

Supreme Court Copy

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IN THE SUPREME COURT OF CALIFORNIA

EPISCOPAL CHURCH CASES

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

SUPREME COURT
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PLAINTIFF IN INTERVENTION AND RESPONDENT THE EPISCOPAL CHURCH'S RESPONSE TO *AMICI CURIAE*

GOODWIN PROCTER LLP
DAVID BOOTH BEERS (SBN 30799)
HEATHER H. ANDERSON (*pro hac vice*)
JEFFREY DAVID SKINNER (SBN 239214)
901 NEW YORK AVENUE
WASHINGTON, D.C. 20001
DBeers@GoodwinProcter.com
HAnderson@GoodwinProcter.com
JSkinner@GoodwinProcter.com
(202) 346-4000 • FAX: (202) 346-4444

ATTORNEYS FOR PLAINTIFF IN INTERVENTION AND ~~RESPONDENT~~
THE EPISCOPAL CHURCH

Appellant

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INTRODUCTION

As a result of the guarantee of religious liberty enshrined in this country's Constitution, the founders and adherents of the Episcopal Church, like those of all other denominations, were and are free to establish a denominational structure and rules of governance that serve their own particular views about how to conduct and perpetuate ministry and mission. Quite deliberately, this group of believers has established and maintained over the centuries a structure in which parishes are formed as inextricable, constituent parts of the Church as a whole, and local parish property may be used only for the Church's mission. While individuals of course may leave the Church and join a different denomination or form a new one any time they choose, Episcopal parishes and their property remain to continue the Episcopal Church's ministry and mission in that place for generations to come.

Accordingly, St. James, which was formed and given its initial property nearly 70 years ago by the Diocese of Los Angeles, exists to provide a church for the individual petitioners here when and so long as they chose to be part of the Episcopal Church. Although the individual petitioners have decided it is time for them to become part of a different faith community, they have no right, under either the Episcopal Church's explicit rules or the laws of California, to retain Episcopal parish property for their own use.

The Court of Appeal in this case correctly recognized this, and specifically enforced the Episcopal Church's "express trust" canon under both the common law "principle of government" analysis previously adopted and applied by this Court, and California Corporations Code, § 9142.

Several groups have filed briefs as *amicus curiae* in support of the petitioners in this case. Like petitioners themselves, all of these *amici* are or were formed by dissident minorities of various hierarchical denominations who themselves would like to be freed of particular denominational rules or authority:

- The "Diocese of San Joaquin, an Unincorporated Association" ("Diocese of San Joaquin") is, like the petitioners in this case, a group of dissenting former members of the Episcopal Church. They would like to take property held by "The Episcopal Bishop of San Joaquin, a corporation sole" for their own use in association with another denomination.¹

- The "Presbyterian Lay Committee" ("PLC") is a voluntary organization of individuals who oppose the theological direction the Presbyterian Church has taken over the past several years, and who, among other things, fund a newspaper and website to promote their views and try

¹ A separate lawsuit involving this group is currently pending in San Joaquin County. (*Diocese of San Joaquin v. Schofield* (Super. Ct. Fresno County, No. 08CECG01425.))

to influence the direction of that denomination.² It was not established by the Presbyterian Church; does not claim, and does not have, any authority to speak for the Presbyterian Church; and is not part of the Presbyterian Church's governing structure.³ It has tried to support congregations wishing to disaffiliate from the Presbyterian Church with their property,⁴ contrary to the Presbyterian Church's rules and polity set forth in the *amicus* briefs of Clifton Kirkpatrick, Stated Clerk of the Presbyterian Church in the United States of America and of the Presbytery of Hanmi and Synod of Southern California and Hawaii, and as previously recognized by the California Court of Appeal in *Korean United Presbyterian Church of Los Angeles v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480 [281 Cal.Rptr. 396].

- *Amici* calling themselves "Iglesia Evangelica Latina, Inc." ("IEL") are apparently dissenting former members of a local congregation of the Assemblies of God Church who would like to leave that denomination with the congregation's property. The Los Angeles Superior Court has determined that these *amicus* may not do so, holding that (1) they have no standing to speak on behalf of "Iglesia Evangelica Latina, Inc.," and (2) that religious entity is under the direct control of the Southern

² See <http://www.layman.org/layman/the-lay-comm/plc-history.htm>.

³ See *ibid.*

⁴ See <http://www.layman.org>.

Pacific Latin American District of the Assemblies of God Church, pursuant to that denomination's express rules and the local church's own actions pursuant to those rules. (*Statement of Decision Filed Sept. 11, 2007* [attached as Ex. 1 to the IEL's *amicus* brief].)

- The “Charismatic Episcopal Church” is a denomination established in 1992, with eight congregations in California. (See <http://cechome.com/ChurchHTML.aspx?t=USA>.) Many of its members or congregations in the United States are former members of older hierarchical denominations, including the Episcopal Church. (See, e.g., http://en.wikipedia.org/wiki/Charismatic_Episcopal_Church [“The majority of churches in the ICCEC in the United States do claim an Anglican identity . . . and use the 1979 Episcopal Book of Common Prayer.”]; <http://tmatt.gospelcom.net/column/1996/03/06> [“Until recently, the 80 or so members of this mission, including their priest, were part of an historic parish in the Episcopal Diocese of Western North Carolina.”].)

- Like the individual petitioners here, the Rev. Peter Min and Thomas Lee appear to be a former minister and member, respectively, of a hierarchical denomination or denominations with express trust clauses in their governing documents who are seeking to avoid the application of those rules and California Corporations Code, § 9142 to their own personal

situations. (See *Amicus Curiae* App. and Br. of Thomas Lee and Rev. Peter Min at ¶¶ 9, 11.)⁵

Accordingly, while purporting to wave the banner of religious freedom, these *amici* urge this Court to abandon the very principles that serve to protect that freedom and adopt a rule that would trample upon the rights of those who prefer hierarchical and connectional church structures, by freeing local congregations from their own express promises to abide by denominational rules.

This Court should decline that invitation. The Constitutional guarantee of religious liberty does not extend only to people and denominations that may hold the views and preferences *amici* espouse; it equally protects those who wish to establish, and who have established, a different model – one in which local congregations are formed to conduct a particular denomination’s ministry for generations to come, with their property protected from the vicissitudes of future congregational majorities. In the words of former Supreme Court Justice William Strong, the freedom of religion in this country

“secures to individuals the right of withdrawing from a church, forming a new society, with such creed and government as they may choose to adopt, raising from their own means another fund; and building another house of

⁵ Petitioners in companion cases S155199 and S155208 have also filed a brief in support of the petitioners here. As their brief addresses only the first prong of the analysis under California’s SLAPP statute, an issue in which the Episcopal Church is not directly involved, the Episcopal Church does not separately respond to it here.

worship. But it does not confer upon them the right of taking property consecrated to other uses by those who may be sleeping in their graves.” (The Hon. William Strong, LL.D., *Two Lectures Upon the Relations of Civil Law to Church Polity, Discipline, and Property* at 58 (N.Y. 1875) [internal quotations omitted].)

Ignoring these truths, *amici* argue that to respect and enforce a denomination’s clearly-stated written rules restricting the use and control of local church property is both unconstitutional and impractical. As we show below, they are wrong.

ARGUMENT

I. BOTH THE “PRINCIPLE OF GOVERNMENT” APPROACH AND § 9142 ARE CONSTITUTIONAL.

As described in the Episcopal Church’s opening brief on the merits (“*Church Br.*”), the United States Supreme Court has specifically endorsed a “principle of government” approach to resolving church property disputes (see *Watson v. Jones* (1872) 80 U.S. (13 Wall.) 679, 727), and indeed has held that the courts *must* respect and defer to a denomination’s own determinations of matters of church organization or government insofar as they may bear on the resolution of civil litigation. (See *Jones v. Wolf* (1979) 443 U.S. 595, 603 [the First Amendment requires civil courts to respect a hierarchical church’s determinations and rules, and to “completely” abstain from resolving “questions of religious doctrine, polity, and practice”]; *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 710 [reversing a ruling that had refused to heed a

denomination's determination affecting the control of property, because "[t]he [First] Amendment ... commands civil courts to decide church property disputes without resolving underlying controversies over ... church polity and church administration" [citation and internal quotation marks omitted]; *Kedroff v. Saint Nicholas Cathedral* (1952) 344 U.S. 94, 116 [religious organizations have the constitutional right "to decide for themselves, free from state interference, *matters of church government as well as those of faith and doctrine*"] [italics added]. See also *Church Br.* at pp. 12-15, 19.)

California law, as articulated in this Court's precedent, codified in Corporations Code, § 9142, and applied by the Court of Appeal in this case, reflects and implements these Constitutional requirements.

Nevertheless, *amici* argue that the "principle of government" approach and § 9142 are unconstitutional because they purportedly (1) treat hierarchical churches differently (and more favorably) than either congregational churches or secular associations, (2) require courts to impermissibly delve into church polity to determine whether a church is "hierarchical"; and/or (3) involve a "delegation of governmental authority." *Amici's* contentions misstate both the facts and the law.

A. The “Principle of Government” Approach Treats Churches and Secular Organizations Similarly.

Amici first contend that the “principle of government” approach adopted by this Court and followed by the Court of Appeal in this case, as well as § 9142, violate the Establishment Clauses of the United States and California Constitutions because they grant special rules and benefits for hierarchical churches that secular associations do not enjoy. (*PLC Br.* at p. 12.) The premise of this Constitutional contention is simply incorrect.

The California courts have embraced the sensible principle that an association’s own rules are binding upon that association’s members, and should be applied where applicable to resolve disputes among them. Thus, California law governing secular voluntary associations holds that the rules of a voluntary association constitute a binding contract between it and its members. (See, e.g., *California Dental Assn. v. American Dental Assn.* (1979) 23 Cal.3d 346, 353 [152 Cal.Rptr. 546] [“The rights and duties of the members of private voluntary associations as between themselves and in their relation to the association, in all matters affecting its internal government and the management of its affairs, are measured by the terms of [the association’s] constitution and by-laws.”]; *Josich v. Austrian Benev. Society of San Jose* (1897) 119 Cal. 74, 77 [51 P. 18] [“Persons who contemplate becoming members of a society like the respondent should understand that their rights as such members will, as a general rule, be

determined by those with whom they thus voluntarily associate themselves,” and “they have voluntarily submitted themselves to the disciplinary power of the body of which they are members”]; *Stoica v. Internat. Alliance of Theatrical Stage Employees* (1947) 78 Cal.App.2d 533, 535-536 [178 P.2d 21] [“The constitution, rules and by-laws of a voluntary unincorporated association constitute a contract between the association and its members”], quoting *Dingwall v. Amalgamated Assn.* (1906) 4 Cal.App. 565, 569 [88 P. 597]; *Davis v. Internat. Alliance of Theatrical Stage Employees & Moving Picture Mach. Operators* (1943) 60 Cal.App.2d 713, 716 [141 P.2d 486].)

California courts will also defer to secular voluntary associations’ interpretation of their own rules, in order to avoid becoming entangled in the interpretation of internal rules and laws for which courts lack competence. (*California Dental Assn.*, *supra*, 23 Cal.3d at p. 353 [courts’ “determination not to intervene reflects their judgment that the resulting burdens on the judiciary outweigh the interests of the parties at stake. One concern in such cases is that judicial attempts to construe ritual or obscure rules and laws of private organizations may lead the courts into what Professor Chafee called the ‘dismal swamp.’”]; *Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 645-646 [32 Cal.Rptr.3d 266] [“We observe that the rationale of abstention from intra-association disputes applies with particular force in this instance. Given the

unique and specialized nature of this association’s business – the operation of a professional football league – there is significant danger that judicial intervention in such disputes will have the undesired and unintended affect of interfering with the League’s autonomy in matters where the NFL and its commissioner have much greater competence and understanding than the courts.”]; *California Trial Lawyers Assn. v. Superior Court* (1986) 187 Cal.App.3d 575, 580 [231 Cal.Rptr. 725] [“This reluctance to intervene in internecine controversies, the resolution of which requires that an association’s constitution, bylaws, or rules be construed, is premised on the principle that the judiciary should generally accede to any interpretation by an independent voluntary organization of its own rules which is not unreasonable or arbitrary.”].)

Finally, California courts defer to the rules and decisions of secular voluntary associations in order to respect and preserve the autonomy of such organizations. (*California Dental Assn., supra*, 23 Cal.3d at p. 353 [emphasizing courts’ concern “with preserving the autonomy of such organizations”]; *Oakland Raiders, supra*, 131 Cal.App.4th at pp. 645-646 [declining judicial intervention in order to avoid “the undesired and unintended effect of interfering with the League’s autonomy”]; *Berke v. Tri Realtors* (1989) 208 Cal.App.3d 463, 469 [257 Cal.Rptr. 738] [“Courts must guard against unduly interfering with an organization’s autonomy by substituting judicial judgment for that of the organization The practical

and reasonable construction of the constitution and bylaws of a voluntary organization by its governing body is binding on the membership and will be recognized by the courts.”] [citations omitted].)

As this Court has explicitly recognized, religious organizations are no exception to this rule:

“[a] person who joins a church covenants expressly or impliedly that in consideration of the benefits which result from such a union he will submit to its control and be governed by its laws, usages and customs ... to which ... he assents as to so many stipulations of a contract. *The formal evidence of such contract is contained in the canons of the church, the constitution, articles, and by-laws of the society, and the customs and usages which have grown up in connection with these instruments.*” (*Rosicrucian Fellowship v. Rosicrucian Fellowship Non-Sectarian Church* (1952) 39 Cal.2d 121, 132 [245 P.2d 481] [citation omitted, italics added].)

More recently, this Court explained, “the members of a church, by joining, implicitly consent to the church’s governance in religious matters; for civil courts to review the church’s judgments would ‘deprive these bodies of the right of construing their own church laws’ and, thus, impair the right to form voluntary religious organizations.” (*Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal. 4th 527, 542 [10 Cal.Rptr.3d 283] [quoting and citing *Watson, supra*, 80 U.S. 679 and *Milivojevich, supra*, 426 U.S. 696].)⁶

⁶ PLC cites to another recent case involving the Episcopal Church, *In re Church of St. James the Less* (Pa. 2005) 888 A.2d 795, to suggest that local congregations are not bound by denominational rules governing

Not surprisingly, *amici* cannot point to a single authority to support the proposition that component parts and members of secular associations are generally excused from compliance with the association's rules, and they are not. The "principle of government" analysis applied by the Court of Appeal merely ensures that churches are treated similarly to, and not more favorably than, such organizations.

Even if the rules of secular organizations generally were not enforceable against their members, moreover, the "principle of government" analysis applied by this Court and the Court of Appeal (and effectively replicated in Corporations Code, § 9142) would not constitute an unconstitutional establishment of religion. The Supreme Court has affirmed that the First Amendment *requires* that churches be free to establish their own polities and rules, "free from state interference." (*Milivojevich*, *supra*, 426 U.S. at p. 722; *Kedroff*, *supra*, 344 U.S. at p. 116.) Respecting those rules, then, does not unconstitutionally "establish" religion, but merely accommodates its free exercise. (See, e.g., *Corp. of the*

property unless they take some special action agreeing to be so bound. (*PLC Br.* at pp. 16, 30-31.) As just shown, any such rule would be wholly inconsistent with California authority governing both secular and religious associations. Moreover, the parish at issue in *St. James the Less* held its property for the mission of the Episcopal Church and the Diocese because it had incorporated and operated as an Episcopal Parish, pursuant and subject to denominational rules that restricted the parish's use and control of that property. (888 A.2d at p. 431.) No additional "assent" was required. (*Id.* at pp. 451-452.) *St. James the Less* is factually indistinguishable from this case.

Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos (1987) 483 U.S. 327 [exemption of religious organizations from aspects of Title VII did not violate Establishment Clause because “[t]here is ample room under the Establishment Clause for ‘benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference,’” and “it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions.”]; *Walz v. Tax Com.* (1970) 397 U.S. 664 [tax exemption for religious entities raises no Constitutional concerns].) That such accommodation is constitutionally permissible is beyond dispute. (See *ibid.*)⁷

B. The “Principle of Government” Approach Is Applicable to Both Hierarchical and Congregational Churches.

Amici similarly assert that the Court of Appeal’s analysis violates the First Amendment’s Establishment Clause because it treats hierarchical churches more favorably than congregational churches. In fact, the analysis treats hierarchical and congregational churches the same. The chosen governing structures and rules of each will be respected.

The analysis to be used to resolve a property dispute involving congregational churches is not presented by this case, of course, and may properly be reaffirmed or refined in later cases involving such

⁷ For the same reasons just discussed, neither the “principle of government” analysis nor § 9142 raises any legitimate issues under the No Preference Clause of the California Constitution.

organizations. However, the “principle of government” analysis applied by the Court of Appeal in this case simply asks what rules the organization before it has established to govern the use and control of the property at issue, and then enforces the rules of that organization against the organization’s members. California has applied that same method of analysis to congregational churches as well.

As the Court of Appeal in this case explained, the “principle of government” approach is applicable to any form of church polity. (See *Op.* at p. 11.) Under this approach, courts recognize that churches are free under the First Amendment to establish ecclesiastical structures and rules to govern their affairs, and that (in accordance with principles generally applicable to voluntary associations as well as constitutional requirements) those rules are binding on that church’s component parts and members. (*Id.* at pp. 10-12. See *Watson, supra*, 80 U.S. at p. 725 [“If the principle of government in [the case of a congregational church] is that the majority rules, then the numerical majority of members must control If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property.”].)

The California courts have previously done just this. (See, e.g., *Providence Baptist Church v. Superior Court* (1952) 40 Cal.2d 55 [251 P.2d 10] [applying “principle of government” analysis to case involving

congregational church]; *Singh v. Singh* (2004) 114 Cal.App.4th 1264 [9 Cal.Rptr.3d 4] [looking to see whether any authority within the congregational church resolved the issue of the corporate officers' terms of office].) Far from treating congregational and hierarchical churches differently, then, the "principle of government" approach applied by the Court of Appeal treats them precisely the same. Indeed, unlike *amici*, the petitioners in this case appear to concede this, complaining that the "principle of government" approach would apply to "*all religious organizations.*" (*Pet. Br.* at 33-34.)⁸

C. **Property Interests and Restrictions Need Not Always Be Stated in a Recorded Deed or Trust Instrument.**

Wholly ignoring the body of law discussed above, which alone refutes their position, *amici* contend that the "principle of government" analysis and § 9142 unconstitutionally favor hierarchical churches because they excuse such churches from complying with procedures necessary to create a trust or an interest in property under other circumstances. Again they are wrong.

⁸ *Amici*'s suggestion that under a "principle of government" approach, a hierarchical church "automatically wins" is thus simply incorrect, at least to the extent it implies that every hierarchical church will always be awarded disputed property. A hierarchical church, like a congregational one, *will* always win in the sense that its clearly articulated rules and polity, whatever they may be, will be respected.

1. Property Interests Need Not Be Contained in Recorded Deeds.

Amici imply that in all other circumstances property interests must be set forth in a deed and/or recorded to be effective. Not so. Property interests are often asserted – and enforced – on the basis of contractual or other arrangements not contained in a deed. (See, e.g., Civ. Code, § 714 [referring to “any covenant, restriction, or condition contained in any *deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property . . .*”], italics added; Civ. Code, § 784 [“‘Restriction,’ when used in a statute that incorporates this section by reference, means a limitation on, or provision affecting, the use of real property in a *deed, declaration, or other instrument . . .*”], italics added; Civ. Code, § 1215 [“The term ‘conveyance,’ . . . embraces *every instrument in writing* by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, *or by which the title to any real property may be affected . . .*”], italics added.)

Accordingly, California courts routinely enforce the property rules of a superior organization versus its subordinate chapters or members:

“When a schism has occurred in a . . . benevolent association, which has united with and assented to the control and supervision of a general organization, and acquired property since its union and assent to the government of the general organization, by the investment of dues collected from its members while harmony obtained, the title to the property remains in the name of the association, and that faction which has remained loyal and adhered to the laws, usages, and

customs of the general organization constitutes the true association, and is alone entitled to the use and enjoyment of the association's property. This rule applies whether the subordinate association be a corporation or simply a voluntary association, and regardless of whether the majority or minority of the entire membership constitute the faction adhering to and observing the laws, usages, and customs of the general organization” (*Most Worshipful Sons of Light Grand Lodge v. Sons of Light Lodge No. 9* (1953) 118 Cal.App.2d 78, 85 [257 P.2d 464] (“*Most Worshipful Sons*”) [quoting *Union Benev. Soc. No. 8 v. Martin* (1902) 113 Ky. 25 [67 S.W. 38]].)

(See also *Henry v. Cox* (Ohio Ct.App. 1927) 159 N.E. 101, 102 [relied upon by *Most Worshipful Sons* and holding that members of a subordinate branch of the Ku Klux Klan “had a right voluntarily to withdraw singly or collectively, but they could not take with them nor transfer any of the property” of the subordinate branch].)

To be sure, unrecorded interests in property generally may not be enforced *against a third party who has purchased the property at issue for valuable consideration and without notice of the restriction.* (See, e.g., Civ. Code, § 1214.) In other circumstances, however, the interest, if proven, is valid and will be enforced. (See, e.g., Civ. Code, § 1217 [“An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.”].)

2. Application of “Principle of Government” and § 9142 In This Case Is Consistent With Applicable Principles and Procedures Governing Charitable Trusts.

Amici's resort to rules and requirements governing private trusts is equally misguided. Charitable organizations like petitioner here are

supported by charitable contributions and donations from large numbers of individual donors, often over periods of many years. Under California law, as well as that of other states, the receipt of such donations alone is sufficient to establish a trust in the organization's property.

Business and Professions Code, § 17510.8 provides, "*The acceptance of charitable contributions by a charity or any person soliciting on behalf of a charity establishes a charitable trust and a duty on the part of the charity ... to use those charitable contributions for the declared charitable purposes for which they are sought.*" (Italics added.) Thus, in the case of charitable corporations and trusts, the Attorney General may investigate to ensure that "the purposes of the corporation or trust are being carried out *in accordance with the terms and provisions of the articles of incorporation or other instrument.*" (Gov. Code, § 12588 [italics added].)

These statutes accurately reflect the common law of California. (See Bus. and Prof. Code, § 17510.8 [provision is "declarative of existing trust law principles"].) In *American Center for Education, Inc. v. Cavnar* (1978) 80 Cal.App.3d 476, 486 [145 Cal.Rptr. 736], for example, the court reiterated that "assets of charitable corporations are deemed to be impressed with a charitable trust by virtue of the declaration of corporate purposes," and may not be diverted to other uses, charitable or otherwise. (See also *In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal.App.3d 850, 857 [121 Cal.Rptr. 899], quoting *Lynch v. Spilman* (1967) 67 Cal.2d

251, 260 [62 Cal.Rptr. 12] [“California has expressed a strong public policy that trust property of a nonprofit religious or charitable corporation be not diverted from its declared purpose,” and that such property may only be used “to carry out the objects for which the [corporation] was created.”] [internal quotation marks omitted]; *Blocker v. State* (Tex.App. 1986) 718 S.W.2d 409, 415 [“[P]roperty transferred unconditionally to a [charitable] corporation ... is ... subject to implicit charitable ... limitations defined by the donee’s organizational purpose”], italics omitted; 4A Fratcher, *Scott on Trusts* (4th ed. 1989) § 348.1.).

Accordingly, California courts have repeatedly affirmed that a majority of the members of a local chapter of a national organization may not divert the property of that local organization to some other group. In *Thatcher v. City Terrace Cultural Center* (1960) 181 Cal.App.2d 433 [5 Cal.Rptr. 396] (“*Thatcher*”), for instance, the court upheld a parent lodge’s legal interest in property held by a subordinate lodge, rejecting the argument that subordinate lodges are separate entities and wholly independent of their parent: “Local lodges come into being, not as independent organizations existing solely for the benefit of their members, but as constituents of the larger organization, the grand lodge, organized for specific purposes, most of which can be accomplished only through subordinate bodies, the local lodges.... The property so acquired by the local lodge becomes impressed with the group purpose of a fraternal benefit

society.” (*Id.* at p. 453, quoting *District Grand Lodge v. Jones* (Tex. 1942) 160 S.W.2d 915, 921; see also *Pizer v. Brown* (1955) 133 Cal.App.2d 367 [283 P.2d 1055] [local union was not entitled to funds or collective bargaining agreements upon seceding from its parent organization]; *Most Worshipful Sons of Light Grand Lodge, supra*, 118 Cal.App.2d at pp. 84-85 [the overwhelming majority of the members of a local lodge, upon voting to withdraw from a parent organization, were not entitled to retain the local lodge’s real property in association with another, similar organization]); *Brown v. Hook* (1947) 79 Cal.App.2d 781, 784, 789, 795 [180 P.2d 982] [“while there appears to be no express provision in the constitution to the effect that a local may not withdraw or secede, the whole framework evidences that the locals and their members are so integral a part of the International that they cannot do so and still maintain their property”]; *Federation of Insurance Employees v. United Office & Prof. Workers of America* (R.I. 1950) 74 A.2d 446, 449 [“the law governing such associations appears to be well settled that, even if the attempt to secede was actually successful and effective, the secessionists, although constituting a majority of the members of the Local, cannot take with them the property of the Local, either into a new and independent union or into a subordinate new or existing unit of a rival parent organization”]; 7 C.J.S. (2004) Associations, § 44 [“members who withdraw [from a voluntary

association] ... lose their rights to associate property, title to which stays in the members remaining in the association”’.)

Here, as in *Thatcher*, St. James came “‘into being, not as [an] independent organization[] existing solely for the benefit of [its] members, but as [a] constituent[] of [a] larger organization . . . organized for specific purposes, most of which can be accomplished only through subordinate bodies.’” (181 Cal.App.2d at p. 453 [citation omitted].) St. James received real property, and raised funds over many years, while a parish of the Episcopal Church. The Church’s Constitutions and Canons, to which St. James voluntarily agreed to be “‘forever bound,” provide that all such property is held in trust for the Church. As in *Thatcher*, the property has “‘become[] impressed with the [Church’s] group purpose”” by virtue of St. James’ decades-long affiliation and its agreement to be bound by the Constitutions and Canons. (*Ibid.* [citation omitted].)

D. The “Principle Of Government” Approach Does Not Require an Impermissible Inquiry Into Church Polity.

Amici next argue that the “principle of government” approach applied by this Court and the Court of Appeal is unconstitutional because it requires civil courts to delve into matters of church polity to decide whether a particular denomination is “hierarchical” or “congregational.” *Amici* further complain that many denominations do not fit precisely into either of these categories. (*PLC Br.* at pp. 17-21; *IEL Br.* at pp. 4, 12.) *Amici*’s

premise is a strawman. As 150 years of experience with the “principle of government” approach shows, the analysis simply does not create the difficulties *amici* suggest.

It is certainly true today, as it was in the 19th Century, that many if not all “hierarchical” denominations are not “purely hierarchical,” but make use of democratic principles in some way and/or vest some decision making authority in local congregations or other subordinate bodies. *The law does not and need not distinguish among these denominations, however.* Within the meaning of the case law, the term “hierarchical” easily accommodates a variety of particular polities. In the words of the United States Supreme Court, a church is legally “hierarchical” if it is organized as a series of “superior ecclesiastical tribunals” with control “more or less complete” over local congregations. (*Watson, supra*, 80 U.S. at p. 722.)

There can be no question that the Episcopal Church is “hierarchical” under this formulation, as numerous courts around the country have uniformly affirmed.⁹ *Amicus* Diocese of San Joaquin appears to argue that

⁹ See, e.g., *Protestant Episcopal Church in the Diocese of L.A. v. Barker* (1981) 115 Cal.App.3d 599, 606-607 [171 Cal.Rptr. 541] [describing hierarchical structure of the Episcopal Church]; *Dixon v. Edwards* (4th Cir. 2002) 290 F.3d 699, 716; *Rector, Wardens & Vestrymen of Trinity-St. Michael's Parish, Inc. v. Episcopal Church in the Diocese of Conn.* (Conn. 1993) 620 A.2d 1280, 1285; *Parish of the Advent v. Protestant Episcopal Diocese of Mass.* (Mass. 1997) 688 N.E.2d 923, 931; *Episcopal Diocese of Mass. v. DeVine* (Mass.App.Ct. 2003) 797 N.E.2d 916, 923; *Protestant Episcopal Church v. Graves* (N.J. 1980) 417 A.2d 19, 24; *Daniel v. Wray* (N.C.Ct.App. 2003) 580 S.E.2d 711, 718; *Bennison v.*

the Episcopal Church is in some sense not “hierarchical” principally because its dioceses purportedly did not have to promise an “unqualified accession” to the Constitution and Canons of the Episcopal Church until 1982. Even if this were true,¹⁰ that would provide no basis for questioning the Episcopal Church’s status as a church organized with a series of ascending “superior ecclesiastical tribunals” with control “more or less complete” over local congregations. Indeed, even the *amicus* appears to concede that the Church is hierarchical with respect to parishes. (See *Diocese of San Joaquin Br.* at p. 12.) Any purely hypothetical difficulty that may arise in some other case provides no basis for departing from more than 100 years of California jurisprudence in this one.

As shown in response to petitioners’ similar argument, the marginal review of church structure and governance necessary to determine whether a denomination has a governing body like the Episcopal Church’s General Convention, and whether that governing body has adopted a rule that bears on the dispute between the parties before the court, raises no constitutional difficulty. (See *Church Br.* at 25-27.) To the contrary, this is a routine task

Sharp (Mich.Ct.App. 1982) 329 N.W.2d 466, 472; *Tea v. Protestant Episcopal Church* (Nev. 1980) 610 P.2d 182, 183; *In re Church of St. James the Less* (Pa.Comm.w.Ct. 2003) 2003 Phila.Ct.Com.Pl.LEXIS 91, affd. 833 A.2d 319, affd. in pertinent part, 888 A.2d 795 (2005).

¹⁰ In fact, although the word “unqualified” was added to Article V of the Constitution as a part of some broader revisions in 1982, dioceses have always had to accede without qualification to the Constitution and Canons of the Episcopal Church as a condition of admission, and the Diocese of San Joaquin, like every other diocese of the Church, did so.

that courts have been performing at least since *Watson* in 1871. (See, e.g., *Op.* at 45 [“there is only one case in our entire survey of the case law in the area where organizational structure was an actual matter of *controversy*. [Citation omitted.] And in that case the appellate court easily surmounted the issue without involvement in religious dogma”]; *Wheelock v. First Presbyterian Church of L.A.* (1897) 119 Cal. 477, 485 [51 P. 841]; *Horsman v. Allen* (1900) 129 Cal. 131, 136 [61 P. 796]; *Permanent Committee of Missions of the Pac. Synod of the Cumberland Presbyterian Church in the United States v. Pac. Synod of the Presbyterian Church, U.S.A.* (1909) 157 Cal. 105, 127-128 [106 P. 395] (“*Committee of Missions*”).)

This is not surprising, as courts similarly and routinely make such determinations with respect to secular associations. (See, e.g., *United States v. Internat. Brotherhood of Teamsters* (2d Cir. 1992) 968 F.2d 1506, 1511 [distinguishing between affiliates “whose authority is derived from their hierarchical association with the international union” and other locals which are “independent entities”]; *Michigan State AFL-CIO v. Employment Relations Com.* (Mich. 1996) 551 N.W.2d 165, 182 [noting the hierarchical structure of union organization – “when the individual bargaining unit members choose to associate with the statewide or the larger association,

these people willingly relinquish the right to assert . . . what is best for the individual bargaining unit”].¹¹

Finally, of course, neither the “principle of government” analysis nor any equitable consideration requires courts to label or make distinctions among denominations that are “more” or “less” hierarchical because, as discussed above, the “principle of government” analysis can be applied even to purely *congregational* denominations. (See Part I(B), *supra* at pp. 13-15.) The analysis, at bottom, is unconcerned with the label to be affixed to a particular denomination’s structure. It asks, simply, (1) what body or bodies has this denomination established for its governance, and (2) what rules or decrees, if any, have those authorities established on the subject of the dispute before the court? (See, e.g., *Wheelock, supra*, 119 Cal. at pp. 483-485; *Horsman, supra*, 129 Cal. at p. 138; *Concord Christian Center v. Open Bible Std. Churches* (2005) 132 Cal.App.4th 1396, 1409 [34 Cal.Rptr.3d 412]; *Singh, supra*, 114 Cal.App.4th at pp. 1275-1276; *Korean United, supra*, 230 Cal.App.3d 480, 500-501.)

E. The “Principle of Government” Approach Does Not Involve Any Delegation of Governmental Authority.

Finally, pointing to *Larkin v. Grendel’s Den* (1982) 459 U.S. 116, PLC wrongly argues that the “principle of government” approach violates

¹¹ In any event, courts would not escape the difficulties complained of by *amici* using “neutral principles,” which similarly requires a court to review sources such as the constitution, canons, and rules of the general church.

the First Amendment's Establishment Clause because it involves an unconstitutional delegation of governmental authority to churches. (*PLC Br.* at pp. 15-17.)

In *Larkin*, the town of Cambridge, Massachusetts, had adopted a provision in its zoning laws that effectively permitted churches to “veto” any application for a liquor license filed by an establishment located within 500 feet of the church's premises. (*Supra*, 459 U.S. at p. 117.) The Supreme Court held that the Cambridge ordinance unconstitutionally “established” religion by giving churches the power to determine whether third-party commercial entities would or would not receive governmental authority to sell liquor. (*Id.* at pp. 126-127.) There is no such delegation of governmental authority here.

Unlike the granting of liquor licenses, deciding whether and how to transfer or restrict the use of privately held property is not principally a governmental function. To the contrary, the locus of property rights and interests are largely determined by private decisions and choices, and are evidenced by private conduct and/or privately created documents such as contracts, trusts, deeds, and associational rules and governing documents.

In the event of any property dispute, to be sure, it is the province of the civil courts to review the evidence and declare the rights of the parties. The “principle of government” analysis implies nothing to the contrary, as this Court's own authority makes clear. (See *Wheelock, supra*, 119 Cal. at

p. 482.) As in all other property disputes, however, the courts' rulings will generally enforce the private arrangements and agreements established by the evidence. (See *id.* at pp. 486-487; Part I(B), *supra* at pp. 13-15.)

F. The Constitution Does Not Require the “Neutral Principles” Approach.

As shown above, the “principle of government” approach previously approved and applied by both this Court and the Supreme Court of the United States raises no constitutional concerns. Neither petitioner nor any *amicus* can point to any authority to the contrary. Nevertheless, the PLC points to a few cases that, it claims, hold that the neutral principles approach “has become a matter of constitutional necessity.” (*PLC Br.* at pp. 33-36. But see *IEL Br.* at 7 [the Supreme Court in *Jones* “did not mandate the Neutral Principles approach”]. The *amicus* misrepresents these cases.¹²

Each of the cases the *amicus* cites indeed states, in various contexts and types of cases, that it will or, under prior authority from that jurisdiction, must apply neutral principles of law to resolve the dispute.

¹² The cases cited are: *Wolf v. Rose Hill Cemetery Assn.* (Colo.Ct.App. 1995) 914 P.2d 468; *Fluker Community Church v. Hitchens* (La. 1982) 419 So. 2d 445; *From the Heart Ministries, Inc. v. African Methodist Episcopal Zion Church, Mid-Atlantic II Episcopal District* (Md. 2002) 803 A.2d 548; *Reorganized Church of Latter Day Saints v. Thomas* (Mo.Ct.App. 1988) 758 S.W.2d 726; *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States* (N.Y. 1984) 464 N.E.2d 454; *Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio v. Keleman* (Ohio 1970) 256 N.E.2d 212; *Presbytery of Beaver-Butler of the United Presbyterian Church in the United States v. Middlesex Presbyterian Church* (Pa. 1985) 489 A.2d 1317.

None, however, suggests that an express trust provision in a hierarchical church's governing document is unenforceable; none considers or discusses the "principle of government" approach applied by the Court of Appeal here; and certainly none holds that such an approach is now unconstitutional. To the contrary, as this Court has quite recently explained, the approach adopted in *Watson* is still good law:

"The high court resolved the competing religious claims by deferring to the decision of the General Assembly, thus adopting the rule still in effect today: '[W]henver . . . questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.' [citation] The rule's modern formulation is similar."
(*Catholic Charities*, *supra*, 32 Cal.4th at pp. 541-542.)

Indeed, *Catholic Charities* noted that *Watson*'s holding is compelled by the First Amendment. (*Id.* at p. 542.)

Accordingly, the Court of Appeal in this case correctly concluded that "the approach articulated by the highest court in this state – directly in *Baker*, *Wheelock*, *Permanent Committee of Missions*, *Horsman*, and *Providence Baptist*; and indirectly in *Rosierucian Fellowship* – has never been overruled or concluded by decisions of the United States Supreme Court." (*Op.* at 75-76.)

II. THERE IS NO PRACTICAL BASIS FOR ABANDONING THE "PRINCIPLE OF GOVERNMENT" METHODOLOGY.

The *amici* proffer various practical considerations that, they contend, counsel against the use of the "principle of government" analysis. Each of

these contentions misses the mark. Moreover, as the Court of Appeal recognized and as *amici* do not and cannot contest, the alternative “neutral principles” analysis would not alter the result in this case. (See *Op.* at p. 76; *Church Br.* at 44-50.) The Court of Appeal therefore should be affirmed.

A. **Numerous Jurisdictions Continue to Apply a “Principle of Government” Analysis.**

Like petitioners, *amici* argue that this Court should require an explicit “neutral principles” analysis in all church property cases because that supposedly is the “clear trend” in other jurisdictions. The fact is, however, that numerous jurisdictions have declined to adopt the “neutral principles” approach since *Jones v. Wolf* was decided in 1979. (E.g., *Bethel AME Church of Newberry v. Domingo* (Fla. Dist. Ct. App. 1995) 654 So.2d 233, 234 [per curiam]; *Fonken v. Community Church of Kamrar* (Iowa 1983) 339 N. W.2d 810, 819; *Bennison, supra*, 329 N. W.2d at pp. 474-475; *Tea, supra*, 610 P.2d at p. 184; *Graves, supra*, 417 A.2d at p. 24; *Seldon v. Singletary* (S. C. 1985) 326 S. E.2d 147, 149; *Schismatic & Purported Casa Linda Presbyterian Church in America v. Grace Union Presbytery, Inc.* (Tex. App. 1986) 710 S. W.2d 700; *Southside Tabernacle v. Pentecostal Church of God, Pac. Northwest Dist., Inc.* (Wash. Ct. App. 1982) 650 P.2d 231, 234 n.2; *Church of God of Madison v. Noel* (W. Va. 1984) 318 S. E.2d 920.)

Moreover, even those jurisdictions that have explicitly adopted the four-factor “neutral principles” analysis have made clear that under that approach, express trust provisions contained in a hierarchical denomination’s governing documents will be enforced against the denomination’s members. (See, e.g., *Bishop & Diocese of Colo. v. Mote* (Colo. 1986) 716 P.2d 85, 108 [upholding the Church’s trust interest based on canons pre-dating I.7(4)]; *Rector, Wardens & Vestrymen of Trinity-St. Michael’s Parish, supra*, 620 A.2d at p. 1292 [enforcing Canon I.7(4)]; *DeVine, supra*, 797 N.E.2d at p. 923 [same]; *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville* (N.Y.App.Div. 1999) 684 N.Y.S.2d 76, 81 [same]; *Daniel, supra*, 580 S.E.2d at p. 718 [Canon I.7(4), required disaffiliating parish members to relinquish possession and control of the parish’s property]; *In re Church of St. James the Less, supra*, 888 A.2d at p. 810 [Canon I.7(4) is enforceable where the parish had historically been subject to numerous national and diocesan canons restricting its control of property]; see also *Crumbley v. Solomon* (Ga. 1979) 254 S.E.2d 330, 332 [Disciplinary Rule, which stated that the general church “shall hold all church property, regardless if all members [of a local church] vote to change the church to some other faith,” held sufficient to find a trust in local church property]; *Cumberland Presbytery of the Synod of the Mid-West v. Branstetter* (Ky. 1992) 824 S.W.2d 417 [relying on express trust provision of national church constitution in awarding property

to general church body]; *Shirley v. Christian Episcopal Methodist Church* (Miss. 1999) 748 So.2d 672, 677 [enforcing a provision in that general church's book of discipline that "titles to all property held by local churches are held in trust for CME ..."]; *Brady v. Reiner* (W.Va. 1973) 198 S.E.2d 812, 843 [property held in trust for general church where the Book of Discipline "prescribe[d] that titles to the property held by trustees of a local church are held in trust for The United Methodist Church"]; *Wisconsin Conf. Bd. of Trustees of the United Methodist Church, Inc. v. Culver* (Wis.Ct.App. 2000) 614 N.W.2d 523, 528 [provision of Book of Discipline stating that "titles to all properties held ... by a local church ... shall be held in trust for The United Methodist Church . . ." served to "convert[] the local ownership of church property to ownership in trust for the benefit of the UMC"] [italics omitted], *affd.* on different grounds, (Wis. 2001) 627 N.W.2d 469. See also *Green v. Lewis* (Va. 1980) 272 S.E.2d 181, 186 [provision in hierarchical denomination's governing documents forbidding unilateral transfer of local church property was enforceable as a matter of contract law]. Accord *Guardian Angel Polish Nat. Catholic Church of L.A., Inc. v. Grotnik* (2004) 118 Cal.App.4th 919, 930-931 [13 Cal.Rptr.3d 552] [holding that property belongs to general church because its governing constitution provides for an express trust]; *Korean United, supra*, 230 Cal.App.3d at pp. 511-512 [same].)

As this case law demonstrates, there is no “clear trend” suggesting that this Court should abandon its own well-settled precedent in favor of the four-factor “neutral principles” analysis.

B. There is No Evidence that Use of a “Principle of Government” Analysis in Property Disputes Will Impose Unwanted Rights or Liabilities on Hierarchical Denominations.

Some *amici* further contend that if this Court affirms the “principle of government” analysis it has used since the 19th Century, hierarchical denominations may as a result be awarded property interests that they neither seek nor desire, or be held vicariously liable for torts committed by one of their member congregations. (See *Charismatic Episcopal Church Br.* at pp. 7-9, 17-19; *PLC Br.* at pp. 53-54.) These contentions are supported by neither evidence nor logic.

The “principle of government” analysis had its origins in the 1871 Supreme Court case of *Watson v. Jones*, and has been applied in California and numerous other states around the country for more than 130 years. Yet, *amici* cannot point to a single case in which a hierarchical church has been awarded property in the face of denominational rules that vest all interest in local church property in the local congregation alone.¹³ This is hardly surprising: the “principle of government” analysis applied by the

¹³ Of course, there may be cases in which either a donor of specific property or a particular local congregation nevertheless will have chosen to create a property interest in another church body even if the denomination’s polity and rules do not establish such an interest applicable to all congregations. Both the “neutral principles” and “principle of government” approaches would permit enforcement of these instruments, as well.

Court of Appeal makes clear that the rules and governance established by the denomination at issue should be enforced *vis-à-vis* the denomination's members. If under those rules local church property is unrestricted and subject to the control solely of the local congregation, that may be enforced under a "principle of government" analysis no less than the express trust provision and similar rules at issue in this case.

Amici's contentions regarding the risk of vicarious tort liability are no more substantial. Again, the notion that a voluntary association's rules will be binding on its members is hardly revolutionary: this "principle of government" has been established and routinely applied by courts across the country for decades, if not centuries. Yet *amici* can point to no authority or example in which this principle – or more specifically, the presence of a denominational "trust" provision – has led to the imposition of unwarranted tort liability on any religious denomination. It has not.

Tort liability is determined according to a separate, well-established body of law that properly seeks to match liability with control and fault. (See, e.g., 1 Speiser, *The American Law of Torts* (2003) § 1.14 at p. 14 ["a person is subject to liability in tort only if: (a) he has caused harm to another, or (b) he has failed to perform his duty to protect another dependent upon him, or (c) something of which he is possessed or someone over whom he has control has caused harm to another"].) Under these principles, a denomination that exercises a high degree of control and

supervision over its local congregations is obviously more likely to be held liable for torts committed by those congregations than a denomination in which local congregations are subject to little or no other authority. An analytical framework that simply makes clear that expressly stated rules or arrangements in a denomination's governing documents will be enforced, however, simply does not affect that issue. There is no reason that liability for any and all torts that may be committed by a local congregation should follow denominational rules restricting local church property for a larger church's mission. Accordingly, such rules have been and will continue to be irrelevant to tort suits involving other issues.

C. **The "Principle of Government" Approach Does Not Harm Third Parties.**

Finally, the PLC contends that enforcing denominational trust provisions in controversies between a denomination and its own former members would somehow "undermine the public notice function that is the foundation of the system for recording real property ownership" and make it "difficult[]" for local churches to alienate or mortgage their property. (*PLC Br.* at p. 52.) Again, despite 130 years of experience with the "principle of government" approach and decades of notice that express trust provisions should and would be enforced in California, the PLC's allegations are unsupported by any evidence or even assertion that churches in California have actually confronted these problems.

As previously discussed, California law is clear that unrecorded instruments may generally establish enforceable interests in property. (See I(C)(1), *supra* at pp. 16-17.) Various statutory provisions make clear that third parties may rely upon title holders' apparent authority with respect to property, and that unrecorded interests may not be enforced against third parties without actual knowledge of those competing interests. (See Civ. Code, § 1214 ["Unrecorded conveyance void as to subsequent purchaser"]; Civ. Code, § 1217 ["An unrecorded instrument is valid as between the parties thereto and those who have notice thereof."]. See also Part I(C)(1), *supra* at pp. 16-17.) Local churches who are subject to denominational rules restricting their control over property naturally have an obligation to behave accordingly -- and generally they do. Episcopal parishes in California and elsewhere routinely encumber property after obtaining the necessary consent of the diocese. Should they fail to do so, however, if the Church's canonical interests have not been recorded the lender's rights of course remain protected.

III. THE RADICAL "NEUTRAL PRINCIPLES" APPROACH AMICI PROPOSE HAS NEVER BEEN ADOPTED IN ANY STATE AND WOULD BE UNCONSTITUTIONAL.

Amici principally argue that this Court should require the "neutral principles" analysis approved in *Jones v. Wolf* and adopted in some other states. As shown above and in the Episcopal Church's opening brief,

amici's arguments are unfounded, and provide no basis for disturbing the well-reasoned view of the Court of Appeal.

One *amicus*, however, appears to go further, and actually urges this Court to adopt a different sort of "neutral principles" analysis that, contrary to the formulation approved in *Jones*, would ignore denominational rules completely. (*IEL Br.* at pp. 24-25.) No state, however, has ever adopted this sort of analysis, and such an approach would be unconstitutional. Even if this Court were inclined to require the four-factor "neutral principles" analysis approved in *Jones* and applied by some of the Courts of Appeal in recent years, it should decline to take such a radical and problematic step.

A. The Supreme Court Contemplates That Denominational Trusts Will Be Enforced.

In *Jones v. Wolf*, the Supreme Court was called upon to decide whether the specific approach to resolving church property disputes applied in the state of Georgia, which Georgia called the "neutral principles approach," was constitutional. Under that specific, four-factor "neutral principles" approach, the Georgia courts looked to deeds, local church articles and bylaws, the constitution and rules of the denomination, and state statutes to determine whether any of sources showed that the property at issue was held for the denomination. (See *Jones, supra*, 443 U.S. at pp. 599-601 [describing Georgia's approach in detail].) If the courts found a provision in any of those sources restricting local church property for the

use of a denomination, they enforced it. (See, e.g., *Carnes v. Smith* (Ga. 1976) 222 S.E.2d 322 [cited and discussed in *Jones, supra*, 443 U.S. at pp. 600-601 and enforcing express trust provision in Methodist Church's Book of Order].) Where they found no such restriction in any of the sources identified, as in *Jones* itself, they ruled in favor of the local church. (*Supra*, 443 U.S. at pp. 608-609. The Supreme Court in *Jones* approved *that specific method* of analyzing church property disputes.

The Supreme Court's opinion makes clear that a key reason the four-factor "neutral principles" approach at issue passed Constitutional muster was precisely because, in the view of the five-justice majority, the specific approach at issue continued to protect religious denominations' freedom to establish their own governing structures and polities.

The Supreme Court reaffirmed that the First Amendment "requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization," and held that the particular "neutral principles" approach under review was "consistent with the foregoing constitutional principles." (*Jones, supra*, 443 U.S. at p. 602.) The four-factor analysis was "flexible enough to accommodate all forms of religious organization and polity" because it offered "flexibility in ordering private rights and obligations to reflect the intentions of the parties." (*Id.* at p. 603.) It allowed religious societies to "specify what is to happen to church property in the event of a particular

contingency, or what religious body will determine the ownership [of property] in the event of a schism or doctrinal controversy” through “reversionary clauses and trust provisions.” (*Ibid.*) And of course, the four-factor “neutral principles” approach the Supreme Court was approving did not “‘inhibit’ the free exercise of religion” because “[a]t any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property” by modifying the deeds or the corporate charter, or amending the rules of the general church to recite an express trust in favor of the denomination. (*Id.* at p. 606.)

Amici contend that *Jones* does not support the enforcement of express trust clauses in general churches’ governing documents because the language just quoted permits “the parties” to structure their affairs to ensure that the denomination’s polity and practices will be enforced, and because a provision in a denomination’s governing documents is not, in *amici*’s view, a “legally cognizable” or “appropriate” trust provision. (*PLC Br.* at pp. 27-28; *IEL Br.* at pp. 22-23.) These contentions are meritless.

The “neutral principles” approach specifically approved in *Jones* in fact enforced express trust clauses in general churches’ governing documents. (*Jones, supra*, 433 U.S. at pp. 600-601 [discussing *Carnes, supra*, 222 S. E.2d 322, which enforced the express trust provision in the United Methodist Book of Order].) Against this background, the Court

then repeatedly referred to denominational trust provisions in terms that contemplate enforcement, noting that to ensure that “the faction loyal to the hierarchical church will retain the church property” in the event of a dispute, “the constitution of the general church can be made to recite an express trust in favor of the denominational church” (*Jones, supra*, 433 U.S. at p. 606), and further that “any rule of majority representation can always be overcome, under the neutral-principles approach . . . by providing . . . [in] the constitution of the general church . . . that the church property is held in trust for the general church and those who remain loyal to it.” (*Id.* at pp. 607-608.) Accordingly, the California Court of Appeal correctly noted in *Korean United* that a denominational trust provision should be enforced in part because “the United States Supreme Court, in *Jones*, invited” this “very type” of provision. (*Supra*, 230 Cal.App.3d at p. 512.)

Amici seize upon the Supreme Court’s use of the word “parties” in its identification of other ways in which a hierarchical church and its members might protect property for that church’s mission to suggest that the Court could not have expected a denominational trust rule to qualify. *Amici* ignore, however, that in the context of a voluntary association, the organization’s rules are deemed to set forth the wishes of the “parties” – the organization *and its members*. (See *Watson, supra*, 80 U.S. at pp. 723-729 [“All who unite themselves to [a voluntary religious association] do so with

an implied consent to this government, and are bound to submit to it.”]; *Rosicrucian Fellowship, supra*, 39 Cal.2d at p. 132 [“[a] person who joins a church covenants expressly or impliedly that in consideration of the benefits which result from such a union he will submit to its control and be governed by its laws, usages and customs ... to which ... he assents as to so many stipulations of a contract. *The formal evidence of such contract is contained in the canons of the church ...*”], italics added; *Davis, supra*, 60 Cal.App.2d at p. 716 [rules of a voluntary association constitute a binding contract between it and its members].)¹⁴

Amici further assert that *Jones* requires denominational interests to be expressed in an “appropriate” or “legally cognizable” manner, and that a statement in the denomination’s governing documents should not qualify. However, California routinely treats the rules of voluntary associations as legally cognizable contracts, and will enforce trust restrictions stated in a variety of documents. (See Part I(A), *supra* at pp. 8-11.); In the case of a charitable trust, the simple receipt of a contribution is sufficient to ensure that a trust is created and that the property received be used for the purposes

¹⁴ Moreover, while this principle holds true regardless of the requirements or procedures an association may have specified for the amendment of its governing documents, it is worth reiterating here that in many associations, including the Episcopal Church, governing rules and provisions are not handed down from on high. They are adopted by a representative body comprised of clergy and lay members elected by and from the parishes of each of the Church’s dioceses. The Church’s parishes and dioceses thus directly participate in the Church’s governance and the adoption and amendment of its Constitution and Canons.

of the charity's established purposes, as set forth in its governing documents. (Bus. & Prof. Code, § 17510.8; *Cavnar, supra*, 80 Cal.App.3d at p. 486; *In re Metropolitan Baptist Church of Richmond, supra*, 48 Cal.App.3d at p. 857. See also Corp. Code, § 9150 [a religious corporation's governing documents include any set of rules by which the congregation is actually governed, regardless of how they are denominated].)

B. No Jurisdiction Refuses to Consider Denominational Rules.

Despite the Supreme Court's clear direction on this issue, the IEL suggests that since *Jones* was decided, one other jurisdiction has recently adopted a form of "neutral principles" analysis that refuses to acknowledge or look at denominational rules. (*IEL Br.* at pp. 24-25.) This is incorrect.

In *Berthiaume v. McCormack* (N.H. 2006) 891 A.2d 539, the court considered a case brought by a few individual members of the Roman Catholic Church, who sought to reverse their bishop's decision to consolidate three existing parishes and sell the parish church in which the plaintiffs had previously worshipped. (*Id.* at pp. 541-543.) The property at issue was titled in the name of the Catholic diocese. (*Id.* at p. 548.) The plaintiffs argued that the bishop had a duty rooted in the canons to preserve the parish church building for them. (*Ibid.*) The bishop, on the other hand,

argued that to consolidate the three parishes and sell off the excess property was within his canonical and ecclesiastical authority. (*Id.* at pp. 543-544.)

The New Hampshire Supreme Court affirmed the lower court's decision in favor of the bishop, explaining that in that case, the deed vesting title in "Dennis M. Bradley, Bishop of Manchester" in combination with a New Hampshire statute specifying that deeds to "Dennis M. Bradley, Bishop of Manchester" were to be interpreted as vesting property in "the Roman Catholic Bishop of Manchester," conclusively resolved the dispute before it. (*Berthiaume, supra*, 891 A.2d at pp. 548, 550-551.) There was no need, then, to review or seek to define the extent of the bishop's canonical authority in the absence of any clearly-worded canon specifically addressing the situation at hand; and the court declined to do so. (*Id.* at pp. 550-551.)¹⁵ The court did not hold, as the *amicus* would have it, that clearly expressed denominational rules restricting the use and control of local church property could or should be ignored under the very different facts presented here.¹⁶

¹⁵ Had it reached this question, the court likely would have been required to defer to the Bishop's determination of the canonical issues involved. (*Milivojevich, supra*, 426 U.S. at p. 723 [the canonical issues involved were "not so express that the civil courts could enforce them without engaging in a searching and therefore impermissible inquiry into church polity," and thus the court was required to defer to the hierarchical church's interpretation of its own rules].)

¹⁶ IEL also cites to *Severns v. Union Pac. R.R. Co.* (2002) 101 Cal.App.4th 1209 [125 Cal.Rptr.2d 100]; *Bjorkman v. Protestant Episcopal Church* (Ky. 1988) 759 S.W.2d 583; *First Evangelical Methodist Church of Lafayette v. Clinton* (Ga. 1987) 360 S.E.2d 584; and *Trinity Presbyterian Church of Montgomery v. Tankersley* (Ala. 1979) 374 So.2d 861 as

Indeed, as discussed in detail above and in the Episcopal Church's opening brief, the Supreme Court has made clear that the courts are constitutionally *required* to allow religious denominations to establish their own rules of governance and administration. (See Part I, *supra* at pp. 6-7, 12-13.) Any method of analysis that ignores this direction and purports to override a religious denomination's own established structure and rules as a matter of state law would be unconstitutional. California should not be the first to take such a step.

supposedly supporting the view that the courts should ignore denominational rules like the Church's Constitution and Canons. They do not. *Severns* did not involve a church or any other type of voluntary association, with rules governing property or otherwise, and it says nothing about the enforceability of such documents. *Clinton* is a one-page opinion in a church property dispute that, without explanation, resolves the dispute on the basis of property deeds. However, the Georgia court does not even discuss, let alone purport to overrule, the four-factor neutral principles analysis it had previously established. (See *Jones, supra* 433 U.S. at pp. 599-601 [discussing Georgia law].) *Bjorkman* and *Tankersley* were both church property disputes in which denominational rules in fact were considered and discussed.

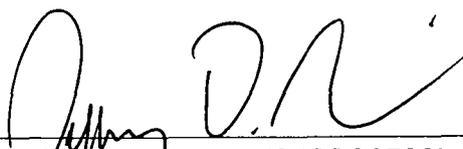
CONCLUSION

As discussed above, *amici* provide no basis for disturbing the well-reasoned decision of the Court of Appeal. This Court should affirm the judgment below.

Respectfully submitted,

GOODWIN|PROCTER LLP

By:

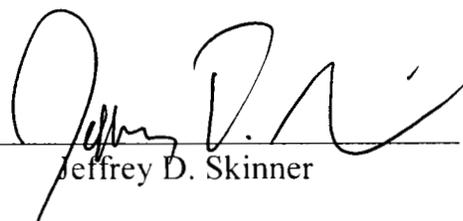

David Booth Beers (SBN 30799)
Heather H. Anderson (*pro hac vice*)
Jeffrey David Skinner (SBN 239214)
901 New York Avenue, NW
Washington, DC 20001
dbeers@goodwinprocter.com
handerson@goodwinprocter.com
jskinner@goodwinprocter.com
Tel: (202) 346-4000
Fax: (202) 346-4444

Dated: August 5, 2008

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

The text of Plaintiff in Intervention and Respondent the Episcopal Church's Response to Briefs of *Amici Curiae* consists of **10,480** words as counted by the Microsoft Word word-processing program used to generate the brief.

Dated: August 5, 2008



Jeffrey D. Skinner

CERTIFICATE OF SERVICE

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

On August 5, 2008, I served the foregoing document described as **PLAINTIFF IN INTERVENTION AND RESPONDENT THE EPISCOPAL CHURCH'S RESPONSE TO AMICI CURIAE** on the interested parties in this action by placing true and correct copies thereof enclosed in sealed envelopes addressed as follows:

Floyd J. Siegal Spile & Siegal, LLP 16501 Ventura Boulevard, Suite 610 Encino, CA 91436 Tel: (818) 784-6899 Fax: (818) 784-0176	<i>Attorney for Petitioners in O'Halloran v. Thompson and Adair v. Poch</i>
John R. Shiner Holme Roberts & Owen LLP 777 South Figueroa Street Suite 2800 Los Angeles, CA 90017 Tel: (213) 572-4300 Fax: (213) 572-4400	<i>Attorney for Plaintiffs/Respondents</i>
Meryl Macklin Kyle Schriener Holme Roberts & Owen LLP 560 Mission Street, 25th Floor San Francisco, CA 94105 Tel: (415) 268-2000 Fax: (415) 268-1999	<i>Attorneys for Plaintiffs/Respondents</i>
Brent E. Rychener Holme Roberts & Owen LLP 90 South Cascade Avenue, Suite 1300 Colorado Springs, CO 80903 Tel: (719) 473-3800 Fax: (719) 633-1518	<i>Attorney for Plaintiffs/Respondents</i>
Frederic D. Cohen Jeremy B. Rosen Horvitz & Levy LLP 15760 Ventura Blvd., 18th Floor Encino, CA 91436-3000 Tel: (818) 995-0800 Fax: (818) 995-3157	<i>Attorneys for Plaintiffs/Respondents</i>

<p>Eric Sohlgren Daniel Lula Payne & Fears LLP Jamboree Center 4 Park Plaza, Suite 1100 Irvine, CA 92614 Tel: (949) 851-1100 Fax: (949) 851-1212</p>	<p><i>Attorneys for Petitioners</i></p>
<p>Robert A. Olson Greines, Martin, Stein & Richland LLP 5700 Wilshire Boulevard, Suite 375 Los Angeles, CA 90036 Tel: (310) 859-7811 Fax: (310) 276-5261</p>	<p><i>Attorney for Petitioners</i></p>
<p>Lynn E. Moyer Law Offices of Lynn E. Moyer 200 Oceangate, Suite 830 Long Beach, CA 90802 Tel: (562) 437-4407 Fax: (562) 437-6057</p>	<p><i>Attorney for Amici Curiae The Rev. Jose Poch, et al. (St. David's Parish, North Hollywood) and The Rev. William A. Thompson, et al. (All Saints Parish, Long Beach)</i></p>
<p>Kent M. Bridwell Law Office of Kent M. Bridwell 3646 Clarington Avenue, Suite 400 Los Angeles, CA 90034-5022 Tel: (310) 837-1553 Fax: (310) 559-7838</p>	<p><i>Attorney for Amici Curiae The Rev. Jose Poch, et al. (St. David's Parish, North Hollywood) and The Rev. William A. Thompson, et al. (All Saints Parish, Long Beach)</i></p>
<p>George S. Burns Kathryn M. Schwertfeger John C. Ashby Law Offices of George S. Burns 4100 MacArthur Blvd., Suite 305 Newport Beach, CA 92660 Tel: (949) 263-6777 Fax: (949) 263-6780</p>	<p><i>Attorneys for Amici Curiae the Presbyterian Church (USA), A Corporation, The Synod of Southern California and Hawaii and Presbytery of Hanmi</i></p>
<p>Randall M. Penner Law Office of Penner, Bradley & Buettner 1171 West Shaw Avenue, Suite 102 Fresno, CA 93711 Tel: (559) 221-2100</p>	<p><i>Attorney for Amicus Curiae the Presbyterian Lay Committee</i></p>
<p>Donald Falk Mayer Brown LLP Two Palo Alto Square, Suite 300 Palo Alto, CA 94306 Tel: (650) 331-2000</p>	<p><i>Attorney for Amicus Curiae the Presbyterian Lay Committee</i></p>

Eugene Volokh Mayer Brown LLP 350 South Grand Avenue, 25th Floor Los Angeles, CA 90071-1503 Tel: (213) 229-9500	<i>Attorney for Amicus Curiae the Presbyterian Lay Committee</i>
Kenneth W. Starr 24569 Via De Casa Malibu, CA 90265 Tel: (310) 506-4611 Fax: (310) 506-4266	<i>Attorney for Amici Curiae Iglesia Evangelica Latina, Inc.</i>
Robert F. Cochran, Jr. Director, Herbert and Elinor Nootbaar Institute on Law, Religion, and Ethics 24255 Pacific Coast Highway Malibu, CA 90263 Tel: (310) 506-4684 Fax: (310) 506-4063	<i>Attorney for Amici Curiae Iglesia Evangelica Latina, Inc.</i>
Lu T. Nguyen 2572 McCloud Way Roseville, CA 95747-5122 Tel: (916) 791-2572 Fax: (916) 791-2608	<i>Attorney for Amicus Curiae The Charismatic Episcopal Church</i>
Russell G. VanRozeboom Wild, Carter & Tipton 246 W. Shaw Avenue Fresno, CA 93704 Tel: (559) 224-2132 Fax: (559) 224-8462	<i>Attorney for Amicus Curiae The Diocese of San Joaquin, an Unincorporated Association</i>
Allan E. Wilion 5900 Wilshire Blvd., Suite 401 Los Angeles, CA 90036 Tel: (310) 435-7850	<i>Attorney for Amicus Curiae Thomas Lee and The Rev. Peter Min</i>
George Deukmejian 5366 East Broadway Long Beach, California 90803	Amicus Curiae
Clerk to Hon. David C. Velasquez Orange County Superior Court Civil Complex Center 751 W. Santa Ana Blvd, Bldg. 36 Santa Ana, CA 92701	<i>Coordination Trial Judge: Case No.: JCCP 4392</i>
Office of the Clerk Court of Appeal Fourth Appellate District 925 Spurgeon Street Santa Ana, CA 92701	<i>Appeal Nos. G036096, G036408, G036868</i>

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Executed on August 5, 2008, at Washington, D.C.

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



J. Joy Dysart