

APPELLATE UPDATE FEBRUARY 2025

Civil Procedure

This is a decision only an appellate nerd would love! In this case, the issue presented was whether the 2-day extension for electronic service contained in Civil Code section 1010.6(a)(3)(B) applies to Calif. Rules of Court, Rule 8.278(c)(1) which requires a memorandum of costs to be filed within 40 days of the filing of a remittitur. A “remittitur” is a pleading which formally returns jurisdiction from the Court of Appeal to the Superior Court once the appellate procedure has concluded. Calif. Rules of Court, Rule 8.272 requires a remittitur to be filed, but does not mention service of the remittitur. Therefore, the Court of Appeal reasoned, the 2-day extension does not apply and a memorandum of costs must be filed within 40 days of issuance of the remittitur.

Wash v. Banda-Wash

Feb. 3, 2025

Fifth Appellate District, case no. F085028

Religion and fraud

In a recent controversial en banc opinion, the United States Court of Appeal for the Ninth Circuit held that the Church of Jesus Christ of Latter Day Saints (“Church”) did not commit fraud when it used members’ tithes to purchase real property and finance a commercial real estate development despite having stated publicly that it would not do so. The Church president had given public assurances that tithing funds had not been used and would not be used to acquire or develop the property. The Church president later clarified that the source of the funds would be earnings on investment reserves.

The plaintiff in the lawsuit, James Huntsman, gave \$5 million in tithes, relying on the president’s assurances that his money would not be used to develop the property. Huntsman sued in federal District Court, contending that the Church had committed fraud under California law. The Church contended that the funds used to purchase and develop the project came from investment reserve funds, not from direct tithes and its president’s statements were not misrepresentations.

The District Court granted the Church’s motion for summary judgment, holding that the First Amendment prevented the court from reaching the merits of Huntsman’s claim.

The Ninth Circuit upheld the District Court, but for different reasons. The Ninth Circuit concluded that the evidence presented in the District Court showed that no reasonable person could have concluded that the Church made any misrepresentation. The Ninth Circuit did not reach the First Amendment issue.

However, in his concurring opinion, Trump appointee Judge Daniel A. Bress opined that finding fraud required the court to examine the church’s statements for accuracy which would violate the church’s First Amendment right to determine spiritual matters for itself. He rejected the notion

that “secular” definitions of fraud could be applied to religious activities. Judge Bress was joined in his concurrence by three other judges, George Bush appointee Milan D. Smith, Jr., Barack Obama appointee Jacqueline Nguyen, and Trump appointee Lawrence J.C. VanDyke.

Judge Patrick J. Bumatay, also a Trump appointee, wrote an even more far-reaching concurring opinion, holding that the First Amendment bars any judicial interference in “ecclesiastical decisions” and “matters of religious truth.”

Huntsman v. Corporation of the President of the Church of Latter-Day Saints

Jan. 31, 2025

Ninth Circuit Court of Appeals, case no. 21-56056