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CASE NO. S182407

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

EPISCOPAL CHURCH CASES

JANE HYDE RASMUSSEN, *et al.*,
Plaintiffs and Petitioners,

v.

THE SUPERIOR COURT OF ORANGE COUNTY,
Respondent.

THE REV. PRAVEEN BUNYAN, *et al.*,
Real Parties in Interest.

SUPREME COURT
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California Court of Appeal, Fourth District, Division Three, No. G042454
Orange County Superior Court, Case Nos. J.C.C.P. 4392; 04CC00647
The Honorable Thierry Patrick Colaw, Coordination Trial Judge

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INTEREST THE REV. PRAVEEN BUNYAN, ET AL.

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GRANTHAM; JULIA HOUTEN

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ISSUE ON WHICH REVIEW WAS GRANTED

“Did the Court of Appeal properly direct the entry of judgment on the pleadings in favor of the national Episcopal Church under *Episcopal Church Cases* (2009) 45 Cal.4th 467?” (Order, June 9, 2010.)

INTRODUCTION

Overruling a demurrer or denying an anti-SLAPP motion does not equate to directing entry of judgment in the plaintiff's favor or barring a defendant from putting on a case, including asserting and proving affirmative defenses. That result should be the same whether the ruling is by the trial court or an appellate determination as to how the trial court should have ruled.

Yet, the Court of Appeal majority held the opposite. It held that this Court's prior decision in this case, *Episcopal Church Cases* (2009) 45 Cal.4th 467 [*"Episcopal Church Cases I"*], effectively ended the litigation and directed entry of judgment – before defendants had even answered or pled affirmative defenses – in favor of the plaintiffs, the national Episcopal Church and its Los Angeles Diocese. Even though the issues in *Episcopal Church Cases I* were limited to a demurrer ruling and the applicability of an anti-SLAPP motion, the Court of Appeal majority read the decision as mandating entry of judgment against defendant St. James Church. *Episcopal Church Cases I* said no such thing, at least not in so many words. Nonetheless, the Court of Appeal majority concluded that this Court must have intended such a remarkable outcome based on the tense, grammar and syntax of what it viewed as the opinion's "plain language."

The Court of Appeal dissent rejected such a reading as "unprecedented," "revolutionary," "without any basis in law" and divorced from the case's procedural posture as it had come before the Court of Appeal and this Court. As the dissent pointed out, *Episcopal Church Cases I* "affirm[ed]" the Court of Appeal's prior decision, a decision which had reversed the trial court's demurrer and anti-SLAPP motion rulings, but had remanded contemplating "[f]urther proceedings . . . consistent with [its] opinion."

The dissent was right and the Court of Appeal majority was wrong. Appellate opinions, including this Court's opinions, must be read and understood in the context of the case's procedural posture before the court. Language used in any opinion can only be understood in the light of the facts and issues before the court and discussed in the opinion. Procedural posture is critical to understanding an opinion. It dictates not only the standard of review, but how the appellate court must view the facts.

Here, the appeal was from a demurrer – where the facts pleaded must be assumed true, without any opportunity for evidentiary rebuttal – and an anti-SLAPP motion – where the facts must be construed most favorably to the plaintiff. As to the latter, *Episcopal Church Cases I* determined that the anti-SLAPP statute did not even apply, making the anti-SLAPP motion a procedural nullity. Even if it had applied, the Code of Civil Procedure specifically bars the denial of an anti-SLAPP motion from affecting further proceedings. Therefore, the *only* motion at issue on its legal merits in *Episcopal Church Cases I* was a demurrer. Nothing about a demurrer allows any court – trial court or appellate – to resolve potential factual issues or yet-to-be-pleaded affirmative defenses against a moving defendant. Appellate opinions cannot be read as going beyond their procedural posture.

Fundamental due process principles also compel narrowly reading *Episcopal Church Cases I*, or any appellate opinion, as limited to its procedural posture. In bringing a demurrer or an anti-SLAPP motion, a defendant has no notice that it must present, and no opportunity to present, a full factual case – and no notice that failure to do so risks entry of judgment against it. Likewise, a party seeking to uphold demurrer and anti-SLAPP rulings on appeal has no notice that it must present (and under the applicable appellate standards, no opportunity to present) a full-fledged factual case. Certainly, no such notice was given in this case. Rather, the

parties on both sides in their briefs acknowledged that they were dealing with a constrained and limited record.

Due process affords defendants the right to controvert plaintiffs' allegations, to raise defenses, to marshal evidence (through a full discovery period), and then to have contested issues of fact and their defenses adjudicated either in a trial or through a proper summary judgment process. Those rights should not and cannot be peremptorily swept away at an early procedural stage before the defendant has even answered, based on an alleged, presumed, and necessarily incomplete state of facts.

Nor is it a fair reading of *Episcopal Church Cases I* that this Court ever suggested such a result. In particular, this Court specifically modified *Episcopal Church Cases I* to clarify that it was “addressing” and “analyzing” the merits, not “deciding” or “resolving” them. (*Episcopal Church Cases* (2009) 45 Cal.4th 467, 476, 478.) To be even clearer, it specifically limited its previously unqualified “conclu[sions]” regarding the merits of the property dispute, by adding “on this record.” (*Id.* at 473, 493.) In context, “this record” can only mean the facts discussed in the opinion – viewed through the lens of the procedural posture (i.e., accepting the truth of mere allegations and construing all facts in favor of the plaintiffs) – but not including undisclosed or occasional hints of yet-to-be asserted factual affirmative defenses that might be buried somewhere in the appellate appendix or not yet even discovered.

Properly and reasonably read, *Episcopal Church Cases I* cannot be construed as mandating entry of judgment in plaintiffs' favor without affording defendant St. James Church an opportunity to answer and to present its full factual case. In fact, the *current* record, still far from developed, now includes testimony not before this Court in *Episcopal Church Cases I* showing that the Episcopal Church two decades ago

unambiguously *waived* any beneficial trust interest in specific St. James Church property.

This Court should reiterate that notwithstanding any lingering ambiguity, given the pre-answer posture of the case, *Episcopal Church Cases I's* mandate was limited to a remand for further proceedings. The judgment of the Court of Appeal majority should be reversed and the petition for writ of mandate should be denied.

STATEMENT OF THE CASE

I. TRIAL COURT ROUND ONE: THE INITIAL PLEADINGS AND PRE-ANSWER MOTIONS.

A. The Complaints.

As a consequence of a doctrinal dispute, the Episcopal Church in the Diocese of Los Angeles (“Diocese”) sued St. James Parish in Newport Beach, a California nonprofit religious corporation, three of its clergy, and twelve of its volunteer lay directors (collectively “St. James Church”) after St. James Church left the Episcopal Church. (*Episcopal Church Cases I*, 45 Cal.4th at 475.) In a first amended complaint, which was the operative complaint in *Episcopal Church Cases I* and remains the operative complaint today, the Diocese alleges eight causes of action. The first, for declaratory relief, seeks possession of property held in the name of the St. James Parish corporation. The other seven claims are directed against the individual defendants and seek monetary damages for alleged breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, conversion, ejectment, promissory estoppel and unjust enrichment. (6 RPE 1315-1347; 45 Cal.4th at 476.)¹

The national Episcopal Church filed a complaint-in-intervention against St. James Church, seeking declaratory relief regarding the ownership of St. James Church’s property and injunctive relief. (5 RPE 1306-1314; 45 Cal.4th at 476.) The national Episcopal Church alleges that it is a hierarchical religious entity superior to the Diocese and, formerly, to St. James Church. (5 RPE 1306-1307.)

¹ “RPE” refers to Exhibits Supporting Real Parties in Interest’s Return, filed October 1, 2009. The citations are in the format [Volume] RPE [Page(s)].

B. St. James Church Demurs and Files an Anti-SLAPP Motion to Strike.

St. James Church demurred to the Episcopal Church's complaint-in-intervention. The demurrer attacked the legal sufficiency of the complaint-in-intervention, asserting that it did not state facts sufficient to state a cause of action. (Code Civ. Proc. § 430.10, subd. (e); 4 RPE 997-1018.)

St. James Church also filed a special motion to strike the Diocese's complaint, asserting that its allegations "arose from" defendants' acts "in furtherance of the right of free speech in connection with a public issue" and that, accordingly, the Diocese had to demonstrate a probability of success on the merits before proceeding with its claims. (1 PE 267-290; *Episcopal Church Cases I*, 45 Cal.4th at 476; *see id.* at 473, fn. 1 [an "anti-SLAPP" motion is shorthand for a motion brought under Code Civ. Proc. § 425.16, "SLAPP" being an acronym for Strategic Lawsuit Against Public Participation].)²

C. St. James Church's First Cross-Complaint.

While defendants' demurrer and anti-SLAPP motion were pending, the St. James Parish corporation (but not the individual defendants) cross-complained against the Diocese for promissory estoppel, fraud, and other claims. (1 PE 247-266.) In particular, the unverified cross-complaint alleged that in 1991 the Episcopal Church in the Diocese of Los Angeles expressly waived any claim regarding, including any claim of a beneficial trust interest in, St. James's property located on 32nd Street in Newport Beach; the cross-complaint attached an unauthenticated copy of a letter to that effect. (1 PE 266.)

² "PE" refers to Exhibits Supporting Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief, filed on or about August 13, 2009. The citations are in the format [Volume] PE [Page(s)].

D. The Superior Court Grants the Anti-SLAPP Motion and Sustains the Demurrer, After Which St. James Parish Dismisses Its Cross-Complaint as Moot.

The trial court granted the anti-SLAPP motion, striking the Diocese's complaint. It also sustained the demurrer to the Episcopal Church's complaint-in-intervention, eventually without leave to amend. It entered judgments of dismissal against the Diocese and the Episcopal Church and in favor of St. James Church. Both the Diocese and the Episcopal Church appealed. (*Episcopal Church Cases I*, 45 Cal.4th at 476.) With the complaints against it stricken, St. James Parish voluntarily dismissed without prejudice, as moot, its cross-complaint. (1 PE 161-162.)

II. APPELLATE ROUND ONE: APPELLATE REVIEW OF THE DEMURRER AND ANTI-SLAPP RULINGS.

A. The Court of Appeal Reverses the Pre-Answer Rulings, Remanding for "Further Proceedings . . . Consistent With [Its] Opinion."

On appeal, the Court of Appeal, Fourth District, Division Three, reversed. It held that (1) the prerequisites for an anti-SLAPP motion did not exist, making that motion a procedural nullity, in that the Diocese's complaint did not "arise from" acts in furtherance of free speech rights (*Episcopal Church Cases* (2007) 152 Cal.App.4th 808, 818-819, *superseded by, aff'd on other grounds by, Episcopal Church Cases I*); and (2) the demurrer should have been overruled under a "principle of government" test for resolving church property disputes (*id.* at 875).

The Court of Appeal reversed the judgments and remanded, directing that "[f]urther proceedings shall be consistent with [its] opinion." (*Id.* at 876.)

B. This Court Affirms the Court of Appeal, Agreeing That an Anti-SLAPP Motion Was Procedurally Unavailable and That the Demurrer Should Have Been Overruled, Albeit on a Different Theory.

This Court granted review. In its Opening Brief on the Merits, St. James Church noted that “[t]his appeal is from the trial court’s grant of an anti-SLAPP motion and the facts, therefore, are limited to those allegations in the complaints which are not in dispute, judicially noticeable documents, and the two declarations submitted in support of the motion.” (4 PE 954, fn. 2.) In its reply brief, St. James Church further noted that certain Episcopal Church arguments were premised on documents not in evidence, but contained as “mere allegations in its own complaint.” (4 PE 1045, fn. 12 [emphasis omitted].) In opposition, the Episcopal Church too recognized that “the record in this case is limited, given its procedural status.” (3 RPE 586, fn. 1.) And, it argued its case based on “[t]he facts *alleged* here” (3 RPE 630 [emphasis added].)

Consistent with the pre-answer procedural posture and limited record, the parties’ briefs did not mention facts potentially in dispute that might support yet-unpled affirmative defenses, including waiver and estoppel. For example, no mention was made of the dismissed cross-complaint. Nor was any mention made in the briefing of the 1991 waiver of any beneficial trust interest in St. James Church’s property.³ (*See*

³ The dismissed cross-complaint, however, was included in the appellate appendix *filed by the Episcopal Church*. (*See* Appellants’ Appendix in Lieu of Clerk’s Transcript, filed in Appeal Nos. G036096 and G036408 on March 6, 2006, Vol. 3, pp. 670-680.) A declaration in support of St. James Church’s anti-SLAPP motion, which mentioned the waiver as a reason why plaintiffs’ claims did not have probable validity, was likewise included in the same appendix. (*Id.*, Vol. 4, pp. 722-723, 906.) The inclusion *by plaintiffs* of these materials in their appendix does not equate to full litigation of their merits.

generally 5 PE 1142-1159 [petition for rehearing discussing lack of briefing on good-faith defenses given the procedural posture of the appeal].)

This Court ultimately “affirm[ed] the judgment of the Court of Appeal, . . . reach[ing] the same conclusions [that the anti-SLAPP and demurrer judgments had to be reversed], although not always for the same reasons.” (*Episcopal Church Cases I*, 45 Cal.4th at 473.) Like the Court of Appeal, this Court first “resolve[d] the preliminary procedural question of whether this action is subject to a special motion to dismiss under Code of Civil Procedure section 425.16.” (*Id.*) It held that the prerequisite (“first prong”) for an anti-SLAPP motion – claims “aris[ing] from” acts of free speech – was not present. (*Id.* at 476-478.) Accordingly, an anti-SLAPP motion was not even procedurally cognizable: “the trial court erred in treating this as a SLAPP suit subject to section 425.16’s special motion to dismiss.” (*Episcopal Church Cases I*, 45 Cal.4th at 478.)

Having disposed of the procedural issue, this Court next addressed the substantive “merits” of the demurrer issue – whether the Episcopal Church had stated a cause of action for ownership of the disputed property. (*See id.* at 478.) First, it addressed “how the secular courts of this state should resolve disputes over church property,” adopting a “neutral principles of law” method and disapproving the Court of Appeal’s “principle of government” approach. (*Id.* at 472, 478-486.) It then applied its “neutral principles” approach to the limited record: the allegations of the Episcopal Church’s first amended complaint-in-intervention that this denomination had enacted a “trust rule” in 1979, and the materials of which St. James Church had requested the trial court take judicial notice. (*Id.* at 479-493; *see* 5 PE 1306-1319, 5 RPE 1019-1206.)

Without any elaboration or further direction, this Court “affirm[ed] the judgment of the Court of Appeal” (*Episcopal Church Cases I*, 45

Cal.4th at 493), which in turn had remanded for “further proceedings” (*Episcopal Church Cases*, 152 Cal.App.4th at 876.)

C. This Court Modifies Its Opinion to Use Less All-Encompassing Language.

St. James Church petitioned for rehearing or modification, expressing concern (well-taken, it turned out), that the Diocese and Episcopal Church would claim that they were entitled to judgment based on this Court’s opinion, despite the preliminary procedural context in which it was rendered. (1 PE 58-76.) In arguing for modification, St. James Church mentioned for the first time on appeal some of its potential affirmative defenses that needed to be pled and litigated on remand to the trial court. The petition argued that St. James Church should “remain free to answer the operative complaints, to plead and litigate affirmative defenses, and otherwise to fully litigate all facts relevant to the property issues under the legal standard imposed by the opinion.” (*See* 1 PE 60.) As an example of affirmative defenses not yet pled, St. James Church reprised its claim that the Diocese had expressly waived and was estopped to claim any beneficial interest in certain real property. (1 PE 63.) The rehearing petition asked for clarification that such issues remained open for adjudication by the trial court. (*See* 1 PE 64-65.)

The Episcopal Church and the Diocese opposed rehearing or modification. They argued that this Court’s opinion was clear in directing that they were the undisputed owners of the contested real property. (1 PE 80-90.)

This Court denied rehearing but significantly modified its opinion. The modifications consisted of the following (deleted words are stricken; added words are underlined):

- Applying the neutral principles of law approach, we conclude, on this record, that the general church, not the local church, owns the property in question.
- We granted review to decide ~~both~~ whether this action is subject to the special motion to strike under Code of Civil Procedure section 425.16 and to address the merits of the church property dispute.
- Both lower courts also ~~decided~~ addressed the merits of the dispute over ownership of the local church – the trial court found in favor of the local church and the Court of Appeal found clear and convincing evidence in favor of the general church. We will also ~~decide~~ address this question, which the parties as well as various amici curiae have fully briefed. We will first consider what method the secular courts of this state should use to resolve disputes over church property. We will then apply that method to ~~resolve~~ analyze the dispute of this case.
- For these reasons, we agree with the Court of Appeal's conclusion (although not with all of its reasoning) that, on this record, when defendants disaffiliated from the Episcopal Church, the local church property reverted to the general church.

(*Episcopal Church Cases I*, 45 Cal.4th at 473, 476, 478, 493 [additions and stricken language indicated]; see No. S155094, slip opn. dated January 5, 2009 and order dated February 25, 2009.)

D. In Opposing Certiorari, the Episcopal Church and the Diocese Argue That this Court Did Not Finally Determine the Parties' Rights.

St. James Church petitioned the United States Supreme Court for a writ of certiorari. (5 RPE 1207-1256.) In opposing certiorari, the Diocese and the Episcopal Church asserted that no United States Supreme Court jurisdiction existed because “no final judgment or decree ha[d] been rendered . . .” by this Court. (5 RPE 1276.) Consistent with that position,

the United States Supreme Court denied certiorari. (*Rector, Wardens & Vestrymen v. Protestant Episcopal Church* (2009) 130 S.Ct. 179.)

III. TRIAL COURT ROUND TWO: ON REMAND, THE TRIAL COURT REJECTS THE EPISCOPAL CHURCH'S ATTEMPT TO PREMATURELY END THE CASE.

A. St. James Church Answers and Pleads Affirmative Defenses for the First Time.

After this Court modified its decision, the case was remanded to the Superior Court. For the first time in the case, St. James Church filed a verified answer denying the material allegations of the Diocese's first amended complaint and a general denial of the Episcopal Church's first amended complaint-in-intervention. In both instances, St. James Church pled numerous affirmative defenses, including defenses of estoppel and waiver. (1 RPE 22-49; 1 PE 186-195.)

In addition, St. James Church filed a cross-complaint against the Diocese similar to the one it had voluntarily dismissed without prejudice in January 2006. The cross-complaint principally asserted a claim for promissory estoppel based on the 1991 Episcopal written waiver of any interest in certain real property of St. James Church. (1 PE 172-185.)

B. St. James Church Commences Discovery to Support Its Defenses.

On remand, St. James Church quickly began marshaling evidence supporting its affirmative defenses. In June and July of 2009, defendants deposed the Rt. Rev. D. Bruce MacPherson and the Rt. Rev. Frederick H. Borsch, two Episcopal bishops who had been in the Diocese during the early 1990s. Bishop MacPherson confirmed that in 1991, Bishop Borsch, the Diocese's then-presiding Bishop, acceded to St. James Church's request

to hold property free of any trust and, on his behalf, Bishop MacPherson wrote to St. James Church confirming that fact. (1 RPE 10, 13-14.)

Bishop MacPherson further testified that the fundamental structure of the Episcopal Church is that of “a voluntary association of equal dioceses” that predates the General Convention of the Episcopal Church. (1 RPE 16.) As a result, the general church’s “presiding bishops” have no overarching authority over the dioceses, reflecting the confederational – rather than hierarchical – nature of the Episcopal Church. (1 RPE 18.)

C. The Trial Court Denies the Episcopal Church’s Request for Judgment on the Pleadings Premised on Its Complaint-In-Intervention and Denies the Diocese’s Comparable Motion Directed at St. James Church’s Cross-Complaint.

The Episcopal Church moved for judgment on the pleadings, demanding entry of judgment in its favor based on the face of its complaint-in-intervention’s allegations. (1 PE 226-240.) The Diocese filed a comparable demurrer to St. James Church’s new cross-complaint. (1 PE 196-225.) Both argued that *Episcopal Church Cases I* had completely and finally resolved the property dispute claims and decided that they owned all of St. James Church’s property. (*Id.*)

The Superior Court denied both motions, ruling that as *Episcopal Church Cases I* was postured from the grant of an anti-SLAPP motion and the sustaining of a demurrer, nothing in this Court’s disposition foreclosed defendants’ ability on remand to take discovery and to plead and prove their defenses. (1 PE 245-246.)

D. The Individual Defendants' Summary Judgment Motions Are Held in Abeyance Pending the Outcome of These Proceedings.

Because the Diocese *did not* move for judgment on the pleadings on *its* first amended complaint, that complaint remains outstanding. It contains not only a claim of ownership of the St. James Parish property, but also pleads numerous claims seeking to impose personal liability for damages on individual church volunteers and clergy. (*See* 6 RPE 1315-1347.) These individual defendants have moved for summary judgment or summary adjudication of the claims against them; the Superior Court is holding those motions in abeyance pending the outcome of these appellate proceedings regarding plaintiffs' motions for judgment on the pleadings.

IV. APPELLATE ROUND TWO: THE WRIT PETITION SEEKING ENTRY OF JUDGMENT ON THE PLEADINGS IN THE EPISCOPAL CHURCH'S AND THE DIOCESE'S FAVOR.

A. The Court of Appeal Majority Grants Writ Relief, Holding That This Court's Anti-SLAPP and Demurrer Rulings Resolved the Merits of the Property Dispute in Plaintiffs' Favor.

The Episcopal Church and the Diocese petitioned the Court of Appeal, Fourth Appellate District, Division Three for a writ of mandate. (Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief, filed August 12, 2009.)

In a split 2-1 decision, the Court of Appeal granted writ relief and directed the Superior Court to grant the motion for judgment on the pleadings filed by the Episcopal Church and to sustain the demurrer to St.

James Church's cross-complaint filed by the Diocese. (Opinion, filed March 26, 2010 ["Opn.,"] at 15.)

The majority opinion, per Presiding Justice Sills, emphasized reading the words in *Episcopal Church Cases I* as literally as possible. In the majority's view, "the plain language of the *Episcopal Church Cases I* opinion" governed, conclusively deciding that plaintiffs own all of St. James Church's property and thereby compelling entry of judgment in the Episcopal Church's favor. (Opn. at 2.) For example, the majority read *Episcopal Church Cases I*'s statement "on this record, when defendants disaffiliated from the Episcopal Church, the local church property reverted to the general church" as "past tense, already-happened, done-deal." (*Id.* [citing *Episcopal Church Cases*, 45 Cal.4th at 493].) In the majority's view, even at a preliminary procedural stage, this "Court can decide any issue it pleases that is 'fairly included' in the briefing," including yet-to-be-pled factual questions and affirmative defenses. (See Opn. at 3.) According to the majority, because "ownership" in the abstract was at issue in the demurrer and anti-SLAPP motion, this Court's opinion conclusively determined all possible property ownership issues without the need for answers, defenses, discovery, trial or other mechanisms for resolving factual disputes. (See Opn. at 6.)

In the majority's view, the procedural posture of the case was irrelevant; all that mattered was a syntactical and grammatical deconstruction of the language in this Court's opinion. Thus, in the majority's view, because this Court's opinion in "analyzing" and "addressing" the dispute used present and past tense language (e.g., that the Episcopal Church "owns" the disputed property and that the property "reverted" to the Episcopal Church), it necessarily, finally and forever decided any and all possible ownership issues, including all existing and

future factual disputes and any yet-to-be-pleaded defenses or matters yet to be discovered. (Opn. at 3, 7-10.)

Notwithstanding that it was St. James Church that sought modification of this Court's opinion asserting that it had *not* finally resolved the property dispute, the majority read the modification of *Episcopal Church Cases I* as strengthening, rather than weakening, a directive that judgment be entered in plaintiffs' favor. It viewed the twice inserted "on this record" qualification as a veiled reference to (or in the majority's phrasing, "an elegant way of disposing of") defenses St. James Church might raise from a copy of a 1991 letter buried in the appellate appendix, even though unaddressed by *any* court and unaddressed by *any* party on appeal until after the *Episcopal Church Cases I* opinion. In the majority's view, "on this record" translates as "the equivalent of a memo to the lower courts: 'The argument has already been made – just look in "this record."' (Opn. at 13-14.)

Likewise, the majority viewed the changes from "resolve" and "decide" to "address" and "analyze" as broadening rather than narrowing the reach of the decision, a proclamation that this Court was not only deciding the present case, but "declar[ing] the proper rule of decision for all the courts of the state." (Opn. at 14.) And, the majority concluded that if this Court had not intended to finally decide the property dispute in favor of the Episcopal Church and the Diocese, it would have been more explicit in its qualifications. (Opn. at 14-15.)

B. Justice Moore Concurs, Asserting That This Court's Unqualified Affirmance, No Matter the Procedural Posture, Directs Entry of Judgment in Favor of the Party Prevailing on Appeal.

Justice Eileen Moore both joined the majority opinion and filed a separate concurring opinion. (Opn., Moore, J. concurring.) In her view, unless this Court specifically states in its disposition that further proceedings should take place, judgment must be entered in favor of the winning party whenever it “affirms” a Court of Appeal’s judgment. (Opn., Moore, J., concurring, at 1-3.) She cited a litany of examples where this Court specifically directed further proceedings and inferred that absent such express language, further proceedings are *not* to occur. (*Id.* at 3.) She further reasoned that in a number of instances when this Court had “affirmed” a Court of Appeal judgment (e.g., itself affirming a trial court judgment), it had ended a case. She thereby extrapolated that whenever this Court “affirms” a Court of Appeal decision (even one, as here, reversing a ruling on preliminary motions) it intends to direct entry of judgment in favor of the party prevailing on appeal, at least unless it expressly states otherwise. (*Id.* at 1.)

C. Justice Fybel Dissents, Arguing That This Court's Decision Must Be Read in the Case's Procedural Context.

Justice Fybel vigorously dissented, characterizing the majority opinion as “unprecedented,” “without any basis in law,” “revolutionary,” and “the only case in the history of California where entry of judgment has been ordered upon overruling a demurrer and denial of an anti-SLAPP motion.” (Opn., dissent, at 1-2.)

In particular, he noted that “the disposition of the Supreme Court’s opinion, . . . affirms without change the disposition of our previous opinion

(*Episcopal Church Cases* (June 25, 2007, G036096))” (*Id.*) The previous disposition was that “[t]he judgments of dismissal against the diocese and the national church are both reversed. Further proceedings shall be consistent with this opinion. Appellants shall recover their costs on appeal.’ There was *nothing* in this disposition supporting entry of judgment for plaintiffs. Instead, the disposition was to the contrary: remand the case to the trial court for ‘[f]urther proceedings.’” (Opn., dissent, at 4-5 [emphasis in original, citations omitted].)

Justice Fybel continued: “The disposition of the California Supreme Court’s opinion stated in full: ‘We affirm the judgment of the Court of Appeal.’ (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 493.) There was nothing in the disposition ordering judgment to be entered for plaintiffs. The case was remanded on this basis.” (Opn., dissent, at 4-5.) “Thus, the Supreme Court’s disposition affirmed that judgment and left it intact and unchanged; nothing in the Supreme Court’s opinion expresses any other disposition. Therefore, as the matter stands, the operative disposition was to reverse and remand for further proceedings, not to enter judgment for plaintiffs.” (Opn., dissent, at 3.)

In the dissent’s view, this Court would not have modified its opinion in *Episcopal Church Cases I* had it intended to end the entire case. St. James Church “properly ask[ed] what was the effect of [this Court’s] modifications if not to clarify that [this] Court was not finally adjudicating the claims and ordering entry of judgment.” (Opn., dissent, at 5.)

Most disturbing to Justice Fybel was that the majority ignored the case’s procedural posture and turned a *defendant’s* pre-answer challenge to the legal sufficiency of a complaint and plaintiff’s *prima facie* case into a suicidal sword resulting in judgment in favor of the *plaintiff*. The dissent pointed out that there is no authority for depriving a defendant of its day in court without any opportunity to plead affirmative defenses, conduct

discovery, or to try disputed factual matters. “Any case or statutory authority supporting the majority’s order to enter judgment for a plaintiff after the overruling of a demurrer and denial of an anti SLAPP motion is conspicuous by its absence from the majority opinion.” (Opn., dissent, at 1.)

Justice Fybel recounted the established law that a demurrer merely challenges the sufficiency of allegations that are assumed true, and an anti-SLAPP motion merely challenges whether plaintiff has stated a prima facie case. He then noted that “if [this] Court truly wished to approve the unprecedented result of entry of judgment in plaintiffs’ favor after overruling a demurrer and denying an anti-SLAPP motion, the court would have expressly and in no uncertain terms said so.” (Opn., dissent, at 3.) “The procedural posture . . . explains the language used in [this] Court’s opinion” and the “opinion is best understood in the context in which it was actually written, namely, [that this] Court treated all the allegations of the complaints as true because it was reviewing a ruling on a demurrer. Employing well established authority . . . [this] Court phrased its opinion in terms of ownership because those were the allegations of the complaints – nothing more, nothing less – and the complaints stated a cause of action.” (Opn., dissent, at 5.)

Further, regarding the anti-SLAPP motion, the dissent noted that “[b]oth [the] [C]ourt [of Appeal in its prior opinion] and [this] Court decided that the first prong of the anti-SLAPP test [whether the action arose out of protected activity] was not satisfied That was the end of [this] Court’s analysis and discussion of the anti-SLAPP motion. Because the complaints did not allege protected activity, [this] Court did not address the second prong of the anti-SLAPP test [probability of success on the merits] in its opinion. For this reason, the [Court of Appeal] majority opinion’s attention to the prong of prevailing on the merits – and especially its

extended discussion of the March 1991 letter – is totally irrelevant.” (Opinion, dissent, p. 6.) The dissent further noted that even an anti-SLAPP second prong determination would not have been the law of the case: “Code of Civil Procedure section 425.16, subdivision (b)(3) expressly prohibits the use at a later stage of the case of a court’s determination that the plaintiff has established a probability of prevailing in an anti-SLAPP motion.” (*Id.*)

D. This Court Grants Review.

This Court granted review on this issue: “Did the Court of Appeal properly direct the entry of judgment on the pleadings in favor of the national Episcopal Church under *Episcopal Church Cases* (2009) 45 Cal.4th 467?” (Order, filed June 9, 2010.)

ARGUMENT

I. APPELLATE DECISIONS, LIKE OTHER OPERATIVE WRITTEN DIRECTIVES, MUST BE READ IN LIGHT OF THE CASE'S PROCEDURAL POSTURE AND OTHER CIRCUMSTANCES.

The determinative question in this appeal is how appellate opinions should be read. Should they, as the Court of Appeal majority and the Episcopal Church and Diocese argue, be read mechanistically, parsing language in isolation from the nature of the proceedings appealed? Or should they, as the Court of Appeal dissent and St. James Church argue, and the Superior Court found, be given a reasonable construction consistent with the procedural context of the appeal? The prior decisions of this Court and the lower appellate courts make clear that it is the latter.

A. Appellate Opinions Are Written Documents That Must Be Construed in the Context in Which They Were Decided.

This Court's *Episcopal Church Cases I* decision is an operative written document, subject to the same general rules of construction as other legal writings. "The interpretation of the former judgment, insofar as its meaning is concerned, is governed by the same rules which apply in ascertaining the meaning of any other writing." (*Young v. Metropolitan Life Ins. Co.* (1971) 20 Cal.App.3d 777, 782 [interpreting its own prior appellate opinion]; see also 16 Cal.Jur.3d (2002) Courts, Construction of Opinions, § 322 ["The interpretation of an appellate opinion is governed by the rules of construction that apply to any other writing. . ."]; *Southern Pac. Pipe Lines, Inc. v. State Bd. of Equalization* (1993) 14 Cal.App.4th 42, 49 ["The meaning and effect of a judgment is determined according to the rules governing the interpretation of writings generally"]; *Smith v. Selma*

Community Hosp. (2008) 164 Cal.App.4th 1478, 1501 [same rules apply to judicial review committee decision].)

Primary among the rules for interpreting writings is that meaning is to be determined from context. (Code Civ. Proc. § 1860; *see generally Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 38-39 [“the meaning of a writing ‘. . . can only be found by interpretation in the light of all the circumstances that reveal the sense in which the writer used the words. . .’”].) This is consistent with, indeed necessary to achieve, the goal that an opinion’s “[i]nterpretation should be reasonable” (16 Cal.Jur.3d (2002) Courts, Construction of Opinions, § 322.) An appellate opinion “should receive a reasonable interpretation and an interpretation which reflects the circumstances under which it was rendered.” (*Young*, 20 Cal.App.3d at 782.) “The entire opinion must be read as a whole to ascertain the precise conclusion arrived at and announced. Each statement must be considered in its proper context, and isolated statements may not be lifted from an opinion and regarded as abstract and correct statements of law.” (16 Cal.Jur.3d (2002) Courts, Construction of Opinions, § 322.)

Thus, a fundamental rule, oft repeated by this Court, is that “[l]anguage used in any opinion is of course to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered.” (*Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2; *accord, e.g., In re Tobacco II Cases* (2009) 46 Cal.4th 298, 323; *Elisa B. v. Superior Ct.* (2005) 37 Cal.4th 108, 118 [statement in prior case involving a father and two women (the father’s wife and a surrogate mother) that a child could not have two mothers did not mean that a child could not have two parents, both of whom are women].) “A decision is authority only for the point actually passed on by the court and directly involved in the case. General expressions in opinions

that go beyond the facts of the case will not necessarily control the outcome in a subsequent suit involving different facts.” (*Gomes v. County of Mendocino* (1995) 37 Cal.App.4th 977, 985 [citation omitted].) “A case should ‘not be read as standing for more than its context and rationale will reasonably support.’” (*Solin v. O’Melveny & Myers, LLP* (2001) 89 Cal.App.4th 451, 460 [citation omitted].)

The bottom line is clear cut – an opinion must be read in context. The Court of Appeal majority’s “plain language,” grammatical and syntactical dissection of this Court’s opinion is misguided.

B. An Appeal’s Procedural Posture Is Critical to Proper Interpretation of Any Appellate Decision; No Appellate Decision Can Decide More Than Properly Can Be Encompassed Within Its Procedural Posture.

Preeminent amongst the context and circumstances in which an opinion is rendered is the case’s procedural posture on appeal. After all, that posture – e.g., what orders are appealed from, what facts and issues were before the trial court, what was the status of the pleadings and evidentiary development in the trial court – dictates not only the standard of appellate review, but also the nature and tenor of the parties’ arguments and the prism through which the appellate court (and hence the parties) must view any facts and issues in the case.

“An appreciation of the procedural context of the case is critical to a proper understanding” of an appellate decision. (*Cornette v. Dep’t of Transp* (2001) 26 Cal.4th 63, 75.) Ignoring it is a fatal error. Appellate opinions rendered after a jury trial, after the grant of summary judgment, and after sustaining of a demurrer are all fundamentally different. Each requires the parties to present, and appellate courts to understand, the facts differently. For example, in the posture of a demurrer, all facts alleged in

the complaint are assumed to be true; in a summary judgment motion, all facts are construed in favor of the nonmoving party; and with a substantial evidence attack on a trial result, all facts are construed most favorably to the verdict or judgment. As a result, an appeal at one procedural stage, even in the same case with the same legal claims, will not necessarily involve the same “facts” on appeal as an appeal at another procedural stage, even if the evidentiary record has not changed. Certainly, every appellate determination does not compel entry of judgment on remand. While an appeal from an order sustaining a demurrer without leave to amend may terminate the case if affirmed, an appeal reversing a grant of summary judgment would not. The point is that *appellate procedural context matters* – greatly.

Building Industry Association v. City of Oceanside (1994) 27 Cal.App.4th 744, is illustrative. There, the Court of Appeal had issued a “prior opinion . . . den[ying] petitions for writ of mandate which sought to compel the superior court to grant motions for summary judgment or adjudication brought by [plaintiffs]. [It had] upheld the trial court’s determination that triable issues of fact remained before the question [of the merits] could be resolved . . .” (*Id.* at 761.) On remand, the trial court interpreted the appellate decision as foreclosing plaintiffs’ ability to make certain arguments, and entered judgment against them. (*Id.* at 760-761.)

On a second appeal, the Court of Appeal reversed, noting that its prior decision did not decide or resolve the merits. “Even when we considered [plaintiffs’] 12 asserted conflicts with state law and/or the general plan, we were unable to determine the merit of the arguments without reference to established facts.” (*Id.*) Although the appellate court had “demolish[ed] one of [plaintiffs’] arguments specifically,” “those conclusions were preliminary on that record,” and neither foreclosed plaintiffs’ ability to litigate further in the trial court nor mandated entry of

judgment. (*Id.* at 761-762.) (*See also Reese v. Wong* (2002) 93 Cal.App.4th 51, 58-59 [ruling in an original writ proceeding challenging a *lis pendens* expungement order addressed only whether the trial court applied the wrong standard in evaluating the motion; it did not predetermine appeal from a judgment in the ensuing contract action].)

It is error to simply disregard, as the Court of Appeal majority did here, the procedural posture in which a case has come to the appellate court. Reading an opinion in a vacuum is a recipe for confusion, at best, and violation of due process, at worst.

II. DUE PROCESS REQUIRES THAT APPELLATE DECISIONS BE LIMITED TO THE PROCEDURAL POSTURE OF THE CASE, ESPECIALLY WHERE THERE IS NO NOTICE TO PARTIES THAT ALL POTENTIAL DISPUTED FACT QUESTIONS ARE TO BE RESOLVED ON APPEAL.

A. Fundamental Due Process Rights of Notice and an Opportunity to Be Heard Bar Courts From Adjudicating Matters Beyond a Case's Procedural Posture, Especially Where the Record Is Limited By That Posture.

Fundamental due process rights also compel reading appellate decisions in their procedural context. (U.S. Const., Amend. XIV, § 1 [(N)or shall any State deprive any person of life, liberty, or property, without due process of law . . ."]; Cal. Const., Art. I, § 7(a) ["A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws . . ."].) A person's substantive legal rights are not to be unexpectedly summarily determined: "The essence of 'due process' is notice and an opportunity to be heard." (*Chance v. Superior Ct. of Los Angeles County* (1962) 58 Cal.2d 275, 284.)

Due process is violated when a court adjudicates an issue outside of the proper procedural context because that context affords notice to the affected party as to what standards – legal and evidentiary – it must meet to address an issue. For example, a demurring party must assume the truth of a complaint’s allegations and is not allowed to present evidence to contradict or go beyond the complaint’s allegations. (*See Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1091-1092 [“demurrers and (a) petition for writ of mandate necessarily constituted only a facial attack on the ordinance since the defendants could not, on a demurrer to the accusatory pleading, offer evidence that as applied to their individual circumstances the ordinance was invalid”].) The moving party on a demurrer, thus, is highly constrained in its arguments and legal and factual presentation. It is on notice that it *cannot* present a factual case, least of all one premised on potentially disputed facts. To adjudicate an evidentiary issue in that context is simply unfair.

The same is true on appeal. An appellate court must view the evidence and facts through the same lens as the trial court does (at least where the trial court is not acting as trier of fact or factfinder). Thus, for example, on appeal from a demurrer, the appellate court, like the trial court, assumes the truth of the complaint’s allegations and must disregard asserted contrary facts and evidence. (*See Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 323, fn. 3 [effect of prior arbitration “not properly before the court at this stage of the litigation” as appeal was from demurrer]; *Fremont Indem. Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114-115 [error “[f]or a court to take judicial notice of the meaning of a document submitted by a demurring party based on the document alone, without allowing the parties an opportunity to present extrinsic evidence of the meaning of the document In short, a court cannot by means of judicial

notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show”). “On appeal [from a demurrer ruling], the Court of Appeal looks only at the complaint and assumes all of the factual allegations are true in order to rule on whether the complaint states a cause of action.” (California Court of Appeal, Second Appellate District, *Civil Appellate Practices and Procedures for the Self-Represented* (2005) app. 7.)

Such due process concerns compel the rule that a court may not adjudicate issues beyond the motion before it – even if those issues might properly be the subject of another or different motion. *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, is on point. There, the Court of Appeal held that a trial court’s consideration of summary judgment evidence submitted for the first time with reply papers violated the nonmoving party’s due process rights even if that same evidence might have supported summary judgment if submitted earlier or in connection with another summary judgment motion. Why? Because “[i]n considering this evidence, the court violated [the opposing party’s] due process rights. [The opposing party] was not informed what issues it was to meet in order to oppose the motion.” (*Id.* at 316.)

Whether before a trial or appellate court, adequate notice satisfying due process includes informing a party of the legal issue in controversy, the particular disposition being sought, what factual record is open, and what factual standard applies (i.e., de novo, assumed truth of the pleadings, all inferences in favor of the nonmoving party, etc.). A court cannot, consistent with due process notice, adjudicate an issue beyond the procedural posture of the matter before it.

B. Appeals From Preliminary, Pre-Factual Dispute Motions Afford Parties No Notice That They Have to Present (or Have The Opportunity to Present) a Full Factual Case.

Due process concerns apply with particular force to appellate rulings on preliminary motions, such as demurrers and motions to strike. When a court is confronted with a preliminary motion, the challenge is to the legal sufficiency of the complaint or to the ability of the *plaintiff* to produce prima facie evidence sufficient for the case to go forward. (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 833 [“A demurrer challenges the sufficiency of the complaint by raising questions of law”]; *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88 [anti-SLAPP motion requires the *plaintiff* to demonstrate that claims are “supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited”].)

Due process allows courts to conclusively resolve a case on such a basis only when a *legal* determination can be made – i.e., the facts pleaded or construed most favorably to the nonmoving party, as a matter of law, cannot support the claim. But the converse is not true. Denial of such motions can never be transmuted into a resolution of the merits of a case in favor of the plaintiff – only, at most, a determination that plaintiff’s case can proceed. Indeed, regardless of the applicable law of the case, at that preliminary stage the plaintiff has only made *allegations*.

The same is true on appeal. A demurrer ruling in favor of the moving party can terminate a case if affirmed, but it cannot do so if reversed. The potential outcomes of a preliminary motion appeal are, by the nature of such motions, *not* symmetrical. That is not just a matter of tradition or historical practice. It is compelled by due process.

Preliminary motions, especially those contesting an *unanswered complaint*, by their very nature afford no notice to defendants that they are required to put on any factual case, let alone raise and support all conceivable defenses. Indeed, in the demurrer context, a defendant is legally forbidden from introducing any matter not found within the plaintiff's own complaint.⁴ (*SKF Farms v. Superior Ct.* (1984) 153 Cal.App.3d 902, 905 ["A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed."].)

Likewise, even when an anti-SLAPP motion is properly available – i.e., where the claims arise from acts in furtherance of free speech – the burden is on the *plaintiff* to produce prima facie evidence supporting its claims. (Code Civ. Proc. § 425.16, subd. (b).) Strictly speaking, by the terms of the statute itself, a defendant need not put on evidence at all (though it may present evidence in order to illustrate plaintiff's lack of a prima facie case).

Preliminary motion practice, as framed by the Code of Civil Procedure and Rules of Court, does not notify defendants that if their challenges to the complaint are unsuccessful on appeal, they risk being precluded from later denying or disproving the allegations of the complaint, asserting factual affirmative defenses, marshaling evidence to prove those defenses, or having the case determined by a trier of fact. There is no notice that judgment may be entered on a plaintiff's allegations alone. Such an outcome, sprung on an unsuspecting defendant, violates due process. (*See Carabini v. Superior Ct.* (1994) 26 Cal.App.4th 239, 244 ["Due process requires an order with such significant impact on the

⁴ The sole exception, at the demurring party's option, are those few indisputable matters which might be judicially noticeable under California Evidence Code sections 451 or 452.

viability of a case not be made without a full opportunity to brief the issues and present evidence.”]; *San Diego Watercrafts, supra*, 102 Cal.App.4th at 316 [“Where a remedy as drastic as (entry of judgment) is involved, due process requires a party be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail.”]; *Meller & Snyder v. R & T Properties* (1998) 62 Cal.App.4th 1303, 1314 [“due process requires that the plaintiff prove its case against” a defendant]; *Van Atta v. Scott* (1980) 27 Cal.3d 424 [detainees’ due process rights violated where prosecution was not required to assume the burden of proving the necessity for bail].)

There is no notice to a party bringing a demurrer (or an anti-SLAPP motion) that in doing so it risks entry of judgment against it. And a party cannot be expected to have opposed entry of judgment against it when an issue was never raised before the appellate opinion on its demurrer. A party cannot have had a full opportunity to present evidence where the relevant procedural standard is that it is either barred from doing so or that its evidence is to be discounted. In the context of reviewing and reversing trial court rulings on a demurrer or anti-SLAPP motion that resulted in judgment for the defendant, due process constrains an appellate court to say nothing more than, essentially, “let the case proceed.”

III. EPISCOPAL CHURCH CASES I, DECIDED ON AN APPEAL FROM THE GRANT OF DEFENDANTS' PRE-ANSWER MOTIONS, CANNOT PROPERLY BE READ AS FINALLY DECIDING THE MERITS IN PLAINTIFFS' FAVOR.

A. *Episcopal Church Cases I*, Read in Procedural Context, Did Not Purport to Decide All Possible Disputed Factual Matters, Especially Matters Which Defendants Had Not Yet Even Had an Opportunity to Plead, Discover or Present to the Trial Court.

Review in *Episcopal Church Cases I* was “primarily to decide how the secular courts of this state should resolve disputes over church property.” (*Episcopal Church Cases I*, 45 Cal.4th at 473.) That is precisely what this Court did. It determined the applicable legal analytical framework: neutral principles of law. Nowhere did this Court suggest that it was determining or foreclosing any ultimate factual issues, and plaintiffs’ success in fighting off St. James Church’s preliminary challenges did not somehow magically transmute their allegations into irrefutable facts.

The case was before this Court on two procedural motions. The first was St. James Church’s anti-SLAPP motion directed at the Diocese’s complaint. (*Id.* at 476.) This Court held that the anti-SLAPP procedure was procedurally inapplicable because the statute’s “first prong” – an action based on a defendant’s free speech rights (*see* Code of Civil Procedure section 425.16, subdivision (b)) – was not met. (*Episcopal Church Cases I*, 45 Cal.4th at 477-478.) Thus, when this Court decided that St. James Church could not utilize the anti-SLAPP statute – obviating any burden plaintiffs might otherwise have had to establish a prima facie case – it did not suddenly convert the preliminary, limited and pre-discovery declarations St. James Church had submitted in connection with the

“second prong” of the anti-SLAPP motion into a self-inflicted wound warranting judgment in plaintiffs’ favor. Indeed, that evidence became completely irrelevant once this Court ruled that no basis for bringing the anti-SLAPP motion ever existed.

The second ruling appealed to this Court was the dismissal of the Episcopal Church’s first amended complaint-in-intervention on demurrer. (*Id.* at 476.) This Court first discussed the relevant legal framework: “How California Courts Should Resolve Disputes Over Church Property.” (*Episcopal Church Cases I*, 45 Cal.4th at 478, 479-485.) It then applied the newly declared law to the “facts” before the courts on the demurrer. Those facts necessarily were limited to the *allegations* of the Episcopal Church’s complaint-in-intervention, which in the procedural posture had to be *assumed to be true*. (*Schifando, supra*, 31 Cal.4th at 1081).

Based on its legal conclusions, *Episcopal Church Cases I* “affirm[ed] the judgment of the Court of Appeal.” (*Episcopal Church Cases I*, 45 Cal.4th at 493.) The Court of Appeal had “reversed” “[t]he judgments of dismissal against the [D]iocese and the national [Episcopal] [C]hurch” and directed that “[f]urther proceedings shall be consistent with this opinion.” (*Episcopal Church Cases*, 152 Cal.App.4th at 876.) The “affirmed” Court of Appeal judgment was an unqualified reversal that specifically contemplated further proceedings. As such, it was “an order for a new trial, placing the parties in the same position as if the cause had never been tried.” (*People v. Moore* (2006) 39 Cal.4th 168, 174; *accord Wiley v. County of San Diego* (1998) 19 Cal.4th 532, 545, fn. 4.) This Court’s mandate cannot reasonably be read as going beyond the appellate judgment that it “affirm[ed].” The Diocese and Episcopal Church effectively recognized as much when they argued to the United States Supreme Court (in opposing certiorari) that this Court had *not* rendered an effectively final judgment. (5 RPE 1276.)

Admittedly, the *Episcopal Church Cases I* opinion does not expressly state that it was only considering *alleged* or assumed facts in discussing the “merits” of the parties’ positions regarding property ownership. Consistent with established law that an appellate case must be read in its procedural context, such language should not have been necessary. In any event, that is the only possible reading in light of the sole procedural posture in which the case was before this Court: a ruling on demurrer (the opinion having held an anti-SLAPP motion inapplicable). As discussed above, on demurrer the *only* facts before a court (whether trial or appellate) are those alleged and merely *presumed* to be true or those that are judicially noticeable. And that is the basis on which the “facts” were before the Court of Appeal and this Court. (*See* Opn., dissent, at 5 [“[This] Court treated all the allegations of the complaints as true because it was reviewing a ruling on a demurrer.”].)

No trier of fact had resolved any disputed fact when the trial court ruled on the demurrer and anti-SLAPP motion. Neither the trial court in sustaining the demurrer and in granting the anti-SLAPP motion nor the Court of Appeal in reversing those decisions purported to resolve any factual controversy. There is no basis to infer that this Court in *Episcopal Church Cases I* made a dispositive determination regarding facts that no prior court had addressed.⁵

⁵ We recognize that Code of Civil Procedure section 909 affords appellate courts a very limited right to make certain factual findings on appeal. (*See* Cal. Const., Art. VI, § 11, subd. (c).) But that power has always been severely constrained. (*Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3d 1058, 1090 [circumstances allowing new factual findings on appeal “very rare”].) It has never been viewed as countermanding the axiomatic rule “that it is the province of the trial court to decide questions of fact and of the appellate court to decide questions of law.” (*In re Zeth S.* (2003) 31 Cal.4th 396, 405 [internal quotations and ellipses omitted]; *see also Avila v. Citrus*

Indeed, *Episcopal Church Cases I*'s reference to discussing the “merits” has to be understood in the context of the opinion as a whole. Whenever the opinion references discussing the “merits” of the church property dispute, it is in contradistinction to the purely procedural and threshold question of whether an anti-SLAPP motion is applicable. (*Id.* at 476 [“We granted review to decide whether this action is subject to the special motion to strike under Code of Civil Procedure section 425.16 and to address the merits of the church property dispute”; “Before deciding the merits of the property dispute, we must decide a preliminary procedural question” regarding anti-SLAPP applicability], 478 [transition paragraph immediately following the anti-SLAPP procedural discussion, “Both lower courts also addressed the merits of the dispute”].) In mentioning “merits,” the opinion only indicates that it is discussing, and drawing a distinction between, substantive and procedural issues, not that it is deciding all possible claims or defenses, including factual ones and particularly those that had not been pled yet.

The opinion further confirms this limited sense of “merits” when it states that “[b]oth lower courts [the trial court and the Court of Appeal] also addressed the merits of the dispute. . . .” (*Id.* at 478.) Of course, neither the trial court nor the Court of Appeal considered or purported to resolve potential affirmative defenses or factual disputes. *Episcopal Church Cases I* did not use “merits” in any broader sense than the lower courts had. Rather, like the lower courts, it used the term in the sense of substantive legal standards rather than procedural issues.

Community College Dist. (2006) 38 Cal.4th 148, 171 [Kennard, J., concurring and dissenting]; *Tupman v. Haberkern* (1929) 208 Cal. 256, 262-263.) That statute – which was not invoked by either this Court or the Court of Appeal – has no application here.

Nowhere did *Episcopal Church Cases I* direct (or hint at) entry of judgment for the Episcopal Church or the Diocese, a judgment that had never been requested in the trial court nor on appeal. Nowhere did *Episcopal Church Cases I* hold or suggest that St. James Church should be barred from raising affirmative defenses, taking discovery, presenting a case in the normal course of litigation, or making a *factual* record that might overcome some or all of the assumed-to-be-true “record” in *Episcopal Church Cases I*. (See *People v. Mattson* (1990) 50 Cal.3d 826, 849-850 [upon remand after reversal of suppression motion, parties may renew pretrial motions, present new evidence and objections to evidence and thereby create a new factual record].) Nowhere did *Episcopal Church Cases I* discuss whether the Diocese or the Episcopal Church might have waived, or were estopped to assert, otherwise applicable “trust” rights. Nowhere did *Episcopal Church Cases I* purport to bar other specific circumstances – not present in the as-yet undeveloped factual record – that might countervail *Episcopal Church Cases I*’s general pronouncements after the case was at issue, the parties conducted discovery, and the trial court resolved any factual disputes. (See *Tobe v. City of Santa Ana* (1995) 9 Cal.4th at 1091-1092 [demurrer could only present facial challenge to ordinance; as-applied challenge required factual development].)

In context, *Episcopal Church Cases I* cannot be reasonably read as directing entry of judgment against St. James Church on the church property ownership issue.

B. The *Episcopal Church Cases I* Modifications Clarified That the Opinion Was Not Deciding and Had Not Decided the Ultimate Merits of the Property Dispute.

If there could be any doubt, the modification of the *Episcopal Church Cases I* opinion can only objectively be read as confirming that this

Court did not intend to reach out beyond the procedural posture of the case before it.

The Diocese and the Episcopal Church opposed modification, arguing that this Court's demurrer and anti-SLAPP opinion finally resolved the ultimate property dispute, essentially barring yet-to-be pled affirmative defenses and any possible further factual development through discovery. (1 PE 80-90.) Had this Court adopted the Episcopal view – that a reversal of the trial court ruling sustaining the demurrer and granting the anti-SLAPP motion was sufficient for judgment to be entered against the moving party – there was no reason for this Court to have modified the opinion at all, or it could have modified the opinion to make clear that the case was over. But that is not what the Court did.

Instead, this Court modified the opinion to remove language stating that it had “*decide[d]* . . . the merits of the church property dispute,” and replaced it with a statement that it simply “*address[d]*” those merits. (45 Cal.4th at 476 [“address” substituted for “decide,” emphasis added]; *see also id.* [replacing “we also *decide* the question” with “we also *address* the question,” emphasis added].) It replaced a statement that it “*resolve[d]* the dispute in this case” with one clarifying that it “*analyze[d]* the dispute in this case.” (*Id.* at 478 [“analyze” substituted for “resolve,” emphasis added].)

The Court of Appeal majority (and the Diocese and Episcopal Church) believe that these modifications clarified *Episcopal Church Cases I* as resolving the ultimate property dispute and directing entry of judgment in favor of the Episcopal Church and its Diocese. That is nonsensical. “Address” and “analyze” are indisputably *less* forceful, less dispositive, and *less* conclusive than “decide” and “resolve.” They undeniably reflect that the modification made the opinion less peremptory.

If that were not enough, this Court also modified the opinion in two critical places, adding “on this record” as qualifying the nature of its determination: “we conclude, *on this record*, that the general church, not the local church, owns the property in question”; “we agree with the Court of Appeal’s conclusion . . . that, *on this record*, . . . the local church property reverted to the general church.” (*Id.* at 473, 493 [emphasis added].) The addition of “on this record” can only be read as a limitation on the scope of the opinion’s conclusions. Before that phrase was added – twice – the opinion’s conclusions were unvarnished. The added phrase cannot be understood except as a qualification that properly reflects the procedural status of the case and the limited nature of the record in any demurrer appeal; it cannot reasonably be read as an expansion of previously unqualified conclusions.

Even so, the Court of Appeal majority read the limitation “on this record” as disposing of any potential fact that might be lurking somewhere in the compiled appellate appendix – whether considered, briefed or even based on properly admissible evidence – and indeed any potential fact to be discovered on remand. But that cannot be so. Cases only stand for propositions and facts *actually* considered by the appellate court, not for every hypothetical combination of facts lurking in an appellate record or in the parties’ undiscovered documents, even if not argued or discussed in the opinion. Indeed, the latter rule would make later courts’ understanding of the meaning of the opinion dependent on their ability to access facts, contentions, and stray pleadings buried in an appellate appendix in storage somewhere. Opinions have to be read based on the facts discussed within their four corners. This Court’s decisions are public pronouncements, not private memoranda to lower courts.

And the modification “on *this* record” suggests that the record can change. That is exactly what happened on remand. On remand, St. James

Church answered and alleged affirmative defenses, it cross-complained, and it obtained initial discovery, including substantive sworn deposition testimony about new factual matters and documents, along with new testimony interpreting some of the documents in the existing limited record (e.g., the 1991 letter). (*See, supra*, Statement of the Case, § III.B; *infra* Argument, § III.D.) All of this necessarily changed the “record,” from that on which *Episcopal Church Cases I* premised its conclusions. Conclusions premised on allegations assumed to be true no longer have dispositive force when the record changes. (*People v. Mattson, supra*, 50 Cal.3d at 849-850; *Building Industry Ass’n v. City of Oceanside, supra*, 27 Cal.App.4th at 761; *Fremont Indem. Co., supra*, 148 Cal.App.4th at 114-115 [error “[f]or a court to take judicial notice of the meaning of a document submitted by a demurring party based on the document alone, without allowing the parties an opportunity to present extrinsic evidence of the meaning of the document”])

C. Due Process Requires a Narrow Reading of *Episcopal Church Cases I* as St. James Church Had No Notice That Its Demurrer or Anti-SLAPP Motion Would Result in Final Resolution of All Factual Issues and Entry of Judgment On Remand.

Due process also bars reading *Episcopal Church Cases I* as dispute dispositive. There was no notice to St. James Church that the demurrer, anti-SLAPP or appellate proceedings were going to be used to pretermite its constitutional right to mount a defense to the Episcopal accusations, or to short circuit its cross-complaint against the Diocese before trial or a properly noticed summary judgment motion.

In the trial court before *Episcopal Church Cases I*, neither the Episcopal Church nor the Diocese had brought *any* motion seeking

affirmative relief. (See Code Civ. Proc. §§ 1003, 1005 [requiring written notice for requesting an affirmative ruling from the court]; cf. *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439 [party which has not cross-appealed cannot seek affirmative relief on appeal].) Neither the Episcopal Church nor the Diocese asked for affirmative relief in opposing the demurrer and anti-SLAPP motion. (See, e.g., 2 PE 525 [“Accordingly, this Court should deny Defendants’ motion.”].) In this Court, plaintiffs sought only “affirm[ance]” of the Court of Appeal’s opinion.⁶ (3 RPE 566, 638.) Likewise, nothing in this Court’s grant of review for *Episcopal Church Cases I* – or in any subsequent order – put St. James Church on notice that it was required to present a full factual case and prove up all of its affirmative defenses before it had even answered the complaints, nor that it had to defend against judgment being entered against it.

Under settled law, St. James Church *could not* have argued disputed factual matters, but was required (as was this Court) to assume that the allegations in the Episcopal Church’s complaint-in-intervention were true. (*SKF Farms, supra*, 153 Cal.App.3d at 905.) Indeed, a leading treatise advises that “[w]hen [a demurrer or other light-most-favorable-to-the-appellant] standard applies, appellant’s opening brief [and presumably any other brief] may state the facts in the light most favorable to appellant or as alleged in appellant’s pleadings.” (2 Eisenberg, Horvitz & Weiner, *Civil*

⁶ In its Court of Appeal briefing, the Episcopal Church offhandedly requested “judgment as a matter of law.” (1 RPE 166.) The Diocese made no similar request. The Episcopal Church made no legal argument that it was procedurally entitled to judgment as a matter of law. And, its substantive theory was that as a self-asserted “superior” religious entity, civil courts had to honor its declarations as to property ownership. The Episcopal Church did not renew its “judgment as a matter of law” request in this Court until after St. James Church petitioned for rehearing and this Court had rejected the substantive theory on which that request had been premised in the Court of Appeal.

Appeals & Writs (Rutter Group, 2009) ¶ 9:145 at p. 9-41.) It is impossible to see any way in which St. James Church was put fairly on notice that in the appeal, it should have been fully litigating its factual case (without the benefit of depositions, discovery, document exchange, etc.), discussing facts other than in the light most favorable to the appellants (here the Episcopal Church and the Diocese), or presenting and proving every conceivable “as applied” challenge to the Episcopal Church’s “trust” claim given the specific facts surrounding the ownership of its property.

Even the parties did not think that the record before this Court was ripe for definitive factual determinations. *Both* sides acknowledged that that “the record in this case is limited, given its procedural context” (3 RPE 586, fn. 1) with “the facts . . . limited to those allegations in the complaints which are not in dispute, judicially noticeable documents, and the two declarations submitted in support of the [anti-SLAPP] motion.” (4 PE 954, fn. 2.) Of course, both sides briefed the impact of various documents pleaded by the Episcopal Church or presented by the Diocese in responding to the anti-SLAPP motion. They had to. The pleaded documents were assumed to be true and the parties had to brief both (1) whether the Episcopal Church had alleged legally viable claims – under both the “neutral principles of law” and “principle of government” approaches (not knowing which standard this Court would adopt) – and (2) whether the Diocese had presented a viable *prima facie* case under the second “merits” prong of the anti-SLAPP analysis in the event that this Court found the first prong satisfied. But nowhere did any party suggest, let alone argue, that the facts presented in connection with the demurrer or the anti-SLAPP motion were the only possible universe of relevant facts or that the trial court moving party could not plead affirmative defenses or conduct discovery should its demurrer and anti-SLAPP trial court victories be reversed on appeal.

Certainly, the unreferenced inclusion *by appellants* of various materials in their appendix does not equate to full litigation of the merits. On appeal, a respondent should not have to parse through and argue every potential fact implicated in an appellate appendix upon risk of waiving a right to try factual claims.

Likewise, the submission of limited evidence in connection with St. James Church's anti-SLAPP motion cannot create a back door vehicle through which to resolve the "merits" of the property dispute against the moving but ultimately-unsuccessful defendant. *First*, the Court of Appeal and this Court both held that St. James Church's anti-SLAPP motion was a nullity. Concluding that the Diocese's claims did not "arise from" acts "in furtherance of . . . [the] right of petition or free speech," they held that the so-called anti-SLAPP "first prong" – whether the statute's procedure even applies – was not satisfied. (*Episcopal Church Cases I*, 45 Cal.4th at 477-478; *Episcopal Church Cases* (2007) 152 Cal.App.4th 808, 818-819.) Having so found, the only proper motion before the trial court – the demurrer – did not permit or require St. James Church to marshal its evidence.

Second, even if the trial court or Court of Appeal had properly considered the second "merits" prong of the anti-SLAPP motion, that motion placed the evidentiary burden on *plaintiffs*, not defendants. Under the anti-SLAPP statute, "the court determines [whether] *the plaintiff* has established that there is a probability that the plaintiff will prevail on the claim." (Code Civ. Proc. § 425.16, subd. (b)(1) [emphasis added].) A defendant need not present any evidence at all. Even when a moving defendant presents evidence, however, the trial court may not "weigh the credibility or comparative probative strength of competing evidence," but may only examine it to determine if "the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support

for the claim.” (*Yu v. Signet Bank/Virginia* (2002) 103 Cal.App.4th 298, 317.) In ruling on an anti-SLAPP motion, every inference is made in plaintiff’s favor and any disputed facts are assumed to be as plaintiff portrays them, as if the court were ruling on a summary judgment motion. (*Bergman v. Drum* (2005) 129 Cal.App.4th 11, 14; *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1010.) Thus, any such “defense” put on by an anti-SLAPP defendant cannot – consistent with statutory procedure and due process – “resolve” the underlying merits of the case against that moving defendant.

Third, the anti-SLAPP statute itself prevents such unfairness. Even “[i]f [unlike in this case] the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action” (Code Civ. Proc. § 425.16, subd. (b)(3).)

D. The Current Record Amply Demonstrates That Substantial Fact Issues Remain Both as to the Local Church and the Individual Defendants Against Whom Personal Liability Claims Remain Pending.

Remand has shown that the assumptions and limited record on the demurrer and anti-SLAPP motion – as so often is the case – do not tell the whole story. Since *Episcopal Church Cases I* was decided, St. James Church has now answered, denying and controverting all of the material allegations of both the Diocese’s first amended complaint and the Episcopal Church’s complaint-in-intervention. It filed another cross-complaint against the Diocese. At no time has the Episcopal Church, the Diocese, or the Court of Appeal majority questioned the legal sufficiency of those

defenses and counterclaims other than by asserting that this Court's prior decision foreclosed them as law of the case.

The specific open *factual* issues include:

First, did the Diocese (on its own behalf and as the Episcopal Church's agent) waive any beneficial trust interest? After remand from this Court, two bishops of the Episcopal Church testified for the first time about the history, meaning and effect of a 1991 letter purporting to relinquish any claim to property located on 32nd Street in Newport Beach. (1 RPE 1-21; 6 PE 1442, 1446.) Nothing in *Episcopal Church Cases I* suggested, much less ruled, that a denomination (or its agent) could not waive (or be estopped from asserting) a "trust canon" even if one were validly enacted, or that any party could not discover extrinsic evidence about the 1991 letter or any other form of waiver or estoppel.

Second, whether the Episcopal Church is a "superior religious body" or "general church" within the meaning of Corporations Code section 9142, subdivision (c)? (*See id.* [self-created trust obligations can only obtain in the case of a "superior religious body" or "general church"].) In the procedural context of a demurrer, St. James Church had to accept the Episcopal Church's self-description as true. But discovery may well prove otherwise. The terms "superior religious body" and "general church" are intensely fact-laden. For example, the post-remand testimony already elicited from the Rt. Rev. D. Bruce MacPherson, who co-authored the Bishops' Statement on the Polity of the Episcopal Church (a document not before this Court in *Episcopal Church Cases I*), throws plaintiffs' conclusory self-description of itself into serious question. (1 RPE 18-19.)

Third, whether additional facts might shed light on the meaning and operation of the Episcopal Church's purported "trust canon"? Before this recent u-turn back to the appellate courts initiated by the Episcopal parties, St. James Church was poised to initiate additional discovery, including

further depositions, document requests, interrogatories and requests for admissions to determine if other grounds exist for invalidating or limiting plaintiffs' claims. Such discovery may well reveal *factual* disputes not yet resolved by any court, including plaintiffs' own prior understanding and enforcement of their "trust" claims, and the extent to which they have waived, narrowed or eliminated those claims in similar circumstances. It is not settled beyond peradventure that simply because an Episcopal document purports to set forth a trust rule, that rule applies without question to every congregation and to all of its property under all circumstances (e.g., certain nonconsecrated property, like clergy residences, may be exempt).⁷

Fourth, whether other factual defenses exist or may be revealed? In this case's procedural context, St. James Church need not describe every factual defense it has or may discover after remand. It may very well be that a deposition yet to be taken, or a document request yet to be propounded, might reveal a new fact or defense completely disposing of all of plaintiffs' claims. Upon such discovery, St. James Church might be entitled to amend its answers, and pursue a completely different attack upon the accusations made against them. That is the nature of the litigation process consistent with due process.

Finally, whether individual defendants are to be held personally liable based on a property determination about which they may have no say? The Diocese's claims against the individual volunteer lay leaders of

⁷ Neutral legal principles would dictate that the meaning of the constitutions and other governing documents of religious entities are to be determined for secular purposes – such as the property ownership determinations – in the same manner as any other written document, including considering whether any amendments were adopted pursuant to the rules and procedures set out in the document itself and the practical construction that the parties placed on the document before there was a dispute.

St. James Church remain outstanding. These claims, levied against volunteer church leaders and clergy, remain at issue, and motions for summary judgment and/or adjudication of these claims are now pending in the trial court. (See 6 RPE 1315-1347 and *supra*, Statement of the Case, § III.D.) Although not part of the Diocese's motion for judgment on the pleadings which attacked only St. James Church's new cross-complaint, there is little doubt that the Diocese will contend that *Episcopal Church Cases I* bars the individual defendants – with no opportunity for a full evidentiary airing – from contending that their actions in disputing the Diocese's property claims were justified, including their reliance on an express waiver of any beneficial trust interest. The plaintiffs' attempt to preclude discovery and factual determinations before the trial court cannot be divorced from these still-pending claims against these individuals.

In light of these substantial disputed and potential fact issues arising after remand to the trial court, *Episcopal Church Cases I* cannot have intended to decide the ultimate property dispute based on plaintiffs' unproven allegations, a limited record on appeal, and undiscovered evidence.

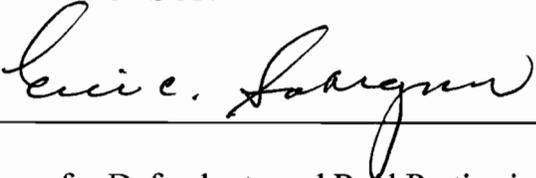
CONCLUSION

For the foregoing reasons, this Court should reverse the Court of Appeal's opinion, direct that the petition for writ of mandate be denied, and clarify that *Episcopal Church Cases I* did not decide or resolve the ultimate merits of the property dispute but instead remanded for further proceedings, including discovery, motion practice and trial as in any other case where the trial court's sustaining of a demurrer and grant of an anti-SLAPP motion is reversed on appeal.

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CERTIFICATE OF COMPLIANCE

(Cal. Rules of Court, Rules 8.504(d)(1))

Counsel of Record hereby certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, that the **OPENING BRIEF ON THE MERITS OF REAL PARTIES IN INTEREST THE REV. PRAVEEN BUNYAN, ET AL.** is produced using 13-point Roman type including footnotes and contains **12,912** words, which is less than the total words permitted by the California Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: August 6, 2010


Daniel F. Lula

PROOF OF SERVICE

Jane Hyde Rasmussen, et al. vs. Superior Court of Orange County
Case No. S182407; Appeal No. G042454

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 is deposited with the United States Postal Service or the common carrier on the same day I submit it for collection and processing.

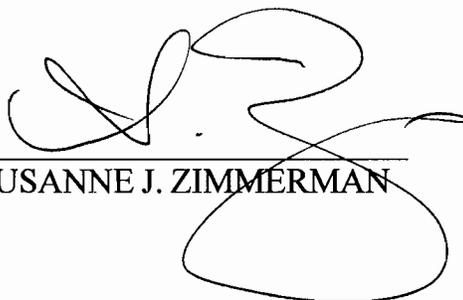
On August 6, 2010, I served the following document(s) described as **OPENING BRIEF ON THE MERITS OF REAL PARTIES IN INTEREST THE REV. PRAVEEN BUNYAN, ET AL.** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes, with first-class postage prepaid, addressed as follows:

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

Executed on August 6, 2010, at Irvine, California.



SUSANNE J. ZIMMERMAN

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[1 copy of Opening Brief]

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Case No. JCCP 4392

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