

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

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| _____ |) | Second Appellate District |
| Church of Christ in Hollywood, a |) | Action No. _____ |
| California nonprofit religious corporation; |) | |
| Daniel A. Rodriguez, |) | |
| |) | Trial Court: Honorable David P. Yaffe, |
| Petitioner. |) | Superior Court of the State of |
| |) | California, County of Los Angeles, |
| v. |) | Trial Court Case No. BC 269040 |
| |) | |
| Superior Court of the State of California, |) | |
| County of Los Angeles, |) | |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |
| Lady Cage-Barile, |) | |
| |) | |
| Real Party in Interest. |) | |
| |) | |

PETITION FOR WRIT OF MANDATE

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I.

INTRODUCTION

This petition arises from an April 12, 2002, Order of Respondent Superior Court of California for the County of Los Angeles that denied Petitioner's application for a temporary restraining order and issuance of an order to show why a preliminary injunction should not issue enjoining Lady Cage-Barile ("Ms. Cage-Barile"), from engaging in or performing the following acts at the Church of Christ located at 600 North Rossmore, Los Angeles, California: (1) tearing down or destroying church literature; (2) obstructing or impeding ingress into or egress from the church; (3) disturbing or disquieting the assemblage of the congregation of the church by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where the meeting is held, or so near it as to disturb the order and solemnity of the meeting; and (4) trespassing on church premises. Appendix for Petition for Writ of Mandate (hereinafter "App."), Ex. 8, page 119 .

The trial court denied the requested relief on two grounds: (i) Article I, Section 2(A) of the California Constitution grants Ms. Cage-Barile an unfettered right to trespass on the Church of Christ in Hollywood's private property to express her religious views; and (ii) the trial court lacks jurisdiction to restrain Ms. Cage-Barile from trespassing on the Church of Christ in Hollywood's private property or violating California Penal Code section 302, because the parties are involved in a religious dispute. App., Ex. 7, pages 111-112. This constitutes plain error by the trial court and is an abuse of its discretion.

Ms. Cage-Barile's behavior does not constitute protected speech. California Code

of Civil Procedure section 527.6 authorizes an injunction to prevent a course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. Moreover, California Penal Code section 302 provides that every person who intentionally disturbs or disquiets any assemblage of people met for religious worship at a tax-exempt place of worship, by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where the meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor.

Petitioner has placed sworn declarations before the trial court providing uncontradicted testimony that Ms. Cage-Barile is routinely trespassing, harassing the congregation, and unreasonably interfering with the ability of the Church Congregation to associate freely. App., Ex. 2, pages 28-34 (Declaration of Daniel A. Rodriguez); Ex. 2, pages 49-51 (Declaration of Hasmig Virginia Ybarra); Ex. 6, pages 89-103 (Second Declaration of Eno Otoyoy); Ex. 6, pages 104-106 (Declaration of Paula Giboney); and Ex. 6, pages 107-109 (Declaration of Paul Giboney). Petitioners' attempt to secure its property and protect its Congregation involves no state action. Thus, the California Constitution has no application to these facts. Moreover, Petitioners only asked that the trial court neutrally apply trespass laws enacted for the protection of all people possessing property rights. No party in this action has asked the trial court to intrude upon any matter of religious doctrine. Because the uncontradicted facts placed before the trial court clearly entitled Petitioners to the injunctive relief requested, this Court should issue the

requested writ of mandate.

II.

PETITION FOR WRIT OF MANDATE

By this verified petition, Petitioners allege:

1. This petition seeks review of the lower court's April 12, 2002, order refusing to grant a temporary restraining order and issue an order to show cause against Ms. Cage-Barile in this action (*Church of Christ in Hollywood v. Lady Cage-Barile*, Superior Court Case No. BC 269040).

2. Petitioners Church of Christ in Hollywood and Daniel A. Rodriguez are plaintiffs in *Church of Christ in Hollywood v. Lady Cage-Barile* and are parties beneficially interested herein.

3. Respondent is the Superior Court for the State of California, County of Los Angeles.

4. The real party in interest is Lady Cage-Barile, a defendant in *Church of Christ in Hollywood v. Lady Cage-Barile* and is a party beneficially interested in this proceeding.

5. On February 28, 2002, Petitioners filed in Respondent Court against Ms. Cage-Barile, a complaint numbered BC 269040 seeking injunctive relief to restrain unlawful trespass, threatening conduct, and nuisance. This complaint is based on the allegations that commencing on or about January 2001, and continuing through to the present, Ms. Cage-Barile has engaged in a course of conduct of harassing and intimidating the leadership and membership of the church. Moreover, Petitioners allege Ms. Cage-Barile, *inter alia*, surreptitiously tape-recorded the Alcoholics Anonymous group that plaintiff Daniel A. Rodriguez and the church leadership

allowed to meet on church property, and repeatedly disrupted church Bible studies and church services. Ms. Cage-Barile is also alleged to have followed certain members of the Congregation through the church and into the parking lot, at times shouting, on other occasions leaning close and hissing in their ear that they are adulterers, agents of Satan, demon-sinners, and other pejorative names. Ms. Cage-Barile is alleged to have damaged the church's ability to minister to its young adults. A true and correct copy of Petitioners' complaint is included as Exhibit 1 of the separately bound appendix of exhibits filed concurrently herewith and explicitly made a part hereof.

6. Petitioner Church of Christ in Hollywood is a California nonprofit religious corporation that owns and operates the church at 600 North Rossmore Avenue, Los Angeles, California.

7. Petitioner Daniel A. Rodriguez is the minister of Church of Christ in Hollywood.

8. Real Party in Interest Lady Cage-Barile is a natural person.

9. Ms. Cage-Barile made no appearance in the lower court. Rather, on March 5, 2002, and later on April 12, 2002 (the order at issue in this petition), Petitioners appeared *ex parte* in the lower court to seek a temporary restraining order and an order to show cause enjoining Ms. Cage-Barile from engaging in or performing any of the following acts at the Church of Christ located at 600 North Rossmore, Los Angeles, California: (1) tearing down or destroying church literature; (2) obstructing or impeding ingress into or egress from the church; (3) disturbing or disquieting the assemblage of the congregation of the church by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where the meeting is held, or so near it as to disturb the order and solemnity of the meeting; and (4) trespassing on church premises. Petitioners appeared before the lower court earlier seeking

substantively similar relief on March 5, 2002. On both occasions, the Honorable David P. Yaffe denied petitioners' applications. In support of the second application, petitioners presented sworn declarations showing how Ms. Cage-Barile's behavior directed against the religious practice of the Church escalated after March 5, 2002 (the date petitioners previously applied for relief). The declarations showed that Ms. Cage-Barile now spends part of her Sundays ripping literature and notices off the Church walls and either crumpling the paper up and throwing it to the ground or secreting it away in her purse. True and correct copies of all documents filed in support of the March 5, 2002, application and the April 12, 2002, application as well as the lower court's orders are attached to the Appendix as Exhibits 1-2, 4-6, and 8 and are explicitly made a part hereof by reference.

10. No opposition papers were filed by Ms. Cage-Barile. Ms. Cage-Barile has not appeared in this action in any manner.

11. Transcripts of the March 5, 2002, and April 12, 2002, hearings were ordered and true and correct copies are attached to the Appendix as Exhibits 3 and 7 and explicitly made a part hereof by reference.

12. The complaint alleges and the declarations filed in support show that Ms. Cage-Barile has engaged in a pattern and practice of (i) disrupting church Bible studies; (ii) disrupting church worship services; (iii) interfering with the Alcoholics Anonymous group the church previously allowed to meet on church property; (iv) damaging the church's ability to minister to its young adults; (v) tearing Church literature and notices from the walls, and either crumpling the papers up and throwing them to the ground or secreting them away in her purse. *See* Ex. 1 to the App.

13. Petitioner will suffer irreparable injury and severe prejudice if Respondent Court

is not compelled to vacate its April 12, 2002, order denying Petitioners' application for a temporary restraining order and order to show cause. As set forth in the supporting declarations, the aggressive behavior of Ms. Cage-Barile, a former member of the church, has increased. She has refused to stop her actions. The church has tried for a year to deal with this difficult situation. The leadership of the Church of Christ in Hollywood has asked Cage-Barile to refrain from committing the above acts. She has refused and stated she will continue her actions. The Church of Christ in Hollywood has determined, according to its own spiritual and religious procedures, after a noticed meeting attended by Cage-Barile in which she was given several hours to present her views, that she is no longer a member of this church. The entire Congregation was invited to attend this meeting. Afterward, the Church voted to end Cage-Barile's membership. The church has tried unsuccessfully to prevent her from entering church property by physically blocking access to the church. As a result, Ms. Cage-Barile's actions have caused, and will further cause, the church to suffer irreparable harm. Her actions have seriously alarmed Dr. Rodriguez causing him substantial emotional distress. Her actions have substantially and unreasonably interfered with and continue to interfere with Dr. Rodriguez' ability to associate effectively with the membership of the church, to practice his religion, and to minister to his congregation. Ms. Cage-Barile's actions and course of conduct have caused and will continue to cause the church to lose members, cancel ministries, and resort to secret meeting times in some cases. Her actions have disrupted church services. She has destroyed church property thus interfering with the church's ability to communicate with its members through posted literature and notices. *See* Declarations filed in support of *Ex Parte* Application for Relief, App., Ex. 2 and Ex. 6.

14. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of

law to compel Respondent Court to enforce petitioners' rights. When petitioners, and their counsel, applied for assistance from the Los Angeles Police Department, they were told to seek relief from the civil courts. When petitioners, and their counsel, applied to the civil courts for reliefBin particular with respect to the California Penal Code section 302 issueBthey were told to look to the criminal courts.

WHEREFORE, Petitioners pray:

1. That this court issue an alternative writ of mandate directing Respondent Court to vacate its April 12, 2002, order and enter a new and different order granting Petitioners their requested relief or to show cause before this Court in a specified time and place why it has not done so;
2. That, on the hearing of this Petition and the return to it, if any, this Court issue a preemptory writ of mandate directing Respondent Court to so order;
3. For costs of suit herein incurred; and
4. For such other and further relief as the court may deem proper.

Respectfully submitted,

May 9, 2002

HARTZLER & HARTZLER

By: _____
Mark B. Hartzler
Attorneys for Petitioners

III.

VERIFICATION

I, Mark B. Hartzler, am one of the attorneys for Petitioners in the above-entitled proceeding. I have read the foregoing petition for writ of mandate and know the contents thereof. The same is true of my own knowledge. I have verified this petition rather than Petitioners for the reason that the facts concerning the application, papers, argument, and hearings before the lower court all lie within my knowledge. Petitioners' factual information is set forth in their sworn declarations, true and correct copies of which are included in the Appendix.

I declare this _____ day of May, 2002, under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Mark B. Hartzler

IV.

MEMORANDUM OF POINTS AND AUTHORITIES

The Church of Christ in Hollywood (the AChurch@) seeks a writ of mandamus from this Court for relief from the extraordinary determination by the Superior Court for the County of Los Angeles that the Church, a private organization, is not entitled to enforce neutral laws to exclude a disruptive trespasser from its private property. The Superior Court's actions are so contrary to established principles of constitutional law that this Court's intervention is necessary.

STATEMENT OF THE CASE

This case involves the efforts of the Church to exclude an individual from its private property. Ms. Cage-Barile is a former member of the church, whose membership in the Congregation was terminated in January, 2002 after a pattern of harassing and intimidating members of the Church for approximately a year. App., Ex. 6, pages 90-91, (Second Otoy Decl., &&7-12). This harassment has included disrupting Bible studies and worship services, calling the Church's minister and church leaders ASatan's agents@ and other pejoratives App., Ex. 6, pages 92-94, (Second Otoy Decl., &&14-29). She has confronted and angrily berated congregants who have been divorced and remarried. App., Ex. 2, pages 5051 (Ybarra Decl.&& 4,5). As a result, the Church has lost members and has had to cancel and reschedule various meetings and events. App., Ex. 2, pages 30-33 (Rodriguez Decl. && 10, 14, and 26). In addition, this behavior escalated after March 5, 2002. Ms. Cage-Barile now spends part of her Sundays ripping religious literature and notices off the

Church walls and either crumpling the paper up and throwing it to the ground or secreting it away in her purse. App., Ex. 6, page 94 (Second Otoyoy Decl., &27); and Ex. 6, pages 105-106 (Paula Giboney Decl., &&6-7). Cage-Barile has maintained this practice despite repeated pleas by Paula Giboney and church leaders requesting that she stop this destructive behavior. App., Ex. 6, page 94 (Second Otoyoy Decl., &27.); App., Ex. 6, pages 105-106 (Paula Giboney Decl., &&6); and App., Ex. 6, page 108 (Paul Giboney Decl., &&6-8).

Accordingly, the Church held a noticed meeting with Ms. Cage-Barile. This meeting was open to the Congregation. After the meeting, which Ms. Cage-Barile attended, the Church voted to terminate her membership. App., Ex. 6, pages 90-91 (Second Otoyoy Decl., &7). Thereafter, the Church notified Ms. Cage-Barile on February 16, 2002 that the leadership and membership of the Church had terminated her membership. Petitioners told Ms. Cage-Barile that she was not permitted to enter Church property, and that if she did so she would be trespassing. App., Ex. 6, pages 92-93 (Second Otoyoy Decl., && 12,13 & Ex. B to Decl.). Nevertheless, Ms. Cage-Barile has continued to enter the Church=s property to disrupt worship services. App., Ex. 6, pages 90-95 (Second Otoyoy Decl., && 5, 18-19, 26-27, and 29). The Church thus applied to the Superior Court for an Order to Show Cause and a Temporary Restraining Order barring Ms. Cage-Barile from entering the Church=s property. App., Ex. 2 and Ex. 6. Ms. Cage-Barile, despite several days= notice of each TRO hearing has never appeared before the lower court or responded to the Church=s counsel=s invitation for her to contact him about

her ability to appear. Petition for Writ of Mandate, *supra*, &10.

The Superior Court has conceded that the evidence showed that Ms. Cage-Barile is making an absolute pest and nuisance of herself by shouting insults at the members of the Congregation. App., Ex. 7, page 113 (Hearing Transcript, April 12, 2002). The Court nonetheless denied relief on the grounds that the church's bylaws stated that the Church's attempts to exclude this disruptive individual from its private property was prohibited on two grounds: (i) Article I, section 2(A) of the California Constitution grants Ms. Cage-Barile an unfettered right to trespass on the Church of Christ in Hollywood's private property to express her religious views, because the court held, "the California Constitution . . . says that every person may freely speak, write, and publish his or her sentiments on all subjects, and it says right in the California Constitution there shall be no prior restraints on speech."; and (ii) the trial court lacks jurisdiction to restrain Ms. Cage-Barile from trespassing on the Church of Christ in Hollywood's private property or violating California Penal Code section 302, because the dispute between the parties involves religion. App., 7, pages 111-117 (Hearing Transcript, April 12, 2002).

SUMMARY OF RELEVANT FACTS

The church is a nonprofit religious corporation. App., Ex. 6, page 90 (Second Otoyó Decl., &1). It is located at 600 North Rossmore Avenue, Los Angeles, California. App., Ex. 6, page 90 (Second Otoyó Decl., &4). Dr. Rodriguez is its minister. App., Ex. 2, page 29 (Rodriguez Decl., &2). Ms. Cage-Barile is a past member of the congregation who disagrees with how Dr. Rodriguez and others guide the church. App., Ex. 2, page 29

(Rodriguez Decl., &&9-12). She has shown her disagreement in the following manner:

- \$ Disrupting church Bible studies. App., Ex. 2, pages 29-30 (Rodriguez Decl., &10).
- \$ Disrupting church worship services. App., Ex. 6, page 92 (Second Otoyoy Decl., &&14-16).
- \$ Interfering with the Alcoholics Anonymous group the church previously allowed to meet on church property by, among other things, surreptitiously tape recording the group. App., Ex. 2, page 30 (Rodriguez Decl., &13).
- \$ Damaging the church's ability to minister to its young adults. App., Ex. 2, page 30 (Rodriguez Decl., &13).
- \$ Tearing Church literature and notices from the walls, and either crumpling the papers up and throwing them to the ground or secreting them away in her purse. App., Ex. 6, page 94 (Second Otoyoy Decl., &27.); App., Ex. 6, pages 105-106 (Paula Giboney Decl., &&6); and App., Ex. 6, page 108 (Paul Giboney Decl., &&6-8).

Ms. Cage-Barile's aggressive behavior has increased over time. She has refused to stop her actions. App., Ex. 2, pages 32-33 (Rodriguez Decl., &25). The church has tried for a year to deal with this difficult situation:

- \$ The leadership of the Church of Christ in Hollywood has asked Ms.

Cage-Barile to refrain from committing the above acts. She has refused and stated she will continue her actions. App., Ex. 2, page 31 (Rodriguez Decl., &18).

\$ The Church of Christ in Hollywood has determined according to its own spiritual and religious procedures after a noticed meeting attended by Ms. Cage-Barile in which she was given several hours to present her views that she is no longer a member of this church. The entire Congregation was invited to attend this meeting. Afterward, the Church voted to end Ms. Cage-Barile's membership in the Hollywood Congregation. App., Ex. 6, pages 90-92 (Second Otoyó Decl., &&6-13).

\$ The church has told Ms. Cage-Barile she is not welcome to participate in church activities. App., Ex. 6, page 91 (Second Otoyó Decl., &12).

\$ The church has told Ms. Cage-Barile she will be trespassing if she enters church property. App., Ex. 6, page 91 (Second Otoyó Decl., &12).

\$ The church has tried unsuccessfully to prevent her from entering church property by physically blocking access to the church. App., Ex. 2, page 31 (Rodriguez Decl., &17).

Despite repeated requests, Cage-Barile will not cease her actions. Ms. Cage-

Barile's actions have caused, and will further cause, the church to suffer irreparable harm as detailed below:

§ Ms. Cage-Barile's actions have seriously alarmed Dr. Rodriguez causing him substantial emotional distress. Her actions have substantially and unreasonably interfered with his ability to associate effectively with the membership of the church, to practice his religion, and to minister to his congregation. App., Ex. 2, pages 31-32 (Rodriguez Decl., &&19-21).

§ Ms. Cage-Barile's actions and course of conduct have caused the church to lose members, cancel ministries, and resort to secret meeting times in some cases. App., Ex. 2, page 32 (Rodriguez Decl., &23).

§ Ms. Cage-Barile's actions have disrupted church services. App., Ex. 2, page 32 (Rodriguez Decl., &23).

§ Ms. Cage-Barile has destroyed church property and interfered with the church's ability to communicate with its members through posted literature and notices. App., Ex. 6, page 94 (Second Otoyoy Decl., &27.); App., Ex. 6, pages 105-106 (Paula Giboney Decl., &&6); and App., Ex. 6, page 108 (Paul Giboney Decl., &&6-8).

ARGUMENT

A. *Petitioners Face Immediate and Irreparable Harm*

California Code of Civil Procedure section 526 authorize courts to issue an injunction in seven different cases, five of which are present in this action. California Code of Civil Procedure section 527.6 authorizes an injunction to prevent a course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. Finally, California Penal Code section 302 provides that every person who intentionally disturbs or disquiets any assemblage of people met for religious worship at a tax-exempt place of worship, by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where the meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment. Petitioners have set forth behavior by Ms. Cage-Barile that meets the standards described in California Code of Civil Procedure sections 526 and 526.7 and which violates California Penal Code section 302.

First, the complaint alleges that Ms. Cage-Barile is trespassing, destroying church property, harassing the congregation, and unreasonably interfering with the ability of the Church Congregation to associate freely. These facts entitle Petitioners to the injunctive relief requested.

Second, the affidavits of Daniel A. Rodriguez, Jeanette Rodriguez, Eno Otoy, and Hasmig Virginia Ybarra show that the ability of the congregation to effectively practice their religion and associate freely has been and will be irreparably harmed if the Court

does not grant injunctive relief. Courts cannot put a dollar value on the damage that has been done to these individuals and will continue to be done by Ms. Cage-Barile's acts.

Third, the declarations show that Ms. Cage-Barile will violate the rights of the Church and Daniel A. Rodriguez absent a temporary restraining order and preliminary injunction.

Fourth, a future judgment cannot restore the membership the Church has lost and will lose or make up for cancelled ministries and Bible classes or make up for the emotional distress and suffering that Petitioners and the congregation will endure absent injunctive relief. *Cf. Wind v. Herbert*, 186 Cal.App.2d 276 (1960). [Irreparable injury means that species of damages, whether great or small, that ought not to be submitted to on the one hand or inflicted on the other].)

Fifth, under the circumstances presented, the Court will find it extremely difficult, if not impossible, to value Petitioners's damages.

B. *The Church has a Fundamental Right to Determine its Membership*

A church has a fundamental right to determine who is and who is not a member. The United Supreme Court, in *Boy Scouts v. Dale*, 530 U.S. 640 (2000), recently reaffirmed the principle that private associations have a First Amendment right to determine the values and beliefs they stand for, and a corresponding right to further these values and beliefs through those they admit and exclude as members and leaders. The *Dale* Court held: "Implicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in pursuit of a wide variety

of political, social, economic, educational, *religious*, and cultural ends.@ *Id.* at 647 (quoting *Roberts v. United States Jaycees*, 468 U.S. 609 (1984) (emphasis added). The Court in *Dale* emphasized that Afreedom of association . . . plainly presupposes a freedom *not* to associate.@ *Id.* at 649 (emphasis added).

The Court in *Dale* thus held that the Scouts had a constitutional right to exclude gay men as scout leaders, despite a New Jersey civil rights statute barring discrimination in public accommodations on such grounds. In a similar Boy Scout case in California, decided prior to *Dale*, the Court of Appeals of California, Third Appellate District, held that the Unruh Civil Rights Act did not apply to the Boy Scouts. Its reasoning is directly applicable to the issue in this case:

If the Act were to apply to the Boy Scouts, it is difficult to see how any nonprofit, private, membership organization could escape the smothering embrace of ubiquitous, omnipotent government. Must a church admit agnostics? Must Aan organization that studies Israeli culture and history . . . admit into [its] group (meeting in a private home) a neo-Nazi who believes in, and [is] dedicated to, the destruction of Israel[?].@ *Welsh [v. Boy Scouts of America]*, 993 F.2d 1267 (7th Cir. 1993)]. No private group, regardless of the selectivity of, or the close personal relationship among, its members would be beyond the reach of section 51. AThere can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire.@ *Roberts v. United States Jaycees*, [468 U.S. 609 (1984)].

Yeaw v. Boy Scouts of America, 55 Cal. App. 4th 607 (3d App. Dist. 1997). *See also Curran v. Mount Diablo Council of the Boy Scouts of America*, 17 Cal. 4th 670 (1998).

In a similar vein, the Supreme Judicial Court of Massachusetts ruled that the Nation of Islam has a right to exclude women from a speech directed at men by Louis Farrakhan held at a theater rented for the occasion. *Donaldson v. Farrakhan*, 2002 Mass. Lexis 147 (February 13, 2002). A federal court in Ohio made a similar ruling regarding the Nation of Islam's rental of the Cleveland Convention Center for a similar men-only assembly. *City of Cleveland v. Nation of Islam*, 922 F. Supp. 56 (N.D. Ohio 1995).

C. *The Church is Not a Public Forum*

The Church's bylaws state that its purpose is to provide and maintain accommodations for public assembly. Otoyó Decl., Ex. B. But any suggestion that this turns the Church into a public forum for free speech purposes, or a public accommodation as the term is understood in the civil rights context, is in direct contravention of *Dale* and the other freedom of association cases cited above. Moreover, it poses a grave danger to religious freedom. Religion is more often than not a communal activity, leading to founding of churches and other institutions to serve as places of religious assembly. As Justice Brennan observed in *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring): "For many individuals, religious activity derives meaning in large measure from participation in a larger religious community. Such a community represents an ongoing tradition of shared beliefs, an organic entity not reducible to a mere aggregation of individuals." But if by founding a place of public assembly for religious worship, a congregation were forced to accept all comers, dissidents and believers alike, the

congregation's existence as an organic community of shared beliefs and practices would be destroyed. Such a reading of "public assembly" cannot be squared with the Constitution.

The Church's right to carry out its mission and to serve its religious community is being severely compromised by Cage-Barile's trespass on its property. In addition to the general disruption this dissident is causing by attacks on the Church members as being sinners and agents of Satan, her actions have compromised the Church's desire to minister to members who have been divorced and remarried by her personal attacks on individual members. The Church has formally disassociated itself from her. Accordingly, the Church may appropriately seek an order enforcing its property rights by enjoining her from trespassing on Church property. *Allred v. Harris*, 14 Cal.App.4th 1386 (1993) (landowners have right to exclude persons from trespassing on private property; right to exclude persons is fundamental aspect of private property ownership); *Golden Gateway Center v. Golden Gateway Tenants' Association*, 26 Cal.4th 1013 (2001) (Judicial enforcement of injunctive relief does not, by itself, constitute "state action" for purposes of the free speech clause in the state constitution).

The Church has presented undisputed evidence that Ms. Cage-Barile had been removed from membership through the proper procedures, and that she had no rights in the corporate or spiritual life of the Church. Traditionally, while courts may not of course decide religious questions, where civil or property rights are involved the courts of this state have always, evenhandedly, accepted jurisdiction over property disputes, even

where ecclesiastical questions may have been indirectly involved.@ *Metropolitan Baptist Church of Richmond v. Younger*, 48 Cal. App. 3d 850 (1975). As this Court has held, quoting the U.S. Supreme Court's decision in *Jones v. Wolf*, 443 U.S. 595, 602 (1979):

ACivil courts have general authority to resolve questions regarding the right to possession of church property. >The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where [such issues] can be determined conclusively.@ *Berry v. Society of Saint Pius X*, 69 Cal. App. 4th 354 (2nd App. Dist 1999). Where a dispute is Aessentially ownership or right to possession of property, the civil courts may appropriately adjudicate the controversy Such disputes may be adjudicated by resort to neutral principles of law.@ *Id.*

D. *The Church Bylaws do not Control the Disposition of this Case*

California appellate law has made clear that courts, in applying neutral principles of law to church property disputes, are not limited to articles of incorporation and corporate bylaws. This Court has specifically held that a court may look beyond bylaws to other rules, practices and traditions of a church:

The definition of the term Abylaws@ as used in the religious nonprofit corporation law includes Athe code or codes of rules used, adopted, or recognized for the management of the affairs of the corporation irrespective of the name or names by which such rules are designated.@ (Corp. Code ' 9150, subd. (a).) One commentator described this provision of the religious nonprofit corporation law as follows: AThis approach in the Religious Corporation Law is designed specially to permit bylaws of a religious corporation to include other types of rules and regulations to be found in

various religious documents such as canons, constitutions, or rules of other religious bodies; church traditions if sufficiently ascertainable; rules of a religious superior; and similar sources.@ (1B Ballantine & Sterling, Cal. Corporation Law (4th ed. 1990) ' 418.04, at p. 19-493.)

Korean Presbyterian Church of Los Angeles v. Presbytery of the Pacific, 230 Cal. App. 3d 480 (2nd App. Dist. 1991). This Court in *Korean Presbyterian Church of Los Angeles* thus held that a presbytery, a higher church body in the Presbyterian church, was improperly denied a writ of possession from the Superior Court directing removal of a dissident group from church property. The Court found that the presbytery had a right to such a writ after applying the bylaws, the Presbyterian Book of Order, and the determination of the presbytery regarding which was the true church.@ See also *Phillip v. Steiger*, 82 Cal. App. 4th 923 (2000) (holding that parent church body was entitled to possession of local church property because evidence was clear that formerly autonomous local church had submitted to parent church's authority, despite fact that local church's bylaws were never formally amended).

Just as this Court held in *Korean Presbyterian Church* that the trial court erred in denying the presbytery a writ of possession directing removal of the dissident church group from the church property, so too, the Church herein has presented declarations from its pastor and its president stating that Cage-Barile is not a member of the Church. The Church has presented evidence that she was discharged from membership according to Church procedures by a vote of the

board and the Congregation's membership. The Church presented evidence that she has engaged in a pattern of disruptive and destructive behavior, and that her continued presence is preventing the Church from carrying on the religious, expressive associational activities that it exists to pursue.

Thus, without determining any religious question or resolving any ecclesiastical dispute, the court can determine, applying neutral principles of law, that the Church owns its property, that Cage Barile is not a member of the Church, and the Church has a right to exclude her from its property.

While this case can be resolved under the application of neutral principles of law, the Church notes, however, that to the extent that the status of her membership *might* be considered to be a religious question, it is established law that a Court must defer to the church hierarchy. *See, e.g., Korean United Presbyterian Church of Los Angeles*, 230 Cal. App. 3d at 500 (Non ecclesiastical issues, including matters of religious doctrine or polity, civil courts must defer to the highest judicatory of the hierarchical church hearing and addressing the matter.); *Jeong v. California Pacific Annual Conference*, 1992 U.S. App. LEXIS 30366, *2 (9th Cir. 1992) (rejecting claim of seminary student denied membership in the ministry, holding that under the first amendment, A[i]f a civil court cannot resolve a dispute in which a religious body is a party without inquiring into questions of religious law and polity, the court must leave the decision of that organization's highest tribunal untouched, accepting that decision as binding on the

court.@). Thus even if the court below believes this case involves a religious dispute over who is a member of this church, it is nonetheless bound to accept the determination of the board that Cage-Barile is not a member.

E. *Petitioners Are Likely to Succeed on the Merits*

To obtain a preliminary injunction, Petitioners must show a reasonable probability it will prevail on the merits. *See ITT Corp. v. County of Imperial*, 35 Cal.3d 63 (1983). Here, Petitioners have presented admissible declarations showing a continuing pattern of harassment and misconduct. The Church and Daniel A. Rodriguez seek to prevent trespass on private church property and harassment of its membership. Cage-Barile is not a member of this congregation, has no voting rights in the spiritual or corporate body of the Church, and has no right to trespass on private church property or harass the congregation. (Eno Decl., ¶¶ 6, 11.) The injunctive relief sought is crafted to interfere as little as possible with Ms. Cage-Barile's rights.

CONCLUSION

Since there is undisputed evidence that Ms. Cage-Barile is not a member of the Church, that she has engaged in a practice of harassment of church officers and members and disruption of the core practices of the Church, and that the Church desires her not to trespass on its property, the Church demonstrated the lower court that it is entitled to a TRO, or at a minimum an order to show cause. *See Naumann v. Zimmer*, 1997 Minn. App. LEXIS 45 (1997) (upholding issuance of

restraining order barring man who had engaged in disruptive demonstrations at church from entering church property). California law permits trial courts to exercise their injunctive power to restrain a wrong when, as here, it constitutes an overbearing assumption by one person of superiority and domination over the rights and property of others. *Fretz v. Burke*, 247 Cal.App.2d 741 (1967). The Church survives due to its membership. If it continues to lose members and must further curtail its ability to protect and minister to its congregation, to conduct worship services and Bible classes, it will suffer irreparable harm. Conversely, Ms. Cage-Barile will suffer little or no harm. Injunctive relief will curtail her ability to enter private church property. As Ms. Cage-Barile has no such right, she gives up nothing. *Cf. Planned Parenthood v. Wilson*, 234 Cal.App.3d 1662, 1674 (1991) (The exercise of the right to free speech at private abortion clinics is appropriate only within the traditional public forum of the public sidewalk). It will also give the congregation the opportunity to exit and enter the Church without being harassed, and to assemble and worship in peace. *Cf. Feminist Women's Health Center v. Blythe*, 32 Cal.App.4th 1641 (1995) (protestors' conduct sufficiently egregious to warrant injunction against picketing, because protesters engaged in conduct which not only interfered with access, but also posed threat of significant level of harm as actions increased anxiety levels in patients and staff even though no violence or threat of violence was present).

Accordingly, Petitioners respectfully request that the Court of Appeals

reverse the lower court's order and require it to issue a new order granting a temporary restraining order and order to show cause re: preliminary injunction enjoining Ms. Cage-Barile, Lady Cage-Barile, from engaging in or performing any of the following acts at the Church of Christ located at 600 North Rossmore, Los Angeles, California: (1) tearing down or destroying church literature; (2) obstructing or impeding ingress into or egress from the Church; (3) disturbing or disquieting the assemblage of the congregation of the Church by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where the meeting is held, or so near it as to disturb the order and solemnity of the meeting; and (4) trespassing on church premises.

Respectfully submitted,

May 13, 2002

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