

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CARROLLTON PRESBYTERIAN CHURCH NO: 565482

SECTION: 26

VERSUS

AMENDED PETITION FOR  
TEMPORARY RESTRAINING ORDER,  
PRELIMINARY INJUNCTION,  
PERMANENT INJUNCTION AND  
DECLARATORY JUDGMENT

THE PRESBYTERY OF SOUTH LOUISIANA  
OF THE PRESBYTERIAN CHURCH (USA)

NOW INTO COURT, through undersigned counsel, comes petitioner, Carrollton Presbyterian Church, a Louisiana nonprofit corporation, domiciled in the Parish of Orleans. Petitioner is a local ("particular") church corporation which seeks relief by way of this Amended Petition including, but not limited to, injunctive relief and a declaratory judgment that all property titled in its name and held by or for it is owned and held by or for it without a trust or other enforceable property interest in favor of the defendant. Petitioner respectfully represents:

Paragraphs 1 – 51 of Carrollton's original Petition for Declaratory Judgment, filed on March 27, 2008, are re-alleged and incorporated as if fully stated herein.

52.

PCUSA Book of Order, at G-9.0503a.(4), G-11.0103.s. and G 11.0502j, states that when there is a "report" that a particular church is "affected with disorder" a presbytery can, without prior notice or hearing, appoint an "administrative commission" to indefinitely assume "original jurisdiction of the existing session" (i.e. remove and replace the governing body of the particular church) and act to "correct the difficulties," which can include the power to "dissolve a pastoral relationship" (i.e. remove and replace the local pastor). The use of an administrative commission is intended to address *spiritual* matters and operate *ecclesiastically* to assure sound doctrine and to correct any internal divisions within a particular congregation that might otherwise threaten the peace, purity and unity within a local congregation.

53.

PCUSA presbyteries have begun departing from the customary and expected use of administrative commissions, and have started misusing them for *temporal*, civil purposes — as a

device to try and expropriate local church property.

54.

PCUSA presbyteries, in response to dissent, whether perceived or actual, by local congregations, ministers, church officers, and trustees to certain external denominational actions, have variously: a) taken acts intended to assert ownership or place clouds on otherwise merchantable local property titles by recording, without prior notice, affidavits or other documents in local mortgage and conveyance records which improperly assert trusts on local church property in favor of the denomination, regardless of the facts of a local church's property history or the laws of the state in which local church property is situated, b) without notice sought to change locks on local church property and otherwise seize local church assets, and c) appointed "administrative commissions" to assert "original jurisdiction" to supplant existing congregational governance by removing, without notice and opportunity for hearing, dissenting ministers and sessions, thereby permitting the PCUSA presbytery to effectively confiscate local church property and deal with it as if its own.

55.

Heightening the threat to local congregational property, the PCUSA, through its Office of General Assembly (Department of Constitutional Services), issued "Advisory Opinion Note 19", which states in part III thereof that if a presbytery, such as the PSL, fails to appoint an administrative commission to take over control of a local church voicing dissent over denominational policies then the next higher ecclesiastical authority, the synod, may appoint an administrative commission to take over control of the presbytery, so as to thereby gain control of local church property.

56.

Illustrating the aggressive tactics increasingly being used by PCUSA presbyteries to utilize "administrative commissions" as the mechanism or device to try and effect denominational ownership and control over local church property, the PCUSA headquarters prepared legal strategy memoranda, waived any privilege of confidentiality, disclosed the memoranda to the press and public, and made them available on the internet. The PCUSA legal strategy memoranda (P-16):

- a) advocate use of administrative commissions specifically for church property disputes, and in conjunction therewith advises how to remove the local pastor and/or governing board of the local church;
- b) advise how to freeze local church assets and physically seize property;
- c) recommend placing a cloud on local church property titles by filing affidavits in property records, irrespective of state law or the facts of any property in dispute;
- d) recommend mailing letters concerning contested property to any banks or other financial institutions that hold accounts for the local church, which letters “order” that no assets be released to the local church;
- e) instruct presbyteries to investigate the religious background of any judge assigned to the case in order to exploit potential partiality or religious bias;
- f) recommend that presbyteries in their pleadings “use spiritual language” in order to posture themselves in a positive light, and to negatively refer to the local church in the caption and in pleadings as “schismatic”; and
- g) recommend to presbyteries, through the use of administrative commissions, to try and keep the local church in a defensive secular legal posture, counseling “Let the schismatics seek Caesar’s help.”

57.

In response to this escalation of retaliatory behavior, a national conclave of Presbyterians gathered from around the United States passed a resolution on July 22, 2006 stating:

“ ... we call upon the Moderator of the PCUSA and all general presbyters to announce and adopt a moratorium on discipline of ordained members engaged in discourse regarding the issues of theology and polity which confront our denomination, including those discussions which may lead to a consideration of departure from the denomination. We call upon you to announce a moratorium on actions to seize or encumber property, interfere with the operations of duly elected session members, or otherwise exercise or initiate discipline upon ordained members of our denomination for engaging in such discussions on either side of the debate.”

On August 22, 2006 the highest PCUSA officials, the Stated Clerk and the Moderator, issued a reply, refusing to urge or otherwise call for such a moratorium.

58.

Notwithstanding the above described national pattern of PCUSA presbyteries misusing administrative commissions for temporal, rather than spiritual, purposes, as a device to take control of local property titled in the name of the local congregation and over which the denomination has no valid trust interest, when Carrollton Presbyterian Church initially filed suit in the captioned matter in March, 2008, it sought only a declaratory judgment and did not seek injunctive relief. Carrollton did not seek injunctive relief at that time because at the time of

original filing the Presbytery of South Louisiana had recently adopted an internal PSL rule that prohibited the appointment of an administrative commission except by a three-fourths vote of all voting members attending a meeting of the entire presbytery.

59.

However, since the time of original filing the Presbytery has acted in escalating fashion as follows:

a) On June 3, 2008, the PSL rescinded that rule of a three-fourths vote and now only requires a 50.1 percent vote to approve the extraordinary step of appointing an administrative commission to take control of a local church and its property (P-17);

b) On September 18, 2008, the PSL notified the prospective purchaser of a portion of Carrollton's property that any sale must be approved by the PSL even though it is undisputed that under the PCUSA constitution and its exception provision of G-8.0701, timely exercised by Carrollton, Carrollton has the right to sell its property without the prior approval of the presbytery, synod or General Assembly (P-18);

c) On September 22, 2008, the PSL, under its new "simple majority" rule, appointed a "standing" administrative commission with presbytery-wide jurisdiction to assume "original jurisdiction" (i.e., remove the pastor and the board of elders and assume governance over any local church and its property within the geographic bounds of the Presbytery of South Louisiana in which the administrative commission, at its sole discretion, may decide. (However, when the Presbytery appointed the standing administrative commission it exempted Carrollton Presbyterian Church, as negotiations were pending concerning the disposition of Carrollton property) (P-17), and;

d) The PSL has now included on the agenda for its upcoming February 17, 2009, PSL meeting a notice that the PSL executive committee (Council) will recommend that the Presbytery adopt an administrative commission with authority "to assume original jurisdiction of the Carrollton Presbyterian Church, New Orleans, and that the Commission assumes said original jurisdiction." (P-19, Item 13 on Notice of Agenda for the upcoming PSL meeting of February 17, 2009). Carrollton first received notice of this PSL agenda item on February 4, 2009.

60.

A monetary award is an insufficient remedy. Absent a temporary restraining order and preliminary injunction, the rights of petitioners and the ministry of Carrollton Presbyterian Church will be irreparably injured. Carrollton supports numerous local, national, and international ministries and missionaries. No amount of subsequent monetary award would be an adequate remedy to the irreparable damage that would be done to the mission and ministries of Carrollton Presbyterian Church which would occur as a result of confiscatory action initiated by the PSL in retaliation for the exercise of petitioner's rights.

61.

A temporary restraining order and preliminary injunction while this suit is pending is necessary to stay the hand of the PSL from appointing an administrative commission that would, without just cause, usurp and replace the authority of the pastor, the session, or the board of trustees. Said restraining order and preliminary injunction would protect the members of Carrollton Presbyterian Church who, under Louisiana nonprofit corporation law, are also the members and in effect the shareholders of the local church corporation. Said restraining order and preliminary injunction would preserve the status quo until such time as the question of ownership and use of the property of Carrollton Presbyterian Church can be determined by this court. Absent a temporary restraining order and preliminary injunction the rights of petitioner, the governing body of Carrollton Presbyterian Church (the session), and the members of the congregation of Carrollton Presbyterian Church, and the property rights of Carrollton Presbyterian Church will be irreparably injured.

62.

Petitioner seeks a permanent injunction in the form of the preliminary injunction and a declaratory judgment that all property held by or for Carrollton Presbyterian Church, and any improvements thereon, whether real or personal, corporeal or incorporeal, movable or immovable, is held without any trust in favor of a national denomination or any of its regional administrative units, such as the PSL, and that all property held by or titled in the name of the local church corporation is held by it in full and exclusive ownership and that neither the PCUSA nor the PSL has any right, title or interest, in trust or otherwise, in said property, nor right to determine the ownership thereof.

63.

The actions by PCUSA presbyteries described above violate state property law and trust law, free speech rights guaranteed by the First and Fourteenth Amendments to the United States Constitution and by Article I, Section 7 of the Louisiana Constitution, the religion clauses of the First Amendment to the United States Constitution and Article I, Section 8 of the Louisiana Constitution, the due process guarantees of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Louisiana Constitution, and substantive property

rights guaranteed under Article I, Section 4 of the Louisiana Constitution. The effect of such actions, if taken in whole or in part or threatened by the PSL, would chill if not violate the foregoing, protected rights, interfere with appropriate local church governance of congregational matters, impede the ability of the congregation of Carrollton Presbyterian Church to hold a congregational or corporate meeting free of improper interference, and cloud the title of property held by Carrollton Presbyterian Church.

64.

Under Louisiana law a showing of irreparable harm is not required when the deprivation of a constitutional right is involved. Nor is a showing of irreparable harm required under Louisiana law when the moving party demonstrates that the action sought to be enjoined is in violation of prohibitory law.

65.

Under Louisiana law a showing of irreparable harm is not required to protect real property rights, to protect the ownership, possession and enjoyment of immoveable property.

66.

Carrollton Presbyterian Church is a not-for-profit corporation. It's primary purpose is not monetary but spiritual and philanthropic. A monetary award is thus an insufficient remedy at law. Absent a temporary restraining order and preliminary injunction, the rights of petitioners and the ministry of Carrollton Presbyterian Church will be irreparably injured. It supports numerous ministries and missionaries, as more fully described in the Memorandum submitted in support of this Petition. No amount of subsequent monetary award would be an adequate remedy to the irreparable damage that would be done to the mission and ministries of Carrollton Presbyterian Church which would occur as a result of confiscatory or disciplinary action initiated by the PSL in retaliation for the exercise of petitioner's rights.

67.

A temporary restraining order and preliminary injunction during the pendency of this suit is necessary to stay the hand of the PSL from appointing an administrative commission that would, without just cause, usurp and replace the authority of the pastor, the session, or the board of trustees. Said restraining order and preliminary injunction would protect the members of

Carrollton Presbyterian Church who, under Louisiana nonprofit corporation law, are also the members and, in effect, the shareholders of the local church corporation. Said restraining order and preliminary injunction would preserve the status quo until such time as the question of ownership and use of the property of Carrollton Presbyterian Church can be determined by this Court. Absent said temporary restraining order and preliminary injunction the rights of petitioner, the governing body of Carrollton Presbyterian Church (the session), and the members of the congregation of Carrollton Presbyterian Church, and Carrollton Presbyterian Church property rights will be irreparably injured.

68.

Inasmuch as petitioner seeks only a temporary restraining order and preliminary injunction during the pendency of this suit, the interests of the petitioner and the members of Carrollton Presbyterian Church and its local church corporation outweigh any possible injury to the PSL which might result from the granting of a temporary restraining order and a preliminary injunction, said relief and injunction being in the public interest.

69.

There is a substantial likelihood that Carrollton Presbyterian Church will prevail on the merits of its suit for permanent injunction and declaratory judgment.

**WHEREFORE**, Petitioner, Carrollton Presbyterian Church, prays that a temporary restraining order and preliminary injunction be issued herein and that a permanent injunction and a declaratory judgment be issued herein after trial on the merits as follows:

- 1) Temporary Restraining Order - restraining and enjoining defendant The Presbytery of South Louisiana and any of its agents, employees or other persons or entities acting on its behalf or in its stead, from:
  - (a) filing any documents in the mortgage and conveyance records in the Parish where the subject property is located, the effect of which would be to place a cloud on the title of any property titled in the name of petitioner;
  - (b) otherwise taking any action to claim or assert ownership, use, or control of local church property, whether corporeal or incorporeal, movable or immovable, or real or personal, or a right to determine ownership, use or control of local church property, in the possession of, control of, owned by or titled in the name of Carrollton Presbyterian Church; and
  - (c) asserting any rights to the property of Carrollton Presbyterian Church, including but not limited to seeking to change the locks of

CPC, initiating any disciplinary action against the ministers or members of CPC, appointing an administrative commission with authority to assume "original jurisdiction" over Carrollton's local governance and control of local property possessed by or titled in Carrollton's name, or otherwise interfering, by dissolution or otherwise, in any way with the rights and responsibilities of the ministers, or employees of CPC, the governing body of CPC (the session), its congregation, or the governing body of its local church corporation Carrollton Presbyterian Church (the board of trustees);

- 2) Preliminary Injunction - enjoining defendant during the pendency of this suit, from any of the acts described in paragraph 1) of this prayer;
- 3) Permanent Injunction - permanently enjoining defendant from any of the acts described in paragraph 1) of this prayer; and
- 4) Declaratory Judgment - declaring that all property held by or titled in the name of the petitioner, and any improvements thereon, whether corporeal or incorporeal, movable or immovable, or real or personal, is held without trust for the use and benefit of the PCUSA or other national denomination, or any of its regional administrative units such as the Presbytery of South Louisiana, and that the petitioner holds all property titled in its name, and all improvements thereon, in full and complete ownership pursuant to the laws of the State of Louisiana and as set forth in petitioner's articles of incorporation, and that neither the PCUSA nor any of its regional administrative units such as the Presbytery of South Louisiana has any right, title or interest in said property nor right to determine the ownership, use or control thereof.

Petitioner also prays that defendant be served with a copy of the above and foregoing petition and order, that defendant be cited to answer said petition and to appear before this Honorable Court at a date and time fixed by this Court to show cause why a preliminary injunction should not issue as prayed for and, after all due proceedings had, a permanent injunction and a declaratory judgment issue as prayed for in favor of petitioner, for all general and equitable relief, and for all costs of these proceedings.

Respectfully submitted,



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**PLEASE SERVE:**

**THE PRESBYTERY OF SOUTH LOUISIANA  
OF THE PRESBYTERIAN CHURCH (USA)**

*Through its agent for service of process:*

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