

# **Episcopal Church wins in property disputes: Breakaway congregations cannot keep properties**

by [John Dart](#) in the [February 10, 2009](#) issue

Episcopal bishop J. Jon Bruno of the large Los Angeles diocese was “overjoyed” at the recent California Supreme Court ruling that said breakaway congregations cannot take possession of their properties, which are held in trust for a larger church body.

Through her New York office, Episcopal presiding bishop Katharine Jefferts Schori said the January 5 decision was a “ringing endorsement” for the rights of parent denominations. She added that she hoped the ruling’s “unequivocal reasoning” would bring remaining property disputes in the 2.2-million-member Episcopal Church to a speedy conclusion.

Just about as happy, if not exultant, are officials of other connectional church bodies such as the Presbyterian Church (U.S.A.) and the United Methodist Church, some of whose dissident congregations are leaving over issues of biblical interpretation and gay rights.

The California decision “is a clear win for the national Episcopal church—along with PCUSA and many other denominations,” according to an analysis written by a consulting attorney for the Presbyterian synod that oversees congregations in southern California and Hawaii. A copy of the analysis was obtained by the Century.

United Methodist leaders in California were dismayed four years ago when a breakaway Fresno-area congregation, St. Luke’s Methodist, triumphed in court. An appeals court ruled that though a trust agreement had been entered with the national body, state laws allowed such trusts to be revoked. The California Supreme Court announced that it would not review that case.

However, the Presbyterian analysis circulated among PCUSA churches concluded that the St. Luke's Methodist case "had lost its power as a precedent in California" after the recent state Supreme Court ruling.

American judges have long refused to referee doctrinal disputes in churches. Most courts conclude that to do so would violate the First Amendment liberty of religious groups to manage their own affairs—free of government interference. But disaffiliating congregations upset with changes in their denominations have hoped that documents demonstrating their long-term local control and ownership would carry the day on secular and "neutral" principles of law.

The Episcopal case centered on St. James Episcopal Church in Newport Beach, California, and it affects two like-minded parishes in Long Beach and North Hollywood.

Amid the turmoil over the national church convention's 2003 approval of the election of an openly gay priest, V. Gene Robinson, as bishop of New Hampshire, St. James broke away from the Episcopal Church and aligned itself with the Anglican Province of Uganda, as did the other two Los Angeles-area congregations.

The ruling in January by the California Supreme Court was agreed to by six of its seven justices, with the seventh concurring on the overall conclusion but using different reasoning.

Justice Ming W. Chin wrote for the majority: "Although the deeds to the property have long been in the name of the local church, that church agreed from the beginning of its existence to be part of the greater church and to be bound by its governing documents." When St. James disaffiliated from the general church, "the local church did not have the right to take the church property with it."

In other words, according to the Presbyterian analysis, the secular courts must consider not only state corporation codes, church property deeds and articles and bylaws of the congregation, but also the denomination's constitution and rules that bind its churches to the larger body.

It was uncertain if the dissenting congregations would appeal to the U.S. Supreme Court. Writers of the Presbyterian analysis call it "highly unlikely" that the nation's high court would accept the case.

John R. Shiner, chancellor of the Los Angeles Episcopal diocese, agreed that a successful appeal was improbable. The California decision, which upholds a 2007 appellate court ruling, “is final, conclusive, definitive,” he said. Shiner suggested also that the ruling could influence church property disputes nationally.

On January 11, the Sunday after the ruling, rector Richard Crocker of St. James Anglican Church (the current name of the Newport Beach church) spoke briefly from the pulpit about the court decision, calling it “very bad news,” according to the *Los Angeles Times*.

Crocker said he remained optimistic that some legal remedy could be found, but he offered no details. Speaking to a reporter after the service, Crocker refused to consider a reconciliation with the Episcopal Church.

If St. James parishioners decide to vacate the church, they could hold author-pastor Rick Warren to his newly disclosed promise of providing worship space for Anglican dissidents at his large Saddleback Church, about 15 miles to the east within Orange County. (See accompanying story.)

Bishop Bruno, in a pastoral letter read in churches January 11, said the Episcopal Church has a long tradition of welcoming a diversity of opinion, even loyal dissent. “Our church remains a large tent expansive enough to include many views and voices while united in common prayer,” Bruno said.

The olive branch was also rejected by Martyn Minns, the missionary bishop of Congregations of Anglicans in North America (CANA). CANA has 70 congregations and 150 clergy in the U.S. under the sponsorship of a Nigerian archbishop. “Many congregations have chosen not even to contest [ownership of church] property,” Minns told the Associated Press. “We’re doing this because we believe in something.”

Minns oversees 11 former Episcopal congregations in Virginia whose efforts to retain their properties have won trial court rulings. Crucial to those rulings is an 1867 state law, passed as Virginia congregations divided over slavery, that allowed a parish to disaffiliate from a denomination when a division occurred, yet maintain legal control over parish property. The Episcopal Diocese of Virginia and the national Episcopal Church are challenging those findings, made by one judge, and appealing the case to the Virginia Supreme Court.

In upstate New York, the pressure is on for breakaway congregations to leave their premises. New York Supreme Court justice Ferris D. Lebous, partly restating a similar appellate court ruling involving the Episcopal Diocese of Rochester, said that dissenting members of the Church of the Good Shepherd in Binghamton cannot keep the church facilities.

Lebous said January 8 that Good Shepherd's property was held in trust for the Diocese of Central New York and the entire Episcopal Church, according to the Episcopal News Service. He ruled that the Syracuse-based diocese is entitled to immediate possession of the church and an accounting of the properties.

In a good-bye sermon January 11, rector Matthew Kennedy said that was the congregation's last Sunday in the building. Services the next Sunday, he said, would be held in the gym of a nearby Baptist church.

"This is the place where my children have been raised and yours maybe," he said, "but Jesus has called us to drop our nets and follow him into the land and place that he is going to show us."