

S 155094

IN THE
SUPREME COURT OF CALIFORNIA

EPISCOPAL CHURCH CASES

SUPREME COURT
FILED

AUG 24 2007

Frederick K. Ulrich Clerk

DEPUTY

After a Decision by the
Court of Appeal, Fourth Appellate District, Division Three
(Case Nos. G036096, G036408, G036868)

ANSWER TO PETITION FOR REVIEW

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THE EPISCOPAL CHURCH

Plaintiff-in-intervention and respondent the Episcopal Church hereby submits its response to the petition for review.

INTRODUCTION

As the authority analyzed at length in the Fourth District Court of Appeal's opinion makes clear, the Constitution requires that whatever analytical approach it uses, a court deciding a church property dispute must respect and defer to the denomination's own determinations and rules. Accordingly, every published decision from the California Courts of Appeal over the last twenty years, with one recent exception, has determined that in the event of a dispute, property held by a local congregation of a hierarchical church must remain with the hierarchical church and its remaining members. The Fourth District's decision correctly follows this same consistent pattern. Moreover, the Fourth District's comprehensive and scholarly analysis and its well-reasoned refutation of the one recent outlying case, *California-Nevada Annual Conference of the United Methodist Church v. St. Luke's United Methodist Church* (2004) 121 Cal.App.4th 754 [17 Cal.Rptr.3d 442], cements the otherwise consistent view expressed by California's appellate courts, and should put to rest whatever recent ambiguity may have been generated by *California-Nevada Annual Conference*.

Against this background, the petitioners' assertions that the opinion in this case has somehow exacerbated a "growing conflict," and that attorneys need "clarification" in order to adequately counsel church clients, rings hollow indeed. From the perspective of petitioners and similarly situated parties, the real problem with the Fourth District's opinion is not that it creates conflict and uncertainty, but that it closes a small window of opportunity for dissenting members of hierarchical churches that *California-Nevada* had briefly opened.

Moreover, the Episcopal Church agrees that, for the reasons set forth in the separate answer filed by the Episcopal Diocese of Los Angeles and associated individual plaintiff-respondents, the Court of Appeal's ruling concerning the first prong of the "SLAPP" analysis provides no basis for review. The petition therefore should be denied.

STATEMENT OF FACTS

I. STRUCTURE OF THE CHURCH

The Episcopal Church is a hierarchical religious denomination with a three-tiered organizational structure. The most basic level of organization consists of the Church's approximately 7,600 worshipping congregations, primarily "parishes." At the parish level, governance is by a "vestry," consisting of the rector, who is an ordained priest elected by the vestry in consultation with the diocesan bishop, and a group of lay persons elected by parish members at their annual meeting. (3 A.A. 371; 4 A.A. 756.)¹

Each parish is a subordinate, constituent part of a larger geographic unit, called a "diocese." Each diocese is governed by an "Annual Convention" made up of elected clergy and lay representatives from each parish. This body has adopted and from time to time amends a diocesan Constitution and other rules, known as "canons," and also elects a "diocesan bishop" who is the ecclesiastical authority within that diocese. (3 A.A. 371; 4 A.A. 693-698, 700-701; 4 A.A. 756.)

All the dioceses together make up the national Episcopal Church. The national Church is governed by a "General Convention," which consists of most of the Church's bishops and other clergy and lay representatives elected by each diocese at its Annual Convention. The

¹ All record citations are to the Appellant's Appendix filed by the Episcopal Church in Court of Appeal Case No. G036868.

General Convention, among other things, has adopted and from time to time amends the Church's Constitution and canons. (3 A.A. 371; 3 A.A. 415-417; 3 A.A. 424-426; 4 A.A. 756.)

The national canons leave "[t]he ascertainment and defining of the boundaries of existing Parishes ..., as well as the establishment of a new Parish or Congregation, ... to the action of the several Diocesan Conventions." (2. A.A. 232.) Accordingly, a new congregation is usually first formed as a "mission." (1 A.A. 131; 3 A.A. 371; 4 A.A. 705-706; 4 A.A. 756). If it meets various criteria specified by the diocese and if the formation of a new parish is consistent with the Church's overall mission needs, the diocese may admit that congregation to the diocese as a parish. (4 A.A. 709-712.)

Consistent with these rules and procedures, the Constitution and canons of the Diocese of Los Angeles set forth the exclusive means for creating a parish in that geographic region. Canon I requires that a congregation wishing to be recognized by the Diocese as a parish must submit an application, demonstrating compliance with stated criteria, for approval by the diocesan bishop and the "standing committee," a committee of clergy and lay leaders. (4 A.A. 705.) Applications must include promises to "be forever held under, and conform to and be bound by, the Ecclesiastical Authority of the diocese, and The Constitution and Canons of the National Church, and The Constitution and Canons of the Diocese." (4 A.A. 701-702, 709-710.) Upon approval of its application, a congregation may become a parish upon a majority vote of the Diocesan Convention. (4 A.A. 701-702.)

The Diocese's Constitution and canons also lay out the procedures by which a parish's status may be changed. Article 19 of the Constitution governs the dissolution of a parish, while Canon III provides for reversion

of a parish to “mission” status. (4 A.A. 702, 711-712.) Either event necessitates diocesan action, and requires that the parish property be transferred to the Diocese. (4 A.A. 711-712.) Parishes are not permitted to unilaterally dissolve or disaffiliate, upon a vote of its membership or leadership, or by any other means. (4 A.A. 760.)

All dioceses adopt in their Constitutions “an unqualified accession to the Constitution and canons of this Church” (Const. Art. V(1), 3 A.A. 419); and diocesan Constitutions in turn require all parishes to accede to the rules of the Church and the diocese. (See, *e.g.*, Diocese of Los Angeles Const. Art. XVIII.39 [new parishes “expressly accede[] to the Constitution, Canons, doctrine, discipline and worship of the National Church, and to the Constitution and Canons of [the Diocese]”], 4 A.A. 701-702.) Similarly, all clergy at their ordinations subscribe to a “declaration” that they “do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church” (Const. Art. VIII, 3 A.A. 421); and vestry members and all other officers within the Church are required to “perform the duties of [their] office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised.” (Canon I.17(8), 3 A.A. 432.)

The Episcopal Church is a member of the “Anglican Communion,” but the Anglican Communion has no juridical or governing authority over any of its members, known as “provinces,” and is not a part of the Episcopal Church’s hierarchical structure. (See, *e.g.*, 1 A.A. 81-83, ¶¶ 36-44.) Defendants have submitted no evidence to the contrary.

II. CANONS GOVERNING PROPERTY

The Church’s Constitution and canons govern both temporal and spiritual matters. Addressing temporal issues, for example, the national

canons require that parishes elect their vestries (Canon I.14, 3 A.A. 431); contribute to clergy pensions (Canon I.8, 3 A.A. 430); and keep records, make reports, and manage their funds in accordance with prescribed procedures (Canon I.6, 3 A.A. 427-428; Canon I.7, 3 A.A. 428-429; and Canon III.9(5)(b)(5), 3 A.A. 453.) Of particular relevance here, the canons also contain numerous provisions restricting the use and control of parish property in ways that ensure that the property will continue to be used for the purposes for which it was received – the Church’s mission.

Aspects of the Church’s policies regarding parish property are expressed in numerous canons dating from the 19th Century.² Canons II.6(2) and (3), adopted in 1868, prohibit parishes from “encumber[ing] or alienat[ing] ..., or otherwise dispos[ing] of” consecrated property without the consent of the diocese. (3 A.A. 375; 3 A.A. 435; 4 A.A. 759.) Canon II.6(1), added in 1871, makes clear that all consecrated property must be “secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with this Church and subject to its Constitution and Canons.” (3 A.A. 374-375; 3 A.A. 435; 4 A.A. 759.) Canon I.7(3), adopted in 1940, provides that a parish may not encumber or alienate any real property, consecrated or unconsecrated, without the consent of the diocese. (3 A.A. 375-376; 3 A.A. 429; 4 A.A. 759.)

Next, consistent with the Church’s concern that parish property be used for its mission, Canon III.9(5)(a)(2), adopted in 1904, provides that “[f]or the purposes of the office [of rector] and for the full and free discharge of all functions and duties pertaining thereto, the Rector shall at all times be entitled to the use and control of the Church and Parish buildings together with all appurtenances and furniture....” Canon

² The Church’s policies in this regard pre-date even the earliest canons. (3 A.A. 377.)

III.9(5)(a)(1) makes clear that the rector's responsibilities must be carried out subject to "the Book of Common Prayer, the Constitution and Canons of this Church, and the pastoral direction of the Bishop." (3 A.A. 374; 3 A.A. 452.)

Finally, in 1979, in direct response to *Jones v. Wolf* (1979) 443 U.S. 595, where the Supreme Court invited hierarchical churches to adopt "express trust" provisions in their governing documents to ensure that, in the event of a division, local church property would remain with the hierarchical denomination and its members, the Church adopted Canon I.7(4), which explicitly states, "All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which [it] ... is located." (3 A.A. 376; 3 A.A. 429; 4 A.A. 759.)

III. HISTORY OF ST. JAMES'

In accordance with the structure and rules discussed above, St. James' was founded in 1946 as an unincorporated Episcopal "mission" that owned no property. (4 A.A. 757-758.) In 1947, St. James' petitioned the Diocese for recognition as a parish, promising that it would:

"be forever held under, and conform to and be bound by, the Ecclesiastical authority of the Bishop of Los Angeles, ... [and] the Constitution and canons of the Church now known as the Protestant Episcopal Church in the United States of America, and the Constitution and canons of the Diocese of Los Angeles." (3 A.A. 488, 494-495; 4 A.A. 758.)

The Diocese established the parish that same year and deeded the parish's real property to it for less than \$100. (3 A.A. 488, 500; 4 A.A. 758.)

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

“form a constituent part of the Diocese of Los Angeles in ... the ... Episcopal Church ...; and ... that the Constitution and Canons, Rules, Regulations and Discipline of said Church ... and the Constitution and Canons in the Diocese of Los Angeles ... shall always form a part of the By-Laws and Articles of Incorporation of the corporation hereby formed and shall prevail against and govern anything herein contained that may appear repugnant to such Constitutions, Canons, Rules, Regulations and Discipline.” (3 A.A. 503-504; 4 A.A. 758.)

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

Until the present dispute arose, St. James’ operated as a subordinate part of the Church, in conformity with the national and diocesan Constitutions and canons. (3 A.A. 489, 517-626; 4 A.A. 759.)

DISCUSSION

I. There Is No Conflict in the Law Requiring Resolution by This Court.

The petitioners attempt to convince this Court that the Fourth District’s opinion creates conflict and chaos in the law governing church property disputes because it affirms the Church’s and the Diocese’s right to enforce the interests clearly expressed in the Church’s Canon I.7(4) without explicitly marching through the four-factor “neutral principles of law” analysis several other courts of appeal have utilized. What petitioners steadfastly ignore, however, is that the Constitution requires denominational rules to be respected and enforced in the context of civil litigation, under either a “neutral principals” analysis or the cleaner “principles of government” analysis the Court of Appeal used in this case. Accordingly, the Fourth District here reached precisely the same conclusion

– and for the same essential reasons – as the great weight of authority from both the California courts of appeal and other jurisdictions applying “neutral principles of law” to facts comparable to those presented here. Indeed, the Fourth District made clear that it would have reached the same result under a neutral principles analysis, but declined to “bolster” its decision with that sort of “overkill.” (Opinion at p. 76.) This Court need not accept review here only to impose upon the lower courts an unnecessary analysis that could not properly affect the results of the case.

A. The States May Not Ignore a Denomination’s Structure and Rules.

In *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), the Supreme Court first held that, in accordance with the law generally applicable to voluntary associations, the polity and locus of authority established by a particular denomination would be dispositive in civil litigation involving an issue that the church itself had resolved: “whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.” *Id.* at 727. Following *Watson*, many state courts adopted what became known as the “principles of government” or “hierarchical” approach to deciding church property disputes.

As the Court of Appeal’s opinion correctly explains, however, in a series of later cases the Supreme Court held that the “hierarchical” approach was not the only constitutionally permissible way to analyze a church property dispute. In *Jones v. Wolf*, the Court approved a “neutral principles of law” approach foreshadowed in earlier decisions, under which courts could examine the deeds to property, governing documents of the

local church, governing instruments of the general church, and applicable state statutes to determine whether property held by a local church is held, and must be used, for the mission of the denomination. 443 U.S. at 602-603.

The Court continued to make clear, however, that 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." *Id.* Accordingly, the Court explained that under a "neutral principles" analysis:

"the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.... [T]he civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Id.* at 606 (emphasis added).

See also Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 710 (1976) (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 religious doctrine. This principle applies with equal force to church disputes over church polity and church administration.") (citation and internal quotation marks omitted); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) (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*") (emphasis added).

In the wake of *Jones v. Wolf*, some courts have continued to utilize a “principles of government” or “hierarchical” analysis,³ while others have adopted the four factor “neutral principles of law” analytical framework. Under either approach, however, courts must respect and enforce the structure and rules established by the church itself insofar as they bear on the dispute.

B. California Authorities Consistently Follow This Constitutional Requirement.

Contrary to the petitioners’ intimations, the California courts of appeal (like this Court) have thus consistently deferred to and enforced a hierarchical church’s rules in disputes over control of property held by or for a local congregation. See *Concord Christian Center v. Open Bible Standard Churches* (2005) 132 Cal.App.4th 1396 [34 Cal.Rptr.3d 412] (enforcing hierarchical church’s rules regarding local church governance and property under “neutral principles of law”); *Guardian Angel Polish Nat. Catholic Church of Los Angeles, Inc. v. Grotnik* (2004) 118 Cal.App.4th 919 [13 Cal.Rptr.3d 552] (enforcing hierarchical church’s rules regarding local church governance and property under “neutral principles of law” and Cal. Corp. Code § 9142); *Metropolitan Philip v. Steiger* (2000) 82 Cal.App.4th 923, 931 [98 Cal.Rptr.2d 605] (holding that identity of local church members entitled to control of local church

³ See, e.g., *Bethel A.M.E. Church of Newberry v. Domingo*, 654 So. 2d 233, 234 (Fla. Dist. Ct. App.) (per curium), review denied, 662 So. 2d 931 (Fla. 1995); *Seldon v. Singletary*, 326 S.E.2d 147, 149 (S.C. 1985); *Church of God of Madison v. Noel*, 318 S.E.2d 920 (W. Va. 1984); *Protestant Episcopal Church in the Diocese of New Jersey v. Graves*, 417 A.2d 19 (N.J. 1980); *In re Catholic Bishop of Spokane*, 329 B.R. 304, 323 (Bankr. E.D. Wash. 2005) (citing *Southside Tabernacle v. Pentecostal Church of God, Pacific Northwest Dist., Inc.*, 650 P.2d 231, 234 n.2 (Wash. Ct. App. 1982); *Bennison v. Sharp*, 329 N.W.2d 466, 474-75 (Mich. Ct. App. 1982); *Schismatic & Purported CasaLinda Presbyterian Church in America v. Grace Union Presbytery, Inc.*, 710 S.W.2d 700 (Tex. App. Ct. 1986).

property is an ecclesiastical issue on which court is required to defer to hierarchical church and noting that “consistent with the United States Supreme Court’s language in *Jones v. Wolf*, . . . ‘provisions in the constitution of the general church’ can override any right the majority of a local congregation might otherwise have to control the local church property”); *Korean United Presbyterian Church of Los Angeles v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480 [281 Cal.Rptr. 396](enforcing hierarchical church’s “express trust” provision under neutral principles of law and Cal. Corp. Code § 9142). *Accord Singh v. Singh* (2004) 114 Cal.App.4th 1264, 1280 [9 Cal.Rptr.3d 4] (explaining that although disputes involving control of church property may be decided in accordance with neutral principles, it is clear that the internal church rules must be respected in that process, and “the decisions of the highest religious tribunal on questions of discipline, faith, or ecclesiastical rule, custom, or law must be accepted”).

In each of these cases (other than *Singh*, which involved a congregational church and presented a somewhat different issue), the courts ruled exactly as the Fourth District did in this case: that local church property must remain with the general hierarchical church in the event of a dispute. Moreover, as several of these decisions expressly note, this result is supported by the plain language of Corporations Code § 9142, in which the legislature similarly confirmed that a “trust” may be found in local church property “to the extent that . . . the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.”

Against this overwhelming and consistent weight of authority, which the Fourth District’s decision below thoughtfully and convincingly affirms, the 2004 decision in *California-Nevada Annual Conference of the United*

Methodist Church v. St. Luke's United Methodist Church (2004) 121 Cal.App.4th 754 [17 Cal.Rptr.3d 442] stands as the one recent outlier. The Fourth District, however, has directly and decisively refuted *St. Luke's* flawed reasoning, and apparently resolved the confusion that decision may have caused.⁴ Thus, petitioners' cries of growing conflict and uncertainty simply cannot withstand scrutiny.

II. The Fourth District's Construction of § 9142 Raises No Constitutional Issues.

Petitioners also suggest that the Fourth District's holding that Corporations Code § 9142 contemplates the enforcement of denominational trust provisions violates the Constitution. Nothing could be further from the truth. As explained above, the Supreme Court has repeatedly affirmed the contrary position: the First Amendment *requires* that denominational rules be respected and enforced. See *supra* pp. 8-10. Compliance with this imperative, as both § 9142's plain language and the Fourth District direct, therefore *avoids* a Constitutional problem rather than creating one.

Nor does this well-established First Amendment authority raise any concerns under the Equal Protection clause. First, California law generally holds that the rules of a voluntary association are binding on its members, and that members of such an association must relinquish any claim to the association's property upon disaffiliation. In *Most Worshipful Sons of Light Grand Lodge v. Sons of Light Lodge No. 9* (1953) 118 Cal.App.2d 78,

⁴ One older case involving the Episcopal Church also failed to enforce the Church's rules as to all of the parishes before it – in part, it appears, because of a lack of evidence as to what those rules were (and are). See *Protestant Episcopal Church v. Barker* (1981) 115 Cal.App3d 599 [171 Cal. Rptr. 541]. However, *Barker* was soon overtaken by Corp. Code § 9142 and the Second District's later decisions in *Korean United* and *Guardian Angel*, and except in *California-Nevada Conference*, has not been followed in that respect. The underlying decision here puts *Barker* to rest as well.

84-85 [257 P.2d 464], for example, the Court of Appeal squarely addressed the issue of whether a majority of a local chapter of a larger voluntary association may, upon disaffiliation from that larger association, continue to use the chapter's property in association with a similar organization, and held that they may not, explaining:

“When a schism has occurred in a religious or benevolent association, which has united with and assented to the control and supervision of a general organization, and acquired property since its union and assent to the government of the general organization, . . . 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. . . .*”

Id. at p. 85 (italics added). See also, e.g., *Gear v. Webster* (1968) 258 Cal.App.2d 57, 62 [65 Cal.Rptr. 255] (association's members are bound by later-adopted rules “[u]nless the rules . . . placed a limitation upon the power of the association to make any change or amendment therein.”). The Fourth District's opinion, then, merely ensures that churches in California are treated the same as other associations.

Even if California generally did not enforce the rules of other types of associations, however, the Fourth District's opinion would raise no equal protection concerns. The need to accommodate churches' First Amendment rights is a legitimate governmental objective that can justify treating churches differently in circumstances such as these. See, e.g., *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 338-39 (1987) (holding constitutional the exemption of religious organizations from Title VII's prohibition against

religion-based employment discrimination); *Walz v. Tax Comm 'n of N.Y.*, 397 U.S. 664, 686-87 (1970) (property tax exemptions for religious organizations are constitutional).

CONCLUSION

Regardless of the words or the analytical approach used, that a religious denomination's structure and rules must be respected in civil litigation is well-established – in the recent decisions of the Courts of Appeals as well as by this Court and the United States Supreme Court. The Fourth District's decision in this case merely, and correctly, affirms that rule of law. The petition for review should be denied.

Dated: August 23, 2007

Respectfully submitted,

GOODWIN PROCTER LLP

David Booth Beers

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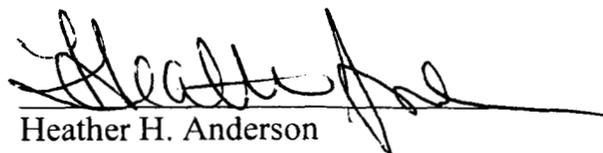
*ATTORNEYS FOR PLAINTIFF IN
INTERVENTION AND RESPONDENT
THE EPISCOPAL CHURCH*

CERTIFICATE OF WORD COUNT

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

The text of this brief consists of 3,744 words as counted by the Word XP word-processing program used to generate the brief.

DATED: August 23, 2007


Heather H. Anderson

CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436.

On August 23, 2007, I served the foregoing document(s) described as **ANSWER TO PETITION FOR REVIEW** on the interested parties in this action by placing true and correct copy thereof enclosed in sealed envelopes addressed as follows:

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<p>Office of the Clerk Court of Appeal Fourth Appellate District 925 Spurgeon Street Santa Ana, CA 92701</p>	<p><i>Appeal Nos. G036096, G036408, G036868</i></p>
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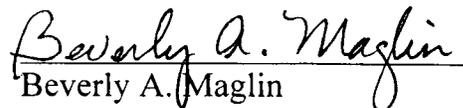
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Executed on August 23, 2007, at Encino, California.

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


Beverly A. Maglin