

DIANA ZALESKI
IN THE COURT OF COMMON PLEAS
2006 SEP 28 PM 4:07 SUMMIT COUNTY, OHIO

SUMMIT COUNTY
CLERK OF COURTS
HUDSON PRESBYTERIAN CHURCH)
201 West Streetsboro Street)
Hudson, Ohio 44236)

Plaintiff)

vs.)

EASTMINSTER PRESBYTERY)
P.O. Box 316)
3833 Main Street)
Mineral Ridge, Ohio 44440)

Defendant)

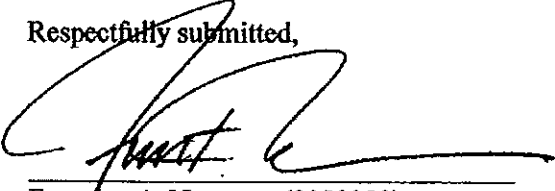
CASE NO. 2006 09 6162

ASSIGNED TO JUDGE SPICER

JUDGE

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

Plaintiff Hudson Presbyterian Church hereby moves this honorable Court for a Temporary Restraining Order in accordance with Ohio Rule of Civil Procedure 65, against Defendant Eastminster Presbytery, enjoining defendant from taking adverse actions interfering with Hudson Presbyterian Church's lawful and legal business operations, and which actions will cause irreparable harm as stated in detail in the attached motion. The reasons and authorities in support of this order are described more fully in the attached brief in support, which is incorporated herein by reference.

Respectfully submitted,


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BRIEF IN SUPPORT

I. BACKGROUND AND FACTS

Hudson Presbyterian Church is an Ohio non-profit corporation duly organized under the Ohio non-profit laws, ORC § 1702, *et seq.*, and currently in good standing with the State of Ohio. A Christian religious institution located in Hudson, Summit County, Ohio, Hudson Presbyterian Church (HPC) has an active membership of over 500 members on its rolls. Worship services, of course, are open to the public, as participation in HPC events is not limited to membership.

HPC's Articles of Incorporation afford it all of the rights provided for by Ohio's non-profit statute (Exhibit A, Articles of Incorp., Art. 6). HPC's By-Laws designate "Session" as the governing body of the Church for both ecclesiastical and secular matters. (Exhibit B, By-Laws, §3.1). Session consists of Elders (§3.5), who also serve as the Board of Trustees of the corporation. Session's powers include, but are not limited to those described in the By-Laws.

- 3.3 The Session shall be empowered to act on behalf of the church with respect to business matters, including but not limited to contracting, conveying, encumbering or exchanging property, both real and personal. The Session shall be empowered to hold property in trust as allowed at law, reserving the right of revocation in all instances. All property held in trust must be held in an express trust. These by-laws in no way diminish the sole authority of the congregation, by vote, at a properly convened meeting on the matter, to be the final authority upon the following: matters relating to the election of elders, deacons, trustees; matters relating to the calling of ordained clergy; matters relating to the pastoral relationship (i.e., changes in terms of call); and matters relating to the buying, mortgaging, or selling of real property.

HPC's By-Laws provide for Annual and Special Meetings. Special meetings may be called by Session. (By-Laws §4.4).

4.4 Special Meetings may be called by the Session. Such calls shall state clearly the purpose of such special meetings, and no other matter save that specified in the call may be considered.

4.5 Notice of the time, place, and purpose of all Annual and Special Meetings of the congregation shall be given from the pulpit on the two Sundays preceding the meeting.

HPC's Articles of Incorporation and Bylaws permit it to voluntarily affiliate with a denomination of its choosing. (Exhibit A, Articles of Incorporation; Exhibit B, Bylaws).

HPC's Session has made a recommendation to the Congregation to begin the process of changing its affiliation from the denomination known as the Presbyterian Church (USA) ("PC(USA)") to the Evangelical Presbyterian Church ("EPC"). The reasons for the change are not at issue, and are not before the court. The issues before this court do not involve any ecclesiastical determinations or internal polity determinations. Rather, as described below, the issues before this court involve the interference and threatened interference by one non-profit organization into the business affairs of another, separate non-profit organization. Here, the interfering non-profit is Eastminster Presbytery, a regional representative body of the denomination known as the PC(USA).

The session of HPC is its governing body for both ecclesiastical and secular matters. (Exhibit B, Section 3.1). Session, by a unanimous vote taken at its regular meeting on September 17, 2006, voted to recommend to the congregation that HPC dis-affiliate with the PC(USA), and re-affiliate with the Evangelical Presbyterian Church, (EPC). Pursuant to §4.4 and 4.5 of the By-Laws, a vote of the entire congregation has been called for October 8, 2006, at which time the congregation at large will vote on the proposal to re-affiliate. The announcement was duly made from the pulpit and by letter to the Congregation. (Exhibit C, September 24, 2006 letter to congregation).

Eastminster, in an effort to try and prevent HPC from voting on a change of its affiliation, is actively seeking to interfere with HPC's conduct of internal business, and seeks to disrupt the congregational meeting called for October 8, 2006. Eastminster appears to be following a series of actions recommended by the PC(USA) to thwart individual churches from changing their denominational affiliations by taking steps such as clouding title to property, filing affidavits asserting non-existent property rights, notifying banks, insurance companies, and other institutions that Hudson is not the true owner of its property, and taking steps to try and undermine the authority of the lawfully elected session (Board of Trustees) of Hudson Presbyterian Church, and purporting to replace it with an "administrative commission" of its choosing. (Exhibit D, PC(USA) Strategy Paper).¹

Eastminster has scheduled a meeting to implement an administrative commission and to attempt to remove Session before the congregational vote of October 8, 2006. (Exhibit E, E-mail of Peggy Richmond).

Eastminster has also initiated steps to interfere with the relationship between Hudson Presbyterian Church and its Pastor, Reverend Dr. D. Wayne Bogue. (Exhibit E, E-mail of Peggy Richmond).

It is apparent that Eastminster is anxious to stop HPC's congregation from voting, and is taking steps to hinder HPC's ability to function as a corporate entity in order to try and de-rail the process of re-affiliation. Eastminster is taking steps to make representations that it is replacing the session of HPC with an "administrative commission" of its own appointment. (Exhibit E). It plans on making representations to the congregation and the community at large that its "administrative

¹ This document was recently discovered and published on-line by The Presbyterian Lay Committee, a PC(USA) "watch-dog" agency.

commission” has authority to handle the corporate affairs of HPC, even though it does not. In an effort to disrupt the proper internal functioning of HPC, Eastminster has sent a letter to HPC’s congregation calling a separate meeting at a separate location. (Exhibit F, Eastminster letter of September 26, 2006). This letter is clearly part of the PC(USA’s) “strategy” to fight churches seeking to depart. (PC(USA) strategy document, Item C.2, Exhibit D).

On information and belief, Eastminster may be taking steps to cloud title to Hudson’s property and may be filing improper affidavits of ownership.

HPC’s Articles of Incorporation, in accordance with the non-profit corporation laws of the State of Ohio, afford it the right to acquire and hold title to both real and personal property. (See Article V and Article VI of HPC’s Articles of Incorporation, attached hereto as Exhibit A).

Likewise, HPC’s By-Laws specifically empower its session (its directors) “to act on behalf of the church with respect to business matters, including but not limited to contracting, conveying, encumbering or exchanging property, both real and personal. (HPC By-Laws, Section 3.3, attached hereto as Exhibit B).

O.R.C. §1702.12(F)(8) expressly empowers HPC, through its directors, to resist a change or potential change in control of the corporation if the directors, by a majority vote of a quorum, determine that the change or potential change is opposed to or not in the best interests of the corporation.

Eastminster Presbytery seeks to replace HPC’s session with an administrative commission of its choosing. The administrative commission would presumably take, or attempt to take, corporate actions into its own hands and control. This would constitute a change of control, which HPC is expressly entitled to resist pursuant to O.R.C. §1702.12.

Additionally, Eastminster Presbytery appears to be taking steps to remove HPC's pastor from his ministerial duties at Hudson Presbyterian Church. In accordance with the terms of the By-Laws of Hudson Presbyterian Church, session is empowered to provide for the call of a pastor, approved by the congregation at large, and which terms of call are established by the congregation at an annual meeting. The current pastor of Hudson Presbyterian Church has been so duly called.

The pastor of a church has a unique and valuable position, including on-going counseling, spiritual counseling, and pastoral care to congregation members. Their services are unique and particular to the pastor providing such care and the person under such care. The harm caused by interfering with these services is irreparable. The threat by Eastminster is imminent.

Likewise, Session is the corporate body's executive arm. Literally, it is its Board of Trustees.² Session is elected by the congregation. The current Session was unanimously elected by the congregation to be its governing body. Session exercises care and control over business matters in a manner reflective of the will of the church. Removal of the session (or apparent removal, or threatened removal) will cause serious irreparable harm to the Church both as a body corporate and body ecclesiastical and will interfere with the business relations of the Church in the community.

Churches change denominational affiliations with some regularity, and courts in Ohio and the United States generally are no strangers to these procedures. Inevitably, after a local congregation votes to disaffiliate from a denomination, a battle over who controls the church property ensues. As noted below, the United States Supreme Court has clearly held, as has the Ohio Supreme Court, that such matters are properly considered by the secular courts pursuant to "neutral principles of law" applicable to any other property dispute, regardless of religious status. (See legal

² Trustees and Directors are used interchangeably in accordance with the Revised Code.

description, *infra*, citing to *Jones v. Wolf*, 443 U.S. 595 (1979). See also *Serbian Orthodox Church of the Kelemen* (1970), 21 Ohio St.2d 154).

The Session of Hudson Presbyterian Church is a corporate legal entity and has every right to protect itself and its business matters, which are being interfered with and are at further risk of being interfered with if not enjoined. A change of control, purported change of control, removal of Session members, removal of a duly called (and legally employed) Pastor, and other such actions will cause irreparable harm to the functions of Hudson Presbyterian Church. The smooth functioning of a church body is a particularly sensitive mission and relationship with its members. Interference with that relationship will cause irreparable harm not otherwise compensable at law.

For the foregoing reasons, and the legal reasoning set forth below, Hudson Presbyterian Church, by and through legal counsel, respectfully requests that this Court enjoin such adverse actions as herein described.

II. LAW AND ARGUMENT

Ohio Revised Code §1702.12 sets forth the authority of non-profit corporations. A non-profit corporation may sue and be sued. (O.R.C. §1702.12(a)). It may, "unless otherwise provided in the articles, . . . take property of any description, or any interest in property, by gift, devise, or bequest." (O.R.C. §1702.12(c)). Significantly, the authority granted by statute to non-profit corporations in Ohio includes the following authority:

- (f) In carrying out the purposes stated in its articles and subject to limitations prescribed by law or in its articles, a corporation may do the following:
 - (1) purchase or otherwise acquire, lease as lessee, invest in, hold, use, lease as lessor, encumber, sell, exchange, transfer, and dispose of property of any description or any interest in property of any description;

- ...
- (4) be a partner, member, associate, or participant in other enterprises or ventures, whether profit or non-profit;

- ...
- (6) become a member of another corporation;

- ...
- (8) resist a change or potential change in control of the corporation, if the directors, by a majority of vote of a quorum, determine that the change or potential change is opposed to or not in the best interests of the corporation, upon consideration of any of the matters set forth in division (e) of §1702.30 of the Revised Code.

Ohio Revised Code §1702.30 sets forth the authority of directors, by-laws, standard of care, liability, and interests that may be considered by the directors in carrying out their duties. O.R.C. §1702.30(B) states that: "a director shall perform the duties of a director . . . in good faith, in a manner the director reasonably believes to be in or not opposed to the best interests of the corporation. . . ." Subsection (C) clarifies that for purposes of division (B):

A director shall not be found to have failed to perform the director's duties in accordance with that division unless it is proved by clear and convincing evidence brought against the director that the director has not acted in good faith, in a manner the director reasonably believes to be in or not opposed to the best interests of the corporation, or with the care that an ordinarily prudent person in a like position would use under similar circumstances. Such an action includes, but is not limited to, an action that involves or affects any of the following:

- (a) A change or potential change in control of the corporation.

In providing further guidance as to the good-faith conduct of a director, O.R.C. §1702.30(E) states:

- (e) For purposes of this section, in determining what a director reasonably believes to be in or not opposed to the best interests of the corporation, a director shall consider the purposes of the corporation and may consider any of the following:

...

- (3) Community and societal considerations;
- (4) The long-term and short-term best interests of the corporation, including, but not limited to, the possibility that those interests may be best served by the continued independence of the corporation.

HPC's Session has made such a determination. (Exhibit G, Resolution).

The Resolution notes that a change of control by Eastminster Presbytery is not in the best interests of the entity to which the Board of Trustees is obligated to protect. (Specific wording is in the attached Exhibit G).

Members of Session have executed affidavits supporting the knowledge of the actions being taken by Eastminster, and further set forth that those actions are adverse to the best interests of Hudson Presbyterian Church and will cause irreparable harm to the Church. (Exhibit H, Affidavits of Session members).

As noted above, the instant matter does not involve internal ecclesiastical questions which, of course, shall be handled through the appropriate ecclesiastical channels. (Suffice it to say that HPC is challenging the validity of various acts taken and/or being taken by Eastminster in an ecclesiastical forum.) HPC has not yet determined whether to proceed with disaffiliation. However, if that step is taken, the internal polity concerns and ecclesiastical disputes with Eastminster can be handled in an appropriate forum.

However, the dispute that is currently before this Court is a matter which the United States Supreme Court and the courts of Ohio have recognized are appropriately determined by our civil judiciary. That issue is the question of property ownership.

The United States Supreme Court has set forth the doctrine of "neutral principles of law" which now governs resolution of church property disputes in Ohio. In *Presbyterian Church v. Haul Church*, 393 U.S. 440 (1969), the U.S. Supreme Court expressly provided the neutral principles of law was a constitutionally permissible method for resolving church property disputes. Ten years later, in *Jones v. Wolf*, 443 U.S. 595 (1979), the U.S. Supreme Court elaborated on the meaning of neutral principles of law and advocated its adoption by the State. Under the neutral principles of law method, courts do not merely defer to ecclesiastical decisions. Instead, courts look to the local church's corporate charter, articles of incorporation, by-laws, deeds, and denominational constitutions in reaching a ruling as a matter of law as to the respective party's property rights.

The Ohio Supreme Court has addressed the issues of neutral principles of law and have adopted them for application in Ohio. In *Serbian Orthodox Church v. Kelemen* (1970), 21 Ohio St.2d 154, the issues before the court arose from a dispute between two competing factions for control and use of a local church. The Court of Appeals had made an inquiry into organizational relationships in resolving the dispute. The Supreme Court found that those inquiries were "unnecessary and immaterial to a neutral law inquiry utilizing principles of law developed for use in all property disputes." *Id.* at 159. Addressing the specific neutral principles of law standard, the *Kelemen* court announced that Ohio would look to "the ordinary indicia of property rights" in determining such disputes. *Id.* at 160. The court specifically found that it could and should look to the articles of incorporation of the local church, the deeds involved, and the general law of Ohio.

The court further had noted that "a review of Ohio law does not reveal recognition of an implied trust theory of real property when a local church joins a church hierarchy." *Id.* at 160.

An excellent description of the law is set forth in the Ohio appellate opinion of *Southern Ohio State Executive Offices of Church of God, et al. v. Fairborn Church of God* (1989) (Green Cty. App.), 61 Ohio App.3d 526. The court applied neutral principles of law in reaching a determination that the executive offices of the denomination had no interests, legal or otherwise, in the property of an individual church. The decision in *Fairborn Church of God* is applicable here, and provide a solid indication that under similar circumstances Hudson Presbyterian Church will prevail on the merits. Likewise, the case of *Upper Ohio Valley Presbytery, Inc. v. The Covenant Presbyterian Church of Steubenville* (1989) (Jefferson App.), 1988 Ohio App. LEXIS 3452 (attached as Exhibit I), upheld the rights of a local church to withdraw from the Presbytery, and retain its property rights.

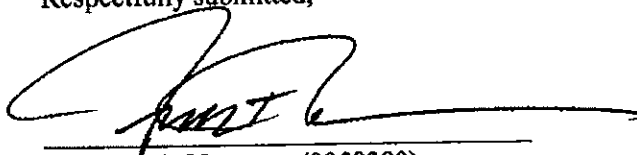
In similar cases in Ohio and throughout the country where neutral principles of law are applied, local churches similarly situated to Hudson Presbyterian Church are found to retain property rights, ownership, and a right to self-determination. Based upon the similarities and factual scenarios of other cases where neutral principles of law are applied, and it will be established at the preliminary injunction hearing and/or as otherwise briefed by the parties, there is a high likelihood of success on the merits for Hudson Presbyterian Church which holds title to its property, and is empowered at law to make determinations such as the recommendation of Session and the scheduled congregational meeting.

Undersigned counsel represents that he made reasonable efforts to contact the Defendant via telephone prior to filing this Motion.

Finally, because the issues pled in this Motion and the Complaint do not involve monetary damages, this Court should waive any requirement of a bond or other security.

WHEREFORE, for the foregoing reasons, Hudson Presbyterian Church respectfully requests that this honorable Court enjoin the actions of Eastminster Presbytery to interfere with business operations, as set forth in the requested order.

Respectfully submitted,



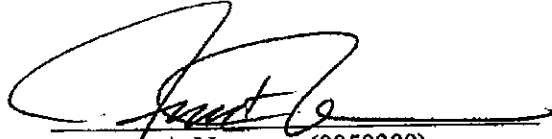
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115612.865470

CERTIFICATE OF SERVICE

A copy of the foregoing was sent by regular U.S. Mail, postage prepaid, this 28th day of September, 2006 to:

Eastminster Presbytery
P.O. Box 316
3833 Main Street
Mineral Ridge, Ohio 44440



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