

Case No. S155094

IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA

EPISCOPAL CHURCH CASES

APPLICATION TO FILE BRIEF OF AMICUS
CURIAE THE CHARISMATIC EPISCOPAL
CHURCH; BRIEF OF AMICUS CURIAE THE
CHARISMATIC EPISCOPAL CHURCH IN
SUPPORT OF PETITIONERS

Court of Appeal, Fourth Appellate District, Division
Three (Appeal Nos. G036096, G036408, G036868)

Orange County Superior Court
(J.C.C.P. 4392, 04CC00647)
The Honorable David C. Velasquez

LU T. NGUYEN
CSB #203229
2572 McCLOUD WY
ROSEVILLE, CA 95747-5122
TELEPHONE: (916) 791-2572
FACSIMILE: (916) 791-2608

ATTORNEY FOR AMICUS CURIAE
THE CHARISMATIC EPISCOPAL CHURCH

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(J.C.C.P. 4392)

INTRODUCTION

Pursuant to California Rules of Court, Rule 8.520(f), the
Charismatic Episcopal Church (CEC) respectfully requests
leave to file the attached brief of amicus curiae in support of
Petitioners.

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**THE APPLICANT'S INTEREST AND
HOW THIS BRIEF WILL ASSIST THE COURT
(Cal. Rules of Court, Rule 8.520(f)(3))**

The Charismatic Episcopal Church is a hierarchical religious denomination with local congregations incorporated and operating under the laws of the State of California. The CEC has over 1000 affiliated congregations domestically and internationally. The CEC has relied on neutral principles of law to form its structure and govern its affairs as it relates to denominational versus congregational property ownership. The CEC believes that the neutral principles of law approach best protects the property interests of the CEC and its affiliated congregations.

Episcopal Church Cases is of vital concern to the CEC. The CEC believes that the Respondents' position unfairly seeks to impose an unlawful trust on a statutorily recognized independent religious corporation without its express consent, would allow a party religious group or person such as a bishop to self-determine property issues over the civil autonomy of a valid California non-profit corporation, misleadingly gives this

Court the impression that all hierarchical denominations desire to operate in this way, and also opens a Pandora's box of implied ownership and liability that could be inferred on the *denomination* should the local religious corporation commit a tortious act beyond the knowledge and approval of the denomination.

The CEC understands that the Court has a thorough legal analysis of the parties' legal positions in the submitted briefs. This amicus brief of the CEC will assist the Court by providing a practical perspective from another hierarchical church denomination – beyond the scope of the parties' briefs – demonstrating why the neutral principles of law approach should remain the law of California.

CONCLUSION

For the foregoing reasons, the CEC respectfully requests that the Court accept the accompanying brief for filing in this case.

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Dated: May 17, 2008

Respectfully submitted,

Lu T. Nguyen, Esq.
Attorney for Amicus Curiae
The Charismatic Episcopal Church

IN THE
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BRIEF OF AMICUS CURIAE
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INTRODUCTION

The Lord Jesus Christ once said, “Render unto Caesar the things that are Caesar’s and unto God the things that are God’s.” (Matthew 22:21, KJV.) While the state cannot interfere in the religious doctrines of the Church, churches should recognize that civil authorities and courts have a right to make laws, decide disputes, and protect citizens who have disagreements over their temporal affairs. The “neutral principles of law” approach, followed by the Charismatic Episcopal Church (“CEC”) denomination to govern and

structure its affairs, is the best method for courts to adjudicate church property disputes, uphold state laws governing church property ownership and governance, and respect the practical realities of how churches actually operate.

The alternative “deference” or “principle of government” approach proposed by Respondents The Episcopal Church in the United States and the Episcopal Diocese of Los Angeles (collectively, “ECUSA”) unfairly seeks to impose a unilateral trust on statutorily recognized independent religious corporations without their express consent. This approach would allow a religious group or person such as a bishop in theological disagreement with a local church to self-determine property issues over the civil autonomy of valid California non-profit corporations, misleadingly gives this Court the impression that all hierarchical denominations desire to operate in this way, and opens a Pandora’s box of implied ownership and liability that could be inferred on the *denomination* should local church members commit a tortious act beyond the knowledge and approval of the denomination.

The CEC commends the “neutral principles” approach to this Court, and urges that it reverse the judgment below.

BACKGROUND OF THE
CHARISMATIC EPISCOPAL CHURCH

The CEC realized in the early 1990s that Church rule and governance over religious matters could not be applied the same way in the civil arena. It sought to avoid the paradoxical and civil tensions between many denominations and the civil courts over temporal matters (i.e., property). The CEC not only relied on California court precedents established since 1979 involving neutral principles of law but also on a biblical rule to govern temporal and religious matters of “Render unto Caesar the things that are Caesar’s and unto God the things that are God’s.” (Matthew 22:21, KJV) While the CEC stands on the position that the state cannot interfere in religious doctrines of the Church, it also realizes that the civil authorities and courts have a right to make laws, decide disputes and protect citizens who have disagreements over civil affairs.

The CEC and other religions, while arguably experts in matters of theology, are not necessarily the best people to

decide legal and civil disputes. It believes that the U.S. Supreme Court's guidance in *Jones v. Wolf* (1979) 443 U.S. 595, encouraging neutral principles of law in the civil court system is the most fair method of resolving church disputes over temporal matters. The CEC has applied this principle and precedent since the early 1990s, and since then, grew over 1000 congregations nationally and internationally within 16 years.

While the CEC provides spiritual and religious guidance over its congregations and members, each congregation is encouraged to govern its own civil affairs, including property ownership and incorporations under state law. This method of separating the spiritual and civil governance has functioned well for the CEC.

The theological disagreements found in The Episcopal Church and other denominations causing internal separation is not foreign to the CEC. In the past few years, the CEC had its own internal disagreements, causing several dioceses and over one hundred congregations to separate. Under the CEC system of governance, it knows of no case that sought review in the civil court system over property issues. The CEC has found that

disagreements have and will occur, even within a theologically conservative denomination like itself. When such disagreement occurs and the local congregation chooses to disaffiliate, the CEC believes that the application of neutral principles of law (which respects how property was actually obtained, maintained and held) makes it less likely that convoluted church property disputes will be brought to court in the first place. Pure neutral principles of law does not confer a greater right on a particular type of church government or California non-profit corporation over another. Should the matter be brought into the civil court, neutral principles of law is a tested and fair method, easily understood by civil judges to determine property ownership without having to delve into religious positions and/or doctrines.

FACTUAL BACKGROUND

The CEC was formed in San Clemente, California, in 1992, and since then has rapidly grown to over 1000 congregations nationally and internationally. The CEC and ECUSA have never been affiliated with one another, but both are spiritually hierarchical denominations led by bishops, with

independent local church congregations called “parishes.”

Unlike ECUSA, however, which has a system of church governance divided between the House of Bishops and House of Deputies that includes lay representatives, the CEC’s hierarchy is closer to the Roman Catholic Church system. The CEC is governed by a Patriarch who acts with the consensus and advice of the Patriarch’s Council (comprised of appointed Archbishops) and International College of Archbishops. All religious and spiritual matters within the CEC are hierarchically governed.

DISCUSSION

I. “NEUTRAL PRINCIPLES OF LAW” IS BEST FOR CHURCH DENOMINATIONS AND LOCAL CHURCH CONGREGATIONS.

The CEC realized in the early 1990s that Church rule and governance over religious matters could not and should not be applied the same way in the civil arena. It sought to avoid the paradoxical and civil tensions historically present between many denominations and the civil courts over temporal matters (i.e., property). Therefore, the CEC has relied on court

precedents establishing the “neutral principles of law” approach as the law of California for three decades, which provides the CEC and other church denominations and local churches with many benefits over the “principle of government” approach advocated by Respondents.

A. The “Neutral Principles of Law” Approach Best Fits How Churches Actually Operate.

Church happens in local communities. The local church is where people come to faith, families are formed in the bonds of marriage, babies are baptized, and loved ones pass on from this life to the next. Church members dig deep to sacrificially donate to support their local clergy, staff, ministries and building programs. Church sanctuaries and chapels, thus, are much more than buildings – they are sacred places where local communities of faith grow, share, learn and heal – regardless of denominational affiliation. This recognition that religious faith is best expressed locally, while reaching globally, has contributed to the rapid growth of the CEC and other religious

traditions across international lines. Respect for local church property ownership is essential for church growth.

Unfortunately, however, theological disagreements like those embroiling ECUSA are all too common in church life. In fact, theological controversies causing internal separation are not foreign to the CEC. In the past few years, the CEC had its own internal disagreements, causing several dioceses and over one hundred congregations to separate. However, under the CEC system of governance, it knows of no case that sought review in the civil court system over property issues.¹ Why? When such disagreement occurs and the local congregation chooses to disassociate, the “neutral principles of law” approach – which respects the practical realities of who paid for the property, who holds the deed, who sacrificed to donate to the local church, and who has paid to maintain and insure the property – makes it unlikely that a dispute will land in the civil court system. Should the matter be brought into the civil court,

¹ Contrast this with ECUSA, which has brought lawsuits against eight local churches, an entire diocese (The Anglican Diocese of San Joaquin, comprised of 47 local churches), and hundreds of church volunteers in the California courts since 2004, and dozens of other lawsuits in other states such as Virginia. ECUSA is one of the most litigious churches in modern history.

the “neutral principles of law” approach is a tested and fair method, and easily understood by civil judges to determine property ownership without having to delve into religious positions and/or doctrines.

Churches should recognize that while they may be experts in matters of theology, they are not best suited to decide legal and civil disputes. The U.S. Supreme Court’s guidance in *Jones v. Wolf* (1979) 443 U.S. 595, followed by California’s leading case in *Protestant Episcopal Church in the Diocese of Los Angeles v. Barker* (1981) 115 Cal.App.3d 599, both encouraged “neutral principles of law” in the civil court system as the most fair method of resolving church disputes over temporal matters, not only because of its constitutional integrity, but in part because the neutral principles themselves are grounded in the practical realities of how churches actually function and operate.

In fact, some academic commentators have argued that secular courts have not gone far enough in applying neutral principles to church property disputes, and should more broadly consider evidence of how churches operate on a daily basis in

order to provide a full and fair hearing to *all* of the parties, including: the flow of funds between a local church and regional body (i.e., diocese), the financial investments of individual churches to build and maintain their properties and buildings, the expectations of parishioner-donors, and whether members have actually consented to be bound by a purported denominational trust “rule.” (Kathleen R. Reeder, *Whose Church Is It, Anyway? Property Disputes and Episcopal Church Splits* (2006) 40 Colum. J.L. & Soc. Probs. 125, 158-59, 167.)

Unlike blind “deference,” which “often erroneously assumes the absolute consent of local churches to the decisions of their national church leadership,” and upholds self-serving interpretations of certain church rules “not indicative of the expectations and intent of the local churches” (*Id.* at 135-36), the pure “neutral principles of law” approach is the best method for courts to respect the different ways in which church property is actually acquired, held and maintained as between denominations and local churches.

B. The “Neutral Principles of Law” Approach Best Accommodates Different Forms of Church Organization and Property Ownership.

There are three basic forms of church structure existing across different religions and faith groups. The “neutral principles of law” approach looks to secular factors of property ownership without making unwarranted assumptions that certain spiritual structures are necessarily indicative of how property is held (which the “deference” rule erroneously does with spiritually hierarchical churches).

The Roman Catholic and Eastern Orthodox denominations are classic hierarchical churches. They are in practice both a spiritual and corporate hierarchy. Virtually all the properties belong to either the national church or arms of the national church (dioceses) and are clearly titled as such on their real property deeds.

On the other end of the spectrum are congregational churches. They do everything at the local level, including independent incorporation and ownership as allowed by state law.

Denominations like ECUSA and the CEC fall in-between. These churches have a spiritual hierarchy but encourage their congregations to seek independent civil protection under their respective state laws by incorporating as separate civil entities, raising and controlling their own money and running their own facilities. Independent local churches – parishes – financially support their diocese and national church, not the other way around.

This method of separating spiritual and civil governance has functioned well for the CEC and contributed to its rapid growth. As independent non-profit corporations under the laws of California, CEC congregations avail themselves completely of the requirements and protection of civil law. As separate California non-profit corporations, these congregations are required to conform to the requirements of state law irrespective of what their canon law says. Should there be a civil conflict (i.e., basic quorum requirements, voting, right to amend, etc.), it is understood that corporate law supersedes and preempts any religious rules that seek to bypass the requirements of the statutes or judicial precedent.

From a civil perspective, California religious corporations like CEC affiliated congregations are more like voluntary associations than owned subsidiaries under corporate law. As such, they should be able to associate or disassociate themselves from other organizations based on their belief system without forfeiting their property. Spiritual interdependence and civil independence can co-exist.

C. The “Neutral Principles of Law” Approach Best Protects a Hierarchical Denomination from Legal Liabilities Arising from Local Church Property.

Upholding the “neutral principles of law” approach in California would not only respect different forms of church property ownership, but it would avoid the real danger under the “deference” rule that hierarchical denominations could be held vicariously or implicitly liable for local church torts.

Episcopal denominations like ECUSA and the CEC have encouraged congregations to own their own property and incorporate under state law in order to relieve the denominations from potential liabilities flowing from local

church property ownership. For example, the CEC allows each local affiliated congregation to independently incorporate to ensure that each local congregation is responsible for all civil actions and liabilities arising from local church property ownership.

The “deference” rule runs the real danger that a trial court could presume a hierarchical church’s implied ownership over local church property, and infer liability to it flowing from torts committed by the separate local church corporation. The CEC does not ask or want any implied ownership over property or corporate matters that it does not expressly accept. The CEC specifically allows each local affiliated congregation to independently incorporate to ensure that local congregations are managing their own civil affairs and completely liable for all civil actions, and such liabilities should not be inferred on the denomination just because of an intangible religious affiliation.

If this Court were to move California away from neutral principles and cede the resolution of civil disputes to a religious hierarchy through deference, or reject well-settled law that trusts in property must be express and instead accept some

implied trust theory of hierarchical church ownership based on the relationship between the parties, national churches like the CEC would be exposed to greater potential liabilities they specifically sought to avoid. Under implied hierarchical church ownership, the next time a local religious corporation has a slip and fall case causing serious injury or death, a civil lawyer could use this theory to pierce the protection of California corporate law and go after the denomination as the “implied owner,” along with all the other assets the denomination has an “implied ownership” in, even though the property at issue may belong to a spiritually affiliated yet separate California non-profit corporation.

Unlike the Roman Catholic Church, who has accepted both the benefits and burdens of their local churches by having property titled in their name, like the CEC, ECUSA has undoubtedly enjoyed significant benefits by being insulated from the burdens of local church property ownership. ECUSA’s proposed “principle of government” rule thus claims all the benefits without any of the corresponding burdens. If ECUSA wants to change its structure and assume liabilities for

local church property, it can ask local church corporations to add its name to the deed as a condition of affiliation, or have the local corporation approve and execute an irrevocable express trust in its favor in exchange for consideration. Having done none of these things, ECUSA cannot complain when it is unable to confiscate local church property through unilateral church rules.

ECUSA's request that this Court apply a special standard to hierarchical denominations – exposing such denominations to greater liability than their non-hierarchical or non-religious counterparts – violates the CEC's rights and protections under California law. Equal protection demands that a hierarchical church denomination like the CEC not be exposed to potential liabilities arising from local churches through the vehicle of “deference,” if that would mean treating other non-religious non-profit corporations differently.

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D. The “Neutral Principles of Law” Approach Best Respects Our System of Civil Laws to Ensure All Parties Are Treated Equitably and Fairly.

While religious denominations can dictate intangible religious matters, they have no legal rights to control the civil and corporate nature of independent California non-profit religious corporations. No civil law allows a third party religious entity to unilaterally change state corporate voting and quorum requirements at will, remove members of a state corporation based on a bishop’s ruling, or unilaterally declare ownership over the assets of either the non-profit corporation or assets belonging to church members.

If all denominations have to do to claim ownership over independently owned and operated California non-profit corporations is to pass a canon or internal rule, without obtaining the express consent of the owner(s), the same “deference” principle would allow them to claim ownership over the assets of individual church members. No reasonable civil law should allow such claim of ownership or trust by mere affiliation and without express consent.

In order to respect our system of laws and protect against the potential for abuse when emotions flare in a heated theological debate, such consent to alienate or forfeit one's property should be express and intended by the property owner. For example, under "deference," the CEC, being a hierarchical church under the leadership of a Patriarch, could theoretically change its rules at any time to claim property ownership over every affiliated congregation and individual member. In support of its rule in court, the CEC would be making the same arguments that Respondents make before this Court.

Religious denominations like ECUSA should not be able to declare a unilateral property trust over independent California non-profit corporations without obtaining the express consent of the local corporations in a "legally cognizable form."² While denominational churches are free to operate

² The term "legally cognizable form," as used in *Jones v. Wolf* (1979) 443 U.S. 595, 606, requires California corporations to expressly consent through proper board action and/or corporate member approval to create a trust in their property. This is consistent with the preceding language in *Jones* where the U.S. Supreme Court stated that before a dispute erupts, the parties (both) can modify the deeds or corporate charter, etc. This context can only reasonably imply a *bilateral* express consent by the national

without *religious* interference from the state, when they seek the benefits and protection of civil laws (i.e., property ownership, corporate form, etc.), they also must accept the requirements and limitations imposed by such laws. ECUSA disregards established principles of California trust, property, corporate and contract laws when it claims property ownership of an independent California non-profit corporation by issuing a unilateral trust without the express consent and approval of the corporation that owns the property.

II. THE “DEFERENCE” RULE IS GROUNDED IN THE NINETEENTH CENTURY, AND DOES NOT RESPECT MODERN AND DIVERSE RELIGIOUS ORGANIZATIONS.

The 19th century concept of “deference to church hierarchy” to resolve civil property and corporate disputes does not take into consideration dramatic changes in the modern and diverse landscape of how churches operate in the 20th and 21st centuries. Most hierarchical church congregations operating in

church and the local religious corporation to effectuate such a property trust interest.

19th century California did not operate as independent California corporations. They operated as integrated auxiliaries of a diocese or national church, much like the way the Roman Catholic Church still operates today. The 19th century civil courts therefore had few alternatives than to defer property disputes to the national church or arms of the national church (i.e., diocese, presbytery, etc.).

Since the turn of the 20th century, and as corporate and tax laws have evolved, many churches and most Episcopal congregations have formed and operate completely independent of a regional or national church under state and federal law in all civil matters. California non-profit religious corporations are recognized as independent entities unto themselves as well as independent tax exempt corporations under Internal Revenue Code §501(c)(3). Civil independence is beneficial for both the local non-profit corporation and the national church.

Under these modern structures, denominations are very quick to deny tax and other legal liabilities of affiliated non-profit religious corporations but are very quick to claim ownership when it benefits them. The type of argument that

claims, “What’s ours is ours and what’s yours is ours irrespective of what California law says” is the quintessential argument of ECUSA. This Court should confirm the wisdom of “neutral principles of law,” as opposed to rigid deference to a religious hierarchy, as the fairest method under civil law to resolve property disputes in a modern era where both California and the federal government recognize the statutory independence of all California non-profit corporations.

CONCLUSION

Church property disputes should be resolved by pure neutral principles of law, not by judicial accession to religious pronouncements or deference to one party’s self-styled principle of government. If California is to protect the rights of all of its citizens, courts should not cede property and/or corporate decisions to a bishop or other religious leaders. The laws protecting individuals and corporations – secular and religious – in this modern era should be equally applied. This Court should reverse the Court of Appeal’s decision in its

entirety and remand with directions that the Court of Appeal
affirm the Superior Court's Orders and Judgment.

Dated: May 17, 2008 Respectfully submitted,

Lu T. Nguyen, Esq.
Attorney for Amicus Curiae
The Charismatic Episcopal Church

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c)(1))

The text of this amicus brief consists of approximately 4,173 words as counted by the Microsoft Word word-processing program used to generate the brief.

Dated: May 17, 2008

Lu T. Nguyen

PROOF OF SERVICE

Episcopal Church Cases

Case No. S155094

I am employed in Placer County, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 2572 McCloud Way, Roseville, CA 95747-5122.

I am readily familiar the business practice for collection and processing of correspondence for mailing with the United States Postal Service and common carriers promising overnight delivery. In the ordinary course of business, such correspondence would be deposited with the United States Postal Service or the common carrier on the same day I submit it for collection and processing.

On May 17, 2008, I served the following document(s) described as APPLICATION TO FILE BRIEF OF AMICUS CURIAE THE CHARISMATIC EPISCOPAL CHURCH; BRIEF OF AMICUS CURIAE THE CHARISMATIC EPISCOPAL CHURCH IN SUPPORT OF PETITIONERS on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes, addressed as follows:

SEE ATTACHED LIST

I then deposited such envelopes with postage thereon fully prepaid, for collection and mailing on the same day at 2572 McCloud Way, Roseville, CA 95747-5122.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit.

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

Executed on March 17, 2008, at Roseville, California.



Duyen T. Tran

Episcopal Church Cases
Case No. S155094

SERVICE LIST

<p>Eric C. Sohlgren Benjamin A. Nix Daniel F. Lula Payne & Fears LLP 4 Park Plaza, Suite 1100 Irvine, CA 92614 (949) 851-1100 Fax: (949) 851-1212</p>	<p><i>Attorneys For Petitioners, Defendants and Respondents The Rev. Praveen Bunyan; The Rev. Richard A. Menees; The Rev. M. Kathleen Adams; The Rector, Wardens And Vestrymen Of St. James Parish In Newport Beach, California, A California Nonprofit Corporation; James Dale; Barbara Hettinga; Paul Stanley; Cal Trent; John Mclaughlin; Penny Reveley; Mike Thompson; Jill Austin; Eric Evans; Frank Daniels; Cobb Grantham; Julia Houten</i></p>
<p>John R. Shiner Lawrence P. Ebiner Holme Roberts & Owen LLP 777 South Figueroa Street, Suite 2800 Los Angeles, CA 90017-5826 (213) 572-4300 Fax: (213) 572-4400</p>	<p><i>Attorneys For Plaintiffs and Respondents Jane Hyde Rasmussen; The Right Rev. Robert M. Anderson; The Protestant Episcopal Church in the Diocese of Los Angeles; The Right Rev. J. Jon Bruno, Bishop Diocesan of the Episcopal Diocese of Los Angeles</i></p>
<p>Brent E. Rychener Holme Roberts & Owen LLP 90 South Cascade Avenue, Suite 1300 Colorado Springs, CO 80903 (719) 473-3800 Fax: (719) 633-1518</p>	<p><i>Attorneys For Plaintiffs and Respondents Jane Hyde Rasmussen; The Right Rev. Robert M. Anderson; The Protestant Episcopal Church in the Diocese of Los Angeles; The Right Rev. J. Jon Bruno,</i></p>

	<i>Bishop Diocesan of the Episcopal Diocese of Los Angeles</i>
Meryl Macklin Kyle L. Schriener Holme Roberts & Owen LLP 560 Mission Street, 25th Floor San Francisco, CA 94105 (415) 268-2000 Fax: (415) 268-1999	<i>Attorneys For Plaintiffs and Respondents Jane Hyde Rasmussen; The Right Rev. Robert M. Anderson; The Protestant Episcopal Church in the Diocese of Los Angeles; The Right Rev. J. Jon Bruno, Bishop Diocesan of the Episcopal Diocese of Los Angeles</i>
Frederic D. Cohen Jeremy B. Rosen Horvitz & Levy LLP 15760 Ventura Blvd., 18th Floor Encino, CA 91436-3000 (818) 995-0200 Fax: (818) 995-3157	<i>Attorneys For Plaintiffs and Respondents Jane Hyde Rasmussen; The Right Rev. Robert M. Anderson; The Protestant Episcopal Church in the Diocese of Los Angeles; The Right Rev. J. Jon Bruno, Bishop Diocesan of the Episcopal Diocese of Los Angeles</i>
Floyd J. Siegal Spile & Siegal LLP 16501 Ventura Blvd., Suite 610 Encino, CA 91436 (818) 784-6899 Fax: (818) 784-0176	<i>Attorneys For Defendants and Petitioners Rev. Praveen Bunyan; Rev. Richard A. Menees; Rev. M. Kathleen Adams; The Rector, Wardens and Vestrymen of St. James Parish in Newport Beach, California, a California nonprofit corporation; James Dale; Barbara Hettinga; Paul Stanley; Cal Trent; John McLaughlin; Penny Reveley; Mike Thompson; Jill Austin;</i>

	<i>Eric Evans; Frank Daniels; Cobb Grantham; Julia Houten</i>
Joseph E. Thomas Jean C. Michel Thomas, Whitelaw & Tyler, LLP 18101 Von Karman Ave., Suite 230 Irvine, CA 92612 (949) 679-6400 Fax: (949) 679-6405	<i>Attorneys For Plaintiff in Intervention and Respondent The Episcopal Church in the United States of America</i>
David Booth Beers Heather H. Anderson Goodwin Procter LLP 901 New York Ave, NW Washington, DC 20001 (202) 346-4000 Fax: (202) 346-4444	<i>Attorneys For Plaintiff in Intervention and Respondent The Episcopal Church in the United States of America</i>
Lynn E. Moyer Law Offices of Lynn E. Moyer 200 Oceangate, Suite 830 Long Beach, CA 90802 (562) 437-4407 Fax: (562) 437-6057	<i>Attorneys For Defendants and Petitioners in Case Nos. S155199 and S155208</i>
Kent M. Bridwell 3646 Clarington Avenue, No. 400 Los Angeles, CA 90034-5022 (310) 837-1553 Fax: (310) 559-7838	<i>Attorneys For Defendants and Petitioners in Case Nos. S155199 and S155208</i>
Clerk of the Court of Appeal Fourth Appellate District, Division 3 925 North Spurgeon Street	<i>Appeal Nos. G036096, G036408, G036868</i>

<p>Santa Ana, California 92701 (714) 558-6777</p>	
<p>Clerk to the Hon. David C. Velasquez Orange County Superior Court Complex Civil Division 751 West Santa Ana Boulevard Santa Ana, CA 92701 (714) 568-4802</p>	<p><i>Judicial Council Coordination Proceeding No. 4392; Case No. 04 CC 00647</i></p>
<p>Office of the Attorney General 1300 "I" Street Sacramento, CA 95814 (916) 322-3360</p>	
<p>George S. Burns, Esq. Law Offices of George S. Burns 4100 MacArthur Boulevard, Suite 305 Newport Beach, CA 92660 (949) 263-6777 Fax: (949) 263-6780</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>Tony J. Tanke, Esq. Law Offices of Tony J. Tanke 2050 Lyndell Terrace, Ste. 240 Davis, CA 95616</p>	<p><i>Attorneys for Amicus Curiae, The Holy Apostolic Catholic Assyrian Church of the East</i></p>