

Supreme Court Copy

CASE NO. S155094

SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

APR 22 2008

EPISCOPAL CHURCH CASES

Frederick K. Onirich Clerk

Deputy
FILED WITH PERMISSION

**PETITIONERS' CONSOLIDATED REPLY BRIEF TO
PLAINTIFFS AND RESPONDENTS' ANSWER BRIEF ON
THE MERITS AND TO PLAINTIFF-IN-INTERVENTION AND
RESPONDENT THE EPISCOPAL CHURCH'S ANSWER
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

PAYNE & FEARS LLP

ERIC C. SOHLGREN, Bar No. 161710
BENJAMIN A. NIX, Bar No. 138258
DANIEL F. LULA, Bar No. 227295
4 Park Plaza, Suite 1100
Irvine, CA 92614
(949) 851-1100 • Fax: (949) 851-1212

**GREINES, MARTIN, STEIN &
RICHLAND LLP**

ROBERT A. OLSON, Bar No. 109374
5700 Wilshire Boulevard, Suite 375
Los Angeles, CA 90036
(310) 859-7811 • Fax: (310) 276-5261

Attorneys for Petitioners, Defendants and Respondents
THE REV. PRAVEEN BUNYAN; THE REV. RICHARD A. MENEES; THE REV.
M. KATHLEEN ADAMS; THE RECTOR, WARDENS AND VESTRYMEN OF ST.
JAMES PARISH IN NEWPORT BEACH, CALIFORNIA, A CALIFORNIA
NONPROFIT CORPORATION; JAMES DALE; BARBARA HETTINGA; PAUL
STANLEY; CAL TRENT; JOHN McLAUGHLIN; PENNY REVELEY; MIKE
THOMPSON; JILL AUSTIN; ERIC EVANS; FRANK DANIELS; COBB
GRANTHAM; JULIA HOUTEN

CASE NO. S155094

SUPREME COURT OF THE STATE OF CALIFORNIA

EPISCOPAL CHURCH CASES

**PETITIONERS' CONSOLIDATED REPLY BRIEF TO
PLAINTIFFS AND RESPONDENTS' ANSWER BRIEF ON
THE MERITS AND TO PLAINTIFF-IN-INTERVENTION AND
RESPONDENT THE EPISCOPAL CHURCH'S ANSWER
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

PAYNE & FEARS LLP

ERIC C. SOHLGREN, Bar No. 161710
BENJAMIN A. NIX, Bar No. 138258
DANIEL F. LULA, Bar No. 227295
4 Park Plaza, Suite 1100
Irvine, CA 92614
(949) 851-1100 • Fax: (949) 851-1212

**GREINES, MARTIN, STEIN &
RICHLAND LLP**

ROBERT A. OLSON, Bar No. 109374
5700 Wilshire Boulevard, Suite 375
Los Angeles, CA 90036
(310) 859-7811 • Fax: (310) 276-5261

Attorneys for Petitioners, Defendants and Respondents
THE REV. PRAVEEN BUNYAN; THE REV. RICHARD A. MENEES; THE REV.
M. KATHLEEN ADAMS; THE RECTOR, WARDENS AND VESTRYMEN OF ST.
JAMES PARISH IN NEWPORT BEACH, CALIFORNIA, A CALIFORNIA
NONPROFIT CORPORATION; JAMES DALE; BARBARA HETTINGA; PAUL
STANLEY; CAL TRENT; JOHN McLAUGHLIN; PENNY REVELEY; MIKE
THOMPSON; JILL AUSTIN; ERIC EVANS; FRANK DANIELS; COBB
GRANTHAM; JULIA HOUTEN

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
LEGAL DISCUSSION.....	3
I. NEUTRAL PRINCIPLES OF LAW SHOULD GOVERN CHURCH PROPERTY DISPUTES.	3
A. The “Neutral Principles of Law” Method Uses Objective and Familiar Legal Principles to Resolve Church Property Disputes.	3
1. The Pure “Neutral Principles” Approach Relies Upon Traditional Secular Indicia of Property Ownership: Deeds, Articles of Incorporation, Agreements, and State Statutes.	3
2. The Pure “Neutral Principles” Approach Affords Only a Circumscribed Role to Religious Canons.	4
B. The Pure “Neutral Principles” Method Is Preferable Because It Is Straightforward, Is Consistent With Existing Law, and Furthers Important Public Policies.	6
1. The Pure “Neutral Principles” Approach Adopted By the New Hampshire Supreme Court and Other States Preserves the Process By Which Courts Traditionally Adjudicate Property Disputes.....	6
2. The Pure “Neutral Principles” Method Is Consistent With Existing California Property Law and Precedent.....	9

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
3. The Pure “Neutral Principles” Approach Best Effectuates Important Policy Objectives and the Reasonable Expectations of the Public.	11
C. The Pure “Neutral Principles of Law” Approach Avoids Unconstitutional Entanglement and Establishment While Preserving Equal Protection and Free Exercise.	15
1. Use of Neutral Principles Affords Equal Treatment.	15
2. Use of Neutral Principles Avoids Unconstitutional Entanglement.	16
3. Use of Neutral Principles Avoids Unconstitutionally Preferring and Establishing Certain Religious Denominations.	18
4. Use of Neutral Principles Upholds Free Exercise Rights.	20
D. Petitioners Prevail Under Either the “Neutral Principles” or “Principle of Government” Standards.	23
1. Neutral Principles of Law Uniformly Favor St. James Church.....	23
2. Even Under a “Deference” or “Principle of Government” Rule, Petitioners Prevail.	28

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
E. Implied Trusts, Voluntary Association Law, and Religious Pronouncements Cannot Be Used to Circumvent Established Neutral Property Law Principles.....	29
II. CORPORATIONS CODE SECTION 9142(C) HAS NO BEARING ON THIS DISPUTE AND, IF ANYTHING, SUPPORTS PETITIONERS.....	32
A. Section 9142(c) Was Never Intended to Address Relations Between a Local Religious Corporation and a Denomination.	32
B. Section 9142(c) Does Not Create the Rule Respondents Urge.	36
C. Section 9142(c) Should Be Interpreted Consistent with Constitutional Limitations.	37
III. ANTI-SLAPP SCRUTINY APPLIES TO THE DIOCESE’S CLAIMS AS THEY DEPEND ON SPEECH-EQUIVALENT EXPRESSIVE CONDUCT.....	38
A. The Public Disaffiliation in Protest of the Episcopal Church Was Highly Expressive Speech.....	38
B. Respondents’ Claims Turn on the Disaffiliation, Because Their Trust Canon Expressly States That It Does Not Become Effective Unless and Until a Disaffiliation Occurs.....	39
CONCLUSION.....	40
CERTIFICATE OF WORD COUNT.....	41

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

<i>Capitol Square Review & Advisory Bd. v. Pinette</i> (1995) 515 U.S. 753	19
<i>Comm. for Public Educ. & Religious Liberty v. Nyquist</i> (1973) 413 U.S. 756	19
<i>Everson v. Bd. of Educ.</i> (1947) 330 U.S. 1.	19
<i>Jones v. Wolf</i> (1979) 443 U.S. 595	<i>passim</i>
<i>Lemon v. Kurtzman</i> (1971) 403 U.S. 602	16
<i>NAACP v. Alabama</i> (1958) 357 U.S. 449	38
<i>Owens v. Ventura County Sup. Ct.</i> (C.D. Cal. 1999) 42 F.Supp.2d 993	15
<i>Presbyterian Church in United States v. Hull</i> (1969) 393 U.S. 440	12, 18
<i>Rosenberger v. Rector & Visitors of the Univ. of Va.</i> (1995) 515 U.S. 819	37
<i>School Dist. of Abington Township v. Schempp</i> (1963) 374 U.S. 203	19
<i>Texas v. Johnson</i> (1989) 491 U.S. 397	38

TABLE OF AUTHORITIES
(Continued)

Page(s)

CALIFORNIA CASES

<i>Ammco Ornamental Iron v. Wing</i> (1994) 26 Cal.App.4th 409.....	23
<i>Birkner v. Lam</i> (2007) 156 Cal.App.4th 275.....	40
<i>Burlingame v. Traeger</i> (1929) 101 Cal.App. 365.....	11
<i>California-Nevada Annual Conf. v. St. Luke’s United Methodist Church</i> (2004) 121 Cal.App.4th 757.....	<i>passim</i>
<i>Concord Christian v. Open Bible Standard Churches</i> (2005) 132 Cal.App.4th 1396.....	10
<i>Davis v. Int’l Alliance of Theatrical Stage Employees</i> (1943) 60 Cal.App.2d 713.....	30
<i>De Mille v. American Fed’n of Radio Artists</i> (1947) 31 Cal.2d 139.....	30
<i>DVI, Inc. v. Superior Ct.</i> (2002) 104 Cal.App.4th 1080.....	13
<i>Elsner v. Uveges</i> (2004) 34 Cal.4th 915.....	33
<i>Faulder v. Mendocino County Bd. of Sup’rs</i> (2006) 144 Cal.App.4th 1362.....	33
<i>Freeman & Mills v. Belcher Oil Co.</i> (1995) 11 Cal.4th 85.....	10
<i>Gear v. Webster</i> (1968) 258 Cal.App.2d 57.....	29

TABLE OF AUTHORITIES
(Continued)

	<u>Page(s)</u>
<i>Grand Grove of United Ancient Order of Druids v. Garibaldi Grove</i> (1900) 130 Cal. 116.....	30
<i>Guardian Angel Polish Nat’l Catholic Church v. Grotnik</i> (2004) 118 Cal.App.4th 919.....	10
<i>Horsman v. Allen</i> (1900) 129 Cal. 131.....	10
<i>Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.</i> (2005) 133 Cal.App.4th 26.....	33
<i>Korean Phila. Presbyterian Church v. Cal. Presbytery</i> (2000) 77 Cal.App.4th 1069.....	31
<i>Korean United Presbyterian Church v. Presbytery of the Pacific</i> (1991) 230 Cal.App.3d 480.....	9, 10
<i>Laird v. Capital Cities/ABC, Inc.</i> (1998) 68 Cal.App.4th 727.....	13
<i>Moore v. California State Bd. of Accountancy</i> (1992) 2 Cal. 4th 999.....	35
<i>Navellier v. Sletten</i> (2002) 29 Cal.4th 82.....	39
<i>NBC Subsidiary (KNBC-TV), Inc. v. Superior Ct.</i> (1999) 20 Cal.4th 1178	37
<i>People v. Benson</i> (1990) 52 Cal.3d 754.....	26, 35
<i>People v. Superior Ct.</i> (1993) 4 Cal. 4th 1164.....	35

TABLE OF AUTHORITIES
(Continued)

	<u>Page(s)</u>
<i>Permanent Committee of Missions v. Pacific Synod of the Presbyterian Church</i> (1909) 157 Cal. 105.....	10
<i>Presbytery of Riverside v. Community Church</i> (1979) 89 Cal.App.3d 910.....	31
<i>Protestant Episcopal Church in the Diocese of Los Angeles v. Barker</i> (1981) 115 Cal.App.3d 599.....	passim
<i>Rosicrucian Fellowship v. Rosicrucian Fellowship Non- Sectarian Church</i> (1952) 39 Cal.2d 121.....	30, 31
<i>Severns v. Union Pac. R.R. Co.</i> (2002) 101 Cal.App.4th 1209.....	7
<i>Silver v. Brown</i> (1966) 63 Cal.2d 841.....	32
<i>Smith v. Superior Ct.</i> (2006) 39 Cal.4th 77.....	32
<i>The Most Worshipful Sons of Light Grand Lodge v. Sons of Light Lodge No. 9</i> (1953) 118 Cal.App.2d 78.....	30
<i>Werner v. Graham</i> (1919) 181 Cal. 174.....	23
<i>Wheelock v. First Presbyterian Church of Los Angeles</i> (1897) 119 Cal. 477.....	10, 15

TABLE OF AUTHORITIES
(Continued)

Page(s)

OUT-OF-STATE CASES

<i>Berthiaume v. McCormack</i> (N.H. 2006) 153 N.H. 239, 891 A.2d 539	6, 7
<i>Bishop & Diocese of Colorado v. Mote</i> (Colo. 1986) 716 P.2d 85	9
<i>Bjorkman v. Protestant Episcopal Church</i> (Ky. 1988) 759 S.W.2d 583	7, 20
<i>First Evangelical Methodist Church v. Clinton</i> (Ga. 1987) 257 Ga. 459, 360 S.E.2d 584.....	7
<i>Trinity Presbyterian Church v. Tankersley</i> (Ala. 1979) 374 So.2d 861	7, 8, 15, 32

FEDERAL CONSTITUTIONAL PROVISIONS

U.S. Const., Amend. 1	18
U.S. Const., Amend. 5	15
U.S. Const., Amend. 14	15

CALIFORNIA CONSTITUTIONAL PROVISIONS

Cal. Const., Art. 1, § 4	18
Cal. Const., Art. 1, § 7	15

CALIFORNIA STATUTES

Civil Code § 22.2.....	11
Civil Code § 1069	22, 27

TABLE OF AUTHORITIES

(Continued)

	<u>Page(s)</u>
Civil Code § 3521	12
Code of Civil Procedure § 425.16(b)(1).....	38
Corporations Code § 5120(c).....	27
Corporations Code § 5140	13, 27
Corporations Code § 9110	13
Corporations Code § 9120(c).....	27
Corporations Code § 9140	13, 14, 27
Corporations Code § 9142	<i>passim</i>
Corporations Code § 9142(a).....	33
Corporations Code § 9142(c).....	<i>passim</i>
Corporations Code § 9150(b)	25
Corporations Code § 9151(e).....	25
Corporations Code § 9230	33
Corporations Code § 9690	13
Evidence Code § 662	23, 27
Probate Code § 15200.....	6
Probate Code § 15201	6
Probate Code § 15206.....	27, 29
Probate Code § 15400.....	28

TABLE OF AUTHORITIES

(Continued)

Page(s)

CALIFORNIA COURT RULES

California Rules of Court, Rule 8.520(c)(1).....	41
--------------------------------------------------	----

LAW REVIEWS

Jeffrey B. Hassler, Note, <i>A Multitude of Sins? Constitutional Standards for Legal Resolution of Church Property Disputes in a Time of Escalating Intradenominational Strife</i> (2008) 35 Pepp.L.Rev. 399	8
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---

TREATISES

2 Bassett, <i>Religious Organizations and the Law</i> (2007) § 7:34	8
4 Witkin, Summary of California Law (9th ed. 1989) <i>Real Property</i> § 500.....	23
9 Witkin, Summary of California Law (9th ed. 1989) <i>Corporations</i> § 127.....	23
<i>Determination of Property Rights Between Local Church and Present Church Body: Modern View</i> (2008) 52 A.L.R. 3d 324	8
Restatement (Third) of Trusts (2003) § 69	23

INTRODUCTION

This case comes down to a choice between two very different methods of resolving church property disputes: one that applies well-known civil law precepts to all parties regardless of their religious or secular character, and one that gives denominational hierarchies special advantage.

Applying neutral legal principles to resolve church property disputes is the preferred modern approach. Well-known to courts and the public, neutral civil law principles promote candor, match the benefits of property ownership with corresponding burdens, and preserve the separate status of duly formed religious corporations.

Application of neutral principles also avoids serious constitutional problems that are certain to arise under the approach advanced by Respondents, the national Episcopal Church and its Diocese of Los Angeles (collectively, “Respondents”). Unlike “deference” or some “principle of government” rule, the “neutral principles of law” method treats all parties – secular or religious, national or local church, historic denomination or new religious structure – equally. Properly applied, this method avoids judicial entanglement with church organization and governance. Use of neutral principles also avoids establishment of so-called hierarchical denominations, and instead respects the diversity of religious practice in our society today.

In contrast, the approach Respondents advance exempts hierarchical denominations from the normal rules for creating and recording property interests. According to them, these denominations

can declare property interests without consideration, without notice, and without the legal titleholder's consent – and civil courts must blindly defer to and civilly enforce their declarations. Whether characterized as deference to hierarchy, a principle of government rule, hybrid neutral principles driven by deference, or an implied trust created by self-generated internal rules, this approach runs counter to well-established California legal principles: statutory law controls over common law; the record titleholder owns the property absent clear and convincing contrary evidence; only the property owner can create a trust; a beneficiary cannot self-create a trust for its own benefit; trusts must be express and in writing; trusts not stated to be irrevocable are revocable at will; and separately incorporated local churches are independent legal persons.

Respondents' approach fosters opaqueness and unpredictability in property relations (confusing adherents, donors and the public alike), misaligns the burdens and benefits of property ownership, and undermines statutory directives. Their approach creates a constitutional brier entangling civil courts in determining how religious denominations are governed, whether and how they are "hierarchical," where the "highest authority" lies, and the history, meaning and bona fides of religious canons and structure.

What the United States Supreme Court envisioned in *Jones v. Wolf* (1979) 443 U.S. 595, and what courts in other states have recently adopted upon careful reflection, is applying to church property disputes the *same* property law rules that govern secular parties. This straightforward method has been employed for decades by many California appellate courts, rather than a rule of rote

“deference” to certain religious denominations rooted in cases from the post-Civil War era. When the “neutral principles” method is followed here, as it should be, it is clear that the trial court correctly determined that the property in this case belongs to the record titleholder, St. James Church.

LEGAL DISCUSSION

I. NEUTRAL PRINCIPLES OF LAW SHOULD GOVERN CHURCH PROPERTY DISPUTES.

A. The “Neutral Principles of Law” Method Uses Objective and Familiar Legal Principles to Resolve Church Property Disputes.

1. The Pure “Neutral Principles” Approach Relies Upon Traditional Secular Indicia of Property Ownership: Deeds, Articles of Incorporation, Agreements, and State Statutes.

The United States Supreme Court set the stage for general adoption of a “neutral principles of law” approach in *Jones v. Wolf*, (1979) 443 U.S. 595. It identified four objective factors a secular court could use to determine church property disputes: (1) the deeds to the property; (2) the local church’s articles of incorporation; (3) the denomination’s constitution, canons, and rules *as agreed upon* by the parties; and (4) relevant state statutes, if any, governing possession and disposition of such property. (*Id.* at 600.) *Jones*, however, did

not dictate whether all four factors would be relevant (or to what degree) under applicable state law, but left to the states what might be legally cognizable. (*Id.* at 606.)

**2. The Pure “Neutral Principles” Approach
Affords Only a Circumscribed Role to Religious
Canons.**

Jones foresaw an approach that “promise[d] to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.” (*Jones*, 443 U.S. at 603.) Thus, *Jones* warned that courts must scrutinize church documents in purely secular terms, giving *no* special deference to them. (*Id.* at 604.) Read in context, *Jones*’s reference to church constitutions and rules is limited to documents that are the product of *mutual* agreement between the parties: “[T]he *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. . . . [C]ivil courts will be bound to give effect to the result indicated by *the parties*, provided it

*is embodied in some legally cognizable form.” (Id. at 606 [emphasis added].)*¹

The need for express consent by the local church – the property owner – is unmistakable. *Jones* did *not* authorize national denominations to confiscate the property of affiliated local churches by canon fiat; all *Jones* invited was *mutual* pre-dispute agreements as to property ownership. The “neutral principles” method thereby retains its secular character, enforcing canons only if they qualify as traditionally expressed mutual agreements – thus obviating Respondents’ concern about a civil court evaluating church documents. (Respondents The Protestant Episcopal Church in the Diocese of Los Angeles’ Answer Brief On the Merits [“DAB”] at 42-43.)

The seminal post-*Jones* California appellate decision, *Protestant Episcopal Church in the Diocese of Los Angeles v. Barker* (1981) 115 Cal.App.3d 599, recognized this by properly limiting consideration of the “constitutions of the general church” to those provisions to which the local church expressly agreed – at most, only those church property rules which existed when the local church affiliated with the denomination. (*Id.* at 623-24.) Such denominational rules are only “legally cognizable” in California when they reflect actual mutual agreement, because trusts in California can

¹ The former Georgia law considered in *Jones* dictated that local “church property be held according to the terms of the church government.” (*Jones*, 443 U.S. at 608 [citations omitted].) Thus, the former Georgia law at issue in *Jones* afforded special status to church constitutions. California law has no such rule.

only be expressly created by the property owner, not by a non-owner. (Prob. Code §§ 15201 [“A trust is created only if the settlor properly manifests an intention to create a trust”]; 15200 [trust created by property’s *owner* so declaring or transferring property].) Thus, post-affiliation canon rules cannot, *ex post facto*, create some unilateral implied trust over local church property.

B. The Pure “Neutral Principles” Method Is Preferable Because It Is Straightforward, Is Consistent With Existing Law, and Furthers Important Public Policies.

1. The Pure “Neutral Principles” Approach Adopted By the New Hampshire Supreme Court and Other States Preserves the Process By Which Courts Traditionally Adjudicate Property Disputes.

The “neutral principles of law” method simply applies tried and true secular property law to a dispute regardless of the religious or secular character of the parties. (*Jones*, 443 U.S. at 603.) “The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges.” (*Id.*)

The New Hampshire Supreme Court recently followed just such a pure “neutral principles” approach. (*Berthiaume v. McCormack* (N.H. 2006) 153 N.H. 239, 891 A.2d 539.) It held that to resolve a church property dispute, a court must “first consider only

secular documents such as trusts, deeds, and statutes. Only if these documents leave it unclear which party should prevail will we consider religious documents, such as church constitutions and by-laws, even when such documents contain provisions governing the use or disposal of church property.” (*Id.* at 248.)

The New Hampshire Supreme Court explained that this approach “is consistent with [the] rules governing the resolution of property disputes generally. In resolving such disputes, [courts] consider extrinsic evidence and the circumstances surrounding a conveyance to determine the parties’ intent *only* if the language of the relevant documents contains either patent or latent ambiguity.” (*Id.* [citations omitted, emphasis added].) California courts have adopted the same analysis. (*See, e.g., Severns v. Union Pac. R.R. Co.* (2002) 101 Cal.App.4th 1209, 1214 [resort to extrinsic evidence improper where deed unambiguous].)

Kentucky, Georgia, Alabama and many other states are in accord, having adopted a pure “neutral principles” approach that applies traditional civil law principles – nothing more, nothing less – to church property disputes. (*Bjorkman v. Protestant Episcopal Church* (Ky. 1988) 759 S.W.2d 583, 586 [“[T]he application of neutral principles appears to be preferable to compulsory deference since in every case, regardless of the facts, compulsory deference would result in the triumph of the hierarchical organization”]; *First Evangelical Methodist Church v. Clinton* (Ga. 1987) 257 Ga. 459, 360 S.E.2d 584 [“Our inquiry must be as to neutral principles of property law Accordingly, we look to the provisions of the deeds that conveyed the two properties involved to the local church.”]; *Trinity*

Presbyterian Church v. Tankersley (Ala. 1979) 374 So.2d 861, 865-66 [“The trial court committed reversible error by allowing the General Assembly’s decree to be binding in this litigation since the composition of the church’s corporate structure was the principal issue to be determined.”]; Jeffrey B. Hassler, Note, *A Multitude of Sins? Constitutional Standards for Legal Resolution of Church Property Disputes in a Time of Escalating Intrad denominational Strife* (2008) 35 Pepp.L.Rev. 399, 457-63 [Alabama, Georgia, Kentucky, Minnesota, New Hampshire, New York, Ohio, and South Dakota all follow a pure neutral principles approach, at least eleven other states have generally adopted a neutral principles approach, and thirteen others have not addressed the question]; see also *Determination of Property Rights Between Local Church and Present Church Body: Modern View* (2008) 52 A.L.R. 3d 324 [collecting cases]; 2 Bassett, *Religious Organizations and the Law* (2007) § 7:34.)

Respondents attempt to turn the traditional property dispute adjudication process upside-down, arguing that courts should first locate and then defer to hierarchical church rules, effectively never reaching secular ownership indicia. (DAB at 46-48; Plaintiff-in-Intervention and Respondent The Episcopal Church’s Answer Brief On the Merits [“EAB”] at 46, 49-50.) For example, Respondents argue that *Jones* “invited” and held “enforceable” unilateral, denominational “trust rule” fiats. (DAB at 3, 15.) As explained above, *Jones* did not.

Admittedly, some other states (e.g., where, unlike in California, implied trusts in property are recognized) have claimed to apply neutral principles, but in fact, have deferred to denominational canons

regardless of other neutral factors. (*See, e.g., Bishop & Diocese of Colorado v. Mote* (Colo. 1986) 716 P.2d 85.) This simply remakes the “neutral principles” method into hierarchical “deference” under another name. As one California Court of Appeal presciently warned, “[a]lthough the hierarchical theory has supposedly been rejected in California, it will nevertheless live on under the label of ‘neutral principles of law,’ if a church’s own rules are viewed as trumping state statutes.” (*California-Nevada Annual Conf. v. St. Luke’s United Methodist Church* (2004) 121 Cal.App.4th 757, 771 [hereinafter, “*St. Luke’s*”].)

As we now discuss, the *pure* “neutral principles” approach commended by *Jones*, followed by *Barker* and *St. Luke’s*, and espoused by New Hampshire and other states, is preferable to the alternatives and should be adopted by this Court.

2. The Pure “Neutral Principles” Method Is Consistent With Existing California Property Law and Precedent.

Consistent with *Jones*, thirty years of California decisional law has employed neutral principles to determine religious property disputes. (*See* Petitioners’ Opening Brief [“OB”] at 24-27; *Barker*, 115 Cal.App.3d 599; *St. Luke’s*, 121 Cal.App.4th 757.) While a handful of appellate decisions have muddied the waters by paying undue homage to certain church leaders, these cases have acknowledged that “neutral principles” is the prevailing rule in California; they have just failed to fully implement it. (*Korean United*

Presbyterian Church v. Presbytery of the Pac. (1991) 230 Cal.App.3d 480, 497; *Guardian Angel Polish Nat'l Catholic Church v. Grotnik* (2004) 118 Cal.App.4th 919, 930; *Concord Christian v. Open Bible Standard Churches* (2005) 132 Cal.App.4th 1396, 1412.)

Respondents tout ancient cases in support of an alternate “principle of government” rule, but these cases do not stand for the proposition that courts must defer to denominational rules in simple property disputes. Instead, these cases contain the seeds of neutral principles (*Wheelock v. First Presbyterian Church of Los Angeles* (1897) 119 Cal. 477, 482 [court reserved for itself the division of property, as “ecclesiastical decrees bearing upon such disposition are not binding upon judicial tribunals”]), or engaged in now-forbidden evaluation of purely spiritual matters (*Horsman v. Allen* (1900) 129 Cal. 131, 136-40 [evaluating whether denomination had departed from the “original faith”]; *Permanent Committee of Missions v. Pacific Synod of the Presbyterian Church* (1909) 157 Cal. 105, 127-28 [evaluating the denomination’s ability to merge with another].)

In light of the adoption of neutral principles in California and nationwide, and for the important and practical public policy reasons discussed below, this Court should acknowledge the better reasoned recent cases adopting the U.S. Supreme Court’s guidance, and confirm that the pure “neutral principles” approach is the law of California. (See *Freeman & Mills v. Belcher Oil Co.* (1995) 11 Cal.4th 85, 88 [court can overrule prior decisions in light of confusion and criticism they have engendered].)

3. The Pure “Neutral Principles” Approach Best Effectuates Important Policy Objectives and the Reasonable Expectations of the Public.

The pure “neutral principles” method furthers important policy objectives and the reasonable expectations of the public.

First, in California, common law rules (such as the “deference” standard Respondents advocate) are subservient to statutory law. “It is only when the code and other statutes are silent that the common law governs.” (*Burlingame v. Traeger* (1929) 101 Cal.App. 365, 371; Civ. Code § 22.2.) The “neutral principles” method looks to all relevant California statutes; Respondents’ proposed theory exalts one but disregards all others.

Second, the “neutral principles” approach is candid. Absent an express written trust executed by the local church, the true property owner is the entity that appears on the publicly recorded deed. This affords the public, local church members, donors and contractors immediate certainty about who owns the property. Respondents’ approach, which vests a national church with the power to create a cloaked ownership interest in local church property through unilateral enactment of an internal rule, leaves ownership a mystery.

Third, the “neutral principles” approach promotes fairness by aligning the burdens and benefits of property ownership. The party who holds the deed usually purchased or received the property, has spent money improving and maintaining it, and bears the risks of liability arising from it. In this case, St. James Church and its members bore all costs associated with every parcel of its property

from 1949 onward. (4 AA 721.)² The Diocese’s complaint acknowledges this, alleging that St. James Church’s withdrawal deprived the Diocese of significant income. (1 AA 24, ¶110.) Despite these facts, Respondents’ approach would allow the national church to claim all benefits of property ownership whenever it chooses, while shouldering none of the corresponding burdens. This is contrary to California law, not to mention basic fairness. (Civ. Code § 3521 (“He who takes the benefit must bear the burden”).)

Respondents quibble that prior donors might have intended moneys contributed to the local church to further only Episcopal doctrine. (DAB at 7-8; EAB at 28.) This attempt to divine donor intention runs straight into the problem identified in *Barker*: it could be equally argued that the church hierarchy, rather than the local church, has strayed from the traditional doctrine followed by the founding members. In this sense, disaffiliation actually fulfills the original donative intent. (*Barker*, 115 Cal.App.3d at 619 [rejecting “implied trust” theory for this reason].) Under modern U.S. Supreme Court precedent, the inquiry is impermissible, as civil courts cannot determine which church body has been most obedient to the doctrines of the faith. (*Presbyterian Church in United States v. Hull* (1969) 393

² “AA” refers to the “Appellants’ Appendix” filed by the Diocese below.

U.S. 440, 450.) Moreover, it is unnecessary. The *objective* fact is that donors contributed to the corporation holding title.³

Fourth, the “neutral principles” method gives full effect to the legally recognized separate corporate status of local churches. There is no dispute that since its founding, St. James has been a California nonprofit corporation (8 RA 1540-45),⁴ with statutory rights. These rights include separate and continued existence, the right to own property, and the right to be governed by its directors and members. (Corp. Code §§ 5140, 9140; *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 [“Corporate entities are presumed to have separate existences.”]; *DVI, Inc. v. Superior Ct.* (2002) 104 Cal.App.4th 1080, 1093-98 (same re personal jurisdiction).) The Legislature’s enactment of the Nonprofit Religious Corporations Law in 1981 (Corp. Code §§ 9110-9690), solidifies that religious corporations are real corporations with real rights of self-government.

Attempting to obscure these rights, Respondents refer to Petitioners as “former members who have asserted ownership and

³ Respondents similarly argue that the property of religious entities is impressed with a charitable trust. (DAB at 35, n.12; EAB at 39.) But the charitable trust doctrine merely prevents a church from converting to for-profit operations, not changing affiliation. (*Barker*, 115 Cal.App.3d at 620 [“We think this change (of religious affiliation) no more compromises charitable purpose than would a switch by a hospital from homeopathic to allopathic medicine or by a psychiatric clinic from Freudian to Jungian theory.”].) Here, no one asserts that St. James Church is no longer solely engaged in religious, charitable activities.

⁴ “RA” refers to “Respondents’ Appendix” filed by Petitioners below.

control over property they used while part of a local parish.” (DAB at 2.) To the contrary, the Diocese sued St. James Church, a corporation, and its directors. Although it severed spiritual ties with the Diocese and Episcopal Church, St. James Church continues its corporate existence and continues to hold clear title to its property, as it has for over fifty years. (4 AA 721-22; 8 RA 1540-45, 1703-04, 1706-21.) Petitioners are not trying to change the legal status quo – recorded title – Respondents are.

Respondents also disregard these rights by claiming that local religious corporations are “subordinate” to their spiritual “hierarchy.” (DAB at 12; EAB at 11.) But under California law, local religious corporations are separate legal persons. (Corp. Code § 9140.) Other states agree, rejecting attempts by national churches to use spiritual pronouncements to control civil corporations. “The courts in this state have long recognized the concept that, whenever there is an incorporated church, there exist two entities . . . [T]here is a spiritual church and a secular legal corporation, each separate though closely connected. Each entity has a separate purpose. Questions involving the spiritual church are ecclesiastical in nature, and civil courts cannot decide any questions concerning this entity. *In contrast, the secular corporate entity is formed by the state and performs civil functions, e.g., holding title to church property, and is in no sense ecclesiastical in its function*”; therefore, civil courts can decide questions concerning

the corporation.”⁵ (*Trinity Presbyterian*, 374 So.2d at 866 [emphasis added].)

National church leaders may well have the power to recognize or not recognize “parishes” or other *spiritual* entities (EAB at 11-12), but they have no power to unilaterally dissolve or disregard a properly incorporated legal person.

C. The Pure “Neutral Principles of Law” Approach Avoids Unconstitutional Entanglement and Establishment While Preserving Equal Protection and Free Exercise.

1. Use of Neutral Principles Affords Equal Treatment.

A chief strength of the “neutral principles” approach is that different religious property owners – whether local congregations, national denominations, or “hierarchical” or “congregational” entities – are treated the same as, and no differently from, secular property owners. The less even-handed approach advocated by Respondents necessarily invites equal protection difficulties by dictating different treatment for local congregations and denominations depending on how “hierarchical” they are, and for religious and secular property owners. Classification based on religion is suspect for equal protection purposes. (*Owens v. Ventura County Sup. Ct.* (C.D. Cal. 1999) 42 F.Supp.2d 993, 998; U.S. Const., Amend. 5, 14; Cal. Const.,

⁵ Accordingly, “[n]otwithstanding incorporation the ecclesiastical body is still all important,” in matters *religious* and in determining who is or is not a part of the religion. (*Wheelock*, 119 Cal. 477.)

Art. 1, § 7.) Use of the “neutral principles” method obviates these problems.

2. Use of Neutral Principles Avoids Unconstitutional Entanglement.

The “neutral principles” approach avoids entangling courts in essentially religious questions inherent in other approaches. (*Lemon v. Kurtzman* (1971) 403 U.S. 602, 613 [excessive government entanglement with religion offends the First Amendment].) When neutral principles are used, there is no need to explore the nature, governance or organizational structure of any religious entity or denomination. Rather, objective documentation – deeds and other written instruments – controls. This attribute led the U.S. Supreme Court to commend “the promise of nonentanglement and neutrality inherent in the neutral principles approach” (*Jones*, 443 U.S. at 604.)

The contrast with the “principle of government” approach that Respondents proffer is striking. This approach asks whether a denomination is hierarchical, where its highest level of “authority” is located, whether that “authority” has issued a rule or determination about the property in dispute, and whether that determination applies to the local church. (EAB at 27; DAB at 38; *see* Opinion, p. 11.) The scope of this entanglement is appropriately illustrated by Respondents’ answering briefs, which spend more than a dozen pages discussing selected elements of history, structure and governance of

the Episcopal Church going back over 200 years.⁶ (DAB at 5-14, 41; EAB at 9-16, 28, 38, 42.) St. James Church could answer in kind and point to evidence showing that the Episcopal Church is *not* hierarchical in matters of property. However, in a non-entangled environment, that discussion should be irrelevant, and under the “neutral principles” approach it is.

Civil courts are not experts in religious affairs or church government. Setting civil courts on such a path is inappropriate in the modern and diverse American religious landscape, which is filled with thousands of religious groups, denominations and sects –Buddhist, Hindu, Evangelical Christian, mainline Protestant, Roman Catholic, Eastern Orthodox, Latter-Day Saints, Muslim, Sikh, Baha’i and Jewish traditions, to name a few. These religions do not fit neatly into pat traditional categories or lend themselves to an anachronistic deference rule developed when only a half-dozen denominations existed in the United States. (*U.S. Religious Landscape Survey 2008*, The Pew Forum On Religion and Public Life, p. 5 [<http://religions.pewforum.org>] [“the Protestant population is characterized by significant internal diversity and fragmentation, encompassing hundreds of different denominations”].) Any approach other than pure “neutral principles” puts civil courts in the untenable position of determining how churches are organized and where their

⁶ Likewise, Respondents asked the trial court to digest voluminous declarations and exhibits from “expert” theologians about Episcopal history, structure and governance. (2 AA 373-487; 3 AA 488-506.) Thus, their own submissions belie their argument that such determinations are “routine.” (DAB at 25.)

authority lies, and consequently, possibly getting it wrong or reaching inconsistent conclusions.

The problem is not neatly solved by “deferring” to the self-serving interpretation of a “hierarchical” denomination about its own “principle of government.” (DAB at 9-15; *see infra* I.D.2.) At the outset, a civil court must decide the nature of the church – hierarchical, congregational, diffuse, hybrid, or something else. Next, a civil court must determine the highest authority in the denomination, and then identify its pronouncement regarding the property dispute (which, as here, may be contested by the local church). Merely deferring to a national church about its own structure still entangles the court.

3. Use of Neutral Principles Avoids Unconstitutionally Preferring and Establishing Certain Religious Denominations.

The pure “neutral principles” approach also avoids unconstitutionally favoring certain religious entities or denominations over others. “[T]here are neutral principles of law, developed for use in all property disputes, which can be applied without ‘establishing’ churches” (*Hull*, 393 U.S. at 449.)

Both the federal and California constitutions, of course, bar governmental establishment of religion. (U.S. Const., Amend. 1; Cal. Const., Art. 1, § 4.) “The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government . . . can pass laws which aid one religion, aid all

religions, or prefer one religion over another.” (*Everson v. Bd. of Educ.* (1947) 330 U.S. 1, 15-16.) In neither purpose nor effect may a state single out a particular religion or category of religious entities or denominations for special benefits. (E.g., *Comm. for Public Educ. & Religious Liberty v. Nyquist* (1973) 413 U.S. 756, 794.) Government must “effect no favoritism among sects.” (*School Dist. of Abington Township v. Schempp* (1963) 374 U.S. 203, 305 [concurring opinion].) This is true even of facially neutral rules. “[T]he Establishment Clause forbids a State to hide behind the application of formally neutral criteria and remain studiously oblivious to the effects of its actions . . . [N]ot all state policies are permissible under the Religion Clauses simply because they are neutral in form.” (*Capitol Square Review & Advisory Bd. v. Pinette* (1995) 515 U.S. 753, 777 [O’Connor, J., concurring].) Respondents’ approach – whether expressed as “deference,” a “principle of government,” or a distorted version of “neutral principles” which elevates church rules over all – fails under these constitutional standards for at least two reasons.

First, Respondents’ approach favors certain religious leaders over dissenting congregations. (See, e.g., DAB at 28 [the “superior religious body” is preferred to the other party].) In practical effect, the price of religious dissent is forfeiture of property held by the local church corporation and for which its members have financially sacrificed. The so-called trust canon that Respondents want courts to enforce is a penalty, expressly triggered only if a local congregation dissents or disaffiliates. (2 AA 431.) Such compulsory deference to a rule disadvantaging dissenters and guaranteeing “the triumph of the

hierarchical organization” in every case (*Bjorkman*, 759 S.W.2d at 586), is per se establishment.

Second, Respondents’ approach favors formally organized denominations – particularly “hierarchical” ones – over looser affiliations and secular parties.⁷ It creates a special rule whereby certain religious denominations may create interests in property through mechanisms unavailable to others under ordinary rules of property and trust law, effectively endorsing those denominations and disapproving persons making alternative and less conventional religious choices.

4. Use of Neutral Principles Upholds Free Exercise Rights.

Respondents assert that the “neutral principles” method must conform to their decrees and enforce their unilaterally adopted canons, or it “violates the Church’s First Amendment right to govern and organize itself without state interference.” (DAB at 57.) The U.S. Supreme Court considered and expressly rejected this argument thirty years ago. (*Jones*, 443 U.S. at 605-06.)

In fact, applying unadulterated neutral legal principles to church property disputes *promotes* the free exercise of religion by

⁷ The practical result of Respondents’ approach would be that even historically congregational denominations might try to recharacterize themselves as “hierarchical” once a property dispute arises, in order to take advantage of “deference,” regardless of prior representations otherwise. (See *Central Coast Baptist Ass’n v. First Baptist Church of Los Lomas*, No. S156770, *rev. granted & held pending this case.*)

accommodating *all* concerned, favoring neither, and providing religion-blind dispute resolution. Local churches have as much of a free exercise right as the religious group from which they departed. Enforcing one-sided, confiscatory property rules that go far beyond what the civil law recognizes in secular contexts unconstitutionally burdens and inhibits the free exercise rights of those dissenting members.

Further, contrary to what Respondents argue, religious denominations are free under “neutral principles” to organize themselves as they see fit. The right of a religion to organize itself spiritually, however, does not include an unfettered right to judicial enforcement of confiscatory internal property canons. No “chaos” will result if civil courts decline to enforce unilateral “trust canons” and instead require churches to follow universally applicable property law. (*See* DAB at 56.) In fact, Respondents seem to agree that they may not, *ex post facto*, “deprive members of vested rights.” (EAB at 30, n.18.) Here, St. James Church has held record title, in fee simple absolute, to its property at all times since 1949. (8 RA 1706-21.) That unquestionably is a “vested right.”⁸ Long association with the

⁸ Respondents circularly reason that St. James Church had no vested right because the Episcopal Church could change its canons at any time. That merely assumes the desired answer. If the right was vested (as it was), the 1979 canon change, as the Episcopal Church concedes, would be of no effect.

denomination does not convert this vested right of ownership into a non-vested one. (*Cf.* DAB at 25, n.9.)⁹

Other denominations such as the Roman Catholic Church avoid property disputes by placing title in the name of the diocesan bishop as trustee for the denomination. (*See, e.g., Barker*, 115 Cal.App.3d at 621.) The Episcopal Church never did so. It is not entitled to offload the burdens of ownership on local churches when convenient, and take the benefits when it suits. “The same freedom useful for administrative convenience carries the risk that congregations which disaffiliate will take their property with them.” (*Id.* at 622.)

D. Petitioners Prevail Under Either the “Neutral Principles” or “Principle of Government” Standards.

1. Neutral Principles of Law Uniformly Favor St. James Church.

Here, neutral legal principles establish that St. James Church owns the property at issue.

Deeds. St. James Church is the record titleholder on all deeds. (8 RA 1706-21.) “A grant [deed] is to be interpreted in favor of the grantee” – here, St. James Church. (Civ. Code § 1069.) The deed

⁹ The Diocese analogizes church property canons to California State Bar ethical rules. (DAB at 56.) Adherence to State Bar ethical canons is a state-imposed condition to the practice of law. If one resigns from the Bar, the ethical canons no longer apply. No one would suggest that the Bar could impose, without individual members’ consent, a rule that every member holds real property in trust for the Bar to be forfeited to the Bar upon leaving practice.

creates a statutory presumption of full beneficial title in St. James Church, which can only be overcome by clear and convincing evidence.¹⁰ (Evid. Code § 662.)

St. James Church purchased three of the four disputed parcels of property with its own funds. (4 AA 721-22.) The Diocese, acting as conduit for a donation, deeded only the original parcel to St. James Church without any reservation of interest or rights. (4 AA 721; 8 RA 1706, 1708; DAB at 18; EAB at 28.) Restrictions – created by extrinsic evidence or otherwise – may not be implied where the deed is made without express restrictions or reference to any recorded declaration of restrictions. (*Werner v. Graham* (1919) 181 Cal. 174, 184; 4 Witkin, Summary of California Law (9th), *Real Property* § 500.) Having unrestrictedly received *all* right, title and interest, full ownership then vested in St. James Church.

Articles of Incorporation. St. James Church’s articles of incorporation contain no language placing its property in trust for

¹⁰ The Opinion below acknowledges that St. James Church *did* enjoy “full beneficial title,” but then reached a conclusion inconsistent with that fact by stating that the title was merely held in trust for the national church. (Opinion, p. 60.) A trust, by definition, separates ownership of legal and beneficial title; the trustee holds the former while the beneficiary holds the latter. (*Black’s Law Dictionary* (5th ed.) [a “trust” is “a right of property, real or personal, held by one party for the *benefit* of another.”].) Since St. James Church possessed both legal title and “beneficial title” (as the Opinion asserts), any trust terminated. (*Ammco Ornamental Iron v. Wing* (1994) 26 Cal.App.4th 409, 417 [“[W]here the legal title and the entire beneficial interest become united in a single person the trust terminates.”]; see Restatement (Third) of Trusts (2003) § 69.)

Respondents. There is no provision for any entity to have any reversionary or other interest in property owned by St. James Church.

The original articles state the corporation's purpose as "maintain[ing] a Parish which shall form a constituent part of the Diocese," and state that the "Constitution and Canons" of the Episcopal Church and the Diocese "for the time being shall, unless they be contrary to the laws of this State, always form a part of the By-Laws and Articles of Incorporation"¹¹ (8 RA 1540.) *Barker* found that indistinguishable language did not create a trust obligation. (*Compare* 8 RA 1540 *with Barker*, 115 Cal.App.3d at 607-08.) That Episcopal rules "for the time being" formed a part of the articles did not create "a kind of open ended agreement . . . to accept in advance any and all rules and regulations which might thereafter be put in effect by the general church." (*Barker*, 115 Cal.App.3d at 623.) Likewise, the language invoking Episcopal canons "unless they be contrary to the laws of this State" necessarily defers to California law – including that a record titleholder is presumed to hold full beneficial title, and that only the owner of legal title can create a beneficial interest in favor of another. Thus, the articles cannot constitute clear

¹¹ The articles of incorporation were amended in 1991 to conform the corporation to recent IRS rules regarding 501(c)(3) nonprofit corporations. (*See* 8 RA 1699-1700.) However, the word "Episcopal" does not even appear in the amendment, and nothing refers to any Episcopal rules. (*Id.*)

and convincing evidence sufficient to rebut the statutory presumption of ownership.¹²

Denominational Canons. As discussed above (Sec. I.A.2, *supra*), the only relevant church documents are those to which St. James Church expressly agreed. When St. James Church joined the Diocese in 1949, no canon or document directed that property was held in trust for the Episcopal Church. (*Barker*, 115 Cal.App.3d at 624.) Rather, the canons contained only general provisions that affiliated churches' property be "dedicated" for the denomination's spiritual aims and requiring the bishop's permission to mortgage any consecrated property. (DAB at 14; EAB at 46.) These *spiritual* rules do not establish an express trust in property. Indeed, "nothing in the general church constitution, canons, and rules operated to create an express trust in local church property in favor of the general church." (*Barker*, 115 Cal.App.3d at 624 [addressing identical provisions].)

¹² The Episcopal Church asserts that the former bylaws of St. James Church referred to their canons, forever forbidding amendment of those bylaws to remove such references. (EAB at 11.) However, its citation to 4 IA 758 (the "Appellants' Appendix" filed by intervenor The Episcopal Church) is to a mere allegation in its *own Complaint*. There is no evidence in the record that the former bylaws of St. James Church contained any such restrictions. Moreover, nothing in cited Corporations Code section 9150(b) creates a perpetual restriction on removing such references. Rather, section 9150(b) simply provides (1) direction on how bylaws may be amended and by whom; and (2) authorization for the bylaws to preclude their amendment by the *board acting alone* so as to preserve the rights of members under section 9151(e). (Corp. Code § 9150(b).)

Thirty years after St. James Church obtained clear title to the original parcel, the Episcopal Church attempted to impose a trust by purporting to enact Canon I.7.4, by which it assertedly claimed a contingent beneficial interest in parish property.¹³ There is *no* evidence that St. James Church ever agreed that property *it* held would be subject to such a burden. At no time after 1949 did St. James Church agree to “an express trust in favor of the denominational church” in California-compliant legally cognizable form. (*Jones*, 443 U.S. at 603.)

Whether St. James Church “objected” to Canon I.7.4 is irrelevant. (DAB at 30, n.10.) Mere silence, inaction or acquiescence of the purported settlor does not create a trust interest in property. There would have been no reason for St. James Church to object since the canon, by its terms, does not comport with California law and has no practical effect unless a church disaffiliates. (*See* Sec. III.B, *infra*.)

Nor can St. James Church be deemed to have surrendered its property rights by merely being affiliated with the Episcopal Church when the new canon was enacted. (DAB at 15, 30 n.10.) St. James Church did not “participate in the vote”; dioceses, not local churches, send delegates to the national convention. (EAB at 6.) At most, local

¹³ Respondents claim that they adopted this canon “in direct response” to *Jones v. Wolf* (1979) 443 U.S. 595. (DAB at 15; EAB at 8.) The record does not support that assertion. (5 AA 986 (vague and conclusory hearsay by declarant who does not state that he was present for canon’s adoption); 3 IA 376 (same); 3 IA 429 (merely cites canon, not reason for its adoption).) Mere proximity in time does not show a causative link. (*People v. Benson* (1990) 52 Cal.3d 754, 781 [per Mosk, J.]) Further, St. James Church disputes whether the canon was properly enacted.

church representatives participated in the selection of *diocesan* representatives. But there is *no* evidence that St. James Church gave any representative power of attorney to sell, give away, or otherwise dispose of its vested property rights by majority vote. There is *no* evidence that St. James ever agreed to Canon I.7.4, knew about it, or acquiesced to it at any time.

Statutes. Numerous California statutes uniformly support St. James Church:

- “The owner of the legal title to property [St. James Church] is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.” (Evid. Code § 662.)
- “A grant [deed] is to be interpreted in favor of the grantee,” here, St. James Church. (Civ. Code § 1069.)
- Nonprofit corporations such as St. James Church have a separate existence upon the filing of articles of incorporation, an existence that continues in perpetuity. (Corp. Code §§ 5120(c), 9120(c).) St. James Church is statutorily empowered to own property. (*Id.*, §§ 5140, 9140.) St. James Church was *not* incorporated under former Corporations Code sections 9203 and 9802 as a “subordinate body” of a national organization. (8 RA 1540-45.)
- “A trust in relation to real property is not valid unless evidenced by . . . a written instrument signed by the trustee . . . or settlor.” (Prob. Code § 15206.) No such written trust instrument signed by St. James Church exists.

- “Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the settlor.” (Prob. Code § 15400; *see St. Luke’s*, 121 Cal.App.4th at 771 [any trust in favor of mother church revocable and deemed revoked upon separation].)
- The rights of St. James Church are consistent with Corporations Code section 9142, discussed below.

In sum, neutral principles of law dictate that St. James Church owns the properties to which it holds record title, free from any unsupported, nonconsensual interest asserted by Respondents.

2. Even Under a “Deference” or “Principle of Government” Rule, Petitioners Prevail.

Having committed their case to a “hierarchical” Anglican structure, Respondents fail to acknowledge or recognize their place in the “hierarchy.” The highest Anglican judicatory is not the Episcopal Church in the United States (DAB at 40), but the worldwide Anglican Communion, which supports Petitioners’ rights.

The Episcopal Church is a member of an unincorporated religious association; it is one of thirty-nine “provinces” of the worldwide Anglican Communion. (<http://www.anglicancommunion.org/tour/index.cfm>.) The Communion is headed by the Archbishop of Canterbury, and governed by the decennial Lambeth Conference, a gathering including Primates (chief bishops) from each of the provinces, scheduled for later this year. (*Id.*) In the interim, the Primates of each of the other thirty-eight Anglican provinces have

“urge[d] the representatives of The Episcopal Church and of those congregations in property disputes with it to suspend all actions in law arising in this situation,” an admonishment that the Episcopal Church has not heeded. (http://www.anglicancommunion.org/communion/primates/resources/downloads/communique2007_english.pdf.)

E. Implied Trusts, Voluntary Association Law, and Religious Pronouncements Cannot Be Used to Circumvent Established Neutral Property Law Principles.

Respondents’ argument, in part, is founded on the premise that courts can *imply* a trust in real property based on the totality of the relationship between national and local churches. Although some states recognize such implied real property trusts, California does not. (Prob. Code § 15206.) Accordingly, *Barker* rejected the idea of such an implied property trust. (*Barker*, 115 Cal.App.3d at 617-18.)

Even without the statutory bar, such an implied trust would be problematic to implement, by allowing different trial courts to make different findings about the nature of the relationship and existence of an implied trust concerning the same denomination, subject only to collateral estoppel constraints. In this case, Respondents *are* collaterally estopped by the final determination in *Barker* that no implied trust was created over individual churches’ property on indistinguishable facts.

The cases Respondents argue regarding fraternal organizations and other voluntary associations are also unavailing. (*E.g.*, *Gear v. Webster* (1968) 258 Cal.App.2d 57, 59 [current Realtor members

required to arbitrate dispute per association's bylaws]; *Davis v. Int'l Alliance of Theatrical Stage Employees* (1943) 60 Cal.App.2d 713, 716 [union bylaws gave it power to "discipline, suspend or expel its members"]; *De Mille v. American Fed'n of Radio Artists* (1947) 31 Cal.2d 139, 146 [member expelled from union for not paying assessment levied in accordance with union rules]; *Grand Grove of United Ancient Order of Druids v. Garibaldi Grove* (1900) 130 Cal. 116, 119-20 [discussing expulsion of members].) These cases are about bylaws and rules of conduct *while* members are affiliated. No case stands for the proposition that an association can unilaterally claim ownership to property of its members even after they leave the association.

The old fraternal society schism case, *The Most Worshipful Sons of Light Grand Lodge v. Sons of Light Lodge No. 9* (1953) 118 Cal.App.2d 78, is of no more help to Respondents. *Most Worshipful Sons* held that where members of a fraternal lodge *depart*, they cannot take the *lodge's* property with them. It held that individual members had no severable interest in the *lodge's* assets. But St. James Church is not seeking to take property owned by another or titled in another's name. It is merely retaining property *to which it has held clear legal title* for almost six decades, and resisting the claims of corporate outsiders claiming a previously unknown beneficial ownership interest.

Rosicrucian Fellowship v. Rosicrucian Fellowship Non-Sectarian Church (1952) 39 Cal.2d 121, is likewise inapposite. Predating *Jones* and the "neutral principles" approach by decades, *Rosicrucian* simply stated in dicta that a person who joins a church

agrees to be bound by its rules, without elaboration. (*Id.* at 132.) That does not mean every church member stands at risk of losing vested property rights by later church pronouncements. Nothing in *Rosicrucian* is inconsistent with *Barker*'s holding that only those property rules in effect at the time of affiliation may even be considered vis-à-vis a local church. (*Barker*, 115 Cal.App.3d at 624.)

Finally, Respondents cannot make an end-run around the “neutral principles” method to control the property of St. James Church by simply declaring that a small minority of former members constitutes the “true” membership of the corporation. (EAB at 54-56.) St. James Church is separately incorporated. It ended its affiliation with the Episcopal Church under California corporate law by an overwhelming majority vote. (4 AA 723-25, 908-10, 920-22.) While the Episcopal Church may no longer recognize St. James as an Episcopal “parish” (it is not), it cannot usurp its corporate governance. (*Korean Phila. Presbyterian Church v. Cal. Presbytery* (2000) 77 Cal.App.4th 1069, 1083 [denomination does not have “standing to challenge control of the Church corporate organization”], *citing* 9 Witkin, *Summary of Cal. Law, Corporations* § 127, p. 626 (9th ed. 1989).)

Presbytery of Riverside v. Community Church (1979) 89 Cal.App.3d 910, recognized the difference between cases where two church factions claim denominational legitimacy and those where a local church withdraws from a denomination entirely. In the latter instance, present here, leaders of the local church's former denomination cannot declare who should control the local corporation no longer spiritually affiliated with them. (*Id.* at 924; *see also St.*

Luke's, 121 Cal.App.4th at 771; *Trinity Presbyterian*, 374 So.2d at 866) Any hindsight declaration by Respondents regarding the religious status of St. James Church and its members is not a temporal power to seize property belonging to former adherents.

II. CORPORATIONS CODE SECTION 9142(C) HAS NO BEARING ON THIS DISPUTE AND, IF ANYTHING, SUPPORTS PETITIONERS.

A. Section 9142(c) Was Never Intended to Address Relations Between a Local Religious Corporation and a Denomination.

Respondents parse out one subparagraph of Corporations Code section 9142 to argue that it grants “superior religious bodies” the breathtaking power to unilaterally appropriate the property of affiliated local churches by merely so declaring in their rules. (DAB at 28-30; EAB 34-36.) The Legislature had no such intent.

The “fundamental [statutory interpretation] task is to ascertain the Legislature’s intent so as to effectuate the purpose of the statute.” (*Smith v. Superior Ct.* (2006) 39 Cal.4th 77, 83.) Even “[t]he literal meaning of the words of a statute may be disregarded . . . to give effect to manifest purposes that, in the light of the statute’s legislative history, appear from its provisions considered as a whole.” (*Silver v. Brown* (1966) 63 Cal.2d 841, 845.)

Section 9142 came about as a technical measure “to fill a void” created by the enactment of another Corporations Code section,

section 9230 (added by Stats.1980, c. 1324 [S.B. 1493].) (Request for Judicial Notice [“Leg.Hist.”] at 19 [author’s letter attached to Sen. Judiciary Comm. background information sheet], 23 [Assm. Judiciary Comm. Analysis], 44, 106 [Enrolled Bill Report]; 17 [Sen. Judiciary Comm. Analysis].)¹⁴ Section 9230 restricted the Attorney General’s powers over religious corporations, including the power to enforce charitable donation restrictions. The concern was that this would leave no one to enforce such charitable restrictions. (Leg.Hist. 44 [Sen. Dem. Caucus analysis]; 46, 112 [bill sponsor letter to Governor].) Therefore, in section 9142, the Legislature created a limited right for religious donors to enforce certain express restrictions stated in their gifts as “a breach of a trust under which any or all of the assets of a corporation are held.” (Corp. Code § 9142(a).)

The legislative history is replete with evidence that the statute addressed the circumstance where a charitable trust exists as to property donated to a religious corporation. (Leg.Hist. 3, 15-16, 19,

¹⁴ The citations are to various legislative history materials for Corporations Code section 9142 (S.B. 1178). Although the Court of Appeal took judicial notice of all legislative history materials (*see* Order dated June 15, 2007 in Appeal No. G036730), the Diocese has objected to certain materials. In this brief, Petitioners cite solely to legislative materials to which the Diocese has *agreed* that this Court should “grant the Motion [for Judicial Notice].” (Response To Petitioners’ Motion For Judicial Notice at 3; *see Elsner v. Uveges* (2004) 34 Cal.4th 915, 934, n.19 [noticing enrolled bill reports]; *Faulder v. Mendocino County Bd. of Sup’rs* (2006) 144 Cal.App.4th 1362, 1376 n.4 [noticing letter from sponsor to Governor]; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 32-35 [collecting cases; committee reports and analyses, legislative counsel digests, enrolled bill reports, caucus analysis all noticeable].)

41 [Assm. Jud. Comm. 3rd Reading Digest; bill addresses issue in context of “[e]xisting law [which] provides that the acceptance of gifts to a religious organization generally establishes a charitable trust. . .”]; 46 [bill sponsor letter to Governor], 105-06 [Enrolled Bill Report; description to Governor makes no mention of hierarchical denomination canons and describes bill as “clarif[ying] the right of individual donors to enforce any charitable trust conditions.”].) The legislators were told that the bill’s purpose was “to define by statute charitable trusts as used properly with respect to property donated or willed to religious organizations” (Leg.Hist. 21 [Sen. Democratic Caucus report]), and to “limit the property of a religious corporation subject to a charitable trust” (Leg.Hist. 28 [Assm. Jud. Comm. bill analysis worksheet]; *accord* Leg.Hist. 42 [Assm. Jud. Comm. 3rd Reading Digest].)

Having created a private right of action for a breach of trust in assets donated to a religious corporation, the Legislature, in subdivision (c), provided the minimum evidentiary floor which must exist before a court could find donations subject to an enforceable trust. Subparagraphs (1) and (3) expressly address gifts *to* a religious corporation, not the property of the religious corporation itself. Subparagraph (1) sets forth minimum standards for a trust where property is “received by the corporation” with an express promise of charitable use; subparagraph (3) recognizes that a charitable trust can exist where “the donor” imposes a trust in writing “at the time of the gift or donation.”

Subparagraph (2) must be read in the same context – limiting the circumstances under which a factfinder could find that gifts or

donations *to* a religious corporation are subject to a trust. (Leg.Hist. 47 [bill sponsor letter to Governor, describing subparagraph (2) as addressing when the church's governing instruments provide that donations be used in a specific way].) “[W]hen a statute contains a list or catalogue of items, a court should determine the meaning of each by reference to the others, giving preference to an interpretation that uniformly treats items similar in nature and scope.” (*Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1011-12.) Subparagraph (2) was directed at the same goal as subparagraphs (1) and (3) – clarifying when assets donated to a local church might be protected through a charitable trust.

Not surprisingly, there is no mention in the legislative history that section 9142 was intended to codify Respondents' interpretation of *Jones*, or that section 9142 preempted other California real property statutes in church property disputes. Likewise, the 1982 amendment adding subdivision (c) makes no mention that it was intended to overrule the then-recent *Barker* decision. The “Legislature is presumed to know of existing case law.” (*People v. Superior Ct.* (1993) 4 Cal.4th 1164, 1178-79, n.9 [citation omitted].) That section 9142 was enacted close in time to *Jones* and *Barker* does *not* suggest any relationship between the two events. (*Benson*, 52 Cal.3d at 781 [per Mosk, J.] “[T]emporal priority does not establish causal force: it is a logical fallacy to reason post hoc ergo propter hoc.”.) Had the Legislature intended to codify *Jones* or overrule *Barker*, or address the controversial topic of whether a national denomination can unilaterally and retroactively impose a trust on property owned by

affiliated local church corporations, one would expect at least some mention of that in the legislative history. There is none.

Section 9142 was enacted unanimously as a noncontroversial piece of legislation. It was directed at gifts to religious corporations and who can enforce them, as that power had recently been removed from the Attorney General. It had nothing to do with the relations between local, separately incorporated churches and some mother church. The legislative history conclusively establishes that the Legislature did *not* intend the meaning and dramatic effect that Respondents now ascribe to section 9142.

B. Section 9142(c) Does Not Create the Rule Respondents Urge.

Moreover, section 9142(c) does not support Respondents' interpretation. The grammatical structure of subdivision (c), subparagraph (2) is a negative conditional. (OB at 44-45.) It appears as one of a series of restrictive conditions. The language is not creating or expanding rights, rather it is *limiting* possible means of creating charitable trusts, consistent with the legislative history. Respondents have misread a limitation – “unless and only to the extent that” – as a grant of right and power.¹⁵

¹⁵ Further, subparagraph (2) only applies to “governing instruments of a superior religious body or general church of which the corporation is a member” Even if Respondents' interpretation was correct, St. James Church is no longer a member of the Episcopal Church, and under Probate Code section 15400, any such trust was revoked. (*See also St. Luke's*, 121 Cal.App.4th at 771.)

C. Section 9142(c) Should Be Interpreted Consistent with Constitutional Limitations.

Even if the language and legislative history of section 9142(c) were susceptible to different interpretations, “statutory provisions should be interpreted in a manner that avoids serious constitutional questions.” (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Ct.* (1999) 20 Cal.4th 1178, 1197 [citations omitted].) Accordingly, section 9142 cannot be interpreted in a manner which confers special and sweeping powers and exemptions on “superior religious bodies.” (OB at 47-49; *Rosenberger v. Rector & Visitors of the Univ. of Va.* (1995) 515 U.S. 819, 854-55 [Thomas, J. concurring] [discussing unconstitutionality of singling out religious entities for special benefits].) Respondents fail to address the serious constitutional problems their interpretation of section 9142(c) raises in providing special benefits to certain religious entities; in effect they concede its constitutional questionability.

III. ANTI-SLAPP SCRUTINY APPLIES TO THE DIOCESE’S CLAIMS AS THEY DEPEND ON SPEECH- EQUIVALENT EXPRESSIVE CONDUCT.

A. The Public Disaffiliation in Protest of the Episcopal Church Was Highly Expressive Speech.

Actions speak louder than words. The disaffiliation of St. James Church is the loudest statement it could make about its disagreement with the direction of the Episcopal Church.¹⁶

The Diocese does not and cannot dispute that symbolic speech is just as entitled to First Amendment protection as traditional (printed or verbal) speech. It nowhere addresses cases such as *NAACP v. Alabama* (1958) 357 U.S. 449, 460 [“[F]reedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech”], or *Texas v. Johnson* (1989) 491 U.S. 397 [flag burning in protest is protected symbolic speech].) St. James Church’s disaffiliation, in and of itself, necessarily intertwined with corporate meetings, votes, and press releases, was an expressive act “in furtherance of” free speech. (4 AA 930-31; Civ. Proc. Code § 425.16(b)(1).)

¹⁶ There is no doubt that the direction of the Episcopal Church was and is a matter of public interest; the Diocese does not contend otherwise.

B. Respondents' Claims Turn on the Disaffiliation, Because Their Trust Canon Expressly States That It Does Not Become Effective Unless and Until a Disaffiliation Occurs.

The expressive disaffiliation act is *the* premise of Respondents' property claims. According to the canon on which Respondents rely, property parish property "is held in trust for this Church" but the supposed trust "in no way limit[s] the power and authority of the Parish, . . . so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons." (5 AA 1039; DAB at 29, 47.) Thus, under Respondents' theory, property ownership remains vested in the local church *unless and until it* ceases to be "a part of, and subject to" the denomination, that is, it disaffiliates. Respondents could *not* assert their supposed property rights had St. James Church not disaffiliated.¹⁷

Thus, far from being irrelevant (DAB 24-26), the disaffiliation is the heart of the case. Respondents' claims "arise from" the disaffiliation; without the disaffiliation, they would "have no basis." (*See Navellier v. Sletten* (2002) 29 Cal.4th 82, 90 [anti-SLAPP applies

¹⁷ The Diocese's argument that "if [Petitioners] had remained an Episcopal parish but asserted exclusive control over parish property, contrary to the Constitutions and Canons [of the Episcopal church], plaintiffs could have made the same claims as exist here" is incorrect under the express terms of the canon rule it relies upon. (*Compare* DAB 25 with 5 AA 1039.) Regardless of whether the Diocese *might have* made a different claim in a different circumstance, the claim that the Diocese *in fact* made is premised on the disaffiliation.

where protected conduct is factual predicate to claim]; *Birkner v. Lam* (2007) 156 Cal.App.4th 275, 285 [“[T]he nature or form of the action is not what is critical but rather that it is against a person who has exercised certain rights.”] [citation and internal quotation omitted].)

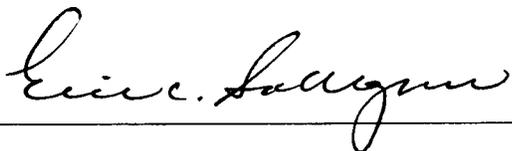
CONCLUSION

Church property disputes should be resolved by pure neutral principles of law, not by judicial rubber-stamping of religious pronouncements or deference to one party’s self-styled principle of government. This Court should reverse the Court of Appeal’s decision in its entirety and remand with directions that the Court of Appeal affirm the Superior Court’s Orders and Judgment.

DATED: April 18, 2008

PAYNE & FEARS LLP
ERIC C. SOHLGREN
BENJAMIN A. NIX
DANIEL F. LULA

GREINES, MARTIN, STEIN &
RICHLAND LLP
ROBERT A. OLSON

By:  _____

Attorneys for Petitioners
THE REV. PRAVEEN BUNYAN, *ET AL.*

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.520(c)(1))

The text of this Petitioners' Consolidated Reply Brief consists of 9,407 words as counted by the Microsoft word processing program used to generate the Brief.

DATED: April 18, 2008



Daniel F. Lula

387524.17

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 April 18, 2008, I served the following document(s) described as **PETITIONERS' CONSOLIDATED REPLY BRIEF TO PLAINTIFFS AND RESPONDENTS' ANSWER BRIEF ON THE MERITS AND TO PLAINTIFF-IN-INTERVENTION AND RESPONDENT THE EPISCOPAL CHURCH'S ANSWER 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 April 18, 2008, at Irvine, California.

LAURA NIEDRINGHAUS

Episcopal Church Cases
Appeal No. S155094

SERVICE LIST

John R. Shiner
Lawrence P. Ebiner
Holme Roberts & Owen LLP
777 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-5826
(213) 572-4300
Fax: (213) 572-4400

*Attorneys For Plaintiffs
and Respondents Jane
Hyde Rasmussen; The
Right Rev. Robert M.
Anderson; The Protestant
Episcopal Church in the
Diocese of Los Angeles;
The Right Rev. J. Jon
Bruno, Bishop Diocesan of
the Episcopal Diocese of
Los Angeles*

Brent E. Rychener
Holme Roberts & Owen LLP
90 South Cascade Avenue, Suite 1300
Colorado Springs, CO 80903
(719) 473-3800
Fax: (719) 633-1518

*Attorneys For Plaintiffs
and Respondents Jane
Hyde Rasmussen; The
Right Rev. Robert M.
Anderson; The Protestant
Episcopal Church in the
Diocese of Los Angeles;
The Right Rev. J. Jon
Bruno, Bishop Diocesan of
the Episcopal Diocese of
Los Angeles*

Meryl Macklin
Kyle L. Schriener
Holme Roberts & Owen LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105
(415) 268-2000
Fax: (415) 268-1999

*Attorneys For Plaintiffs
and Respondents Jane
Hyde Rasmussen; The
Right Rev. Robert M.
Anderson; The Protestant
Episcopal Church in the
Diocese of Los Angeles;
The Right Rev. J. Jon
Bruno, Bishop Diocesan of
the Episcopal Diocese of
Los Angeles*

Frederic D. Cohen
Jeremy B. Rosen
Horvitz & Levy LLP
15760 Ventura Blvd., 18th Floor
Encino, CA 91436-3000
(818) 995-0200
Fax: (818) 995-3157

*Attorneys For Plaintiffs
and Respondents Jane
Hyde Rasmussen; The
Right Rev. Robert M.
Anderson; The Protestant
Episcopal Church in the
Diocese of Los Angeles;
The Right Rev. J. Jon
Bruno, Bishop Diocesan of
the Episcopal Diocese of
Los Angeles*

Floyd J. Siegal
Spile & Siegal LLP
16501 Ventura Blvd., Suite 610
Encino, CA 91436
(818) 784-6899
Fax: (818) 784-0176

*Attorneys For Defendants
and Petitioners Rev.
Praveen Bunyan; Rev.
Richard A. Menees; Rev.
M. Kathleen Adams; The
Rector, Wardens and
Vestrymen of St. James
Parish in Newport Beach,
California, a California
nonprofit corporation;
James Dale; Barbara
Hettinga; Paul Stanley;
Cal Trent; John
McLaughlin; Penny
Reveley; Mike Thompson;
Jill Austin; Eric Evans;
Frank Daniels; Cobb
Grantham; Julia Houten*

Joseph E. Thomas
Jean C. Michel
Thomas, Whitelaw & Tyler, LLP
18101 Von Karman Ave., Suite 230
Irvine, CA 92612
(949) 679-6400
Fax: (949) 679-6405

*Attorneys For Plaintiff in
Intervention and
Respondent The Episcopal
Church in the United States
of America*

David Booth Beers
Heather H. Anderson
Goodwin Procter LLP
901 New York Ave, NW
Washington, DC 20001
(202) 346-4000
Fax: (202) 346-4444

*Attorneys For Plaintiff in
Intervention and
Respondent The Episcopal
Church in the United States
of America*

Lynn E. Moyer
Law Offices of Lynn E. Moyer
200 Oceangate, Suite 830
Long Beach, CA 90802
(562) 437-4407
Fax: (562) 437-6057

*Attorneys For Defendants
and Petitioners in Case
Nos. S155199 and S155208*

Kent M. Bridwell
3646 Clarington Avenue, No. 400
Los Angeles, CA 90034-5022
(310) 837-1553
Fax: (310) 559-7838

*Attorneys For Defendants
and Petitioners in Case
Nos. S155199 and S155208*

Clerk of the Court of Appeal
Fourth Appellate District, Division 3
925 North Spurgeon Street
Santa Ana, California 92701
(714) 558-6777

Appeal Nos. G036096,
G036408, G036868

Clerk to the Hon. David C. Velasquez
Orange County Superior Court
Complex Civil Division
751 West Santa Ana Boulevard
Santa Ana, CA 92701
(714) 568-4802

Judicial Council
Coordination Proceeding
No. 4392; Case No. 04 CC
00647

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814
(916) 322-3360

George S. Burns, Esq.
Law Offices of George S. Burns
4100 MacArthur Boulevard, Suite 305
Newport Beach, CA 92660
(949) 263-6777
Fax: (949) 263-6780

*Attorneys for Amici Curiae
the Presbyterian Church
(USA), A Corporation, The
Synod of Southern
California and Hawaii and
Presbytery of Hanmi*