

To be Argued by:  
Donald G. Nichol, Esq.  
(Time Requested:  
15 Minutes)

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND DEPARTMENT

---

The Presbytery of Hudson River of the Presbyterian Church (U.S.A.)  
and Rev. Richard M. Spierling as Chair of the Administrative  
Commission appointed by the said Presbytery with respect to the  
First Presbyterian Church of Ridgebury,

*Plaintiffs- Appellants,*

Docket No. 2008-04618

*- against -*

The Trustees of the First Presbyterian Church and Congregation of  
Ridgeberry a/k/a Ridgebury Church and/or The Church at Ridgebury,  
Trustees of the First Presbyterian Church and Congregation of  
Ridgebury, Trustees of the Presbyterian Church of Ridgebury, New  
York and The Ridgebury Presbyterian Church; and Lori DeBlock,  
Les Kirby, Marie Knibbs, Dorothy Kwapong, Ronald Lyons, Theda  
Wolfe, the Rev. Robert W. Hoag, and Stanley Wayne,

*Defendants-Respondents.*

---

**ANSWERING BRIEF**

of

Defendants-Respondents,  
except the Rev. Robert W. Hoag,  
an innocent bystander

Jacobowitz and Gubits, LLP  
*Attorneys for Defendants-Respondents*  
158 Orange Avenue, P. O. Box 367  
Walden, New York 12586  
845-778-2121

Donald. G. Nichol, of counsel

TABLE OF CONTENTS

State Pursuant of CPLR 5531 ..... i

Table of Authorities ..... ii

Preliminary Statement ..... 1

Summary of Argument ..... 3

Questions Presented ..... 6

Statement of Facts ..... 8

Point I - The Court May Not Intrude on the Religious Dispute Concerning the  
PC(USA) Constitution ..... 20

Point II - Ridgebury’s Deeds Secure Its Ownership of Its Property ..... 35

Point III - Ridgebury’s Incorporation Guarantees Its Property Rights ..... 41

Point IV - The Unilateral Declaration of the Beneficiary Cannot Create a Trust ..... 44

Point V - The Denominational Trust Provision is “Void” ..... 55

Point VI - The Presbytery Has Failed to Prove a Trust Beyond a Reasonable Doubt ..... 59

Point VII - Ridgebury Church Expressly Revoked any Trust That May Have Been Formed by  
Implication ..... 62

Point VIII - The Episcopal Diocese Case is Inapposite ..... 65

Conclusion ..... 69

The Constitution of the Presbyterian Church - 1805-1902

Second Amended Certificate of Incorporation

Certification of Compliance

Certificate of Compliance

## TABLE OF AUTHORITIES

### FEDERAL CASES

<u>Jones v Wolf</u> , 443 U.S. 595 .....	12, 21, 34, 35, 51, 66
<u>Presbyterian Church v Mary Elizabeth Blue Hull Presbyterian Church</u> , 393 U.S. 44019,	21, 38, 52

### STATE CASES

<u>Application of Church St. Francis De Sales</u> , 110 Misc. 2d 511 .....	47
<u>Barker</u> , 115 Cal. App. 3d at p. 612 .....	66
<u>Beaver v Beaver</u> , 117 N.Y. 421 (1889) .....	57, 58
<u>Bernstein v Friedlander</u> , 58 Misc. 2d 492 .....	47
<u>Berthiaume v McCormack</u> , 153 N.H. 239 (2006) .....	37
<u>California-Nevada Annual Conference v St Luke's UMC</u> , 121 Cal. App. 4th 754 (200 )	46, 62, 65
<u>Church of St. James, the Less</u> , 888 A.2d 795 .....	56
<u>Cong. Yetev Lev v Kahana</u> , 9 NY3d 282, 286 (2007) .....	20, 22, 38
<u>FPC Schenectady v UPCUSA</u> , 62 N.Y.2d 110 (1984) .....	2, 32, 50, 64, 66
<u>Holy Spirit v Tax Commission</u> , 55 N.Y.2d 512 .....	32
<u>In Re First Presbyterian Church</u> , 106 N.Y. 251 (1887) .....	40, 44
<u>Loch Sheldrake Associates v Evans</u> , 306 N.Y. 297 (1954) .....	35
<u>Mtr. of George v Holstein-Friesian Association</u> , 238 N.Y. 513 (1924) .....	54
<u>Matter of Cord</u> , 58 N.Y.2d 539, 449 N.E.2d 402, 462 N.Y.S.2d 622 [1983] .....	37
<u>Mercury Bay Boating Club v San Diego Yacht Club</u> , 76 N.Y.2d 256, 557 N.E.2d 87, 557 N.Y.S.2d 851 [1990] .....	37
<u>Mtr of Brown v Supreme Court of the Independent Order of Foresters</u> , 176 N.Y. 132 (1903)	. 55
<u>Mtr of Cong. Yetev Lev v Kahana</u> , 31 AD3d 541 .....	54

<u>Petty v Tooker</u> , 21 N.Y. 267 (1860) .....	40
<u>Presbytery of Beaver-Butler v Middlesex Presbyterian Church</u> , 507 PA 255, 270 .....	22
<u>Procopio v Fisher</u> , 83 A.D.2d 757 (1981) .....	54
<u>Trustees of the Diocese of Albany v. Trinity Episcopal Church</u> , 250 A.D.2d 282 (3d Dept 1999)	49
<u>Uihlein v Matthews</u> , 72 N.Y. 154 .....	36
<u>Wyatt v Benson</u> , 23 Barb. 327 (1857) .....	47

### **Miscellaneous**

106 NY Jur 2d, Trusts §64 .....	57
10 NY3d 163, 166 .....	36
Real Property Law §240(3) .....	2
5 NY Jur 2d, Associations and Clubs, §4 .....	55
Restatement of Trusts, 3rd , §11 .....	46
Restatement of Trusts, 3rd, §63, comment c .....	61

## Preliminary Statement

This appeal concerns the ownership of the property of The Church at Ridgebury, EPC<sup>1</sup>. The property was given by members of the congregation of Ridgebury with the intent that it be held by its corporate trustees for the benefit of the local congregation. No financial support was provided by any denomination or presbytery. At all times, from 1792 to the present, during which Ridgebury was affiliated with any denomination or presbytery, the denominational constitution contained an express guaranty that Ridgebury's affiliation did not affect its right or title to its property. *Book of Confessions*, 6.148. The denominational constitutions, by their express terms, are not to be "aided by the civil power" and "not attended with any civil effects." *Book of Order*, G-1.0301(b) and G-1.0308.

Though Ridgebury's deeds, certificates of incorporation, and NY statutory law all indicate that Ridgebury is the owner of its property, the Presbytery claims that a disputed trust provision, recently added in 1981 or 1983, respectively, trumps the intent of the donors – and all deeds, certificates of incorporation and NY statutes. The Presbytery seeks to have the Courts establish a trust, which it could not (and did not) establish by the exercise of its ecclesiastical powers.

After Ridgebury disaffiliated because of the Presbytery's repeated violations

---

<sup>1</sup> Ridgebury, a/k/a The First Presbyterian Church and Congregation of Ridgebury (Ridgeberry), has now (as of January 2007) affiliated with the Presbytery of the East of the Evangelical Presbyterian Church, the fifth denomination and the fourth presbytery with which Ridgebury has been affiliated since 1792.

of the denominational constitution, the Presbytery sued Ridgebury. On cross motions for summary judgment, the court dismissed the Complaint.

## Summary of Argument

Ridgebury's defense accords with the 'neutral principles of law' doctrine adopted by the Court of Appeals in *FPC Schenectady v UPCUSA*, 62 NY2d 110 (1984), which ruled that Presbyterian churches do not hold their property in trust for the denomination. The Court of Appeals held (at 120) that even in hierarchical denominations, a local church could leave with its property if it had not previously ceded that property to the denomination. Neutral principles considers deeds, certificates of incorporation, state statutes, and undisputed provisions of denominational constitutions which are capable of secular interpretation.

- I. Deeds** - Ridgebury's deeds are all in its name without any ambiguity, restrictions, or trust provisions in favor of the Presbytery or denomination.
  - A. Title searches by each party acknowledge that Ridgebury owns its property and did not cede it to the denomination.
  - B. The US Supreme Court has held that it is the obvious duty of the court to enforce the deeds.
  - C. Real Property Law §240(3) confines interpretation of the deeds to the 'four corners' of the instruments.
- II. Certificates of Incorporation** - The Certificates place Ridgebury's property in the hands of its trustees of benefit of the congregation.
  - A. Ridgebury's pre-1828 incorporation prohibits any imposition of denominational status on Ridgebury. Ridgebury is free to change

denominations at will.

B. The amended certificate contains an express revocation of any trust.

**III. State Laws** - State laws concerning conveyance of trusts were not complied with:

A. Trusts must be established by the Owner and not the putative beneficiary.

B. Religious Corporations Law §12 and Not-for-Profit Corporation Law §§550 & 551 require court approval of a conveyance of a trust in a local church's property -- upon petition supported by a congregational vote in favor of the conveyance. There was no court approval of the claimed trust.

C. General Obligations Law §5-703(1) requires the owner to execute a writing to convey a trust.

D. General Obligations Law §5-703(3) renders the claimed constitutional trust provision "void" as a contract to convey a trust.

**IV. The denominational constitution** - The PC(USA) constitution cannot be considered by the courts because the provisions at issue are the subject of religious dispute.

A. The PC(USA) constitution is, by its express terms, not to be "aided by the civil power" and any violation thereof is "not attend with any civil effects."

- B. The express property guaranty in Part I of the PC(USA) constitution relied on by Ridgebury renders the claimed trust provisions in Part II of the constitution invalid.
  - C. The express property guaranty in the constitution relied on by Ridgebury is supported by the highest judicatory in the PC(USA).
  - D. Ridgebury has expressly retained “veto power” over the trust provision.
  - E. The PC (USA) is not hierarchical, but presbyterian in its government.
- V. The Presbytery has not presented evidence that the congregation of Ridgebury intended to convey a trust to the Presbytery or denomination. Presbytery’s burden is to prove it beyond a reasonable doubt.
- VI. Even were a trust created, it could not be equitably enforced because of Presbytery’s “unclean hands” in violating the constitution it seeks to enforce.
- VII. Ridgebury did not intend to create a trust, but even if a trust were mistakenly formed by implication, it has expressly revoked any trust.
- VIII. *Episcopal Diocese v Harnish* is inapposite.

## Questions Presented

1. May the Court take sides in the religious dispute of whether the undisputed express property guaranty always in the denominational constitution is superceded by the disputed property trust provisions later added in the 1980's?

*The Court below did not reach this question because it found that the putative beneficiary cannot create a trust by its unilateral declaration.*

2. Can the putative beneficiary of a claimed trust establish a trust in the owner's property without express action, complying with the statute of frauds, on the part of the property owner to settle the trust?

*The Court below ruled that it is hornbook law that a non-owner may not establish a trust interest in someone else's property by claiming an express trust.*

3. Can the Court impose denominational status on a church incorporated before 1828?

*The Court below acknowledged that Ridgebury had all the rights of a pre-1828 church, which include freedom from denominational restrictions.*

4. Can a local church convey, without consideration, all its property to another party without a congregational vote or court order as statutorily required by the Religious Corporations Law and the Not-for-Profit Corporation Law?

*The Court below did not need to reach this question.*

5. If the religiously disputed constitutional provision "void" as a contract to convey a trust since Ridgebury did not execute a writing as required by General Obligations Law §5-703(3)?

*The Court below did not need to reach this question.*

6. Did the Presbytery present facts sufficient to prove a trust beyond a reasonable doubt, the legal standard in New York?

*The Court below did not need to reach this question.*

7. If there were a trust, may the Presbytery enforce the trust provision even though it is itself in substantial and continuing violation of the denominational constitution?

*The Court below did not need to reach this question.*

8. If there were a trust, did Ridgebury's express revocation of any trust, as provided by the Restatement 3<sup>rd</sup> of Trusts, revoke the trust?

*The Court below did not need to reach this question.*

## **Statement of Facts**

The essential undisputed facts necessary to decide the motions for summary judgment are provided in the Statement of Undisputed Facts (R-21) and the Plaintiff's Response and Statement (R-629). These two documents are summarized for the Court's convenience in the Markup Statement of Undisputed Facts (R-633).

### **Ridgebury – Formation and Affiliations**

The First Presbyterian Church and Congregation at Ridgebury was formed by its congregation as an independent (or particular) church in 1792. (R-211) Ridgebury incorporated in 1805, placing its property under the control of its trustees for the benefit of the local church. (R-60) (It is now known as The Church at Ridgebury, EPC, having begun communion with the Evangelical Presbyterian Church in January of 2007, having voted to affiliate in December of 2006.)

Ridgebury has faithfully held to Presbyterian beliefs since its inception. Presbyterian churches are Reformed in doctrine and Presbyterian (connectional, not hierarchical) in governance. Ridgebury's first Presbytery and first denomination were the Presbytery of Morris County and the Associated Reformed Presbyterian denomination. (R211-221) It later disassociated with the Associated

Presbytery and entered communion with the Presbytery of Hudson of the Presbyterian Church in the United States of America. From there it transitioned to communion with the Presbytery of Hudson River (PHR) and the United Presbyterian Church in the United States of America. It then transitioned to communion with the Presbyterian Church (USA), i.e., the PC(USA).

Ridgebury maintained a congregational governance at three different times during its history: when originally formed, after disassociating from the Associated Presbytery of Morris County (R211-221) and after disaffiliating from the Presbytery of Hudson River (R-61), before associating with the EPC.

In January 2005, by unanimous vote of its membership, The Church at Ridgebury disassociated itself from the PC (USA) and the Presbytery of Hudson River. (R-61) The disaffiliation was due to the Presbytery's continuing violations of the denominational constitution and the PC(USA)'s failure to enforce the constitution. (R-79-88) (In January of 2007, Ridgebury joined the Presbytery of the East of the Evangelical Presbyterian Church.)

Associating and disassociating with different presbyteries in different denominations is an ordinary event for a particular church like Ridgebury because for Presbyterians, religious doctrine commands a higher loyalty than loyalty to any particular organization. The Record contains several charts showing

the various splits and combinations of Presbyterian denominations over the years.

(R-66-76 ) As a result of this Presbyterian practice, there are currently more than a dozen different Presbyterian denominations in the United States at the present time. (R-70-72)

### **Ridgebury's Property**

Over the years, the congregation of Ridgebury donated property to the Church to be held by the local trustees and to be used for the benefit of the local church. (R-60, 211-221) Ridgebury bought and paid for its property. It operated and maintained its property. (R-21-22) Ridgebury undertook all the responsibilities of property ownership. (R-21-22) It did everything from mowing the grass to turning out the lights. Ridgebury's members have borne the heat of the day. They purchased the property by the sweat of their brow. They did it for their church. There is no evidence of any intent on the part of Ridgebury's congregation to give of their time, talent, or treasure for the benefit of the Presbytery rather than for their own church. (R ????)

Ridgebury did what state law requires to secure its title. It made sure its deeds were free of restrictions, reverters, or trusts. It recorded its deeds in the county clerk's office. It incorporated and placed its property in the hands of its own elected trustees to be held for the benefit of the congregation. Ridgebury's

members never authorized the conveyance of any property interest or trust to anyone. Neither did Ridgebury ever apply for court approval to alienate its property to any presbytery or any denomination.

Ridgebury sought and obtained a title search which showed that it was, in fact, the owner of its property. The PHR also obtained a title search which also showed that Ridgebury owned its own property. Nothing in the public record indicated that the Presbytery was claiming an interest.

The Presbytery contributed nothing toward Ridgebury's property. It did nothing to operate and maintain it. To the contrary, Ridgebury contributed to the Presbytery so that it could acquire property and perform its duties toward the local churches.

When Ridgebury disaffiliated, it amended its Certificate of Incorporation. In the Amended Certificate, Ridgebury expressly revoked any trust interest:

Any claim to ownership of the property, real or personal, of the Church not expressly granted by legal action of the Trustees and approved by the Courts of the State of New York with respect to real property, is hereby declared unscriptural and contrary to the true faith and thus null, void, and without effect.

### **Presbyterians and Church Property**

From the beginning of Presbyterianism, church property has always been owned and controlled by the local (particular) church. In John Knox's original

1560 Book of Discipline (Books of Order were originally called Books of Discipline), the control of church property was placed in the hands of deacons and treasurers, which are exclusively local church offices. (Elders, who are also local officers, are the officials who organize and participate in larger councils known as presbyteries, synods, and general assemblies. See Book of Confessions, 6.173-175.) Local ownership of church property had a Biblical basis and was a reaction to the centralized property ownership of the hierarchical systems from which the Presbyterians had separated. See Scots' Confession (1560), Chapter VIII. These principles were continued in the 1578 Book of Discipline.

In the 1640's, this principle of local ownership of church property was confirmed by the "express property guaranty" written into the Westminster Confession of Faith. Book of Confessions, 6.148. This express property guaranty provided that one's property rights and title were not infringed by one's church affiliation. As this is stated in the Index of the 1902 constitution of the Presbyterian Church in the United States of America, p. 514 : " Property rights [are] not affected by church relation."

This express property guaranty in the Westminster Confession of Faith remains a part of the constitution of virtually every Presbyterian denomination existing today, including the PC(USA).

In 1929, the Presbyterian Church in the United States of America, a

predecessor of the PC(USA), in response to a departure of a significant number of churches leaving to form the Orthodox and Bible Presbyterian denominations, attempted to introduce a new doctrine requiring local churches to hold their property in trust for the denomination. This attempt was voted down.

In the 1970's, numerous churches left the PCUS to form the Presbyterian Church in America (PCA). In the early 1980's, numerous churches left the UPCUSA to form the Evangelical Presbyterian Church (EPC).

In response, the UPCUSA in 1981, and the PC(USA) upon merger in 1983, adopted new provisions in their Books of Order (the lesser part of their constitutions) to assert that local churches now held their property in trust for the denomination. While this action was taken at the perceived invitation of the Supreme Court in *Jones v Wolf*, 595 US 445 (1979), no action was taken to notify local churches to actually put the claimed trust in any cognizable legal form.

In amending Part II of the denominational constitution (the Book of Order, Chap VIII) to claim a trust, the denomination failed to rescind or amend the express property guaranty provision of Part I (the Book of Confessions, 6.148), which by its terms forbids the claims of the disputed trust provision.

Neither did the PC(USA) rescind or amend the express veto power ( Book of Confessions, 3.20 & 6.174) possessed by particular churches and congregations over any provision of the denominational constitution which is not Biblically

based. See also Book of Order, 1.307, the regulative principle of church government which permits only Biblically based rules.

Neither did the PC(USA) rescind or amend the express provisions of the Book of Order proclaiming that any violations of the Book of Order (which includes the disputed trust provision) are “not attended with any civil effects.”

Neither the PHR nor Ridgebury took any action to place the claimed trust into a cognizable legal form as needed to give the claimed trust any civil effect.

### **The PC(USA) Constitution and Church Governance**

The constitutions of Presbyterian denominations, including the PC(USA), are uniquely structured to avoid the adverse consequences of hierarchical polity. Since hierarchical churches stress organization over doctrine (unlike Presbyterians who stress doctrine over organization), the hierarchical system will ultimately corrupt the purity of the doctrine. As John Calvin wrote in his commentary on Hebrews 6: “...the world almost always degenerates to corruptions even from the best institutions.”

While to the uninitiated, the governance of a Presbyterian denomination may appear like a hierarchical system, it is not. In a hierarchical system, power flows from the top down, placing the hierarch (usually a bishop) in the position of having the final say in church governance. In the Presbyterian system, power is delegated from the bottom up and the Bible is the final authority. The

Presbyterians have checks and balances to prevent abuse, and veto power over erroneous rules or decisions.

Thus, although the Presbyterian system has levels of governance (sessions, presbyteries, synods, and general assemblies) there is no general or ultimate authority in any of those entities over another: the power is shared, with deference given the higher levels, unless contrary to Biblical authority or otherwise in error. The denomination is prohibited from enacting non-Biblical rules (the regulative principle of governance) and the lesser judicatories retain a veto erroneous rules or decisions.

Additionally, to prevent abuse, the denominational constitution is not to be enforced by the civil power because it expressly has no “civil effects.”

The Book of Order, G-1.500 defines the constitution of the PC(USA):

*The Constitution of the Presbyterian Church (U.S.A.) consists of the Book of Confessions and the Book of Order.*

However, both the Book of Confessions, 6.002, and the Book of Order, G-1.0307, acknowledge the unique authority of the Scriptures, stating that the Bible is the *only* Rule for Faith and Practice [i.e., manners or life]. The Book of Confessions requires a 2/3's vote of the presbyteries to amend. G-18.0201. The Book of Order may be amended by a mere majority. G-18.0301. The Bible may never be amended. Rev 22:19.

Thus, the three constitutional documents rank in authority as follows:

1. The Bible
2. The Book of Confessions
3. The Book of Order

The unique role of the Bible in Presbyterian polity (as opposed to hierarchical polity) is expressed by Rev. Charles Hodge, DD, the Principal of the Princeton Theological Seminary in *What is Presbyterianism?*, found at <http://www.pcahistory.org/documents/wip.html> which states:

Jesus Christ is its head. All power is derived from him. His word [the Bible] is our written constitution. All Church power is, therefore, properly ministerial and administrative.

Because of this unique authority of the Bible as an integral part of the PC(USA) Constitution (Book of Order, G-1.307,) all interpretation of the denominational constitution involves deciding ecclesiastical doctrine, since it necessarily involves interpretation of the Bible.

The Book of Confessions contain not only an express property guaranty at 6.148, it contains express authority for the local church to veto any provision adopted by a church council which does not strictly comport with Biblical authority. These veto powers are expressed at 3.20 and 6.174.

The Book of Order acknowledges the authority of the Book of Confessions stating at G-2.0100 that the Confessions declare to its members and the world:

who and what it is,

what it believes,

what it resolves to do.

The Book of Order goes on to acknowledge that the Confessions are constitutional standards applicable to the PC(USA):

They [the Confessions] are not lightly drawn up or subscribed to, nor may they be ignored or dismissed.

The Confessions give local church elders the right to determine the authority of presbyteries, synods, and general assemblies:

... to convene together in them as often as they shall judge it expedient for the good of the Church. BoC, 6.173

### **Ridgebury Abided by the Constitution until the Eve of the Litigation**

Ridgebury abided by the denominational constitution until the time of its disaffiliation. So the Presbytery agrees. Brief p.14. Unfortunately, the Presbytery did not comply with the Constitution, allowing 18 churches to flagrantly violate an undisputed provision of the Book of Order, which has been upheld on several occasions. The denomination did nothing to enforce the constitution.

The Presbytery acknowledged the validity of the express property guarantee by not requiring Ridgebury to execute a written trust or amend its certificate of incorporation to state a trust in accordance with the disputed trust provision.

The Presbytery acknowledged the validity of the express property guarantee assuring Ridgebury's ownership of its property by:

- approving Ridgebury's contracts with pastors and pastoral calls to the Church (R-378-87)
- Appointing moderators to the Church (R-373-77)
- Accepting lists of church officials, membership record, session records, and annual reports (R- 396-431, 438-77)
- Agreeing to be governed by Presbyterian polity and discipline
- Convening in Presbytery meetings as judged expedient and useful by Ridgebury's elders

Indeed, Ridgebury participated in Presbytery activities in this same way prior to the disputed trust provisions. Today, Ridgebury participates in the same way in the activities of the Presbytery of the East of the Evangelical Presbyterian Church.

Ridgebury suffered substantial losses in membership and attendance as result of PHR's violations of the constitution and PHR's recommendation of unsatisfactory pulpit supply. (R-470-477). People did not want to be associated with a schismatic and apostate Presbytery and denomination. Because Ridgebury's continued existence was threatened by continued affiliation, Ridgebury, after study and prayer seeking God's wisdom, decided unanimously to disaffiliate.

The Presbytery, in violation of the constitution, appointed various committees and commissions which did nothing useful. The Presbytery then sued and lost its case in August of 2006.

Ridgebury has prospered and grown since voting to join the EPC in December of 2006 (PHR was advised in writing) while churches still associated with the Presbytery have continued to shrink in membership, Presbytery has now brought this appeal which can only destroy the good work which has been accomplished at Ridgebury. Ridgebury will continue a church in accordance with the intent of the donors over the years. Presbytery's only option is to close and sell the church property (it has no people) like it did at Canterbury Presbyterian Church.

## **Point I**

### **The Court May not Intrude on the Religious Dispute Concerning the PC(USA) Constitution**

The Presbytery of Hudson River (PHR) asks the Court to ignore the undisputed proof (deeds, certificates of incorporation, and state laws) that Ridgebury owns its property and to take the Presbytery's side in a religious dispute concerning the PC(USA) constitution. PHR claims that a disputed trust provision in a religious constitution must take precedence over the ordinary statutory proof of ownership, but fails entirely to notify the court that the trust provision, on which it relies, is the subject of religious dispute – a dispute in which Ridgebury's position by the highest authority or judicatory of any Presbyterian denomination.

### **The Legal Rule**

The legal rule concerning religious disputes is clear and has been articulated by the highest courts of both the nation and this state: a secular court may not decide questions of ecclesiastical doctrine. This rule was stated by the US Supreme Court in *Presbyterian Church v Mary Elizabeth Blue Hull Presbyterian Church*, 393 US 440, 449:

... the [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relations involving church property so as not to require the civil courts to resolve ecclesiastical questions.

Likewise, the Court of Appeals in *Cong. Yetev Lev v Kahana*, 9 NY3d 282, 286 (2007) states:

The First Amendment forbids civil courts from interfering in or determining religious disputes, because there is a substantial danger that the state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrine or beliefs.

### **Presbyterian Property Disputes Are All Ecclesiastical**

PHR cannot deny the disputed property trust provisions involve ecclesiastical doctrine. In fact, PHR's own exhibits assert that within the Presbyterian Church, property issues can only be decided on an ecclesiastical basis. Their exhibited Report (R-609) of the Committee which offer the disputed trust provision states:

... whenever there is a controversy regarding the possession and use of church property, the issues in that dispute are invariably intertwined with issues regarding a doctrinal or other ecclesiastical matter. There is no neat dichotomy between "spiritual" issues on one hand and "temporal" on the other. . . . Property matters cannot be determined correctly apart from the resolution of related "ecclesiastical" issues.

The Report goes on (R-612):

The [Presbyterian Church] does not distinguish between matters of faith on the one hand and temporal matters on the other. All are essentially ecclesiastical and are determined in exactly the same way.

Since the parties agree that the property dispute herein is essentially

ecclesiastical, the application of the legal rule should be apparent. The court must not intrude on the dispute.

In giving guidance on church property matters, the US Supreme Court has held that it is the duty of all parties to structure their relationships to avoid basing property claims on religious grounds. As the Court has stated:

Hence, States, religious organizations, and individuals must structure relations involving church property so as not to require the civil courts to resolve ecclesiastical questions. *Presbyterian Church, supra*, at 449.

In asserting their property claim solely in the spiritual provisions of the denominational constitution, the denomination and presbytery failed miserably to heed the Supreme Court's direction. The Court goes on to warn that amending a denominational constitution might be insufficient, but that the parties' intent would only be enforced "provided it is embodied in some legally cognizable form." *Jones v Wolf*, 443 US 595, at 606. PHR's failure to embody their claimed trust interest in a "legally cognizable form" precludes enforcement of their claim.

By making a claim to a trust in the denominational constitution, PHR and the denomination have chosen to present their claim in the place most likely to be the subject of a religious dispute. Several areas of dispute are apparent on the face of that religious or constitution. These areas of dispute were not unknown to those who chose this venue in which to assert the disputed trust claim. The report

initially recommending the constitutional revisions itself stated the problem (R-609):

... whenever there is a controversy regarding the possession and use of church property, the issues in that dispute are invariably intertwined with issues regarding a doctrinal or other ecclesiastical matter.

This admission by PHR that the disputed trust provisions can only be resolved by reference to ecclesiastical doctrine precludes the Court from considering the trust provisions. As the Court of Appeals has held in *Cong. Yetev Lev v Kahana*, 9 NY3d 282, 286 (2007) :

...courts may rely upon internal documents, such as a [denominational constitution], but only if those documents do not require interpretation of ecclesiastical doctrine.

### **Ecclesiastical Disputes in the Denominational Constitution**

Ridgebury does not ask the court to give aid to its theological position, but in the remainder of this point outlines the religious dispute to show that the disputed trust provision in denominational constitution may not be considered because , as admitted by PHR, it necessarily involves interpretation of ecclesiastical doctrine. Ridgebury believes, as the Pennsylvania Supreme Court held in determining that a local Presbyterian church owned its property, that the denominational constitution is spiritual in nature. *Presbytery of Beaver-Butler v Middlesex Presbyterian Church*, 507 PA 255, 270. The property issue must be

resolved, therefore, on the remaining neutral principles of law.

A short listing of the apparent matters of religious dispute follows:

1. The denominational constitution has no civil effect and is not to be enforced by the civil authorities. BoO, G-1.0308, G-9.9.1002a, G-1.0301b
2. The disputed trust provisions are “ultra vires” and ineffective. G-1.0307
3. The “express property guarantee” of the Westminster Confession overrules the disputed property trust provisions rendering the claimed trust void. BoC, 6.148.
4. Local churches retain a veto over the disputed trust provisions. BoC, 3.20, 6.174

### **The PC(USA) Constitution Has No Civil Effect**

Presbyterians, ever distrustful of hierarchical and state authority took careful steps to assure that their ecclesiastical authority would not be misused by either church or civil authorities. In 1788, when initially organizing at their first General Assembly in the United States, the Presbyterians adopted a Form of Government and Discipline, that is, the first ‘Book of Order’. They stated eight (8) general principles which continue in full force and effect in the current PC(USA) Book of Order. These principles begin and end with the principle that the Presbyterian constitution is not to be “aided by the civil power” and that the

Presbyterian constitution is “not attended with any civil effects.”

The purpose of stating these overriding principles of church order is to assure that the rights of private judgment in all matters of religion are not infringed by state support of one party or another with respect to the religious beliefs and judgments. Thus, neither those supporting a communal holding of property (the disputed trust provisions), nor those supporting property rights and title (the express property guaranty) may have the state determine the correctness of their beliefs.

Therefore, since the PC(USA) constitution has no civil effect, it cannot be used as the basis of determining property rights. If Ridgebury finds that the denomination is violating its property guaranty, its remedy is religious, and not secular. If the PHR believes that Ridgebury is violating the disputed trust provision, it may discipline Ridgebury in accordance with the denominational constitution, provided Ridgebury remained in communion with the denomination. (The Courts should note that it was the Presbytery’s express violations of the PC(USA) constitution, and the denomination’s failure to discipline the Presbytery or the offending churches, that led to Ridgebury’s disaffiliation. Ridgebury does not seek to enforce the constitution by the civil power, nor is the Presbytery permitted to enforce its view of the constitution by the civil power. The PC(USA) constitution has no civil effect.

## **The Disputed Trust Provisions are “Ultra Vires”**

The Book of Order, G-1.0307, states the regulative principle of church governance: that the Bible is the only Rule of faith and practice. This principle of “Sola Scriptura”, that is, Scripture alone, is a hallmark of the Reformation which led to Presbyterian rejection of hierarchical polity. As a PC(USA) history states Presbyterians “rejected . . . hierarchical church government.” *A Brief History of the Presbyterians*, Smylie, Geneva Press, PC(USA), p.24.

Pursuant to the regulative principle, no denominational rule or legislation is permitted unless it has a clear and direct basis in the Bible. This principle is based on the sure and certain knowledge that humans “may err”, and that in matters as important as religion, we may only rely on God’s Word which is inspired, infallible, and inerrant.

PHR admits that the adoption of the disputed trust provisions were not adopted in accordance with this principle. Those provisions were adopted based on a Supreme Court decision, not on a Scriptural basis. Therefore, the disputed trust provisions are properly the subject of religious dispute.

## **The Express Property Guaranty**

Afraid that a misunderstanding of the “communion of believers” would lead to a false claim that in the Church property is to be held communally, that is, in trust for the organization, the Westminster divines wrote an express property

guaranty into the confessional statement concerning the association of Christians, which is called in religious terms the “communion of saints.” See BoC, 6.148. (Those mistaking this with the Lord’s supper should refer to the Chapter “Of the Lord’s Supper.”) The meaning of the express property guaranty is clear: “Property rights [are] not affected by church relation.” See The Constitution of the Presbyterian Church in the United States of America, 1888, revised through 1903. p. 514.(copy attached)

The Confessions work toward the Book of Order in the same way the US Constitution works toward the laws. If the government were to adopt a trust provision claiming that a person’s property was held in trust for the government, we would look to the US Constitution to show that this law was invalid. Similarly when the denomination adopts a trust provision claiming the property of a particular church is held in trust for the denomination, we look to the Confessions to show that this disputed trust provision is invalid.

Commentators on the Westminster Confession are clear on the meaning of this express property guaranty. Dr. R.C. Sproul, a well known theologian and author of more than forty books , writes in *Truths We Confess – A Layman’s Guide to the Westminster Confession of Faith*, vol 3, p74, Presbyterian and Reformed Publishing, 2007:

The confession reaffirms the principle of private ownership. This may seem insignificant, but it isn’t simply a statement on economics

or political theory. The authors of the confession were concerned about Christian ethics and Christian faith. They wanted to maintain the right of private ownership as an ethical principle.

Similarly, Prof. Gordon H. Clark affirms that the Westminster Confession intended to preserve private ownership against the communal ownership reflected in a denominational trust, stating: “The Apostles stressed the right of private property.” They did not endorse communal ownership. See *What do Presbyterians Believe?*, p. 228, Trinity Foundation, 1965, 2001.

The Westminster Confession of Faith, 1646, has been in the superior part of every Presbyterian Constitution in the United States since the origin of this country, it is easy to see that there was no historical trust doctrine in any Presbyterian denomination and that the disputed trust provision is overruled by the superior Confession, which according to the Book of Order is reflective of Presbyterian belief and may not be “ignored or dismissed.” BoO, G-2.0200. As the Book of Order states at G-2.0200:

The Church is prepared to counsel with or even to discipline one ordained who seriously rejects the faith expressed in the confessions. Moreover, a more exacting amendment process is required to change the confessions of the Church than is required to change the constitution in matters of government, worship, or discipline.

Since Part I of the PC(USA) constitution guarantees that Ridgebury’s property rights will not be affected, the inferior trust provision cobbled onto Part II of the denominational constitution cannot “take away or infringe the title or

property” which Ridgebury has in its goods and possessions.

The Confessional statement that Ridgebury stands on in opposing the trust provisions is fully supported by Scriptural references set forth in the Book of Confessions. Thus, Ridgebury’s position has been confirmed by the highest judicatory in any Presbyterian denomination. As the Westminster Confession of Faith states at 6.010:

The Supreme Judge, by which all controversies of religion are to be determined, and all decrees of councils, opinions of ancient writers, doctrines of men, and private spirits, are to be examined, and in whose sentence we are to rest, can be no other but the Holy Spirit speaking in the Scripture.

Ridgebury’s position would be entitled to deference but for the adoption of neutral principles of law doctrine in New York.

### **Ridgebury Retained a Veto Power Over the Trust Provision**

Unlike Episcopal churches, particular churches in Presbyterian denominations reserve a veto power over disputed provisions of the denominational constitution. In the Presbyterian system, as opposed to the hierarchical, power is shared. BoO G-9.0103 states in pertinent part:

All governing bodies of the Church are united by the nature of the Church and share with one another responsibilities, rights, and powers as provided in this Constitution.

The respect and obedience due to any governing or “higher” body is both

limited G-1.0307 and contingent. *Book of Confessions*, 6.174 . The Permanent Judicial Commission of the General Assembly of the PC(USA) admitted this relationship in *Johnston et al v Heartland Presbytery*, Remedial Case 217-2 which stated:

“G-1.0400 does not characterize the task of governance as power and authority to carry out edicts, but in terms of arriving at the “collected wisdom and united voice of the whole Church”. While the Book of Order refers to a higher governing body’s “right of review and control of a lower one” (G-4.0301f), **these concepts must not be understood in hierarchical terms**, but in light of the shared responsibility and power at the heart of Presbyterian order (G-4.0302). (emphasis added)

The Westminster Confession of Faith Book of Confessions 6.174 states the limiting conditions on the authority of “higher” governing bodies:

“... which decrees and determinations, **if consonant to the Word of God**, are to be received with reverence and submission, not only for their agreement with the Word, but also for the power whereby they are made, as being an ordinance of God, appointed thereunto in his Word. (emphasis added) ( as amended 1788)

Thus it is clear that any decrees and determinations which are not consonant with the Word of God may be vetoed. The Scot’s Confession, 3.20, places this veto power in much more emphatic terms:

As we do not rashly condemn what good men, assembled together in general councils lawfully gathered, have set before us; so we do not receive uncritically whatever has been declared to men under the name of the general councils, for it is plain that, being human, some

of them have manifestly erred, and that in matters of great weight and importance. So far then as the council confirms its decrees by the plain Word of God, so far do we reverence and embrace them. But if men, under the name of a council, pretend to forge for us new articles of faith, or to make decisions contrary to the Word of God, then we must utterly deny them as the doctrine of devils, drawing our souls from the voice of the one God to follow the doctrines and teachings of men.

Ridgebury has vetoed the trust provisions as mere doctrines and teachings of men which are the result of error, which error is manifest in the legal strife the alleged trust provisions have created.

### **PC(USA) is Presbyterian, not Hierarchical**

Finally, there is an ecclesiastical doctrinal dispute as to whether or not the PC(USA) is hierarchical. Ridgebury believes, based the denomination's admissions, that the PC(USA) is presbyterian, and not hierarchical. The PC(USA) claims it is hierarchical, and not presbyterian. As Professor Erickson (R-77,78) states, a presbyterian system is based on the premise of local authority delegated upward, which authority may be withdrawn if abused. A hierarchical system is based on authority possessed at the top and exercised downward, with no recourse for those below.

Denominational documents reveal the truth: the PC(USA) is not hierarchical. It has no hierarchs. But the PC(USA) greatly desires to be deemed

hierarchical to gain legal advantage. Here's what the denominational documents state:

- Presbyterians “rejected . . . hierarchical church government.” *A Brief History of the Presbyterians*, Smylie, p.24.
- “Thus, there is no hierarchy of presbyters in the Presbyterian Church...”, *Presbyterian Polity for Church Officers*, Gray & Tucker, p.6 (Joan Gray was the past Moderator of the PC(USA), an office like the speaker of the house)
- “... these concepts [of church government] must not be understood in hierarchical terms, but in light of the shared responsibility and power at the heart of Presbyterian order.” *Johnston v Heartland Presbytery*, Remedial Case 217-2, Permanent Judicial Commission of the General Assembly of the PC(USA). This is the highest PC(USA) court
- “Certainly, the Presbyterian Church (USA) (PC(USA)) does not refer to itself as a hierarchical church. When speaking to a civil court, however, ... firmly present the PC(USA) as a hierarchical church.” Louisville Papers

This final bullet is from secret denominational legal directives to lawyers in church property cases. It quite plainly directs the PC(USA)'s lawyers to misrepresent the denomination as a hierarchical entity. The reason is clear and self-serving – PHR, unlike Ridgebury, is unable to point to denominational documents or scholarly treatises to claim that it is a hierarchical church, so it points to “legal precedents”, where denominational lawyers have succeeded in misleading the courts -- or the question was not disputed by someone with knowledge. If the PC(USA) were hierarchical, and not presbyterian as its name

would imply, there would be support for that position in denominational and theological writings, not denials as noted above. Calvin or Knox, or the Confessions would speak of this hierarch, if it were so. The question of whether the denomination is hierarchical or not, however, a question of fact, a religious question of fact – and not a question of law. And this religious question is in dispute. Note that we do not talk of “factual precedents”, though “judicial notice” may be taken of indisputable facts.

The Constitution of the United States and that of New York prohibits any attempt to bind a party to a factual determination made in a proceeding which it was not a party. Nevertheless, the Court of Appeals has held that even in hierarchical denominations, a local church could leave with its property if it had not previously ceded that property to the denomination. *FPC Schenectady*, 62 NY2d 110 at 120.

Further, the law of New York is clear, the courts must accept Ridgebury’s characterization of its beliefs. As stated by the Court of Appeals in *Holy Spirit v Tax Commission*, 55 NY2d 512, 518:

...the courts may not inquire into or classify the content of the doctrine, dogmas, and teachings held by that body to be integral to its religion but must accept that body's characterization of its own beliefs and activities and those of its adherents, so long as that characterization is made in good faith and is not sham.

## **Conclusion of Point**

The sum and substance of this review of the numerous disputes concerning ecclesiastical doctrine related to the trust provisions in the denominational constitution is that the court may not decide the religious dispute. It must decide the question of property ownership based on the other criteria permitted by the neutral principles of law doctrine. The denomination and Presbytery, in aspiring to arrogate a trust, failed to fulfill their duty to structure their relations involving church property so as not to require the civil courts to resolve ecclesiastical questions.

Ridgebury, on the other hand, fulfilled its duty to place its property in the proper legal structure to permit determination of its ownership, in accordance with the intent of the donors, without entry into theological controversy. Two title companies, one from each side, considered the neutral criteria of ownership and came to the same conclusion: Ridgebury owns its own property.

Ridgebury's ownership of its own property is consistent with the intent of the member-donors who voted their unanimous statement that they had given their property to Ridgebury in trust to be used for a local church serving its members.

**Point II**  
**Ridgebury's Deeds Secure**  
**Its Ownership of Its Property**

New York law aims at securing property titles to the owners thereof. If property titles are not secure, a dangerous instability will result. Property owners rely on their deeds to prove their title. Therefore, New York has developed a thorough system of recording deeds and other property instruments to show the world who the owners are. This system both resolves — and prevents — property disputes.

The donors of Ridgebury's property took care to establish their intent by making sure that Ridgebury's deeds reflected its right and title.

This duty to enforce the deeds was emphatically endorsed by the US Supreme Court when it validated Neutral Principles of Law in *Jones v Wolf*, 443 US 593, 603 (footnote 3):

Indeed, even in *Watson v Jones*, a common law decision heavily relied on by the dissent, Mr. Justice Miller, in speaking for the Court, stated that, regardless of the form of church government, it would be the "obvious duty" of a civil tribunal to enforce the "express terms" of the deed, will or other instrument of church property ownership. 13 Wall at 722-723

Here, the courts have the same "obvious duty" to enforce the express terms of Ridgebury's deeds. This duty is particularly compelling when PHR's claim of a

trust is unsupported by any instrument of property ownership in a cognizable form under New York law. In *Jones v Wolf*, supra at 606, the US Supreme court specifically directed that a denomination could not merely amend its constitution, but needed to establish the intent of the parties in a “legally cognizable form.” Here, there is no publicly recorded property instrument (the legally cognizable form) that supports PHR's claim.

The property title records system in New York has, at its heart, the premise that each property deed or instrument is to be construed within the four corners of the document. This defining premise is enshrined in Real Property Law §240(3) which states:

Every instrument creating, transferring, assigning or surrendering an estate or interest in real property must be construed according to the intent of the parties, so far as such intent may be gathered from the whole instrument and is consistent with the rules of law.

When Real Property Law §240(3) is applied to this case, Ridgebury Church's deeds, which contain no trust in favor of the presbytery or denomination, are dispositive. Ridgebury's deeds prove its ownership.

New York's rule of review limiting construal to the "four corners," i.e., to the "whole instrument" is long established and limits any review of extraneous authorities. The rule is stated by the Court of Appeals in *Loch Sheldrake*

*Associates v Evans*, 306 NY 297 (1954):

The settled rule for the construction of such instruments is that all evidence must be excluded which is offered to "vary, explain or contradict a written instrument that was complete in itself and without ambiguity in its terms" since, when words in a deed "have a definite and precise meaning, it is not permissible to go elsewhere in search of conjecture in order to restrict or extend the meaning" (*Uihlein v Matthews*, 72 NY 154, 159 and cases cited.) That is the first rule of construction and in this case we need no other.

Thus, New York's settled rule for construction of deeds does not permit extraneous provisions from a denominational constitution (even were they not in dispute) to "vary, explain or contradict" Ridgebury's deeds. The deeds must be enforced by the courts in accordance with their unambiguous terms.

Under church law, the church is entitled to 10% of each person's property. This is known as the tithe. If we permit looking past the deeds to denominational constitutions to vary, explain, or contradict a person's title, then no title will be safe. Denominations could claim a trust interest in any member's property.

If denominations want to hold trust interests in church property, lawyers are fully capable of drafting trust clauses for the deeds – and they always have been, if that had been the intent of the parties. Then there would be no dispute.

This rule of construction in determining property disputes has been confirmed by the Court of Appeals as recently as March 2008 in *Mtr of Piel*, 10

NY3d 163, 166 :

We begin with the fundamental premise that a court must first look within the four corners of a trust instrument to determine the grantor's intent (see generally *Mercury Bay Boating Club v San Diego Yacht Club*, 76 NY2d 256, 557 N.E.2d 87, 557 N.Y.S.2d 851 [1990]; *Matter of Cord*, 58 NY2d 539, 449 N.E.2d 402, 462 N.Y.S.2d 622 [1983]). Only if the terms are ambiguous may a court consider extrinsic evidence.

This analysis, which focuses on the deeds and other secular documents, is compelled by RCL §240(3) and endorsed by the Court of Appeals and the US Supreme Court. If is necessary when, as here, the religious constitution is in dispute. This same approach was explicitly adopted by New Hampshire in *Berthiaume v McCormack*, 153 N.H. 239 (2006).

In *Berthiaume*, the New Hampshire Supreme Court said that the courts must:

...first consider secular documents such as trusts, deeds, and statutes. Only if these documents leave it unclear which party should prevail will we consider religious documents, such and church constitutions and by-laws, even when such documents contain provisions governing the use or disposal of church property (at 248).

The NH Court explained that this approach:

...is consistent with [the] rules governing the resolution of property disputes generally. In resolving such disputes, [courts] consider extrinsic evidence, and the circumstances surrounding a conveyance to determine the parties intent, only if the language of the relevant document contains either patent or latent ambiguity.

While the NH Court adopted this rule by design, here it must be adopted by default because the relevant provisions of the religious constitution are in dispute — and, therefore, are non justiciable. As recently stated by the Court of Appeals in applying the neutral principles of law doctrine in *Congregation Yetev Lev v Kahana*, 9 NY3d 282, 286:

In doing so [applying neutral principles], courts may rely on internal documents, such as a [denominational constitution], but only if those documents do not require interpretation of ecclesiastical doctrine. (emphasis added)

Here, the disputed ecclesiastical doctrine concerning the property provisions in the denominational constitution may not be determined by the courts in resolving this property dispute. This rule was stated by the US Supreme Court in *Presbyterian Church v Mary Elizabeth Blue Hull Presbyterian Church*, 393 US 440, 449:

... the [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relations involving church property so as not to require the civil courts to resolve ecclesiastical questions.

Likewise, the Court of Appeals in *Cong. Yetev Lev v Kahana*, 9 NY3d 282, 286 (2007) states:

The First Amendment forbids civil courts from interfering in or determining religious disputes, because there is a substantial danger

that the state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrine or beliefs.

Therefore, because the relevant provisions of the denominational constitution are the subject of a religious dispute or controversy concerning religious doctrine, the property dispute herein must be determined solely upon the review of the neutral deeds, certificates of incorporation, and state statutes.

The deeds convey the realty to Ridgebury Church in fee simple absolute and contain no restrictions, reverters, or trust provisions. Nor has the Ridgebury congregation ever conveyed title - or a trust - to the PHR or PC(USA).

### **Point III**

#### **Ridgebury's Incorporation Guarantees Its Property Rights**

Ridgebury's incorporation prior to 1828, and the clear terms of its certificates of incorporation are clear proof of its title. Religious Corporations Law §24 , provides that the RCL does not apply to pre-1828 churches. Thus Ridgebury's right to disaffiliate with its property is well settled. See *Petty v Tooker*, 21 NY 267(1860). The Court of Appeals summarized this right in *In Re First Presbyterian Church*, 106 NY 251 (1887) holding that it is:

...settled that a religious corporation held its temporalities wholly free from the domination of any ecclesiastical authority, and by a tenure so independent that it could change its creed and denominational character without losing its hold upon its property.

Religious Corporations Law §24 preserves Ridgebury's right as a pre-1828 religious corporation. Nothing could be clearer. Ridgebury, having incorporated in 1805, is free to disaffiliate with its property. Ridgebury has done nothing to surrender its rights which, by the express terms of the statute, can only be done by vote of the majority of the members voting to surrender that right. Here to the contrary, the disaffiliation was done by a unanimous vote.

The right of pre-1828 churches to disaffiliate with their property is well known to the Presbytery of Hudson River. We read minutes on their website which (after Ridgebury's departure) indicated that their lawyer had advised them

to check which of their constituent churches were incorporated prior to 1828. This communication and the great delay in bringing this appeal led Ridgebury to make substantial improvement to its property in reliance thereon.

The original 1805 certificate of incorporation placed the control of Ridgebury's property solely in the control of its elected trustees to be used for the benefit of the local congregation. No interest in favor of the presbytery or denomination is even hinted.

The amended certificate of incorporation in 2005 contained a further disavowal of any trust interest, specifically stating:

Any claim to ownership of the property, real or personal, of the Church not expressly granted by legal action of the Trustees and approved by the Courts of the State of New York with respect to real property, is hereby declared unscriptural and contrary to the true faith and thus null, void, and without effect.

Again, the clear intent expressed by the members, the donors of Ridgebury's property, is clearly expressed by the unanimous vote: no trust.

(More than two years ago from the date of this brief, on December 3, 2006, the congregation of The Church at Ridgebury filed a Second Amended Certificate of Incorporation. The members, again by unanimous vote, decided that the Church should associate itself with the Evangelical Presbyterian Church and the Presbytery of the East thereof. These last two years have been years of growth and

celebration. Ridgebury is able to be Presbyterian without any pretense of hierarchy. The EPC, like the original Presbyterian denominations with which Ridgebury was associated, continues to guarantee local ownership of church property. (R-651-655) But, just in case the denomination changes its mind, the Second Amended Certificate of Incorporation (copy attached) states:

The Church shall retain all ownership and control of its property.)

## **Point IV**

### **The Unilateral Declaration of the Beneficiary Cannot Create a Trust**

Who can create a trust? Only the owner of the property. This fundamental principle, together with the statutes and law requisite to making a trust, leads to the certain conclusion that a religious denomination, by its amendment of its constitution, cannot create a beneficial trust interest in an existing local church's property. Only the owner can create a trust. Therefore, should it be assumed for argument's sake that the disputed religious trust provision may be considered, no trust was created by this amendment to the denominational Book of Order.

The Religious Corporations Law (RCL) and the Not-for-Profit Corporations Law (N-PCL) require court approval for a local church to grant a trust. General Obligations Law (GOL) §5-703(1) requires a duly executed property instrument. Finally, General Obligations Law §5-703(3) nullifies a denominational trust provision in its secular operation: declaring it "void."

Any trust requires three roles: a settlor (grantor), who creates the trust; a trustee, who holds the trust property; and a beneficiary, who receives the benefit of the trust property. Thus, it is the owner, and not the beneficiary, who can create the trust. Here, the owners are the members of Ridgebury Church, who have contributed their time, talent, and treasure to Ridgebury, are the true owners of the property. They have placed it in the hands of their locally elected trustees for the

operation, maintenance and preservation of a local church in their community – a purpose which will be defeated if ownership is wrested from them.

### **Historical Lack of any Trust**

Local ownership of local churches was provided for in the earliest presbyterian Books of Discipline in 1560 and 1578 and continued unabated as the norm in presbyterian polity. Local ownership and property rights were confirmed by the Westminster Confession of 1646. It is reflected in tens of thousands of local Presbyterian church property deeds which uniformly lack any trust clauses. Local churches, like most people, depend on their deeds to prove their ownership. The constitution of the Presbyterian Church in the United States of America, which Ridgebury joined in 1817, explicitly indicated that their “Property rights [are] not affected by church relation”. Local church property rights have been historically “guaranteed.”

*In Re First Presbyterian Church*, 106 NY 251 (1887) is instructive on this point because the presbytery made no claim of a trust interest express or implied.

The Court of Appeals held that there was no trust, stating:

...for no authority in the church has ever held or pretended that a society could not sell its land without the precedent consent of the presbytery. The interference of that body was sought by the minority of the society in the present case. The majority declined to appear or to recognize the authority invoked.

So much for an historical trust doctrine. The local church refused to recognize that the presbytery had any authority whatsoever in property matters.

In 1929, an attempt was made to alter this Presbyterian norm of property ownership by introduction of a requirement for local churches to hold their property in trust for the denomination. This attempt was defeated. Thus it is clear that before the 1980's, it was undisputed that all local presbyterian churches owned their property free and clear of any claimed denominational trust, by implication or otherwise.

### **Statutory and Legal Requirements to Create a Trust**

Since Ridgebury Church has always been the actual owner of its property, no trust could have been granted without express action by Ridgebury's congregation – in compliance with statutory and legal requirements. The basic premises of trust law preclude the formation of a trust in the manner claimed by PHR. The court below, in dismissing PHR's claims said:

It is hornbook property law that only the owner of real property can convey an interest in the property; B can not create a future interest in A's property without A's consent(see generally, Bogert, Trusts and Trustees [2nd ed rev] §§ 141 et seq).

Another court similarly said:

We know of no principle of trust law stating that a trust can be

created by the declaration of a nonowner that the owner holds the property as trustee for the nonowner. *California-Nevada Annual Conference v St Luke's UMC*, 121 Cal App 4th 754 (200 )

Moreover, an owner can convey a trust only to the extent that it may convey the property. Restatement of Trusts, 3rd , §11, Capacity of Settlor to Create a Trust, states:

A person has capacity to create an irrevocable *inter vivos* trust by transfer to another or by declaration to the same extent that the person has capacity to transfer the property *inter vivos* free of trust in similar circumstances.

Therefore, since Ridgebury Church may not convey its property without first obtaining court approval pursuant to Religious Corporations Law §12 and Not-for-Profit Corporations Law §§ 510 and 511, neither may it convey a trust without compliance with those statutory requirements. And the NfPCL requires a 2/3 congregational vote. See §511.

The requirement for court approval is unambiguous. Not For Profit Corporations Law Section 510(a) states in pertinent part:

A sale, lease, exchange, or other disposition of all or substantially all of the assets of a corporation may be made on such terms and conditions and for such consideration...as may be authorized in accordance with the following procedure:

(1) If there are members entitled to vote thereon, the Board shall

adopt a resolution recommending such sale, lease, exchange or other disposition...the resolution shall be submitted to a vote at a meeting of the members entitled to vote thereon...at such meeting by two-thirds vote...the members may approve the proposed transaction...

Here, it is undisputed that there was no vote of the members of the congregation to grant a trust.

Not-for-Profit Corporation Law Section 511 specifies the requirements of a petition to the court to approve the disposition. No petition for court approval was ever made to create the claimed trust.

Among the purposes of the Not-for-Profit Corporation Law and Religious Corporations Law §12 is to prevent the dissipation of corporate assets. See *Bernstein v Friedlander*, 58 Misc 2d 492. The Court must determine whether the consideration and terms of the transaction are fair and reasonable. *Application of Church St. Francis De Sales*, 110 Misc 2d 511.

Indeed, it is the duty of the court to withdraw its consent when it is apparent that the sale of the property would be in opposition to the view of a large majority of the members of the corporation. See *Wyatt v Benson*, 23 Barb. 327 (1857).

While local churches may be free to grant a trust in favor of their denomination, such a sale or conveyance would require an application to the court to approve the conveyance to ensure that it is in the best interests of the local

church corporation and supported by the majority of its members.

New York's NfPCL §510 makes it clear that a vote of the congregational members of a church is required to convey a property trust to another entity. The PC(USA)'s BoO, G-7.0304, also makes it clear that members of the congregation are to vote concerning the buying, mortgaging, or selling real property. This BoO provision confirms that the congregation must vote to convey a trust interest. Pursuant to N-PCL §510(a)(1), 511(a)(8), such vote of the members must be by a 2/3 majority.

Therefore, it is clear that there never has been conveyance of a trust interest to PHR since there has never been a resolution by the church's governing board to recommend such a conveyance, there has never been a vote of the congregation to approve such a conveyance of a trust interest, and there has never been a petition to the Supreme Court by Ridgebury Church for permission to grant a trust to PHR.

Finally, there has never been a court finding that the interests of Ridgebury would be promoted by granting a trust.

Hence, no trust interest could have been granted to PHR by Ridgebury since no application for court approval for the grant of a trust was made. And the congregation did not vote to approve the trust.

## **Distinguishing Methodist and Episcopal Church Cases**

This situation is distinguishable from Episcopal and Methodist churches which always held their property subject to a denominational trust since their inception as local churches. Methodist founder John Wesley, who died in 1791, wrote the original Methodist Deed of Trust, which is required of all Methodist churches since the founding of the Methodist Church, a hierarchical derivative of the Church of England. For Episcopalians, the existence of a pre-existing denominational trust is the clear holding in *Trustees of the Diocese of Albany v. Trinity Episcopal Church*, 250 A.D.2d 282 (3d Dept 1999) where the court held:

...the intent and purpose of adopting the "Dennis Canon" was to declare and enunciate existing canonical church law and not to effect a change in said law.

Although this express trust provision was absent from the national canons at the time Trinity Episcopal Church acquired the parcels of land surrounding the church edifice parcel, retroactive application of such trust provisions would not, as defendants contend, extinguish the real property rights of every local church or parish throughout New York, so long as a court finds that the trust provisions were declaratory of existing church policy.

Thus it is clear that the reason that Episcopal and Methodist church property cases have different results than Presbyterian cases relates to the fundamental manner in which church property is held. Since Presbyterian churches have held their property free of any denominational trust interest (particularly true of pre-

1828 churches), a retroactive application of the disputed trust provision would extinguish real property rights of local churches throughout New York in violation of the US and NY Constitutions.

### **NO Presbyterian Historical Trust Doctrine**

The Court of Appeals in *FPC Schenectady*, 62 NY2d, 110, at 125 found that the Presbyterians had no trust provision prior to the 1980's. PHR, in its Brief, makes the absurd and bizarre argument that “*Schenectady* Did Not Reach the Issue of Whether a Historical Implied Trust Exists in the PCUSA.” Brief p.32-33. PHR had better re-read the Court of Appeals decision at 124-125. The Court of Appeals specifically looked at the question of an implied trust in favor of the denomination (#2 or the second type). After concluding that there was no intent by the local church to grant such a trust, the Court of Appeals noted that the denomination had actually voted down an attempt to introduce a trust in 1929. The vote against adding a trust claim to the denominational constitution is good evidence that no implied trust existed before that time, but certain proof that no trust existed after that time.

### **Court Approval Need to Convey a Trust Interest**

Therefore, to convey a trust interest to PHR, Ridgebury, as the owner of the property, needed to receive court approval of the conveyance of the property

interest in accordance with the requirements of the RCL and the NfPCL

The Respondent's Brief fails to even mention these statutory requirements. Nothing should permit ignoring these statutes – intended to protect church properties from “those who might divert them from the true beneficiaries” -- in order to permit a conveyance without court approval and without the approval of the congregation.

### **Beneficiaries Cannot Declare Trusts in Other's Property**

PHR (and the denomination) base their claim that a beneficiary may be able to create a trust on a misreading of certain dicta in *Jones v Wolf*, 443 US 595, 606 (1979) which reads in pertinent part:

Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. . . . And the civil courts will be bound to give effect **to the result indicated by the parties, provided it is embodied in some legally cognizable form.** [emphasis added]

Presuming that the Supreme Court was not giving denominations a license to steal, we must take cognizance of three points: First, the result must be one “indicated by the parties”. Both parties must act. Ridgebury, as the owner of the property, has not acted to grant a trust. Second, the trust must be “embodied” in some

legally cognizable form.” Something more than a mere declaration of religious polity is needed to embody a trust. A trust clause in a religious constitution has no body. It is purely aspirational; to take effect it must be embodied. In New York, the “form” in which it must be “embodied” is a property instrument executed by the local church GOL §5-703(1). A trust provision in an religious organization’s constitution is at best a contract to grant a trust and is “void”. GOL §5-703(3)

Third, and finally, in asserting a trust provision in the Book of Order, the denomination failed to perform its duty enjoined by the US Supreme Court, to “structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.” *Presbyterian Church*, 393 US 440, 449. The issues in theological and ecclesiastical dispute in the denominational constitution were well known. At least four distinct religious objections to the trust provision are readily apparent as noted previously. The denomination’s failure to avoid religious dispute in its assertion of a trust prevents considering its claim.

### **An Example**

A business corporation, seeking the benefits of a connectional organization joins the local business chamber and agrees to abide by the rules. The business chamber notices that many businesses are leaving for greener pastures. A proposal

is made to introduce a trust provision requiring each member to hold all its property in trust for the business chamber. A majority, not planning to leave, approve the proposal. A minority, including the business corporation, do not believe the trust provision valid, ignore the provision, and continue to participate in the business chamber. After many years, the business corporation decides to leave for greener pastures, checks its deed, gets a title report showing its ownership, and lists its property, planning to sell the real estate and leave. The business chamber sues to enforce the trust and enjoin the business corporation.

Is there a trust? No way. If the majority can vote to take the minority's property, no one would be safe. Why would we think a religious denomination can be different.

**Point V**  
**The Denominational Trust Provision is “Void”**

The disputed trust provision in the PC(USA) Book of Order relied on by PHR is declared void in its secular application by General Obligations Law §5-703(3) which states:

A contract to . . . establish a trust of real property, or any interest therein or right with reference thereto, is void unless the contract ... is in writing and subscribed by the party to be charged . . .

Constitutions and by-laws of voluntary associations and not-for-profit corporations are a contract between the members and the organization. As stated by the Court of Appeals in *Mtr. of George v Holstein-Friesian Assn.*, 238 NY 513, 523 (1924):

The by-laws and constitution form the contract between the members of the Association and the Association itself. (See also *Mtr of Cong. Yetev Lev v Kahana*, 31 AD3d 541, *dissent* 548 (2<sup>nd</sup> Dept. 2006); *Procopio v Fisher*, 83 AD2d 757,758 (1981))

By-laws, in the context of not-for-profit corporations include “constitutions, by-laws, charters, rules, and regulations.” N-PCL §102 (a)(2).

Therefore, the “contract” between Ridgebury Church and PHR set forth in the denominational constitution trust clause – even were it otherwise valid – is “void” by application of GOL §5-703(3).

The disputed trust clause cannot result in a trust in favor of PHR or deprive Ridgebury of vested rights. As the Court of Appeals said in *Mtr of Brown v Supreme Court of the Independent Order of Foresters*, 176 NY 132, 137 (1903):

Conceding that the constitution and by-laws of the defendant are part of the contract between the parties and the general rule that the law permits great freedom of action in making contracts, there are some restrictions placed upon that right by legislation, by public policy and by the nature of things.

Here, NYS legislation, in the form of GOL §5-703(3), places restriction on the denomination and PHR to exact a property trust from local churches affiliated with the denomination or its presbyteries. The constitutional trust provision, as a “contract” provision under New York law, is void – not valid or legally binding. It is not binding because Ridgebury Church – as the owner of the property sought to be charged with the trust – has not executed a property instrument in cognizable legal form in New York. There has been no compliance with the Statute of Frauds set forth in the General Obligations Law.

New York has long held that any by-laws of voluntary associations and not-for-profit corporations which are unreasonable are unenforceable. See 6 NY Jur 2d, Associations and Clubs, §4. By-laws, such as denominational constitution, which purport to deprive property and/or vested rights are thus unenforceable. More specifically, GOL §5-703(3) provides that constitutions and by-laws

attempting to create a trust, as contracts to make a trust, are “void” and, thus, unenforceable and without effect. This is consistent with other jurisdictions which have considered this issue. The Pennsylvania Supreme Court stated in *In re: Church of St. James, the Less*, 888 A.2d 795, 807-808:

. . . a member of a voluntary association is bound by the amendments to the association rules so long as the amendments (1) are duly enacted: and (2) do not deprive the member of vested property rights without the member’s explicit consent. [emphasis added]

Here, the property trust provision relied on by PHR was not duly enacted, but more importantly, seeks to deprive Ridgebury Church of its property rights without its consent. Thus, as a part of the contract between Ridgebury and PHR, the trust provision is declared void by GOL §5-703(3) because there is no writing subscribed by Ridgebury evidencing its explicit consent.

Since the trust provision is void and without effect, GOL §5-703(3) eliminates the possibility that a trust can arise by implication as a consequence of its purported adoption by the denomination. The trust provision is void and “without effect.” Things without effect cannot have implications (which are effects). This elimination of any trust which may arise by implication distinguishes GOL §5-703(3) from GOL §5-703(1); otherwise §5-703(3) would be a mere redundancy.

Void means end of story. The disputed trust provision is void.

## Point VI

### The Presbytery Has Failed to Prove a Trust Beyond a Reasonable Doubt

New York law frowns upon trusts created by any means other than the property owner's written act. The General Obligations Law (§§ 5-703(1&3)) provides that real property trusts are "void" unless the owner signs a writing. Here, there is no such thing. Instead, the denomination attempted to arrogate a trust interest by religious means. To accomplish this, the denomination adopted a disputed trust provision claiming a trust in property owned by its local churches. Even were we to assume for argument's sake that the putative non-owner beneficiary can create a trust in an owner's property without the express act of the owner, the establishment of a trust has not been proved beyond a reasonable doubt.

Trusts must be established beyond a reasonable doubt. This standard of proof is articulated long ago by the Court of Appeals in *Beaver v Beaver*, 117 NY 421 (1889). See also *Starbuck v Farmers Loan and Trust Company*, 28 Ad 272 (1898); 106 NY Jur 2d, Trusts §64. In *Beaver* the Court of Appeals stated:

To constitute a trust there must either be an explicit declaration of trust, or circumstances which show beyond a reasonable doubt, that a trust was intended to be created. It would introduce a dangerous instability of titles if anything else were required, or if a voluntary trust . . . could be established, in the absence of express words, by circumstances capable of another

construction or consistent with a different intention.

PHR argues that Ridgebury's behavior – abiding by the valid provisions of the denominational constitution and ignoring the invalid provisions – is evidence of an intent to convey a trust. Ridgebury's behavior was no different prior to the assertion of the disputed trust provision. Ridgebury's behavior in its new Presbytery and new denomination is no different than its behavior in PHR and the PC(USA).

Additionally, PHR suggests a trust is created by the acts of a minister.

Under Presbyterian polity, ministers are members of Presbytery and not members of the local church and therefore not entitled to vote at a meeting of the congregation. Book of Order, G-7.0308 states:

"since a Minister is not a member of the congregation, he or she may not vote in the meeting of the congregation".

Clearly, a non-member not even entitled to vote cannot act to create a trust which requires the vote of 2/3 of the members.

A trust cannot be created by "... circumstances capable of another construction or consistent with a different intention." *Beaver v Beaver*, supra.

As stated by the court below:

The Restatement (Third) of Trusts § 13 states, "[a] trust is created

only if the settlor properly manifests an intention to create a trust relationship." The comment to this section of the Restatement states, "[t]he manifestation of intention requires an external expression of intention as distinguished from undisclosed intention." "The settlor must manifest with certainty his intent to have a trust and also provide the terms of the trust" (Bogert, Trusts & Trustees [2nd ed rev] § 45).

Here, there is no proof beyond a reasonable doubt as to the intent of Ridgebury to grant such a trust.

**POINT VII**  
**Ridgebury Church Expressly Revoked Any**  
**Trust That May Have Been Formed by Implication**

In amending its Certificate of Incorporation, Ridgebury Church expressly revoked any trust which may have been implied. (R-63) The Amended Certificate of Incorporation was subscribed and recorded in the county clerk's office, thus effectively revoking any implied trust.

The Amended Certificate of Incorporation of Ridgebury Church, to counter any notion that it could grant a trust interest in its property without any express intent to do so, amended its Certificate of Incorporation to clearly indicate the means and manner of creating a trust – by express act and with court approval.

The clear and express vote of the congregation on notice to the members starkly contrasts with the ambiguous and dubious acts purported to have manifested its intent to create a trust without any notice to the members. The vote of the congregation accords perfectly with over four hundred (400) years of Presbyterian polity which supports the Biblical intent that local churches own their own property. The vote resolved to maintain and adhere to the religious beliefs and standards held by the congregation since its inception.

It is perfectly clear that the disputed trust claimed by PHR, based on its own reading of G-8.0201 of the BoO, does not specify that the trust it purports to make

is irrevocable.

The Restatement Third of Trusts, Section 63, comment c, presumptions regarding revocability, states in pertinent part:

If, however, the settlor has failed expressly to provide whether the trust is revocable or amendable but has retained an interest in the trust (other than by resulting trust), the presumption is that the trust is revocable and amendable by the settlor.

Here, it is undeniable that Ridgebury Church has retained an interest in the purported trust property. The purported trust property is the church buildings, facilities, and personal property continually in use by the congregation in accordance with its corporate purposes. Ridgebury Church holds the deeds. It possesses, uses, and maintains the property. Therefore, Ridgebury Church was fully able to revoke any trust that was created.

While the claimed trust does not satisfy the requirements of NYS General Obligations Law Section 5-703 (there was no writing subscribed by the owner of the property) the denial and/or revocation of any implied trust fully meets the requirements of the General Obligations Law in that it was in writing, subscribed by the authorized officers of the Church. It is also properly recorded in the County Clerk's Office.

An implied trust, if created by the ambiguous acts of the settlor, can

certainly be revoked by the unambiguous express declaration of the settlor.

The court in *California-Nevada Annual Conference v St. Luke's UMC*, 121 Cal App 4th 754 where an actual trust had been created by St. Luke's, the local church, the court went on to determine that a trust could be revoked by the local church:

that trust could be amended or dissolved by amending the St. Luke's articles of incorporation to expressly state that St. Luke's would not be "affiliated with" or "subject . to the . discipline . of the United Methodist Church," and that it would hold property "in trust for the sole benefit of this Corporation." That is exactly what St. Luke's did.

That is exactly what Ridgebury did.

**Point VIII**  
**The Episcopal Diocese Case Is Inapposite**

The recent Court of Appeals, *Episcopal Diocese v Harnish*, \_\_NY3d \_\_ (Oct. 23, 2008), is inapposite. This Presbyterian case differs from the Episcopal case in key critical elements. Here is an Outline of Differences.

<b>All Saints Episcopal</b>	<b>Ridgebury Presbyterian</b>
Property always in trust for the Diocese	Property always locally owned
Denomination always had trust requirement	Denomination never claimed any trust prior to 1981
No need for RCL § and NfPCL compliance since trust was <i>ab initio</i>	Compliance with RCL and NfPCL required
No revocation of trust	Any trust expressly revoked
No religious dispute over trust canon	Trust provision is the subject of religious dispute
Trust canon properly adopted	Disputed trust provision <i>ultra vires</i>
Trust canon not over-ruled	Disputed trust provision over-ruled by express property guarantee
Episcopal canon permits civil enforcement	Presbyterian constitution not to be enforced by civil power
Episcopal canon has civil effects	Presbyterian constitution has no civil effects

Local church in violation of canon	Ridgebury in compliance with constitution. Presbytery and Denomination in violation.
Local church effected a writing	Ridgebury merely affiliated. No compliance with statute of frauds
Church agreed to obey future canons	Ridgebury agreed to veto (deny) erroneous provisions. Has vested right to disaffiliate
Denomination is hierarchical (episcopal)	Denomination is Presbyterian (non-hierarchical)
Highest religious authority supports Diocese	Highest religious authority supports Ridgebury
Religious Corporations Law expressly requires an Episcopal church to hold its property in trust.	Ridgebury is a pre-1828 church. Not bound by the RCL and free to disassociate with its property.

The Court of Appeals in *Episcopal Diocese v Harnish* case did not criticize or overrule *FPC Schenectady v UPCUSA*, 62 NY2d 110, (1984) which reached an entirely different result in Presbyterian church property case. The differences between the Episcopal and Presbyterian systems required a different result, as the court below found in upholding Ridgebury's property rights.

To blindly apply the *Episcopal Diocese* case here would result in a complete reversal of the neutral principles doctrine and would violate the US Constitution by

granting clear preference to the religious views one group over those of another. In *FPC Schenectady v UPCUSA*, the Court of Appeal explicitly adopted Neutral Principles of Law (at 120) and noted that denominational deference is likely unconstitutional stating:

Moreover, we agree with those who have observed that the doctrine is preferable to deference because it does not prefer one group of disputants to another. The deference approach assumes that the local church has relinquished control to the hierarchical body in all cases, thereby frustrating the actual intent of the local church in some cases. Such a practice, it is said, discourages local churches from associating with a hierarchical church for purposes of religious worship out of fear of losing their property and the indirect result of discouraging such an association may constitute a violation of the free exercise clause. Additionally, by supporting the hierarchical polity over other forms and permitting local churches to lose control over their property, the deference rule may indeed constitute a judicial establishment of religion (see Adams & Hanlon, *Jones v Wolf*, Church Autonomy and the Religion Clauses of the First Amendment, 128 U of Pa L Rev 1291, 1337).

To reverse the court below would be to give mere lip service to Neutral Principles, and allow disputed religious views to trump the state statutes regarding the recording of deeds, the creation of trusts, and the conveyance of property by religious corporations. The appellate court in *California-Nevada*, *supra*, commented on this skirting of Neutral Principles doctrine, stating:

A general church [denomination] may certainly view a local church's board of directors as being "unauthorized" and not in compliance with the general church's rules. This is an ecclesiastical matter, and not a matter with which a civil court would interfere. (*Jones v Wolf*, *supra*,

443 U.S. 595.) But we respectfully disagree with the view that acts of a board of directors of a lawfully formed corporation may be viewed by a civil court to be a nullity simply because those acts are deemed unauthorized not by any recognized rule of state law, but rather only by the general church's own rules. In *Barker* the court stated: "Essentially, the hierarchical theory subordinates civil control of church property to ecclesiastical control of church property. Under this theory the canons and rules of a general church override general principles of legal title in the resolution of church controversies over property." (*Barker*, supra, 115 Cal. App. 3d at p. 612.) Although the hierarchical theory has supposedly been rejected in California, it will nevertheless live on under the label of "Neutral Principles of Law," if a church's own rules are viewed as trumping state statutes.

Our Court of Appeals has ruled in *FPC Schnectady*, supra, at 120:

Thus even though members of a local group belong to a hierarchical church, they may withdraw from the church and claim title to real and personal property, provided that they have not previously ceded the property to the denominational church (Nowak, Rotunda & Young, Constitutional Law [2d ed], ch 19, § IV, p 1075). The fact that the Presbytery is part of a hierarchical body which may have determined the property dispute adversely to plaintiffs does not bind this court if it proves possible to decide the controversy through application of "Neutral Principles of Law."

Since Ridgebury has never ceded its property to the Presbytery or denomination, the decision and judgment of the court below should be affirmed.

## CONCLUSION

Because all property of The Church at Ridgebury, EPC was donated to Ridgebury to be held in trust for the use of its congregation;

because Ridgebury as a pre-1828 religious corporation has the right to freely disassociate and keep its property;

because the deeds of Ridgebury are absolute without trusts, reverters or restrictions;

because the congregation of Ridgebury Church voted unanimously to disaffiliate from PHR and the denomination and revoked any trust;

because the state laws required to be followed to convey a trust to PHR were not followed;

because the disputes of the parties concerning asserted trust provision ,the constitution and governance of the denomination is non justiciable; and

the Appellate Division should affirm the Decision and the Judgement of the Supreme Court.

Dated: December 10, 2008  
Walden, New York

Respectfully submitted,

---

Donald G. Nichol  
JACOBOWITZ AND GUBITS, LLP  
*Attorneys for Defendants-Respondents*  
158 Orange Avenue  
P. O. Box 367  
Walden, NY 12586-0367  
(845) 778-2121