

4-24-1957

# People's Church of San Fernando Valley, Inc. v. County of Los Angeles [DISSENT]

Jesse W. Carter  
*Supreme Court of California*

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## MEMORANDUM CASES

[48 C.2d 899; 311 P.2d 540]

[L. A. No. 23790. In Bank. Apr. 24, 1957.]

THE PEOPLE'S CHURCH OF SAN FERNANDO VALLEY, INC. (a Corporation), Respondent, v. COUNTY OF LOS ANGELES et al., Appellants.

APPEAL from a judgment of the Superior Court of Los Angeles County. Philbrick McCoy, Judge. Reversed.

Action to recover taxes paid under protest and for declaratory relief. Judgment for plaintiff reversed.

Harold W. Kennedy, County Counsel, Gordon Boller, Assistant County Counsel, Alfred C. DeFlon, Deputy County Counsel, Roger Arnebergh, City Attorney (Los Angeles), and Spencer L. Halversen, Deputy City Attorney, for Appellants.

A. L. Wirin and Hugh R. Manes for Respondent.

Beardsley, Hufstedler & Kemble, Charles E. Beardsley, Shirley M. Hufstedler, Seth M. Hufstedler, Morris E. Cohn, Richard W. Petherbridge and Stanley A. Weigel as Amici Curiae on behalf of Respondent.

SHENK, J.—This is an appeal by the defendants from a judgment for the plaintiff in an action to recover taxes paid under protest and for declaratory relief.

The plaintiff is a church organization owning real property within the jurisdiction of and subject to taxation by the county and city of Los Angeles. Within the time prescribed by law for the tax year 1954-1955 the plaintiff filed a property statement and an application for the tax exemption authorized by section 1½ of article XIII of the Constitution. The application was made on the regular affidavit form provided by taxing officials of the defendant county. Among other things the form provided for a statement under oath that the applicant did not advocate the violent overthrow of the local or federal government nor the support of a foreign government in the event of hostilities. The oath is required by the provisions of section 32 of the Revenue and Taxation Code adopted in

1955 to implement section 19 of article XX of the Constitution. The plaintiff refused to execute the oath and its property was assessed in the same manner as nonexempt property. The plaintiff paid the first installment of its taxes under protest, and commenced this action to recover the same.

The plaintiff contends that both section 19 of article XX of the Constitution and section 32 of the Revenue and Taxation Code are invalid for the reasons urged by the plaintiff in the case of *First Unitarian Church of Los Angeles v. County of Los Angeles*, ante, p. 419 [311 P.2d 508]. The trial court properly concluded that section 19 of article XX of the state Constitution did not violate any provision of the federal Constitution, but held that the application for exemption was improperly denied because section 32 of the Revenue and Taxation Code was invalid. Its decision followed from its conclusion that the Legislature, in enacting that section, had no authority to exclude householders from the requirements of making the oath in order to qualify for a tax exemption nor to limit that section to claims for exemption from property taxes only.

It was held in *The First Unitarian Church* case that section 32 of the Revenue and Taxation Code is a reasonable regulation provided by the Legislature in administering the tax exemption laws of the state and that case is controlling here. The conclusion of law in the present case to the effect that section 19 of article XX is valid was not carried into the judgment. The conclusion of law that section 32 is invalid formed the sole basis for the judgment ordering the refund.

The judgment ordering the refund is reversed.

Schauer, J., Spence, J., and McComb, J., concurred.

TRAYNOR, J., Dissenting.—For the reasons stated in my dissenting opinion in *First Unitarian Church of Los Angeles v. County of Los Angeles*, ante, p. 419 [311 P.2d 508], I would affirm the judgment.

Gibson, C. J., concurred.

CARTER, J., Dissenting.—For the reasons stated in my dissenting opinion in *First Unitarian Church of Los Angeles v. County of Los Angeles*, ante, p. 419 [311 P.2d 508], I would affirm the judgment.

Respondent's petition for a rehearing was denied May 22, 1957. Gibson, C. J., Carter, J., and Traynor, J., were of the opinion that the petition should be granted.