guidance as to which take

¹⁷ If donors wish to place other restrictions on gifts, of course, they may easily do so. (See *Watson, supra*, 80 U.S. at p. 674.)

based on provisions in the governing documents of general churches, including the Episcopal Church, under either “neutral principles” or “principle of government.” (See, e.g., *Bishop & Diocese of Colo. v. Mote* (Colo. 1986) 716 P.2d 85, 108 [upholding the Church’s trust interest based on canons pre-dating I.7(4)]; *Rector, Wardens & Vestrymen of Trinity-St. Michael’s Parish, Inc. v. Episcopal Church in the Diocese of Conn.*, *supra*, 620 A.2d at p. 1292 [Canon I.7(4) “merely codified in explicit terms a trust relationship that has been implicit in the relationship between local parishes and diocese since the founding of [the Church]”]; *Episcopal Diocese of Mass. v. DeVine*, *supra*, 797 N.E.2d at p. 923 [enforcing Canon I.7(4)]; *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville* (App.Div. 1999) 684 N.Y.S.2d 76, 81 [Canon I.7(4) “expressly codifies a trust relationship which has implicitly existed between the local parishes and their dioceses throughout the history of the ... Church”]; *Daniel v. Wray* (N.C.Ct.App. 2003) 580 S.E.2d 711, 718 [Canon I.7(4), required disaffiliating parish members to relinquish possession and control of the parish’s property]; *In re Church of St. James the Less* (Pa. 2005) 888 A.2d 795, 810 [Canon I.7(4) is enforceable where the parish had historically been subject to numerous national and diocesan canons restricting its control of property].)¹⁹

¹⁹ See also *Crumbley v. Solomon* (Ga. 1979) 254 S.E.2d 330, 332 [Disciplinary Rule, which stated that the general church “shall hold all church property, regardless if all members [of a local church] vote to

Both the “neutral principles” and “principle of government” approaches, moreover, permit the courts to consider relevant state statutes such as § 9142. While this statute would be one of the four “factors” required to be considered under a neutral principles analysis, the Court of Appeal applying “principle of government” in this case simply (and properly) considered it, and held that it independently required the same result as the common law approach. (*Op.* at 76.) Nor, under the “principle of government” approach, would a court be precluded from looking to or finding a property restriction on the basis of language in a local church’s governing documents or in the deeds to the property: they simply need not look to these sources if it is already clear, as in this case, that the denomination has included that restriction in its governing documents.

change the church to some other faith,” held sufficient to find a trust in local church property]; *Cumberland Presbytery of the Synod of the Mid-West v. Branstetter* (Ky. 1992) 824 S.W.2d 417 [relying on express trust provision of national church constitution in awarding property to general church body]; *Shirley v. Christian Episcopal Methodist Church* (Miss. 1999) 748 So.2d 672, 677 [enforcing a provision in that general church’s book of discipline that “titles to all property held by local churches are held in trust for CME”]; *Brady v. Reiner* (W.Va. 1973) 198 S.E.2d 812, 843 [property held in trust for general church where the Book of Discipline “prescribe[d] that titles to the property held by trustees of a local church are held in trust for The United Methodist Church”]; *Wisconsin Conf. Bd. of Trustees of the United Methodist Church, Inc. v. Culver* (Wis.Ct.App. 2000) 614 N.W.2d 523, 528 [provision of Book of Discipline stating that “titles to all properties held ... by a local church ... shall be held in trust for The United Methodist Church . . .” served to “convert[] the local ownership of church property to ownership in trust for the benefit of the UMC”] [italics omitted], *affd.* on different grounds, (Wis. 2001) 627 N.W.2d 469. See also *Green v. Lewis* (Va. 1980) 272 S.E.2d 181, 186 [provision in hierarchical denomination’s governing documents forbidding unilateral transfer of local church property was enforceable as a matter of contract law].

Not surprisingly, then, the Court of Appeal recognized that a “neutral principles” analysis would lead to the same result in this case. (*Op.* at 76.) “Neutral principles” is not code for an entirely different substantive law in which hierarchical church rules and decisions may be ignored. It is an analytical framework, which the “principle of government” approach merely focuses.

III. THE COURT OF APPEAL CORRECTLY INTERPRETED SECTION 9142.

Petitioners also allege that the Court of Appeal erred in interpreting and applying § 9142(c). The Court of Appeal, however, interpreted and applied § 9142(c) consistently with its unambiguous terms, legislative history, and legal context. As the Court of Appeal concluded, “[w]hat is abundantly clear ... is that in a hierarchically organized church, the ‘general church’ *can* impress a trust on a local religious corporation of which the local corporation is a ‘member’ *if* the governing instruments of that superior religious body so provide.” (*Op.* at 58.) Because Episcopal Church Canon I.7(4) “readily qualifies as a ‘governing instrument,’” the Court of Appeal found that “the right of the general church in this case to enforce a trust on the local parish property is clear.” (*Id.* at 58, 76.) This conclusion was correct.

A. **Denominational Trusts Are Enforceable Under the Plain Language of § 9142(c).**

In interpreting § 9142, the Court need look no further than the plain language of the statute. (See *Green v. State* (2007) 42 Cal.4th 254, 260 [64 Cal.Rptr.3d 390].) Subsections (c) and (d) of § 9142 provide:

“(c) No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at common law unless one of the following applies:

(1) Unless, and only to the extent that, the assets were received by the corporation with an express commitment by resolution of its board of directors to so hold those assets in trust.

(2) Unless, and only to the extent that, the articles or bylaws of the corporation, *or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.*

(3) Unless, and only to the extent that, the donor expressly imposed a trust, in writing, at the time of the gift or donation.

(d) Trusts *created* by paragraph (2) of subdivision (c) may be amended or dissolved by amendment from time to time to the articles, bylaws, or governing instruments *creating* the trusts” (Italics added.)

Section 9142(c) thus lists three parallel ways in which religious charitable trusts can be created. Each of the methods that § 9142 identifies must be interpreted to be distinct from the others. (See *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159 [278 Cal.Rptr. 614]

[noting that courts must “attribute significance to ‘every word and phrase’ used by the Legislature”].)

Under subdivision (c)(2), moreover, trusts can be created or enforced either (1) through “the articles or bylaws of the corporation,” *or* (2) “the governing instruments of a superior religious body or general church of which the corporation is a member.” Because these phrases are connected with the word “or,” only one of these methods need be employed. (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 680 [183 Cal.Rptr. 520].)

The methods identified in the statute are independent and exclusive; there are no other requirements for creating an enforceable trust.

That § 9142(c)(2) describes alternative means of “creating” trusts is further confirmed by the language of subdivision (d), which states that “[t]rusts *created by* paragraph (2) of subdivision (c) may be amended or dissolved by amendment from time to time to the articles, bylaws, *or* governing instruments *creating* the trusts.” (Italics added.) In short, § 9142 simply cannot be read any other way than as authorizing a general church, such as the Episcopal Church, to “create” a trust in the property of its local churches by adopting provisions such as Canon I.7(4). (See *Op.* at 55-57.)

Petitioners argue that § 9142(c) should be interpreted to provide a “minimum evidentiary floor of facts which must be present before the assets of a religious corporation may be deemed impressed with a trust”

(that must be “created” in some other way) because it is drafted as a “negative conditional.” (*Pet. Br.* at 44.) The fact, however, is that the statute identifies alternative circumstances under which a trust may be recognized, and gives a trust created by the governing instrument of a hierarchical church the same status as a trust created “by [a] donor ... in writing, at the time of the gift or donation” or a trust created by the “express commitment by resolution of [a] board of directors.” (Cal. Corp. Code § 9142(c)(1) & (3).) To describe such an instrument as a “minimum evidentiary floor” that requires the court to look elsewhere for the creation of a trust is simply implausible.²⁰ Indeed, Petitioners’ position would impermissibly deprive § 9142(c)(2)’s reference to “the governing instruments of a superior religious body” of any significance, as obviously a local church can always create an enforceable trust through one of § 9142’s other mechanisms without reference to the general church’s governing instruments. (*Harris, supra*, 52 Cal.3d at p. 1159.)

B. The Legislative History of § 9142 Supports its Plain Language.

Section 9142’s legislative history reveals that, among other things, the legislature intended the statute to “define” the circumstances in which a

²⁰ Because the statute identifies those factual circumstances under which, absent some unusual countervailing factors, a trust or use restriction is generally recognized, the Court of Appeal has reasonably characterized the statute as establishing a “presumption” of a trust’s existence. (See *Guardian Angel, supra*, 118 Cal.App.4th at p. 931; *Korean United*, 230 Cal.App.3d at p. 508.)

charitable trust would be deemed to exist. (See *Petitioners' Motion for Judicial Notice* (Nov. 12, 2007), Exhibit A.3 at p. 15 [a “key issue” was whether “*a definition of charitable trusts [should] be added to the religious corporations law*”] (italics added); Exhibit A.8 at p. 37 [“*This bill ... defines the circumstances under which assets of a religious corporation are deemed to be held in trust.*”] (italics added); Exhibit A.10 at p. 41 [The bill “[s]pecifies that no assets of a religious corporation are impressed with any trust *unless a trust is expressly imposed by [one of the specified means]*”] (italics added). See also *Op.* at 50-55.)

Ignoring this history, Petitioners contend that the statute was adopted in order to “limit” trusts. (*Pet. Br.* at 46.) As the Court of Appeal explained, the legislature apparently did seek to limit trusts – in order to limit the authority of the attorney general. (See *Op.* at 51-52.) However, this fact is of no help to Petitioners here because, as the statute’s plain language and the legislative history cited above shows, the legislature intended to limit the existence of trusts *to those circumstance described in the statute* – including when a trust is expressly stated in a general church’s governing documents. There is no hint in the legislative history that § 9142 was intended to “limit” trusts established through one of the instruments identified in subdivision (c).

C. **The Plain Language of § 9142 is Consistent with Other Applicable Principles of Law.**

The Court of Appeal's interpretation of § 9142 also comports with other applicable principles of law, including common law principles governing voluntary associations and charitable trusts.

California law governing voluntary associations holds that the rules of a voluntary association constitute a binding contract between it and its members. (See, e.g., *Davis v. Int'l Alliance of Theatrical Stage Employees & Moving Picture Mach. Operators* (1943) 60 Cal.App.2d 713, 716 [141 P.2d 486].) Religious organizations are no exception to this rule. As the California Supreme Court has explained,

“[a] person who joins a church covenants expressly or impliedly that in consideration of the benefits which result from such a union he will submit to its control and be governed by its laws, usages and customs ... to which ... he assents as to so many stipulations of a contract. *The formal evidence of such contract is contained in the canons of the church, the constitution, articles, and by-laws of the society, and the customs and usages which have grown up in connection with these instruments.*” (*Rosicrucian Fellowship, supra*, 39 Cal.2d at p. 132 [quoting Zollman, *American Church Law*, § 328] [italics added].)

Furthermore, members of a voluntary association generally have no right to any property of that association upon disaffiliation. (See, e.g., 7 C.J.S. (1980) *Associations*, § 26(b) [“On termination of membership the right of members to property of the association ordinarily ceases, and those who remain have the sole right to such property.”]; *The Most Worshipful*

Sons of Light Grand Lodge v. Sons of Light Lodge No. 9 (1953) 118 Cal.App.2d 78, 84-85 [257 P.2d 464] [holding that the overwhelming majority of the members of a local lodge, upon voting to withdraw from a parent organization, were not entitled to retain the local lodge's real property in association with another, similar organization].) Section 9142's statement that an enforceable trust restriction may be stated in a denomination's governing documents merely reaffirms these common law rules.

The plain language of § 9142 is similarly consistent with neutral principles of California common law governing charitable trusts. “[A]ssets of charitable corporations are deemed to be impressed with a charitable trust by virtue of the declaration of corporate purposes,” and may not be diverted to other uses, charitable or otherwise. (*Am. Ctr. for Educ., Inc. v. Cavnar* (1978) 80 Cal.App.3d 476, 486 [145 Cal.Rptr. 736].) There is no suggestion in the case law that such trusts are presumed to be transferable to some other charitable or corporate purpose by the corporation's current leadership or that these trusts may be revoked. To the contrary, “California has expressed a strong public policy that trust property of a nonprofit religious or charitable corporation be not diverted from its declared purpose,” and that such property may only be used “to carry out the objects for which the [corporation] was created.” (*In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal.App.3d 850, 857 [121 Cal.Rptr.

899] [quoting *Lynch v. Spilman* (1967) 67 Cal.2d 251, 260 (62 Cal.Rptr. 12)] [internal quotation marks omitted]. See also *Blocker v. State* (Tex.App. 1986) 718 S.W.2d 409, 415 [“[P]roperty transferred unconditionally to a [charitable] corporation ... is ... subject to implicit charitable ... limitations defined by the donee’s organizational purpose”] [italics omitted]; 4A Fratcher, *Scott on Trusts* (4th ed. 1989) § 348.1.)

This principle is illustrated in the church context in *Baker v. Ducker*, *supra*, 79 Cal. at p. 374, in which this Court made clear that the majority of a church’s members could not choose to divert property to another religious denomination: “It is thus made clear that the property in question was held by the Reformed Church in trust for its members, and the defendants, even though they constituted a majority of the members, had no right and no power to divert it to the use of another and different church organization.” (See also *Metropolitan Baptist*, *supra*, 48 Cal.App.3d at pp. 854-857 [applying these principles to find that the leadership of a local Baptist church could not divert its trust property for purposes inconsistent with its stated purpose, that of being a Baptist church].)

As in this case, denominational rules will often define a local church organization’s purpose and contain restrictions on local church property. Enforcing these rules, as the plain language of § 9142(c)(2) does, is consistent with the above-described common law principle.

D. St. Luke's Was Wrongly Decided.

In the light of these considerations, California courts of appeal have concluded that enforceable trusts may be created by a hierarchical church's governing documents, as § 9142(c) states. (*Op.* at 58; *Guardian Angel, supra*, 118 Cal.App.4th 919; *Korean United, supra*, 230 Cal.App.3d 480. See also *Metropolitan Philip, supra*, 82 Cal.App.4th 923.) Nevertheless, Petitioners contend that *St. Luke's, supra*, 121 Cal.App.4th 754, alone properly interprets § 9142(c). The *St. Luke's* court held that, despite § 9142's plain language, the statute does not permit trusts to be stated in a general church's governing documents. As shown above, however, *St. Luke's* is an aberration from the body of church property jurisprudence and sharply conflicts with the plain language and legislative history of § 9142. (See also *Op.* at 71-74.)

The *St. Luke's* court viewed the plain language of § 9142 as being at odds with certain principles of California law governing *private* trusts. However, if § 9142 in some respects differs from the general rules applicable to private trusts, that is both unsurprising and immaterial. (See *Op.* at 73-74.) As discussed above, § 9142 and the Episcopal Church's Canons do not create a trust in private, unrestricted assets, but simply define the restriction the common law imposes on assets donated to and held by a charitable organization. (See *Baker v. Ducker, supra*, 79 Cal. at p. 374.) There is no reason that rules applicable to the creation of private

trusts would be expected to apply. (*Cf. In re Estate of Upham* (1899) 127 Cal. 90, 95 [59 P. 315] [“trusts for public charitable purposes are upheld under circumstances under with private trusts would fail”] [quoting *Russell v. Allen* (1883) 107 U.S. 163, 167].)

E. The Court Of Appeal’s Decision Does Not Violate Constitutional Principles.

Finally, Petitioners contend that the Court of Appeal’s interpretation of § 9142 would violate the Establishment and Equal Protection Clauses of the United States Constitution. (*Pet. Br.* at 47-49.) As explained above, however, the Supreme Court has repeatedly affirmed the contrary position: the First Amendment *requires* that denominational rules be respected and enforced. (See Part I(A), *supra* at pp. 12-15.)

Section 9142 does not, by permitting a denomination’s governing documents to define the purpose of the charitable trust to which a church’s assets are subject, “establish” or “prefer” religion. As noted above, assets donated to *any* charitable organization are generally held in trust for the organization’s “declared purpose.” (See *supra* pp. 39-40.)

In *The Most Worshipful Sons of Light Grand Lodge v. Sons of Light Lodge No. 9*, *supra*, 118 Cal.App.2d at pp. 84-85, for example, the Court of Appeal squarely addressed the issue of whether a majority of a local chapter of a larger voluntary association may, upon disaffiliation from that

larger association, continue to use the chapter's property as part of a similar organization. The Court held that they may not, explaining:

“When a schism has occurred in a religious or benevolent association, which has united with and assented to the control and supervision of a general organization, ... title to [its] property remains in the name of the association, and that faction which has remained loyal and adhered to the laws, usages, and customs of the general organization constitutes the true association, and is alone entitled to the use and enjoyment of the association's property. *This rule applies whether the subordinate association be a corporation or simply a voluntary association, and regardless of whether the majority or minority of the entire membership constitute the faction adhering to and observing the laws, usages, and customs of the general organization*” (*Id.* at p. 85, italics added.)

Similarly, California law generally holds that the rules of all voluntary associations are binding on its members. (See, e.g., *Gear v. Webster* (1968) 258 Cal.App.2d 57, 62 [65 Cal.Rptr. 255] [association's members are bound by later-adopted rules “[u]nless the rules . . . placed a limitation upon the power of the association to make any change or amendment therein.”].) The Opinion below, then, merely ensures that churches in California are treated the same as other associations.²¹

²¹ Even if California generally did not enforce the rules of other types of associations, the Court of Appeal's opinion would raise no constitutional concerns, because the need to accommodate churches' First Amendment (Free Exercise) rights is a legitimate governmental objective that can justify treating churches differently in circumstances such as these. (See, e.g., *Hernandez v. Comm'r of Internal Revenue* (1989) 490 U.S. 680 [holding constitutional a provision of Internal Revenue Code governing charitable deductions]; *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos* (1987) 483 U.S. 327, 338-339 [holding constitutional the exemption of religious organizations from Title VII's prohibition against religious employment discrimination]; *Walz v. Tax*

**IV. THE COURT OF APPEAL SHOULD BE AFFIRMED
BECAUSE THE CHURCH PREVAILS UNDER A “NEUTRAL
PRINCIPLES” ANALYSIS.**

As shown below, the judgment of the Court of Appeal should be affirmed even under the “neutral principles” approach that Petitioners press. (See *Op.* at 76 [declining to engage in the “overkill” of a “neutral principles” analysis].)

Under neutral principles as articulated in *Jones v. Wolf, supra*, 443 U.S. at p. 602, a court faced with a church property dispute may examine “(1) the deeds to the property, (2) the articles of incorporation of the local church, (3) the constitution, canons, and rules of the general church, and (4) relevant state statutes, if any, governing possession and disposition of such property” to determine whether, taken together, these sources indicate that local church property is “held in trust” – that is, is to remain with the larger denomination in the event of a dispute. (*Barker, supra*, 115 Cal.App.3d at p. 621.) All four “neutral principles” factors favor the Church’s trust interest here.²²

Comm’n of N.Y. (1970) 397 U.S. 664, 686-687 [holding that property tax exemptions for religious organizations are constitutional].

²² Under the precedent discussed below, the limited evidence in the record should be sufficient to establish the Church’s trust interest. In the event that additional evidence were necessary, however, the Church must be permitted to develop that evidence. The Episcopal Church’s complaint states an “actual controversy” concerning a legally cognizable claim, and thus states a valid cause of action under the declaratory judgment statute. The trial court therefore erred in sustaining Petitioners’ demurrer. (*Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943, 947 [148 Cal.Rptr. 379].)

A. The Deeds Support the Church's Trust Interest.

In 1946, St. James' mission applied to become a "parish" of the Episcopal Church and, in so doing, promised that the parish would "be forever held under, and conform to and be bound by" the authority and rules of the Episcopal Church and the Diocese. (3 A.A. 488, 494-495.) In reliance on that promise, the Diocese deeded the parish property to "St. James' Episcopal Church" for "less than \$100." (3 A.A. 488, 500-501.)

B. St. James's Governing Documents Support the Church's Trust Interest.

In keeping with the promise noted above, from its initial incorporation until at least August 2004, St. James' Articles of Incorporation provided that the

"Constitution and Canons, Rules, Regulations and Discipline of [the Episcopal] Church ... and the Constitution and Canons in the Diocese of Los Angeles, for the time being *shall ... always* form a part of the By-Laws and Articles of Incorporation of the corporation hereby formed and shall prevail against and govern anything herein contained that may appear repugnant to such Constitutions, Canons, Rules, Regulations and Discipline" (3 A.A. 503-504, italics added.)

The Church's Canons also form part of the local parish's bylaws as a matter of California law. (See *Korean United, supra*, 230 Cal.App.3d at pp. 503-504 [the bylaws of a religious corporation include religious bodies, canons, constitutions or other rules]; Cal. Corp. Code § 9150(a) [bylaws include "code or codes of rules used, adopted, or recognized for the

regulation or management of the affairs of the [religious] corporation irrespective of the name or names by which such rules are designated”].)

C. The Church’s Canons Support Its Trust Interest.

As explained above, the Church’s Canons contain numerous provisions governing the use and control of parish property and confirm that such property must be retained for the mission of the Church.

Canons II.6(2) and (3), adopted in 1868, prohibit parishes from unilaterally encumbering, alienating, or disposing of any “consecrated” real property without the Diocese’s consent. (3 A.A. 435.) Canon II.6(1), adopted in 1868, also requires that consecrated property be “secured for ownership and use” by an entity “affiliated with this Church and subject to its Constitution and Canons.” (*Ibid.*)

Canon I.7(3), adopted in 1940, similarly forbids parishes from “encumber[ing] or alienat[ing the parish’s real property] or any part thereof without the written consent of the Bishop and Standing Committee of the Diocese” (3 A.A. 429.)

Canon III.9(5)(a)(1), adopted in 1904, provides that the ordained Episcopal “rector” of the parish has the exclusive right to use and control parish property, subject to “the Rubrics of the Book of Common Prayer, the Constitution and Canons of [the Episcopal] Church, and the pastoral direction of the Bishop.” (3 A.A. 452.)

Finally, Canon I.7(4) explicitly states that “[a]ll real and personal property held by or for the benefit of any Parish ... is held in trust for this Church and the Diocese thereof in which such Parish ... is located.”

(3 A.A 376, 429.)

D. California Corporations Code Section 9142 Confirms the Church’s Trust Interest.

As discussed in Part III, *supra*, California Corporations Code § 9142 directly speaks to the issues in this case. As the statute specifies, “the governing instruments of a superior religious body or general church of which the [local Church] corporation is a member ... expressly provide” that all parish property “is held in trust for [the] Church and the Diocese thereof in which such Parish ... is located,” and these “governing instruments creating the trust[.]” have not been amended to alter or dissolve that trust restriction.

E. California Case Law Confirms That the Church’s Trust Interest Is Enforceable on These Facts.

Two court of appeal decisions have applied neutral principles to church property disputes since the adoption of § 9142(c), and held that § 9142 and statements in the general church’s governing documents established that the property at issue was held for the larger church.

In *Korean United, supra*, 230 Cal.App.3d 480, a majority of the congregants of a local church voted to disaffiliate from the Presbyterian Church and attempted to retain the local church property for their own use.

The local church's articles of incorporation provided that "this Corporation shall be at all times subject and adhere to the doctrines and discipline of the Presbyterian Church in the United States of America" and a Presbyterian Church rule (adopted after the local church had incorporated) stated that local church property was "held in trust ... for the use and benefit of the Presbyterian Church." (*Id.* at pp. 489-490, italics omitted.)

The trial court in *Korean United* awarded the local church property to the disaffiliating congregants, but the court of appeal reversed. The court explained that "[i]n determining the presence or absence of a trust in the Church property, the trial court erred by not applying the presumptive rules in § 9142(c)(2) that the property was held in trust for the use and benefit of PCUSA." (*Supra*, 230 Cal.App.3d at p. 509.)²³

The Court of Appeal similarly enforced a general church's trust interest in local church property in *Guardian Angel, supra*, 118 Cal.App.4th 919. At issue was a provision in the Polish National Catholic Church's Constitution decreeing that the property of its local churches belonged to those congregants who "conform to the provisions of the constitution, laws, rules, regulations, customs and usages of the [larger church]." (*Id.* at p. 923 [citation omitted].)

²³ The court in *Korean United* also held that the trial court should have deferred to the denomination's recognition of the loyal faction of congregants as the continuing church. (See Part V, *infra* at p. 55.)

The Court of Appeal again noted that under § 9142(c)(2), “California law presumes ‘a trust ... in religious assets ‘to the extent that ... the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.’” (*Guardian Angel, supra*, 118 Cal.App.4th at p. 931.) It then held that the restriction stated in the general church’s rules remained enforceable notwithstanding the subsequent actions of the local church leadership. (*Id.*; see also *Metropolitan Philip, supra*, 82 Cal.App.4th at p. 931 [noting that “provisions in the ‘constitution of the general church’ can override any right the majority of a local congregation might otherwise have to control the local church property”].)

The facts alleged here are stronger than those that supported the Court’s decisions in *Korean United* and *Guardian Angel*. As described above, the Episcopal Church’s governing documents contain numerous provisions that protect and preserve parish property for the mission of the Church, including the specific declaration of trust in Canon I.7(4). All but one of these canons were adopted well before St. James’ incorporated or acquired any property. St. James’ articles specifically incorporated the national canons, and, as a matter of California law, the Church’s canons also form part of its bylaws. The Diocese deeded property to “St. James’ Episcopal Church” for less than \$100, after St. James’ had promised that it would “be forever held under, and conform to and be bound by,” the

Church's structure and rules. Finally, California Corporations Code § 9142(c)(2) confirms that the Church's canonical provisions are enforceable.

F. Petitioners' "Neutral Principles" Analysis Ignores the Relevant Facts and Law.

Petitioners' own "neutral principles" analysis ignores the facts and authority just discussed, and essentially contends that they should prevail based upon a pair of older court of appeal cases and the fact that St. James' is incorporated. They are wrong.²⁴

1. *Barker and Presbytery of Riverside are Outdated and Distinguishable.*

Ignoring *Korean United, Metropolitan Philip*, and *Guardian Angel*, Petitioners rely heavily on *Barker, supra*, 115 Cal.App.3d 599, and *Presbytery of Riverside v. Community Church of Palm Springs* (1979) 89 Cal.App.3d 910 [152 Cal.Rptr. 854], both of which held that one or more local churches were entitled to retain local church property after disaffiliating from a hierarchical denomination. These cases are of little relevance here. Notably, the disputes in both cases arose prior to *Jones v. Wolf*, prior to the adoption of § 9142, and prior to adoption of any express trust provision in the applicable denomination's governing documents.²⁵

²⁴ Petitioners also rely upon *St. Luke's, supra*, 121 Cal.App.4th 754, which we have already shown was wrongly decided. (See Part III(D), *supra* at pp. 40-41.)

²⁵ In *Barker*, which involved parishes of the Episcopal Church, the court did not reference or discuss any of the earlier national church Canons

(See *Op.* at 58 [distinguishing *Barker*].) As noted above, the later California cases applying a neutral principles analysis to facts which *included* trust provisions and § 9142 have properly reached the opposite conclusion. (See Part IV(E), *supra* at pp. 47-49.)²⁶

Petitioners allude to the *Barker* court's failure to apply Diocesan Canon 10.06, which provides that parish property shall revert to the Diocese upon dissolution of the parish, to parishes that had incorporated before its adoption.²⁷ This aspect of *Barker*, however, has been refuted and superseded by the later decisions of the same appellate district. (*Korean United, supra*, 230 Cal.App.3d at p. 512; *Guardian Angel, supra*, 118 Cal.App.4th at p. 929.)

As the *Korean United* court explained, the Presbyterian Church's trust provision applied to that congregation, which had incorporated before its adoption, because (1) these documents are akin to corporate bylaws, which are enforceable regardless of when they are adopted; (2) the local church had been represented in the trust provision's enactment through the Presbyterian Church's democratic structure; (3) the "the United States

governing parish property, and there is no evidence that the court was even aware of them.

²⁶ In this, the California courts are in accord with the overwhelming weight of authority from around the country. (See *supra* at pp. 30-31 & n.19.)

²⁷ With respect to one of the parishes before it, of course, *Barker* held that this canon was sufficient to establish a trust in the local church's property.

Supreme Court, in *Jones [v. Wolf]*, invited” the “very type” of trust provision the Presbyterian Church had adopted; and (4) the trust provision was reflected in a “legally cognizable form” under California law. (*Korean United, supra*, 230 Cal.App.3d at p. 512.) The same is true here.

Moreover, in *Korean United*, the Second District brought this aspect of its “neutral principles” analysis back into alignment with the law generally governing voluntary associations, which similarly holds that members of an association are bound by the association’s rules *as they may be amended over time*. (E.g., *Gear v. Webster, supra*, 258 Cal.App.2d at pp. 61-62.)

2. Incorporated Local Churches Are Bound By Denominational Rules.

Petitioners also assert that no trust exists here because St. James’ never explicitly incorporated as a “subordinate body” under the Corporations Code. (*Pet. Br.* at 42.) In fact, the Corporations Code has never contained a separate part for “subordinate entities,” and has never required a subordinate entity to use any particular language or reference any particular code section in order to be treated as such.

California first enacted a nonprofit Corporations Code in 1872. (See Civ. Code Div. First, Part IV, Title XII [“Religious, Social, and Benevolent Corporations”].) While the law specifically authorized the formation of religious corporations, it contained no provisions mentioning the

obligations of “subordinate” entities. Nevertheless, in *Wheelock*, the California Supreme Court recognized that a local church corporation can (and should) be treated as “subordinate” to a hierarchical denomination if that is the relationship established by virtue of the denomination’s structure and rules:

“The Civil Code of this state ... expressly permits religious bodies to incorporate, but such incorporation is only permitted as a convenience to assist in the conduct of the temporalities of the church. *Notwithstanding incorporation the ecclesiastical body is still all important. The corporation is a subordinate factor in the life and purposes of the church proper....* [citation omitted] ‘The legislature never means by granting or allowing such charters to change the ecclesiastical status of the congregation.’” (*Supra*, 119 Cal. at p. 483, italics added.)

In 1939, Title XII (“Nonprofit Corporations”) was amended to state that a nonprofit corporation “may be formed for the purpose of incorporating any subordinate body instituted or created under the authority of any head or national association,” and that in that case, certain provisions would (automatically) apply.²⁸ (Civ. Code Div. First, Part IV, Title XII [“nonprofit corporations”].)

In 1978, the Corporations Code was amended to provide that these statutory provisions applicable to “subordinate bodies” would no longer be

²⁸ Under the new provisions, a subordinate corporation would automatically dissolve upon revocation of its charter by the head organization, and the subordinate body would then deliver its property and assets to the larger organization.

self-executing, but should in the future be stated in the subordinate entity's articles in order to be given effect. (See § 9132(a)(2).) Like its predecessors, the current Code does not even remotely suggest that a "subordinate" corporation must use that term – or any other word or provision – in its articles of incorporation, or that a corporation's "subordinate" status may not be determined by virtue of an organization's structure and rules.

Based upon this statutory history, the Second District Court of Appeal has confirmed that a local church is incorporated as a "subordinate entity" where its articles of incorporation use precisely the same language used by St. James' here. (Compare *Korean United, supra*, 230 Cal.App.3d at pp. 510-511 *with* 2 A.A. 164 [St. James' articles].)

As the Court of Appeal accurately noted, California courts have repeatedly rejected the notion that a local church's incorporation in any way insulates it from compliance with denominational rules. (See *Op.* at 13-15, 19-21, 66.) Thus, Petitioners' efforts to rely on St. James' corporate status must fail.

V. **THE COURT OF APPEAL SHOULD BE AFFIRMED BECAUSE THE COURT WAS REQUIRED TO DEFER TO DETERMINATIONS OF A HIERARCHICAL CHURCH REGARDING THE IDENTITY AND LEADERSHIP OF ITS LOCAL PARISH.**

California's and other states' courts have made clear that, notwithstanding any use of neutral principles in church property disputes,

they must defer to the decision of a hierarchical church as to the proper representatives of a member local church. The Church should prevail on the merits of its claims for this reason as well.

In *Korean United, supra*, 230 Cal.App.3d 480, a majority faction of a local church voted to withdraw from the national Presbyterian Church, and the church hierarchy determined that the minority of congregants remaining loyal to the denomination constituted the continuing congregation. The trial court awarded the property to the majority faction, but the Court of Appeal reversed. As discussed above, one of the grounds for reversal was the fact that the trial court should have enforced the trust interest stated in the Presbyterian Church's Book of Order. The court also ruled, however, that under the First Amendment, the general church's determination as to which group constituted the continuing church was "binding and conclusive on the trial court." (*Id.* at p. 503.)

A similar conclusion was reached in *Metropolitan Philip, supra*, 82 Cal.App.4th 923. There, a majority of local church congregants had voted to disaffiliate from the general church, but, again, the general church determined that the continuing local church consisted of the loyal minority. The appellate court correctly recognized that "the real question in [the] case was not whether the property belonged to the general church or to a seceding local church, but rather which of the two local groups is entitled to

possession and use of the property,” (*Id.* at p. 930), and that this was an ecclesiastical decision that was binding on the civil courts. (*Id.* at p. 931.)²⁹

Here, while St. James’ vestry and a majority of the members present at a congregational meeting voted to disaffiliate from the Church, the vote was not unanimous. (*Op.* at 6.) The Diocese and the Episcopal Church have recognized the loyal minority as the continuing parish. (*Ibid.*) This is a determination to which the civil courts must defer.

* * * *

²⁹ Courts in other jurisdictions have held similarly. (See, e. g., *Episcopal Diocese of Mass v. DeVine*, *supra*, 797 N.E.2d at 921-922 [where dispute involved “question of which individuals hold authority to act on behalf of [the church] ..., we consider the matter to be inappropriate for determination by application of neutral principles of law”]; *St. Mary of Egypt Orthodox Church, Inc. v. Townsend* (Ga.Ct.App. 2000) 532 S.E.2d 731 [same]; *Church of God of Madison v. Noel*, *supra*, 318 S.E.2d at 924 [where “the proper church authorities had already determined who were the proper trustees of the Church of God of Madison, the civil courts were bound to abide by that decision”].)

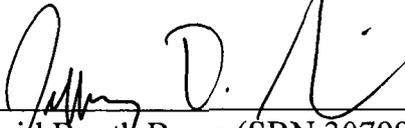
CONCLUSION

For the foregoing reasons, this Court should affirm the Court of Appeal's Opinion.

Respectfully submitted,

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Dated: January 28, 2008

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

The text of Plaintiff in Intervention and Respondent the Episcopal Church's Answer Brief on the Merits consists of **13,730** words as counted by the Microsoft Word word-processing program used to generate the brief.

Dated: January 28, 2008



Jeffrey D. Skinner

CERTIFICATE OF SERVICE

I am employed in the District of Columbia. I am over the age of 18 and not a party to the within action. My business address is Goodwin|Procter LLP, 901 New York Avenue, NW, Washington, DC 20001.

On January 28, 2008, I served the foregoing document described as **PLAINTIFF IN INTERVENTION AND RESPONDENT THE EPISCOPAL CHURCH'S ANSWER BRIEF ON THE MERITS** on the interested parties in this action by placing true and correct copies thereof enclosed in sealed envelopes addressed as follows:

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



Jeffrey D. Skinner