

IN THE SUPREME COURT OF THE STATE OF OREGON

HOPE PRESBYTERIAN CHURCH OF ROGUE RIVER, a domestic
nonprofit corporation,
Plaintiff-Respondent, Petitioner on Review,

v.

PRESBYTERIAN CHURCH (U.S.A.) and PRESBYTERY OF
THE CASCADES, a domestic nonprofit corporation,
Defendants-Appellants,
Respondents on Review.

Supreme Court No. S059584
Court of Appeals No. A139430
Jackson County Circuit Court No. 07-2707-E2

PETITIONER ON REVIEW'S BRIEF ON MERITS

Appeal from Judgment of the Jackson County Circuit Court
The Honorable G. Philip Arnold

Appeal from the Decision of the Oregon State Court of Appeals
Before Ortega, Presiding Judge, Armstrong and Landau

Court of Appeals Opinion Filed: April 27, 2011
Author of Opinion: Laudau, J. Pro Tempore
Concurring Judges: Ortega, P.J. and Armstrong, J.

James R. Dole
OSB No. 892272
Dole, Sorenson, Ransom
& Ferguson
1867 Williams Hwy. Suite 109
Grants Pass, OR 97527
(541) 476-3883
Of Attorneys for Plaintiff-Respondent,
Petitioner on Review
Hope Presbyterian Church of
Rogue River

W. Michael Gillette, OSB No. 660458
Jill S. Gelineau, OSB No. 852088
Sara Kobak, OSB No. 023405
Schwabe Williamson & Wyatt P.C.
Pacwest Center, Suites 1500-2000
1211 S.W. Fifth Avenue
Portland, OR 97204
503-222-9981
Of Attorneys for *Amicus Curiae*
Presbyterian Law Committee

Forrest A. Norman, OHB No. 0059389
Pro Hac Vice
Gallagher Sharp
Sixth Floor, Bulkley Building
1501 Euclid Avenue
Cleveland, OH 44115
216-522-1175
Of Attorneys for *Amicus Curiae*
Presbyterian Lay Committee

James A. Wallan
OSB No. 861029
Hornecker, Cowling, Hassen
& Heysell, LLP
717 Murphy Road
Medford, Oregon 97504
(541) 779-8900
Attorney for Defendants-
Appellants, Respondents
on Review
Presbyterian Church (U.S.A.)
and Presbytery of the Cascades

Yen P. Nguyen CSB No. 23909
Weil Gotshal & Manges
201 Redwood Shores Parkway,
#500
Redwood Shores, CA 94065
650-802-9009
Of Attorneys for Respondent on
Review/Defendants-Appellants
Presbyterian Church (U.S.A.)
and Presbytery of the Cascades

TABLE OF CONTENTS

1.	Statement of the legal questions presented and of the rules of law to be established	1
2.	Nature of the action or proceeding, relief sought in the trial court and the nature of the trial court's judgment	2
3.	Statement of Facts Material to Determination of Review	3
4.	Summary of the Argument	8
5.	Argument	10
A.	The Court should hold that Oregon adopts the neutral principles approach in resolving disputes regarding church property	10
B.	The Court should hold that, applying neutral principles of Oregon law, no trust was created over plaintiff's real and personal property in favor of defendants in a legally cognizable manner	21
1.	Neutral principles of Oregon real property law require that the trial court's decision be affirmed	25
2.	Clear and convincing evidence fails to establish the existence of a trust	29
C.	The Court should hold that plaintiff corporation and the church congregation are not alter egos and that the purported acts of the congregation cannot be imputed to plaintiff	43

D. The Court should hold that, if any trust was created here, plaintiff was free to revoke it and did so 45

6. Conclusion 47

Certificate of Compliance

Certificate of eFiling/Service

TABLE OF AUTHORITIES

Cases Cited

<i>Abercrombie v. Hayden Corp.</i> 320 Or 279, 883 P2d 845 (1995) .	28
<i>All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina et al</i> , 385 S.C. 428; 685 Se 2d 163 (2009)	20, 24, 25
<i>Berean Fundamental Church Council, Inc. v. Braun</i> , 281 Or 661, 576 P2d 361 (1978)	15
<i>Confusion and Coercion in Church Property Litigation</i> , 96 Va L Rev 443, 447 (2010)	18, 19
<i>Connall v. Felton</i> , 225 Or App 266, 201 P3d 219 (2009) . . .	39, 40
<i>Connecticut General Life Ins. Co. V. Department of Revenue</i> , 12 Or Tax 461 (1993)	21
<i>Decker v. Berean Baptist Church</i> , 51 Or App 191, 624 P2d 1094 (1981)	16
<i>Episcopal Church in Diocese of Connecticut v. Gauss</i> , 302 Conn 408, 28 A 3d 302 (2011)	20
<i>Fluker Community Church v. F.B. Hitchens</i> , 419 So 2d 445 (La Sct 1982)	19, 20
<i>Hatley v. Stafford</i> , 284 Or 523, 588 P2d 603 (1978)	28
<i>Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A)</i> , et al, 242 Or App 485, 255 P3d 645 (2011)	6, 7, 10, 14, 15, 29, 30, 31, 32, 38, 44

<i>In re Roman Catholic Archbishop of Portland in Oregon</i> , 335 BR 842 (US Bkry 2005)	16
<i>Jones v. Wolf</i> , 443 US 595 (1979)	7, 15, 21, 22, 23, 29
<i>Lang v. Allen</i> , 120 Or 96, 251 P 715 (1926); <i>Roseman v.</i> <i>Lansing</i> 113 Or 638, 232 P 648 (1925)	28
<i>O'Neil v. Twohy Bros. Co.</i> , 98 Or 481, 190 P 306 (1920)	28
<i>Presbyterian Church v. Hill Church</i> , 393 US 440 (1969)	16
<i>Presbytery of Bismark v. Allen</i> , 74 ND 400, 22 NW2d 625 (1946)	14, 15
<i>Presbytery of Huron v. Gordon</i> , 68 SD 228, 300 NW 33 (1941)	14, 15
<i>Samuel v. King</i> , 186 Or App 684, 64 P3d 1206 (2003)	40
<i>Shipe v. Hillman</i> , 206 Or 556, 292 P2d 123 (1955)	39
<i>Susitna Ltd. V. Pacific First Federal</i> , 118 Or App 126, 846 P2d 438 (1993)	28
<i>Timberridge Presbyterian Church, Inc. V. Presbytery of Greater</i> <i>Atlanta</i> , 307 Ga App 191, 193, 705 SE 2d 262 (2011)	21, 22
<i>Trustees of the Presbytery of Willamette v. Hammer</i> , 235 Or 564, 385 P2d 1013 (1963)	10, 13, 14, 15
<i>United States National Bank of Portland v. Krautwash, et al</i> , 221 Or 609, 351 P2d 947 (1960)	41, 42
<i>Winters v. Winters</i> , 165 Or 659, 109 P2d 857 (1941)	30, 39

TABLE OF AUTHORITIES

Statutory Provisions and Other Authorities

Book of Order	6, 7, 9, 10, 21, 23, 24, 27, 29, 30, 43, 44, 45
ORS 41.470	28
ORS 41.580(1)(f)	26, 28
ORS 42.220	26
ORS 61.005 to 61.125	33, 35
ORS 61.131 to 61.370	33, 35
ORS 61.361	33
ORS 61.375 to 61.481	33, 35
ORS 61.375(1)	36
ORS 61.505 to 61.950	33, 35
ORS 93.020(1)	25, 28
ORS 130.005	38
ORS 130.150(1)	29
ORS 130.150(1)(b)	30, 37, 38
ORS 130.910	38
Presbyterian Church Constitution	14
Presbyterian Policy for Church Officers	20

1. Statement of the legal questions presented and of the rules of law to be established.

A. Should Oregon adopt a rule of law for adjudicating church property disputes which requires their resolution without regard to whether litigants are religious organizations. The Court should hold that Oregon adopts the neutral principles approach to resolving these disputes, which does exactly that.

B. Did the court of appeals err in holding that a trust was created over all of plaintiff's real and personal property despite the failure to comply with the clear requirements of Oregon trust, real property and corporate law. The Court should hold that a legally defective attempt to amend a corporation's articles of incorporation was not a legally cognizable way of creating a trust over all of plaintiff's real and personal property.

C. Whether the court of appeals erred in disregarding the distinction between the church congregation's ecclesiastical jurisdiction as distinct from the church corporation's civil rights and obligations. The Court should hold that plaintiff corporation is independent from the church congregation, owns and controls its

property, must follow its corporate bylaws in order to convey or otherwise deal with its property and is not bound to the purported acts of the congregation with which it is affiliated, except as may be required or allowed by its bylaws.

D. Whether, among other statutory requirements to create a trust over real property and personal property, ORS 130.505(1) would permit plaintiff here - purported settlor of a trust - to revoke that trust where the terms of the trust do not expressly provide that it is irrevocable. The Court should hold that any trust which existed here does not expressly provide that it is irrevocable and the plaintiff here, if it ever created a trust, revoked it.

2. Nature of the action or proceeding, relief sought in the trial court and the nature of the trial court's judgment.

Plaintiff Hope Presbyterian Church filed an action seeking to quiet title to its real property located in Rogue River, Oregon, and seeking a declaration that defendants did not have a claim to any of plaintiff's property. Defendants Presbyterian Church (U.S.A) and Presbytery of the Cascades answered, denying plaintiff's claims. The

parties filed motions for summary judgment seeking a ruling on all claims except for plaintiff's Third Claim claim which sought injunctive relief. The general judgment under review is a general judgment based upon the trial court's ruling in plaintiff's favor on its motion and against defendants on theirs.

3. Statement of Facts Material to Determination of Review.

Plaintiff first incorporated in 1930 under the name "Hope Presbyterian Church of Rogue River". Plaintiff's-Respondent's Brief and Excerpt of Record dated September 25, 2009, ER 6. Plaintiff's corporate purpose is set forth in its articles of incorporation, which have never been amended:

"[T]o preach the gospel & to inculcate moral & spiritual principles thru preaching & Teaching, also thru social & Recreational Progress." *Id.*

Nothing in the corporation's articles or any other governing documents have ever required the corporation to maintain an affiliation with a Presbyterian denomination.¹

¹ There are several recognized Presbyterian associations in the United States in addition to defendant PCUSA, including the Evangelical Presbyterian Church, Presbyterian Church in America, Orthodox Presbyterian Church and Cumberland Presbyterian Church.

The congregation associated with plaintiff has existed in Rogue River continuously since early in the 20th Century. Plaintiff and the church congregation have been associated with organizations espousing a Presbyterian form of church government throughout their history. The congregation has over the past 100 years built and maintained a thriving place of worship in this small Southern Oregon town. This has been without material, financial or other support from defendants.

When plaintiff incorporated in 1930, the Presbyterian church in Rogue River, then known as Woodville, was a short distance from its present location at 515 Broadway. At the time the church congregation first organized, title to the real property where its place of worship was located was vested in the name of the church's trustees. ER 3-4.

The church moved to its present location in the 1950's. At that time, title to the property was vested in the name of the Trustees of the Presbytery of Southwest Oregon. ER 12. In 1961, the Presbytery transferred title to plaintiff. *Id.* This conveyance was by warranty

deed, outright, and free of any liens or encumbrances. The conveyance recites:

“* * * Trustees of the Presbytery of Southwest Oregon, * * * hereby grant, bargain, sell and convey [the property] To have and to Hold the above described and granted premises unto the said grantee, its heirs and assigns forever. And the grantor does covenant that it is lawfully seized in fee simple * * * and that it will and its successors shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.” *Id.*

No conveyance of any real property to plaintiff or the congregation's trustees has at any time restricted ownership of the corporation's property for religious purposes or established an express trust. *See* ER 12, 30-54.

Presbyteries and Synods appear to have loaned money to plaintiff over the years. ER 14, 16, 18, 20, 22, 26, 27. These debts were evidenced by promissory notes and church property was pledged as security with mortgages and trust deeds. *Id.* The Presbyteries also appear to have made one grant to plaintiff. The loans and grant were fully repaid, together with interest. The liens were all discharged.

In 2001, plaintiff acquired an additional parcel of real property from a third party, the Pyles. ER 29. This conveyance, like the previous ones, was by warranty deed and without any restrictions or reservations.

Defendant PCUSA did not exist until 1983. Appellants' Brief dated June 26, 2009, p 6. It was created by a merger of the Presbyterian Church in the United States of America and the United Presbyterian Church of North America. *Id.*

Defendants' constitution is the *Book of Order*. Section G-8.0200 of that document provides:

“All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A).” *Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A), et al*, 242 Or App 485, 489, 255 P3d 645 (2011).

Section G-8.0200 was included in the *Book of Order* in response to *Jones v. Wolf*, 443 US 595 (1979).

In 1983, persons associated with the congregation of Hope Presbyterian Church signed a document entitled "Articles of Amendment" for an entity identified as "Hope 'Community' or 'United' Presbyterian Church," wherein the statement is made: "This corporation is a church congregation of and holds all property as trust for the Presbyterian Church (U.S.A.)." *Hope Presbyterian*, 242 Or App at 491. There is no corporation affiliated with plaintiff or the church congregation known by the name "Hope 'Community' or 'United' Presbyterian Church." It does not appear there ever has been any entity with that or a similar name in Oregon at any time. These articles of amendment were never filed with the Oregon Secretary of State. *See Hope Presbyterian*, 242 Or App at 492.

In July of 2007, the congregation of Hope Presbyterian Church voted 62 in favor and 2 opposed to disaffiliate from appellants. *Id.* Because plaintiff's representatives and the church congregation knew appellants intended to assert claims against its real and personal

property, plaintiff instituted this action to assure that the congregation would continue to have a place to worship.

On cross motions for summary judgment, the trial court ruled for plaintiff.

4. Summary of the Argument.

The court of appeals incorrectly held that the trial court applied the wrong test to adjudicate this church property dispute. The trial court correctly applied the neutral principles approach. The Court should make clear that, for compelling reasons, Oregon follows the majority of states in applying the neutral principles approach.

The trial court was correct when it held that there was insufficient evidence that a trust exists over plaintiff's real and personal property. Oregon real property law is clear that under circumstances like the present, no trust could come into existence under these facts. Neutral principles of law, including the statute of frauds and the parol evidence rule, would not permit the result which defendants seek.

Likewise, Oregon trust law would not find a trust in these circumstances. The unilateral declaration in §G 8.0200 in the *Book of Order* cannot create a trust. The fact that the congregation's ecclesiastical vote acknowledging an ecclesiastical trust was not recorded is evidence which cuts both ways. It can just as readily be interpreted to mean that the congregation and plaintiff corporation did not intend any trust to have civil law effect, encumbering their property, as they took no measures to make the purported declaration a matter of public record. The fact that this assertion makes no reference to the purported trust's revocability means - under Oregon law - that it is revocable. The congregation's subsequent vote to withdraw from the denomination and plaintiff corporation's unequivocal actions to sever any relationship it may have had with defendants clearly revoked any trust to the extent one might have ever existed. The defective, incomplete attempt to amend a corporation's articles cannot constitute the kind of clear and convincing evidence necessary under Oregon law to create a trust.

5. Argument.

A. The Court should hold that Oregon adopts the neutral principles approach in resolving church property disputes.

The court of appeals held:

“ * * * [T]he only relevant Oregon Supreme Court decision appears--at least implicitly--to adopt the hierarchical deference approach from which defendants contend. Under that approach, the declaration of the existence of a trust in the *Book of Order* is determinative.” *Hope Presbyterian*, 242 Or App at 495.

This was error. Oregon has not adopted the hierarchical deference approach. Oregon courts have consistently relied on neutral principles of Oregon law to resolve church property disputes and have properly declined to defer to religious organizations. This court should now make clear that Oregon is a neutral principles jurisdiction.

The court of appeals incorrectly ruled that the Supreme Court in *Trustees of the Presbytery of Willamette v. Hammer*, 235 Or 564, 385 P2d 1013 (1963), implicitly adopted the hierarchical deference approach. Holding that Oregon has implicitly adopted one approach over others is problematic in itself. But the court of appeals here misreads *Trustees of the Presbytery of Willamette*.

Trustees of Presbytery of the Willamette was a straightforward quiet title action to construe a deed. The conveyance by its terms was from the Conditis “to the Trustees of Pleasant Grove Presbyterian Church, their successors and assigns forever.” 235 Or at 566. The defendant asserted that, contrary to the plain language of a deed vesting title in plaintiffs, the property was “subject to a trust for the maintenance and upkeep of the Pleasant Grove Presbyterian Church and a contiguous cemetery.” *Id.* The trial court held for plaintiff and the Supreme Court affirmed.

In construing the deed, the Supreme Court relied exclusively on common, neutral principles of Oregon real property and trust law. The court first considered the parol evidence rule, then represented by 1 Restatement, Trusts, §38(3). The court construed the relevant deed by its plain language to hold that the trustees were not intended to have a beneficial interest in the property themselves and their use of the property as trustees was not restricted as the defendants asserted. *Id.* at 567. The court held that as an evidentiary matter, an affidavit of one of the grantors’ heirs executed 45 years after the conveyance

was unhelpful hearsay. It could not be read to restrict the property's use as defendants maintained. *Id.* In support of this, the court relied on two of its prior opinions relating to the creation of trusts, neither of which involved church property. The court then discussed application of the statute of frauds, holding that defendants could not prevail because the trust which they advocated was unsupported by any writing "prior to or at the time of the transfer." *Id.*

The extent to which the case involved application of church structure was, at best, secondary to its decision. Defendants argued that plaintiff failed to prove that title had passed from the trustees of the local church to the Presbytery. At the time of the conveyance, the plaintiff was unincorporated. It later incorporated and the Supreme Court held that "when a church incorporates is [sic] succeeds to the rights of the unincorporated body including the title to land held by church trustees." *Id.* at 568. This holding was not based on what kind of church was involved, hierarchical or otherwise.

The corporation later dissolved, which left the question as to whether the Presbytery acceded to the corporation's rights. *Id.* Trial

testimony included an explanation from a Presbyterian pastor and then-secretary-treasurer of the Presbytery that, under the constitution of the United Presbyterian Church, “when a member church is dissolved the property falls under the control of the Presbytery * * *.”

Id. There does not appear to have been any contrary testimony or other evidence and the court found the pastor’s testimony sufficient evidence to decide the question. In *Trustees of the Presbytery of Willamette*, Pastor Peniston did not decide a matter of law, he simply testified as to his understanding of how Presbyterian polity would apply in that particular instance.

It stretches a reasonable interpretation of *Trustees of the Presbytery of Willamette* to say that on this basis Oregon has adopted the hierarchical deference approach to resolve church property disputes, whether by implication or otherwise. If the court intended to establish a rule by which future church property disputes would be decided, it was that these cases are to be decided under neutral principles such as the parol evidence rule, the statute of frauds and common, state real property and trust law.

In *Trustees of the Presbytery of Willamette*, contrary to the opinion of the court of appeals in the present case, the Supreme Court did not resolve the case “by deferring to the provisions of the national Presbyterian Church Constitution.” *Hope Presbyterian*, 242 Or App at 647. It was resolved on the basis of neutral principles of Oregon law such as the parol evidence rule, the statute of frauds, and Oregon trust law. Reference to Presbyterian polity was necessary only for the trial court to decide who was the proper party to hold title to the property where the successor corporation to the original grantee had dissolved. That is no issue in this case.²

The court of appeals’ reference to *Presbytery of Bismark v. Allen*, 74 ND 400, 22 NW2d 625 (1946), and *Presbytery of Huron v. Gordon*, 68 SD 228, 300 NW 33 (1941), is unconvincing evidence that Oregon has adopted the hierarchical deference approach. These cases are relegated to a footnote at the end of the court’s opinion in *Trustees of*

²Indeed, the Court in *Trustees of the Presbytery of Willamette* criticized the evidence on this: “The manner in which title to church property is held within the Presbyterian Church organization could have been made more explicit by reference to the Constitution of the United Presbyterian Church in the United States of America * * *”. *Id.* at 569.

the Presbytery of Willamette. In both, the churches were organized as corporations, articles of which expressly bound them to the Presbyterian church. Moreover, as the court of appeals here recognizes, until the United States Supreme Court decided *Jones v. Wolf* in 1979, “the hierarchical deference approach was the only one acceptable to a majority of” the United States Supreme Court. *Hope Presbyterian*, 242 Or App at 507. Accordingly, neither *Presbytery of Bismark* nor *Presbytery of Huron* reflect courts making a choice among differing ways to resolve church property disputes. They do not support the court of appeals conclusion that Oregon has adopted the hierarchical deference approach.

In fact, other than the court considering the sufficiency of Pastor Peniston’s testimony in *Trustees of the Presbytery of Willamette*, no other reported Oregon decision relies on anything other than neutral principles of law to resolve church property disputes. The supreme court in *Berean Fundamental Church Council, Inc. v. Braun*, 281 Or 661, 576 P2d 361 (1978), relied entirely on the statute of frauds and other neutral principles of Oregon law. The Supreme

Court held that “having resolved the issue of whether or not there was a constructive trust in favor of the defendants, it is not necessary that we discuss the organizational issue of plaintiff and defendants.” *Id.* at 670.

In *Decker v. Berean Baptist Church*, 51 Or App 191, 624 P2d 1094 (1981), the court of appeals affirmed the trial court’s ruling that the plaintiffs, former members of a church in schism, had no claim to control over the church and its property. Relying on the United States Supreme Court’s decision in *Presbyterian Church v. Hill Church*, 393 US 440 (1969), the court held that because it was impermissible to consider church doctrine, plaintiffs had no legal claims to invalidate the corporate act of the defendant, which they disputed. 51 Or App at 198. The case was resolved strictly on the basis of neutral principles of Oregon law.

In *In re Roman Catholic Archbishop of Portland in Oregon*, 335 BR 842 (US Bkry 2005), the question was whether the court could apply secular principles to decide whether property was owned by the hierarchical Roman Catholic Church or by its particular parishes. The

archdiocese asserted that its liabilities could not be satisfied by resorting to property of the parishes and schools because the archdiocese merely held its property in trust for them. The archdiocese sought to assign at least beneficial title in property to the local churches. As a matter of Oregon statutes and neutral bankruptcy laws, the court rejected this. Judge Perris in that case clearly understood Oregon law to require her to rely on neutral principles to decide the case.

These cases show that Oregon courts have consistently declined to adjudicate church property disputes by deferring to the decisions of religious organizations. If the holdings in these cases do not expressly adopt the neutral principles approach as they appear to, then it remains a matter of first impression before this court now. This dispute therefore requires the court to make clear which approach Oregon follows.

The court should hold that Oregon courts must apply the neutral principles approach to resolving disputes over church property. The reason is that, among the alternatives, it is the most

suitable means of resolving these disputes fully and fairly, while protecting important constitutional principles. Justice Blackmun explained:

“The primary advantages of the neutral principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general - flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner a religious organization can ensure the dispute over the ownership of church property will be resolved in accord with the desires of the members.” *Jones*, 443 US at 605.

The neutral principles approach is the approach adopted by the majority of states which have decided the question. See “*Confusion*

and Coercion in Church Property Litigation, 96 Va L Rev 443, 447

(2010). In *Fluker Community Church v. F.B. Hitchens*, 419 So2d 445

(La SCt 1982), the Louisiana Supreme Court reasoned:

“* * * But it is now clear that a state, as a means of adjudicating a church property dispute, is constitutionally entitled to adopt a ‘neutral principles of law’ analysis involving considering of the deeds, state statutes governing the holding of church property, the local church’s charter, and the general church’s constitution and laws. The First Amendment does not require a state to adopt a rule of compulsory deference to religious authority in resolving church property disputes, where no issue of doctrinal controversy is involved.

Indeed, we think the safeguards against laws establishing religion and prohibiting the free exercise thereof contained in the First Amendment and in *Article I, § 8 of our state constitution* necessitate our adoption of the ‘neutral principles’ approach. Whatever authority a hierarchical organization may have over associated local churches is derived solely from the local church’s consent. Refusal to adjudicate a dispute over property rights or contractual obligations, even when no interpretation or evaluation of ecclesiastical doctrine or practice is called for, but simply because the litigants are religious organizations, may deny a local church recourse to an impartial body to resolve a just

claim, thereby violating its members' rights under the free exercise provision, and also constituting a judicial establishment of the hierarchy's religion." *Fluker*, 419 So2d at 447.

See also All Saints Parish Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina et al, 385 S C 428; 685 Se2d 163 (2009); *Episcopal Church in Diocese of Connecticut v. Gauss*, 302 Conn 408, 28 A3d 302 (2011).

Anything other than the neutral principles approach presents the potential for dilemmas which courts need not face. The hierarchical deference approach requires a court to rule on whether a religious group's polity represents a hierarchical structure or not. While that may be a simple matter for the Catholic Church, the United Methodist Church and other "mainstream" Christian denominations, nothing limits the hierarchical deference approach to those. Religious scholars even debate whether defendants represent a hierarchical form of church governance. *See J. Gray and J. Tucker*, PRESBYTERIAN POLICY FOR CHURCH OFFICERS (3d ed) (Geneva Press, 1999). The hierarchical deference approach would potentially require a court to determine, for the purpose of a property dispute,

whether an organization is even a “church” that qualifies for the application of this rule of law, exempting it from ordinary legal standards.³ As Justice Blackmun explained in *Jones v. Wolf*, the neutral principles approach frees the courts from these concerns by putting religious organizations on the same footing with all others in the adjudication of property disputes.⁴

B. The Court should hold that, applying neutral principles of Oregon law, no trust was created over plaintiff's real and personal property in favor of defendants in a legally cognizable manner.

Defendants have argued that the trial court erred by declining to consider the *Book of Order* in its ruling. This court should make no mistake: by this they mean that the decision should begin and end with §G-8.0200 of the *Book of Order*. Defendants' position is that considering anything else, including otherwise applicable neutral principles of Oregon law, would be error. *See Timberridge*

Presbyterian Church, Inc. V. Presbytery of Greater Atlanta, 307 Ga App

³ By way of example, the Court need only recall Oregon's judicial history of the Baghwan Shree Rajneesh and the former city of Rajneeshpuram. *See, e.g. Connecticut General Life Ins. Co. V. Department of Revenue*, 12 Or Tax 461 (1993).

⁴ Plaintiff fully concurs in this regard with the position and arguments of amicus Presbyterian Lay Committee.

191, 193, 705 SE2d 262 (2011). Defendants are wrong.

Nothing binds this court to ignore principles of Oregon law in resolving church property disputes such as this. Defendants' interpretation of *Jones v. Wolf* is inaccurate. They contend that the following is one of the Supreme Court's holdings and compels reversal of the trial court: "[T]he constitution of the general church can be made to recite an express trust in favor of the denominational church." *Jones*, 443 US at 606.

This was dicta. Justice Blackmun included this passage in response to Justice Powell's concern that the neutral principles approach would fail to protect the free exercise of religious association. *Jones*, 443 US at 610. Justice Blackmun disagreed, reasoning that the neutral principles approach does not inhibit religious association any more than any other neutral principles of law. Under the neutral principles approach, a trust in favor of a denomination could come into existence in any of a number of ways. Justice Blackmun simply listed some possibilities which could include amending the church constitution, so long as it reflected the parties'

mutual intent and was done in a way that conformed to the laws of the particular state. *Jones v. Wolf* cannot be interpreted to hold that any particular express trust clause, much less the one here, necessarily results in a ruling in the denomination's favor.

A court is not required to give effect to a trust clause like §G-8.0200 if the record otherwise fails to establish the valid existence of a trust. Justice Blackmun could not have been clearer that something like §G-8.0200 would be given effect if it was what the parties intended and "*provided it is embodied in some legally cognizable form.*" *Jones*, 443 US at 606 (Emphasis added). *Jones* clearly requires such trusts to be based on the intent of both parties, which is the ordinary rule of state law. The corollary is true, that if there is insufficient evidence of the parties' intent or otherwise the failure to properly establish a trust under neutral provisions of state law, then no trust can exist over a church's property in favor of the denominational church.

It was correct for the trial court here to decline to apply the *Book of Order* because, as discussed below, it was unnecessary.

Neutral principles of law overcome §G-8.0200 of the *Book of Order* because no trust was created here in a “legally cognizable” way.

In *All Saints Parish v. Waccamaw*, *infra*, the local congregation sought a declaration that the national Episcopal Church organization did not have an interest in the local church property. After making clear that South Carolina follows the neutral principles approach, the court held that the local church could sever its relationship with the national organization and retain its place of worship. *Id.* at 445. The court held that the Dennis Canon, a trust clause akin to §G-8.0200 of the *Book of Order*, did not divest the local church of its property because it was the declaration of a putative trust beneficiary at a time when the beneficiary had no vested interest in the property. *Id.* at 449. The court’s conclusion was further based on facts including that the purported trust did not provide for the trustees’ duties and that a quitclaim deed to the church property made clear that title was held in the congregation’s corporate entity. *Id.* at 448. The church’s corporate property owner properly took those acts which South Carolina’s Non-Profit Act would require in order to amend the

corporation's articles and sever its relationship with the national church. *Id.* at 450. This court should rule similar to the South Carolina Supreme Court in *All Saints Parish*, because Oregon law does not support the existence of a trust here.

1. Neutral principles of Oregon real property law require that the trial court's decision be affirmed.

If defendants were not religious organizations, this case would be simple. Plaintiff would prevail as a matter of law based on several common principles of Oregon real property law. The court should disregard the fact that defendants are religious organizations, reverse the court of appeals decision and affirm the trial court's judgment.

Under Oregon law, real property may only be transferred to a trust if the settlor executes a conveyance or other signed instrument actually transferring the property to the trust. ORS 93.020(1) provides:

“No estate or interest in real property, other than a lease for term not exceeding one year, nor any trust or power concerning such property, can be created, transferred or declared otherwise than by operation of law or by a conveyance or other instrument in writing, subscribed by the party creating,

transferring or declaring it, or by the lawful agent of the party under written authority, and executed with such formalities as are required by law.”

Likewise, the statute of frauds, ORS 41.580(1)(f), requires that an agreement to convey real property be evidenced by a signed writing.

If a deed is unambiguous, the parol evidence rule prohibits other evidence of terms of any other agreement that contradict the terms of another fully integrated agreement:

“41.740 Parol evidence rule. When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be, between the parties and their representatives or successors in interest, no evidence of the terms of the agreement, other than the contents of the writing, except where a mistake or imperfection of the writing is put in issue by the pleadings or where the validity of the agreement is the fact in dispute. However this section does not exclude other evidence of the circumstances under which the agreement was made, or to which it relates, as defined in ORS 42.220, or to explain an ambiguity, intrinsic or extrinsic, or to establish illegality or fraud. The term agreement includes deeds and wills as well as contracts between parties.”

Here, plaintiff corporation owns two parcels of real property and other assets. In 1961, plaintiff acquired its interest in the property at 515 Broadway, Rogue River, from the Trustees of the Presbytery of Southwest Oregon. The interest was conveyed by statutory warranty deed. Plaintiff corporation owns one other parcel of real property. It acquired this from a third party in 2001, also pursuant to a statutory warranty deed. Neither deed recites any trust or other restrictions on use.

Presbyteries which existed before defendants loaned money to plaintiff corporation in the 1950's. The loans were secured by mortgages and trust deeds. The loans were paid and the mortgages and trust deeds were discharged and reconveyed. Again, the discharge of these liens were without restrictions or reservations. On the basis of the chain of title to plaintiff's property the trial court was correct to decline to consider §G-8.0200 of the *Book of Order* because the facts were clear. §G-8.0200 has no bearing on this issue because, as a matter of law, no trust could be unilaterally imposed on plaintiff's property in favor of defendants without the existence of a

signed writing creating such a real property interest under ORS 93.020(1), ORS 41.580(1)(f), and ORS 41.470, and based on precedent of both this court and the court of appeals. *See, e.g., O'Neil v. Twohy Bros. Co.*, 98 Or 481, 190 P 306 (1920); *Lang v. Allen*, 120 Or 96, 251 P 715 (1926); *Roseman v. Lansing* 113 Or 638, 232 P 648 (1925); *Abercrombie v. Hayden Corp.* 320 Or 279, 883 P2d 845 (1995); *Hatley v. Stafford*, 284 Or 523, 588 P2d 603 (1978); *Susitna Ltd. V. Pacific First Federal*, 118 Or App 126, 846 P2d 438 (1993).

The court of appeals' decision here is inconsistent with these authorities. There is no basis for the court's ruling to the extent it departs from Oregon law, other than the status of defendants as religious organizations. This decision requires the court's intervention and reversal of the court of appeals. In the absence of reversal, this court would cast doubt on the legal effect, at least when a religious connection was made, of longstanding Oregon statutes and case law. Religious organizations should not be entitled to special preferred status in the courts of Oregon, particularly where it is used to coerce religious association as in these circumstances.

2. Clear and convincing evidence fails to establish the existence of a trust.

The court of appeals held that even if Oregon applied neutral principles of law and disregarded §G-8.0200 of the *Book of Order*, defendants would still prevail because the evidence established, as a matter of law, that a trust existed over plaintiff's property for the benefit of defendants. *Hope Presbyterian*, 242 Or App at 512. This was error. Oregon law is clear that no trust could exist in these circumstances.

The court of appeals erred when it held that a trust was properly created because there is sufficient evidence to show fulfillment of the requirements of ORS 130.150(1). The court here held that the trust was created from the "declaration by the owner of property that the owner holds identifiable property as trustee." *Id.* at 513. On this record, the court's holding is incorrect.

In *Jones v. Wolf*, Justice Blackmun reasoned that it was possible for members of religious organizations to create trusts. However, contrary to defendants' position, nothing in *Jones v. Wolf* compels a court to find that a statement such as §G-8.0200 of the *Book of Order*

is a legally cognizable way to create a trust if that would be inconsistent with neutral principles of state law. Under the neutral principles approach, the laws of the particular state control. Section G-2.0800 would be just one piece of evidence for the court's consideration, but state law would dictate the result.

For a trust to exist in Oregon, there must be clear and convincing evidence of a sufficiently specific, affirmative declaration from the putative settlor, consistent with ORS 130.150(1)(b) See *Winters v. Winters*, 165 Or 659, 109 P2d 857 (1941). Here the evidence is insufficient to find a trust ever existed.

Under the neutral principles approach, §G-8.0200 of the *Book of Order* should be irrelevant because it is the mere statement of the putative trust beneficiary. Nothing in Oregon law would support creation of a trust by such means. To the extent that the court of appeals may have held otherwise, it was incorrect.

The court of appeals erred when it held that "Hope Presbyterian amended its own bylaws by expressly including a provision stating that it is bound by the provisions of the PCUSA." *Hope Presbyterian*,

242 Or App at 514. It is undisputed that this amendment was to the congregation's bylaws, not the bylaws of plaintiff corporation. The congregation, while affiliated with plaintiff corporation, is a legally separate, unincorporated association. The document states:

"BY-LAWS
of the
Congregation of the Hope Presbyterian Church of
Rogue River, Oregon

Preamble

The Congregation of the Hope Presbyterian Church of Rogue River, Oregon does hereby enact the following By-Laws for the government of the church as an ecclesiastical body and all other instruments designed for the purpose are revoked as of this date, January 1, 1966 (as amended October 23, 1983)." Appellant's Brief, ER 16.

Nothing suggests that this amendment was intended to apply to plaintiff corporation. The amended bylaws refer to offices such as elder, deacon and the church pastor, which are all ecclesiastical positions under the Presbyterian form of government, not offices of a corporation. While plaintiff corporation is governed by three trustees according to its bylaws, a quorum of the congregation consists of "25 eligible voters". It is obvious that the amendment to the

congregation's bylaws does not affect plaintiff's rights. Nothing in the record supports a finding that plaintiff corporation was bound to this act of the congregation or that plaintiff's trustees took similar action.

The court of appeals further held, incorrectly, that "the congregation and its leadership approved the amendment to Hope Presbyterian's corporate documents * * *." *Hope Presbyterian*, 242 Or App at 514. There are numerous problems with the court's holding here. Nothing in the record supports a finding that a decision by "the congregation and its leadership" would bind plaintiff corporation. The document purports to have been signed by "F. Shirley Arnold", "Richard J. Condon" and "James W. Davis". Nothing in the record establishes that these individuals were duly elected trustees of plaintiff corporation at the time they signed the document or that they acted in accordance with the corporation's bylaws or the applicable provisions of chapter 61 of the Oregon Revised Statutes as it existed in 1983.⁵ For example, the document purports to amend the articles of incorporation for "Hope Community or United Presbyterian

⁵ Oregon's nonprofit corporations statutes are now within Chapter 65 of the Oregon Revised Statutes.

Church.” Plaintiff corporation has never been registered with the Oregon Secretary of State under this name. Nothing in the record establishes that it has, even without registration, used the name. On November 1, 1983, plaintiff corporation’s name on the registry of the Oregon Secretary of State was “Hope Presbyterian Church of Rogue River.”

The court of appeals incorrectly held that this document is valid as a binding amendment to the plaintiff’s articles of incorporation. This holding is contrary to Oregon law. There is no dispute the document was not filed with the secretary of state at any time. In November of 1983, ORS 61.361 provided:

“Procedure to amend articles of incorporation. (1)
Amendment to the articles of incorporation shall be made in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at an annual or a special meeting of members having voting rights. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950

for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(2) Any number of amendments may be submitted and voted upon at any one meeting.”

ORS 61.370 (1981) provided:

“**Articles of amendment.** The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

(1) The name of the corporation.

(2) The amendment so adopted.

(3) Where there are members having voting rights, a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(4) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.”

ORS 61.375 (1981) provided:

“Filing articles of amendment. (1) Duplicate originals of the articles of amendment shall be delivered to the Corporation commissioner. If the Corporation Commissioner finds that the articles of amendment conform to law, he shall, when all fees have been paid as in ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950 prescribed:

(a) Indorse on each of such duplicate originals the word “Filed,” and the month, day and year of the filing thereof.

(b) File one of such duplicate originals in his office.

(c) Issue a certificate of amendment to which he shall affix the other duplicate original.

(2) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the Corporation Commissioner, shall be returned to the corporation or its representative.”

ORS 61.380 (1981) provided:

“Effect of certificate of amendment. (1) Upon the issuance of the certificate of amendment by the Corporation Commissioner, the amendment shall become

effective and the articles of incorporation shall be deemed to be amended accordingly.

(2) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason.”

The purported amendment here does not identify plaintiff. It improperly indicates that it was adopted at a meeting of the trustees because it had no members *and also* that it was adopted at a meeting of its members. It was never filed with the Oregon Secretary of State and, accordingly, the State Corporation Commissioner never issued a certificate of amendment. Had the document been filed with the secretary of state it would have been rejected because, due to the foregoing defects, it did not “conform to law”. ORS 61.375(1).

Whether the purported amendment complied with the existing law is not a technical formality that can be disregarded. The court of appeals holds that despite its defects, this purported amendment determines the outcome of the case. Just as the court of appeals

disregarded the statute of frauds and the parol evidence rule, pp 25-28 *infra*, the only apparent basis for the court to have disregarded the requirements of Oregon's nonprofit corporation statutes is because defendants are religious organizations.

This court should reverse the court of appeals on this basis. The reason is apparent: the court of appeals incorrectly held that this document was evidence of the purported trust settlor's declaration that it held property in trust. ORS 130.150(1)(b). In fact, the evidence *fails* to establish that any such legally effective declaration was ever made because the record lacks proof that plaintiff's duly authorized representatives ever took any action to correct these defects and they never sought to make the amendment a matter of record by filing it with the secretary of state.

Even if the purported articles of amendment was a legally valid document under Oregon law as applied to plaintiff corporation, it still fails to constitute clear and convincing evidence that a trust was created in the manner required by ORS 130.150(1)(b), various other provisions of Oregon law relating to the creation of trusts, and

existing Oregon precedent. Any purported trust created by these purported articles of amendment is impossibly vague because it fails to sufficiently identify the property or specify the rights and obligations of the trustees and beneficiaries. Considering the document against neutral principles of Oregon law, it does not create a trust.

ORS 130.150(1)(b) requires that to establish a trust, the trustor's declaration must state "that the owner holds identifiable property as trustee." While this statute was enacted after 1983, it applies here and does not depart from otherwise existing Oregon law. ORS 130.005; 130.910.

The court of appeals erred here when it concluded that the articles of amendment declared defendant to hold "identifiable property as trustee." *Hope Presbyterian*, 242 Or App at 513. The amendment purports to declare that the "church congregation * * * holds all property as trustee for the Presbyterian Church (U.S.A.)." This is insufficient under Oregon law. If the law permits creation of a trust by the declaration that the purported trustee holds "all property"

in trust, then ORS 105.150(1)(b) is left with virtually no meaning because the property is not sufficiently identified.

This problem is well-illustrated by the instant case. The purported trust would have ostensibly come into existence in 1983. Nothing in the record indicates what property plaintiff owned other than the property at 515 Broadway, whether real property or personal property, including bank accounts. At that time, plaintiff did not own the property which it acquired from the Pyles by warranty deed in 2001 and there is no evidence that after-acquired property was conveyed to anyone at any time or placed into trust.

The court of appeals decision conflicts with Oregon precedent in this respect. In *Shipe v. Hillman*, 206 Or 556, 292 P2d 123 (1955), the court held that a deed which on its face was an absolute conveyance to the grantee did not establish a trust for plaintiff's benefit. In *Winters v. Winters*, 165 Or 659, 109 P2d 857 (1941), the court held that a trust existed over specific, identified bonds that were subject to a probate proceeding where there was direct evidence to support the decedent's intent that the bonds be held in trust. *Connall*

v. Felton, 225 Or App 266, 201 P3d 219 (2009), held that a deed which made no mention of any trust would not be construed to create a trust for defendant's benefit. The court held that the deed was "plain on its face and unambiguous." In *Samuel v. King*, 186 Or App 684, 64 P3d 1206 (2003), the court held that property was held in trust where, despite the absence of a deed conveying title to the trustees, the trust instrument's asset schedule specifically identified it as a trust asset and the instrument included appropriate words of conveyance. The court held that "the trust instrument and attached documents described above unambiguously express and effect [decedent's] intent, as grantor, to convey his titled assets listed in the 'Schedule of Assets' to the trust as of the date he executed the trust instrument." *Id.* at 692.

The courts in these cases held that deeds to specific property which failed to make any reference to the existence of a trust would be construed according to their plain terms, unless there existed an instrument specifically conveying particular assets in trust. No Oregon authority supports a holding that a trust is created over "all

property”, including after-acquired property, by a statement of no more specificity than exists here.

In *United States National Bank of Portland v. Krautwash, et al*, 221 Or 609, 351 P2d 947 (1960), the decedent’s will purported to leave his friend and housekeeper a monthly amount and the right to live in decedent’s home and use its contents. Plaintiff, the administrator of decedent’s probate estate, sought a declaration that it would hold the property in trust. The supreme court held that no trust existed:

“A trust requires a settlor, a trustee, a beneficiary, and a definite property. The quoted will named no trustee and designated no trust property. Half the trust is missing. While there are cases holding that a trustee can be appointed, to save an otherwise valid trust, we find no cases holding that both the trustee and the corpus of the trust can be supplied when the settlor failed to manifest his intent.” *Id.* at 612 (internal citations omitted).

In *United States National Bank*, the court held that the reference to “my home and its contents” was insufficient to manifest decedent’s intent to create a trust. In the present case, the purported declaration refers to nothing more than “all property”. In this respect, among the

others discussed herein, the court of appeals decision in the instant case is irreconcilable with existing Oregon precedent.

In addition to the foregoing defects, any trust here fails for other reasons. The purported trust has no stated purpose, charitable or otherwise. It does not identify rights or responsibilities of the trustees or the beneficiaries and it provides nothing to indicate its duration. *See, e.g.,* Restatement, Second, Trusts, §§25, 351.⁶ The purported trust here is hopelessly indefinite. In Oregon, proof of the existence of a trust must be established with clear and convincing evidence. What little exists here is inadequate to created a trust under Oregon law. *United States National Bank of Portland, supra.* If this court were to hold otherwise it would represent a substantial departure from existing law, solely on the basis that the defendants are religious organizations.

⁶ While the Uniform Trust Code has largely replaced it, Oregon courts have relied on the Restatement of Trusts. *United States National Bank of Portland*, 221 Or at 612. The commentary to the Restatement provides: “* * no trust is created unless [the settlor] manifests an intention to impose duties which are enforceable in the courts.” Ambiguous “precatory words” do not create a valid trust.

C. The Court should hold that plaintiff corporation and the church congregation are not alter egos and that the purported acts of the congregation cannot be imputed to plaintiff.

The record here is undisputed that title to the real property at issue has been vested in plaintiff corporation since at least 1961. Likewise it is undisputed that the congregation is merely an unincorporated association of worshipers. The Presbytery of Southwest Oregon conveyed title to the property at 515 Broadway to plaintiff corporation by statutory warranty deed, free of any encumbrances, restrictions or limitations. Title to the property acquired in 2001 was conveyed to it by the Pyles by warranty deed, again without restrictions.

The court of appeals decision improperly disregards the distinction between the corporation and Rogue River's Presbyterian congregation, an unincorporated association. There is no evidence in this record to support the court's decision to treat them as alter egos. As plaintiff made clear to the trial court and the court of appeals, corporations cannot be bound to the *Book of Order* because they cannot be members of either of defendants. Membership with

defendants is a purely ecclesiastical matter and, accordingly, extends only to natural persons. The *Book of Order* provides:

"Persons may enter into active church membership in the following ways: by profession of faith, reaffirmation of faith in Jesus Christ, or transfer of certificate from some other church." *Book of Order* §G-5.0100.b.

A corporation cannot do any of these things. Defendants have never disputed this at any time throughout this proceeding.

The court of appeals incorrectly made short shrift of the issue:

"The argument, however, is directly at odds with how Hope Presbyterian's own complaint characterizes itself. As we have noted, in its complaint, Hope Presbyterian alleges that it is a 'non profit religious corporation * * * affiliated with defendant's religious organization.' Moreover, the *Book of Order* expressly provides that a local congregation holds property in trust for PCUSA 'whether legal title is lodged in a corporation' or some other entity." *Hope Presbyterian*, 242 Or App at 512.

It would make no sense for plaintiff to allege that it had nothing to do with defendants. Besides being disingenuous, it would eliminate any justiciability of the dispute. Alleging in the complaint that the corporation was "affiliated" with defendants neither admits nor suggests that plaintiff is a *member* of either or is bound to anything in the *Book of Order*. As discussed herein, the *Book of*

Order's decree that it makes no difference how title is held, in the name of a corporation or otherwise, cannot dictate the outcome of this case because it is no more than the unilateral statement of the putative trust beneficiary. It is not a binding directive to a court of law.

In fact, the *Book of Order* is clear that defendants do not have the authority to dictate property rights:

"* * * [t]he power of the church is strictly that of moral and spiritual influence [G-9.0102a, G-1.0308]. It is the power of loving concern, not of punishment. There was a time when a person could be locked in the village stocks for religious offenses, but our polity clearly says that no civil penalties can be sought for religious wrongdoing. * * * [t]he particular powers of governing bodies are only those stated in the constitution * * *. Each governing body has certain expressed powers, *and only those powers*, to exercise." *Id.* at 10-11. (Emphasis added).

D. The Court should hold that, if any trust was created here, plaintiff was free to revoke it and did so.

ORS 130.505(1) is clear:

“Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor of the trust may revoke or amend the trust.”

Plaintiff has maintained consistently throughout this proceeding, both at the trial court and before the court of appeals, that if a trust existed, it duly exercised its right pursuant to ORS 130.505(1) to revoke it. It has consistently maintained that its actions up to and including the initiation of this action is clear and convincing evidence of its intent to revoke. Defendants have never contested this. The court of appeals failed to address the issue at all. This was error.

It is difficult to know what defendants' position is regarding this issue because they have failed to respond to the point. What is clear is that to ignore the issue results in several problems. It would strip the Presbyterian community in Rogue River of their place of worship built up over the past century without any of defendants' assistance. It would sanction defendants and other religious organizations' coercion of religious association - surely a troubling message to communicate to the citizens of this state. It would further leave the question open in Oregon as to why under these circumstances ORS 130.505(1) would not permit a putative trustor to revoke a trust

when the law would otherwise seem so clear. It would leave open the question of under what circumstances may the unilateral determination by a religious organization that property is held in trust or belongs to a church bind individual members of the church or an affiliated organization. The only apparent reason would be that ordinary, neutral principles of Oregon law do not apply to religious organizations, while they would apparently apply to everyone else.

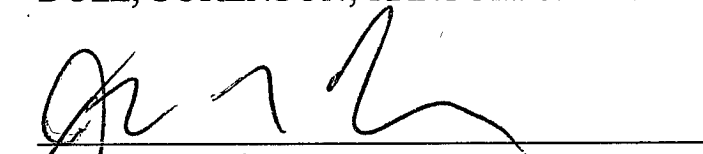
6. Conclusion.

Plaintiff seeks the ruling of this court reversing the decision of the Court of Appeals. The Court should hold that the court of appeals erred in not affirming the trial court, which applied neutral principles of Oregon law to rule for plaintiff. At no time did plaintiff create a

trust in defendant's favor in a legally cognizable way. If it did, it was revoked. Plaintiff is entitled to sever any relationship with defendants and retain its property.

Dated this 17th day of November, 2011.

DOLE, SORENSON, RANSOM & FERGUSON, LLP



James R. Dole
OSB No. 89227
jdole@roguevalleylaw.com
Of Attorneys for Petitioner on Review

Certificate of Compliance
with ORAP 5.05(2)(d)

Brief Length:

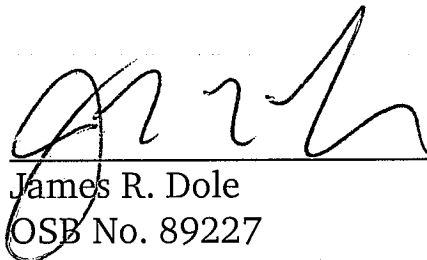
I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a) is 9110 words.

Type Size:

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

Dated: November 17, 2011

DOLE, SORENSON, RANSOM & FERGUSON, LLP



James R. Dole

OSB No. 89227

jdole@roguevalleylaw.com

Of Attorneys for Plaintiff-Respondent
Petitioner on Review

CERTIFICATE OF eFILING
And
PROOF OF SERVICE

I certify that I submitted the original of PETITIONER ON REVIEW'S BRIEF ON MERITS via eFiling on November 17, 2011, so that it may be filed with the Supreme Court, Appellate Court Administrator at this address:

Appellate Court Administrator
Appellate Courts Records Section
Supreme Court Building
1163 State Street
Salem, Oregon 97301

I further certify that on November 17, 2011, I served via electronic mail a true and correct copy of the PETITIONER ON REVIEW'S BRIEF ON MERITS to:

James A. Wallan at his electronic email address of jaw@roguelaw.com

Yen P. Nguyen at his electronic email address of titi.nguyen@weil.com

W. Michael Gillette at his electronic email address of wmgillette@schwabe.com

Forrest A. Norman at his electronic email address of fnorman@gallaghersharp.com

DOLE, SORENSON, RANSOM & FERGUSON, LLP



James R. Dole, OSB No. 89227

jdole@roguevalleylaw.com

Of Attorneys for Plaintiff-Respondent
Petitioner on Review