

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

HUDSON PRESBYTERIAN CHURCH,	)	Case No: 2006 09 6162
	)	
Plaintiff,	)	JUDGE SPICER
	)	MAGISTRATE SHOEMAKER
vs.	)	
	)	<u>EASTMINSTER PRESBYTERY'S</u>
EASTMINSTER PRESBYTERY,	)	<u>MOTION FOR SUMMARY</u>
	)	<u>JUDGMENT</u>
Defendant.	)	
	)	
	)	
	)	

This case involves a property dispute between two factions of a previously undivided congregation of the Hudson Presbyterian Church (U. S. A.), an Ohio religious corporation. Plaintiff is one of those two factions and has improperly identified itself in the Complaint as Hudson Presbyterian Church.<sup>1</sup> Plaintiff is attempting to separate Hudson Presbyterian Church (“Hudson Presbyterian”) from the defendant, Eastminster Presbytery (“Eastminster”), a hierarchical religious entity that is part of Presbyterian Church (U. S. A.).

In response, Eastminster, in the exercise of its hierarchical function and pursuant to express language contained in the Presbyterian Church’s governing Constitution, has identified the true Hudson Presbyterian Church congregation (“True Church”) and it is not Plaintiff. The Hudson Presbyterian True Church is that group of congregants

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<sup>1</sup> As will be made clear later herein, the name Hudson Presbyterian Church, and the assets it owns, properly belong to that part of the congregation that chooses to remain part of Presbyterian Church (U. S. A.).

(members) that wish to remain faithful to and affiliated with PCUSA. As the True Church, they are entitled to use and possession of the church building and other assets. Eastminster is now entitled to appropriate court orders permitting it to take control of this property for the benefit of the True Church at Hudson Presbyterian, and dismissing all restraints on Eastminster's freedom to act with respect to control of the church's pastor and session (a Presbyterian church's equivalent to a parish council or board of trustees).

Eastminster now respectfully Moves the Court for summary judgment, dismissing the Complaint and granting the Counterclaim, declaring that Hudson Presbyterian's assets be directed to Eastminster, for the benefit of the True Church at Hudson Presbyterian. This motion is supported by all of the pleadings, depositions, and affidavits filed before the Court. It is further supported by true and authenticated copies of the present and past versions of the Presbyterian denomination's *Book of Order*, which is part of the denomination's Constitution.

**I. Summary of motion and argument**

Hudson Presbyterian Church is part of a hierarchical Christian denomination called Presbyterian Church (U.S.A) ("PCUSA"). PCUSA is divided into regions, and Eastminster is one such region, having jurisdiction over 55 churches in Northeast Ohio, and their Ministers of the Word and Sacrament. Hudson Presbyterian was formed and chartered by Eastminster. Eastminster and other affiliated bodies within PCUSA spent considerable resources forming Hudson Presbyterian and helping build the worship sanctuary (church building).

All churches and governing bodies in PCUSA are subject to PCUSA's Constitution, which includes the *Book of Order*. The *Book of Order* expressly creates a

hierarchical structure, whereby individual (“particular”) churches are subject to and governed by presbyteries (such as Eastminster). Hudson Presbyterian was formed as part of PCUSA (actually, PCUSA’s immediate predecessor). When it formed a corporation, Hudson Presbyterian expressly stated that it was bound by the denomination’s Constitution. It also stated that a corporate purpose was to adopt by-laws that were in conformity with the Constitution.

At all relevant times, the *Book of Order* has subjected all of a particular church’s property to an *express trust* in favor of PCUSA. Hudson Presbyterian, by adopting articles of incorporation and by-laws recognizing the primacy of the denomination’s Constitution, granted that express trust in its property in favor of PCUSA, to be administered by Eastminster.

In the event of a schism (or division of a congregation into two factions) within a particular church (as has happened at Hudson Presbyterian), the *Book of Order* has delegated to presbyteries the duty and authority to identify the faction (True Church) entitled to possession and use of the church’s property. A schism has occurred here, where part of the congregation has voted to leave PCUSA and part of the congregation has voted to remain with PCUSA. As a result, Eastminster has identified the True Church in Hudson, and the Court should order Plaintiff (which wrongly calls itself Hudson Presbyterian) to abandon all property of Hudson Presbyterian and relinquish it to Eastminster for its further administration pursuant to the *Book of Order*.

Eastminster is also entitled to a constructive trust in the property that is Hudson Presbyterian. The church was originally founded and funded by Eastminster and other governing bodies of PCUSA. Plaintiff would be unjustly enriched if it were now allowed

to take the property and assets of Hudson Presbyterian that Eastminster and the Presbyterian denomination worked so hard to build.

In 2006, Plaintiff attempted to separate Hudson Presbyterian from its hierarchical relationship with PCUSA. This included attempted changes to the corporation's articles of incorporation, which were illegal and ineffective, and these changes must be set aside by the Court. Plaintiff also attempted to change the corporation's by-laws, contrary to direct provisions of both the articles of incorporation and prior by-laws. These changes should be set aside by the Court. Plaintiff attempted to change the express property trust held by PCUSA, which was contrary to direct provisions in the articles of incorporation. That change must be set aside by the Court. Lastly, Plaintiff staged a vote to disaffiliate from PCUSA, which was contrary to direct provisions of the articles of incorporation. This vote must be set aside by the Court.

Finally, to the extent Plaintiff has sought this Court's intervention prohibiting Eastminster from taking disciplinary or other action with respect to Plaintiff's pastor and session, such intervention is constitutionally prohibited by the First and Fourteenth Amendments of the United States Constitution. Civil courts have no jurisdiction over the ecclesial relationships between Eastminster Presbytery and its minister members and church members. This interference in Eastminster's ecclesial functions violates its free exercise of religion. Thus, the temporary restraining order and preliminary injunction must be dismissed.

Eastminster is thus entitled to summary judgment on any or all of five independent grounds. First, Hudson Presbyterian and its property are subject to an *express* property trust in favor of PCUSA. Second, Eastminster, acting according to

PCUSA's Constitution, has identified the True Church entitled to possession and use of Hudson Presbyterian and its property. Third, Hudson Presbyterian's property is bound by a constructive trust, as Eastminster formed the church, and without its contributions (and those from other governing PCUSA bodies), the church would not have been built. Fourth, the changes to the corporate articles of incorporation and by-laws were illegal and ineffective; thus, the corporate actions were *ultra vires* and the church and corporation both remain subject to the hierarchical authority of PCUSA. Fifth, the Court should not interfere with Hudson Presbyterian as it is unconstitutional interference with the internal matters of a hierarchical church

## **II. Statement of facts**

### **(a) Presbyterian Church (U. S. A.) overview**

The Presbyterian Church (U. S. A.) is a national Christian denomination with approximately 2.4 million members. The Presbyterian Church in the United States had split into two parts during the American Civil War. Hudson Presbyterian Church was formed and incorporated in June, 1982, about one year prior to the merger of the Presbyterian Church in the United States ("PCUS") and the United Presbyterian Church in the United States of America ("UPCUSA"). The two merged denominations formed the Presbyterian Church (U. S. A.). Hudson Presbyterian was created within the UPCUSA denomination and became part of the PCUSA denomination.

### **(b) PCUSA, of which Hudson Presbyterian is a part, is organized hierarchically.**

PCUSA is a hierarchical organization that is governed by representative bodies, called governing bodies, which are, from lowest to highest:

- (1) Session, the governing body for a particular church (Hudson Presbyterian has a session that governs the church):
- (2) Presbytery, a regional body having jurisdiction over a number of member particular churches and their pastors. Eastminster is the presbytery that governs Hudson Presbyterian;
- (3) Synod, a larger regional body, having jurisdiction over a number of presbyteries; and
- (4) General Assembly, which is the highest governing body.

Under PCUSA's Constitution, each governing body is limited by the Constitution's express provisions. Powers that are not mentioned specifically are reserved to the presbyteries, and the acts of each governing body are subject to review by the next higher governing body.<sup>2</sup>

(c) **Hudson Presbyterian's articles of incorporation are governed by PCUSA's Constitution, including the *Book of Order***

PCUSA's Constitution is organized in two parts.<sup>3</sup> The Book of Confessions sets forth the eleven creeds and confessions of PCUSA. The form of government, directory for worship, and rules of discipline are set forth in the *Book of Order*.

The *Book of Order* contains the rules and governing structure that every particular Presbyterian church is required to adhere to. It established the authority of PCUSA's governing bodies and the proper organization of each church within PCUSA. Hudson Presbyterian, at its inception, bound itself and agreed to adhere to this Constitution, which includes the *Book of Order*.

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<sup>2</sup> *Book of Order*, G-9.0103.

<sup>3</sup> PCUSA's predecessor, UPCUSA, similarly had a constitution and a Book of Order.

When it was formed by UPCUSA, Hudson Presbyterian, in its articles of incorporation, expressly submitted to the denomination's "authority and form of government as set forth in the Constitution . . . and under the further authority of Eastminster Presbytery." Hudson Presbyterian further provided in its articles of incorporation that a corporate purpose was to adopt bylaws that conformed to the denomination's Constitution.<sup>4</sup>

These references in Hudson Presbyterian's articles of incorporation to "the Constitution" make the *Book of Order* an integral part of the governing instruments of Hudson Presbyterian, just as these by-laws are. These were undoubtedly relied upon by Eastminster and the denomination in forming and financially supporting Hudson Presbyterian.

(d) **PCUSA's *Book of Order* and property trust**

On May 23, 1981, prior to formation of Hudson Presbyterian, and two years after the United States Supreme Court decision in Jones v. Wolf (1979), 443 U. S. 595, 61 L. Ed. 2d 775, 99 S. Ct. 3020, UPCUSA amended its *Book of Order* to provide for an express trust in all property of a particular church in favor of the denomination, as set forth below:

"2. *All property held by or for a particular church, a presbytery, a synod, the General Assembly, or The United Presbyterian Church in the United States of America, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or of a more inclusive judicatory or retained for the production of income, is held in trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America.*" (G. XLII, Sec. 72.02). (Emphasis added).

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<sup>4</sup> Exhibits 4 and 6.

Its *Book of Order* further provided, at the time, that:

“3. Whenever property of, or held for, a particular church of The United Presbyterian Church in the United States of America ceases to be used by that church as a particular church of The United Presbyterian Church in the United States of America in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery.” (G. XLII, Sec. 72.03)

*These provisions were in effect when Hudson Presbyterian was formed.*<sup>5</sup> The clear import of these provisions is that an express property trust was created in favor of the Presbyterian denomination (and Eastminster, its regional presbytery).

(e) **PCUSA’s *Book of Order* defines which members get a church’s property in the event of a schism**

After the reunion that created PCUSA, Sections 72.02 and 72.03 of UPCUSA’s *Book of Order* became G-8.0201 and 8.0301 of PCUSA’s *Book of Order*, with the only change being that PCUSA’s name was substituted for UPCUSA. The new *Book of Order* also added G-8.0601:

“The relationship to PCUSA (U.S.A.) of a particular church can be severed only by constitutional action on the part of the Presbytery (G-11.0103i). If there is a schism within the membership of a particular church and the Presbytery is unable to effect a reconciliation or a division into separate churches within PCUSA (U.S.A.), the Presbytery shall determine if one of the factions is entitled to the property because it is identified by the Presbytery as the True Church within PCUSA (U.S.A.). This determination does not depend upon which faction received the majority vote within the particular church at the time of the schism.”

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<sup>5</sup> Cramer affidavit, para. 4, Tammen affidavit, para. 15.

These provisions have remained unchanged from 1983 to the present.<sup>6</sup> They authorize Eastminster as the presbytery to decide which faction in the Hudson Presbyterian schism is really the True Church, entitling it to the church's property.

(f) **Formation of Hudson Presbyterian**

Hudson Presbyterian began in 1981 as a new church development<sup>7</sup> of UPCUSA. On or prior to May 11, 1982, this new church development petitioned Eastminster to become a Presbyterian church, within Eastminster, and as part of the UPCUSA denomination. Eastminster, at a special meeting of its members (presbyters) held on June 13, 1982, approved organization of Hudson Presbyterian Church,<sup>8</sup> and installation of Rev. Richard L. Shipley, a UPCUSA minister, as its pastor following a confirming vote of the congregation.<sup>9</sup>

Hudson Presbyterian formed a corporation on June 30, 1982 under the name The Hudson United Presbyterian Church, and its articles of incorporation provided, in relevant part, the following corporate purposes:

*“2. To voluntarily associate together for divine worship and godly living, agreeably to the Holy Scriptures, submitting to the authority and form of government as set forth in the Constitution (as amended) of the United Presbyterian Church in the United States of America, and under the further authority of Eastminster Presbytery.*

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<sup>6</sup> Cramer affidavit, para. 5, Tammen affidavit, para. 16.

<sup>7</sup> A new church development is essentially a precursor to a particular church, and may or may not result in formation (organization) of a church by a presbytery, depending upon local interest in forming a Presbyterian congregation and available resources.

<sup>8</sup> It was initially known as The Hudson United Presbyterian Church.

<sup>9</sup> Exhibit 152, Eastminster minutes of June 13, 1982.

“4. To adopt bylaws in conformity with the provisions of the Constitution, setting forth its organizational, ecclesiastical, and corporate structure and method of operation.” (Emphasis added).<sup>10</sup>

On December 4, 1983, Hudson Presbyterian submitted for filing an amendment to the articles of incorporation, to reflect the reunion (merger) of UPCUSA and PCUS into PCUSA. The only change made was to change the name of the corporation to The Hudson Presbyterian Church (U. S. A.), expressly recognizing that it is a particular church within the hierarchical denomination of Presbyterian Church (U. S. A.).<sup>11</sup>

Hudson Presbyterian’s initial by-laws read, in relevant part:

“1. The Hudson United Presbyterian Church being a particular congregation of the United Presbyterian Church (USA) recognizes that *the Constitution of said Church, is in all its provisions, obligatory upon it and its members.*

\* \* \*

18. These by-laws may be amended *subject to* the charter of the corporation, the laws of the State of Ohio, and *the Constitution of The United Presbyterian Church in the United States of America* at an annual meeting or at any special meeting by a two-third’s (2/3) vote of the voters present provided that a full reading of the proposed change or a printed distribution of the same shall have been made in connection with the call of the meeting.

19. These by-laws or the charter of this corporation may *not be amended contrary to* or so as not to include the provisions of the Constitution of The United Presbyterian Church in the United States of America.” (Emphasis added).<sup>12</sup>

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<sup>10</sup> Exhibit 4.

<sup>11</sup> Exhibit 153.

<sup>12</sup> Exhibit 4.

The by-laws were thus entirely consistent with the articles of incorporation, as well as with PCUSA's Constitution (which was then UPCUSA's constitution). Provision 1 was amended after the reunion of UPCUSA and PCUS to reflect that reunion and recognize that the Constitution of PCUSA was "in all its provisions, obligatory upon it and its members."<sup>13</sup> This provision and Provisions 18 and 19 remained the same thereafter until 2006.

**(g) Financial support of Hudson Presbyterian by PCUSA**

In order to assist Hudson Presbyterian in its first five years of operation (1981-1985, which includes the period during which it was a new church development), Eastminster made \$55,600 of grants to Hudson Presbyterian, which were supplemented by grants of \$28,000 from Synod of the Covenant and \$54,000 from the denomination's General Assembly.<sup>14</sup>

On November 30, 1982, Hudson Presbyterian purchased the 1.94 acre property on which the church is now located for the sum of \$77,932, of which \$37,932 was furnished as a grant by Eastminster and the remaining \$40,000 was a gift back from the sellers.<sup>15</sup>

Thereafter, a church was built on the property, which was ultimately dedicated on June 14, 1987. Eastminster (as a presbytery, and its other churches) contributed \$220,825 toward the construction. Hudson Presbyterian further, and with written approval from Eastminster as required by the *Book of Order*, borrowed \$150,000 from PCUSA's General Assembly, \$25,000 from Synod of the Covenant, and \$100,000 from

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<sup>13</sup> Exhibit 4.

<sup>14</sup> Cramer affidavit, para. 11.

<sup>15</sup> Cramer affidavit, para. 12, Exhibit 110.

Eastminster itself. Assistance from PCUSA's various governing bodies amounted to approximately seventy-one percent (71%) of the cost of the church construction, which was \$699,373.<sup>16</sup> Subsequently, in 1994, the Synod and the General Assembly loaned Hudson Presbyterian \$45,000 to assist in elevator installation on the property.<sup>17</sup>

The total of grants from PCUSA's governing bodies during the period 1981-1987 was \$396,357, which was supplemented by \$275,000 in loans to construct the church and the \$45,000 elevator loan in 1994.

In addition to real estate and buildings, Hudson Presbyterian has approximately \$325,000 in liquid assets, comprised of various accounts funded through member contributions, most of which undoubtedly came from members who believed they were contributing to a particular church within the PCUSA denomination.<sup>18</sup> These contributors include John and Polly Wise, who initiated and contributed to a library fund in the memory of their deceased minor son. As can be seen from their separately filed affidavit, these funds were not intended to be for the benefit of a church that secedes from PCUSA.<sup>19</sup>

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<sup>16</sup> Cramer affidavit, para. 12, Exhibit 110, the dedication program of Hudson Presbyterian of June 14, 1987.

<sup>17</sup> As part of preparing for the 1994 expansion, the then pastor of Hudson Presbyterian, in correspondence dated October 1, 1993, acknowledged the existence of "church polity which ultimately gives the Presbytery the advantage of any Hudson Presbyterian Church assets as well as responsibility for its liabilities." See Shipley affidavit, and Cramer affidavit, para. 13.

<sup>18</sup> Exhibit 156, statement of assets provided in discovery by attorney Forrest Norman.

<sup>19</sup> See John and Polly Wise affidavits, para. 12 and 11, respectively

**(h) Installation of Reverend Bogue as pastor**

On January 1, 1998, over a decade after construction of the church, the present pastor, Rev. D. Wayne Bogue, became successor pastor at Hudson Presbyterian. He was formally installed as the pastor on February 22, 1998. He transferred to Eastminster on November 11, 1997, having previously been ordained by PCUSA's Presbytery of New Brunswick (NJ) on July 10, 1994, as a Minister of the Word and Sacrament and within PCUSA. As part of the ordination on that date, he affirmatively answered the question "Will you be governed by our church's polity, and will you abide by its discipline?"<sup>20</sup> Pastor Bogue is now a leader of Plaintiff, the schismatic faction that is disloyal to PCUSA. Pastor Bogue admits his seminary tuition was funded by the very denomination he now seeks to abandon (although he did not formally resign from PCUSA and continues to participate in its medical insurance and retirement programs).<sup>21</sup>

**(i) Illegal changes to articles of incorporation**

On January 8, 2006, Plaintiff (wrongly acting in the name of Hudson Presbyterian) attempted to amend the corporation's articles of incorporation, acting through its session and not its membership. The attempted change in the articles of incorporation was to fundamentally alter its relationship with PCUSA thusly:

1. *Revise the name from The Hudson Presbyterian Church (USA).*

"Article 1. The name of the corporation shall be The Hudson Presbyterian Church."

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<sup>20</sup> Cramer affidavit, para. 14, Bogue deposition, p. 13.

<sup>21</sup> Bogue deposition, pp. 3, 12; however, on April 2, 2007, Pastor Bogue delivered to Eastminster a letter renouncing jurisdiction, tantamount to a resignation from PCUSA.

2. *Change the corporation's purpose from submitting to the authority and form of government of PCUSA.*

“Article 3. \* \* \* to voluntarily associate with a denomination such as Presbyterian Church (USA), as may be appropriate to carry out the dictates of conscience and the greater purposes of being His church.”

3. *Amend the by-law provisions so that they do not need to follow the Book of Order requirements.*

“Article 4. This corporation shall establish By-Laws for the governance of the church. The business of the church and the officers of the corporation shall be ordered and provided for as set forth in the By-Laws.”

4. *Attempt to alter the express trust property relationship with PCUSA.*

“Article 5. This corporation shall have the power to acquire and hold title to both real and personal property in fee simple, in trust, or otherwise. Any property held in trust, or deemed to be held in trust, shall be in a revocable trust, unless expressly stated otherwise in writing, such powers being expressly reserved by this corporation.”

New Articles 3 and 4 attempted to replace old articles 2 and 4, and new article 5 had no counterpart in the original articles of incorporation.<sup>22</sup>

Ohio Revised Code, Sec. 1702.38 requires that articles (other than consolidating amendments) can only be amended by a majority of the voting members. The voting members of Hudson Presbyterian are the church members, and not the session.<sup>23</sup>

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<sup>22</sup> Exhibit 3; Pastor Bogue confirmed at his deposition, p. 23, that the congregation did not approve these amendments.

<sup>23</sup> Further, the eleventh provision of Hudson Presbyterian's then effective by-laws required that changes of the church's charter (articles of incorporation) could be made only upon a quorum of at least twenty-five voting members of the congregation. From the minutes of the session meeting at which this occurred (Exhibit 74), the quorum requirement was not met.

The attempt to change the relationship between Hudson Presbyterian and PCUSA failed due to the fact that the corporate formalities of a vote of Hudson Presbyterian members were not taken and instead, a vote of the session was incorrectly used to make the changes.

As the changes to the articles of incorporation that were attempted in 2006 were illegal, only the 1982-1983 articles of incorporation should be considered as governing Hudson Presbyterian.

**(j) Changes to the by-laws**

Thereafter, on February 19, 2006, an attempt was made to amend the by-laws to read, in relevant part:

“1.2. The Hudson Presbyterian Church is a particular congregation in the Reformed tradition of PCUSA, and in accordance with the dictates of conscience is in voluntary association with the Presbyterian Church (USA), (hereafter “PCUSA”), its successors or reformed structures, and as such, recognizes that the Constitution (the Book of Order), along with the Book of Confessions, are the guiding and governing documents for the denomination. *So long as this relationship shall exist, and so long as these documents are in harmony with Scripture, these documents shall order the business of the church.*” (Emphasis added).

Provision 18 was renumbered and amended to delete the requirement that amendments be subject to PCUSA’s Constitution (new by-law number 5.1). Provision 19 was deleted.<sup>24</sup> All of these amendments violated the absolute prohibitions of Provisions 18 and 19 of the then existing by-laws, as well as G-4.0103 and G-7.0101 of the *Book of Order* that respectively provide that a particular church “shall be governed by this Constitution” and “shall function under the provisions of this Constitution.”

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<sup>24</sup> Exhibit 6.

These by-law changes were approved by the congregation which, prior to the vote, was provided an explanation of the purpose of the proposed changes, authored by attorney Forrest Norman.<sup>25</sup> The congregation was told, in essence, that the alteration of Provision 18 and deletion of Provision 19 did not reflect a fundamental change in Hudson Presbyterian's relationship with PCUSA and were required only because the old by-laws somehow violated Ohio law, which they certainly did not. As such, attorney Norman's "explanation" was false and misleading. The true reason for the changes was an attempt to change the relationship with PCUSA set forth in the articles of incorporation and to evade the express property trust of the *Book of Order*.

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<sup>25</sup> The explanation for proposed by-laws changes was, in relevant part:

"18. [Comment: renumbered as 5.1; subjugation reference to the constitution of the PC(USA) removed as certain provisions *potentially* conflict with Ohio State law regarding property ownership rights, and duties and responsibilities of church trustees. As revised, there is less of a chance of conflict in stated duties and/or interpretation in the event of a property dispute. This section provides guidance as to *potential* amendments, *not yet determined*, which may or may not conflict with an interpretation of the Constitution of the PC(USA); and may or may not conflict, depending on whose interpretation is used. It is legally safer to omit the phrase, which does not reflect Ohio law requirements. This deletion does not alter any rights currently in place, but serves only to clarify those rights.]

[Comment: provision deleted as legally incorrect and legally vague and potentially unenforceable. Portions of old 19 that are redundant to 5.1 are included in 5.1. Note: provisions of the Constitution of the PC(USA) *are* included in these by-laws. See, e.g., sections 1.2, II, III (esp. 3.2), 3.5, 3.11, 3.13, 4.10; other sections drafted consistent with the Book of Order.]" (Emphasis supplied by Mr. Norman).

This document is Exhibit 14; see also Bogue deposition, p. 22.

The change to the by-laws made them inconsistent with the articles of incorporation. Because of this, the inconsistent by-laws provisions should be stricken. Further, as the new by-laws included amendments that are prohibited by the prior by-laws, these amendments should be stricken on this additional ground, as well.

**(k) Session resolution regarding property trust**

On September 23, 2006, without notice to or approval of Eastminster, Hudson Presbyterian's session passed resolutions claiming no property trust had ever been acknowledged or assented to by the session and purporting to revoke such trust in the event one existed.<sup>26</sup> These revisionist actions directly contravened PCUSA's Constitution which even Plaintiff acknowledged in its illegal amended charter (January 8, 2006 articles of incorporation) that it was bound by.

The September 23, 2006 resolution specifically recognized that "Session is aware of the provisions of the Book of Order set forth at G-80000 et. seq." These are the *Book of Order* provisions relating to the church and its property. This recognition is a tacit admission that the property provisions of the *Book of Order* apply to Hudson Presbyterian.

The self-serving statement in the session resolution that follows, that "no property trust in favor of the denomination has ever been created" directly contradicts the following statement that "Session hereby revokes any such trusts." This resolution should be ignored by the Court as a self-serving statement that contradicts Hudson

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<sup>26</sup> As previously pointed out, Hudson Presbyterian, by binding itself to the denomination's constitution which contained a clearly stated express property trust clause, had indeed created and assented to a property trust in favor of PCUSA. This resolution of September 23, 2006 is Exhibit 51.

Presbyterian's articles of incorporation which state that the corporate purpose is to "... associate together ... submitting to the authority and form of government as set forth in the Constitution (as amended) of the Presbyterian Church (U. S. A.)" Since the Constitution contains the very property clause that is recognized in the resolution, the further contradictory clauses in the resolution should not be recognized.

(I) **Vote to disaffiliate**

Subsequently on November 5, 2006, and without authority from or approval of Eastminster, a vote occurred at Hudson Presbyterian on the question of whether the congregation should disaffiliate from PCUSA.<sup>27</sup> Plaintiff and its pastor and session took numerous steps to ensure the outcome of the vote. The session conducted six "information" meetings for the congregation on the disaffiliation issue, but permitted Eastminster representatives to be joint presiders at only one of them.<sup>28</sup>

Hudson Presbyterian's October, 2006 newsletter, "The Point," was one-sided in favor of disaffiliation.<sup>29</sup> Excerpts include:

"The transition away from the PCUSA and to another body that the session and I are recommending would free us from a *dying, unfaithful denomination that has lost its way and refuses to return.*

\* \* \* we had reason to believe that the presbytery might take aggressive action against HPC; \* \* \*

Jesus is no longer supreme in the PCUSA.

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<sup>27</sup> Exhibit 83.

<sup>28</sup> Bogue deposition, pp. 34-35. The vote had been scheduled to occur a month earlier and was to include a vote to affiliate with the Evangelical Presbyterian Church ("EPC"). As a result of concerns expressed at meetings about EPC, the vote ultimately was only on the issue of disaffiliation.

<sup>29</sup> Exhibit 88; Bogue deposition, pp. 31-34.

This [referring to a report from PCUSA's General Assembly], simply, is a gross departure from the scriptures.

All of these are but signs that the PCUSA has left its first love, Jesus Christ, and is now following other gods – gods of their own invention and policies that are egregious to our conscience. Moreover, the PCUSA has, in our opinion, no intention of returning to the historical biblical Reformed faith, but is intent on continuing on this path toward decline and death.” (Emphasis and bracketed language added).

Notwithstanding the propagandizing in favor of disaffiliation, the vote in favor of disaffiliation was only 161 to 61.<sup>30</sup> Despite the vote to “disaffiliate,” Hudson Presbyterian still remains bound by PCUSA's Constitution, including the express property trust in the *Book of Order*.

Also significant is that the vote to “disaffiliate” from PCUSA did not change any of the existing provisions in the corporation's articles of incorporation and by-laws, that to this day include significant references to PCUSA and its Constitution.

Notwithstanding the forgoing, Plaintiff, through the testimony of Pastor Bogue, claims that it is no longer part of PCUSA or functioning as a particular church within PCUSA.<sup>31</sup>

**(m) Church property**

Hudson Presbyterian's assets include a church building and land, appraised at approximately \$2,900,000 by the Summit County, Ohio Auditor. At the time of the disaffiliation vote, Hudson Presbyterian owed PCUSA approximately \$8,000 and Eastminster approximately \$11,000. In addition, Hudson Presbyterian is the beneficiary

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<sup>30</sup> Bogue deposition, p. 83.

<sup>31</sup> Bogue deposition, pp. 2, 42.

of approximately \$325,000 in trust funds at various banks that were established under the name The Hudson Presbyterian Church (U. S. A.). As of February 28, 2007, the Hudson Presbyterian financial statement showed \$59,921 in Restricted Funds, \$33,898 in “loans” to the General Fund from these Restricted Funds, and \$7,368 of cash.<sup>32</sup>

As of February 28, 2007, the Hudson Presbyterian financial statement showed a \$32,000 loss for the first two months of 2007. Plaintiff has taken funds designated for specific church purposes from the Restricted Funds to pay for church operating losses that arose *after the vote to disaffiliate*, in violation of Ohio Revised Code, Section 1715.20, which allows trustees to “dispose of any such fund in accordance with the purpose for which it was created.” The funds taken from the Restricted Fund have been characterized as a loan. Those funds should be repaid back to the original Restricted Funds.

(n) **Eastminster names minority faction as “True Church” at Hudson Presbyterean, pursuant to the *Book of Order***

Meanwhile on November 14, 2006, Eastminster’s presbyters, at a regular meeting and in accordance with the *Book of Order*, identified the minority faction at Hudson Presbyterian (and not Plaintiff’s faction) to be the true Hudson Presbyterian church. This faction is thus the only group entitled to use of the name Hudson Presbyterian Church, and the only group entitled to use of the church premises and other assets.<sup>33</sup> On March 13, 2007, Eastminster’s presbyters further determined that use and possession of the

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<sup>32</sup> Exhibit 156; statement of assets provided by attorney Forrest Norman in discovery.

<sup>33</sup> Cramer affidavit, para. 17.

Hudson Presbyterian property should pass to the True Church congregation.<sup>34</sup> As this Court is aware, Eastminster and the True Church congregation have requested use of the church building for church services as a PCUSA congregation, and have been refused.

Notwithstanding that Eastminster, pursuant to its duties under the *Book of Order*, has determined that the True Church (the minority faction) is entitled to use of and title to Hudson Presbyterian's property, the schismatic Plaintiff is attempting to wrest control of the church's property and assets through this lawsuit.

### **III. Legal Argument**

#### **(a) Constitutional and United States Supreme Court development of neutral principles of law doctrine**

The First Amendment to the United States Constitution bars a civil court from adjudicating church property litigation through its own interpretation of religious doctrine. However, some church property disputes can be resolved by courts by using neutral principles of law. The United States Supreme Court, in Presbyterian Church v. Hull Church (1969), 393 U.S.440; 21 L.Ed.2d 658; 89 S. Ct. 601, stated

“The First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without establishing churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.” (393 U.S. at 449, 89 S.Ct. at 606.)

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<sup>34</sup> Cramer affidavit, para. 19.

In Jones v. Wolf, the United States Supreme Court elaborated on Presbyterian Church v. Hull Church by expressly approving use of trust provisions by religious bodies to govern use and possession of church property in the event of schism, thusly:

“The primary advantages of the neutral principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general-flexibility in ordering private rights and obligations to reflect the intentions of the parties. *Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy.*” (443 U.S. at 603, 99 S.Ct. at 3025.) (Emphasis added).

In the instant case, Eastminster Presbytery, under the specific authority of the *Book of Order*, determined that Hudson Presbyterian is in schism and on November 14, 2006, identified the minority faction in the disaffiliation vote as the True Church at Hudson Presbyterian, which thus became entitled to use of the property and assets. This designation follows the authority extended by the Jones v. Wolf court.

The Jones v. Wolf court further said:

“At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, *the constitution of the general church can be made to recite an express trust in favor of the denominational church.* The burden involved in taking such steps is minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally recognizable form.” (443 U.S. at 606; 99 S.Ct. at 3027.) (Emphasis added).

UPCUSA's addition to its *Book of Order* of an express property trust clause on May 23, 1981 followed two years after the precise invitation of the United States Supreme Court in Jones v. Wolf to include a trust in the general church's Constitution, which the Supreme Court said would bind a civil court. Hudson Presbyterian was and is thus bound by these provisions.

**(b) Hierarchical structure impacts upon neutral principles of law**

When examining a church property dispute under such neutral principles of law, courts generally first begin with an examination of whether the church is hierarchical or congregational. State, ex. rel. Morrow v. Hill (1977), 51 Ohio St. 2d 74, 364 N.E. 2d 1156.

The significance of a hierarchical relationship is two-fold. First, courts are required to follow the decisions of hierarchical religious organizations' highest tribunals. The Supreme Court, in Serbian Eastern Orthodox Diocese v. Milivojevich (1979), 426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372, stated

“In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.”

Second, if a church is hierarchical, not only are a particular church's deed and articles of incorporation examined under the neutral principles test, but a court is directed to look further to the church constitution, minutes and polity documents. In Southern

Ohio App. 3d 526, 539; 573 N.E. 2d 172, 181, the Ohio Court of Appeals said:

“We find that the minutes and polity documents relied upon by Executive Offices need not be wholly excluded from consideration by reason of the neutral principles of law rule. While they contain ecclesiastical pronouncements, they also contain passages of a secular nature that bear on the property dispute. Those passages may be scrutinized in purely secular terms. Unless they were excludable on more conventional bases established in the Rules of Evidence, the trial court should have given them consideration in making its determination.”

Among the documents to be reviewed, the court expressly included church constitutions and similar documents.

(c) **Hudson Presbyterian is part of a hierarchical denomination**

A multitude of indicia exist to establish that Hudson Presbyterian is in a hierarchical relationship with PCUSA. Some are as follows:

1. Hudson Presbyterian began in 1981 as a new church development by UPCUSA, which later reunited (merged) with PCUS to form PCUSA.
2. Eastminster organized (formed) Hudson Presbyterian in 1982, and installed its pastor. For its entire life, Hudson Presbyterian has been part of Eastminster Presbytery and PCUSA (or its predecessor, UPCUSA).
3. The name is Hudson *Presbyterian Church (U.S.A.)*. This was an implicit recognition by Hudson Presbyterian that it was part of the hierarchical denomination of *Presbyterian Church (U. S. A.)*.
4. The articles of incorporation purpose is: “To voluntarily associate together... submitting to the authority and form of government as set forth in the Constitution (as amended) of the United Presbyterian Church of the United States of

America, and the further authority of Eastminster Presbytery.” UPCUSA thereafter became PCUSA.

5. PCUSA and its governing bodies provided a majority of the cost to construct the church and over \$137,000 of grants for initial operating expenses. Without such initial support from PCUSA, Hudson Presbyterian could not have built the church that Plaintiff now looks to take from the denomination and that part of the congregation that is loyal to PCUSA. Certainly, PCUSA’s governing bodies would not spend such resources to establish an independent church.

6. Presbyterian denominations have been held to be hierarchical by the United States Supreme Court. See Watson v. Jones (1871), 80 U.S. 679; 20 L.Ed. 666; Presbyterian Church v. Hull Church, *supra*.<sup>35</sup> See also Serbian Orthodox Church v. Keleman (1970), 21 Ohio St. 2d 154, 156, 256 N. E. 2d 212, wherein the Ohio Supreme Court said “the Presbyterian Church is hierarchical in organization rather than congregational.”

7. The original by-laws read “The Hudson Presbyterian Church being a particular congregation of the United Presbyterian Church (U.S.A.) recognizes that the Constitution of said Church is in all its provisions obligatory upon it and its members”.

8. Hudson Presbyterian directly adopted the PCUSA Constitution. The PCUSA Constitution, including its *Book of Order*, is structured hierarchically. G-9.0103 of the *Book of Order* states in relevant part: “[T]he jurisdiction of each governing body is limited by the express provisions of the Constitution, with powers not mentioned being

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<sup>35</sup> See also The Upper Valley Presbytery, Inc. v. The Covenant Presbyterian Church of Steubenville, Ohio (1988), Case No. 87-J-3, App: Jefferson County, 1988 Ohio App. LEXIS 3452, recognizing in the opinion’s second paragraph that UPCUSA is “organized in a connectional and *hierarchical* structure.” (Emphasis added).

reserved to the presbyteries, and with the acts of each subject to review by the next higher governing body.” *This is the very essence of hierarchical structure.*

9. As required by the *Book of Order*, Hudson Presbyterian secured written approval of Eastminster to mortgage its real estate.

10. As required by the *Book of Order*, Hudson Presbyterian’s Ministers of Word and Sacrament, including the schismatic Pastor Bogue, were approved first and installed by Eastminster.

11. Even after the disaffiliation vote, Hudson Presbyterian’s articles of incorporation still reference PCUSA’s Constitution as authority.

12. Even after the disaffiliation vote, Hudson Presbyterian’s by-laws still reference PCUSA’s Constitution and Book of Order as the guiding and governing documents of the denomination. In addition, reference to “the denomination” is an additional recognition that Hudson Presbyterian is part of a hierarchical *denomination*.

13. Under all of the foregoing criteria, which are part of the Living Relationship Test, adopted by the Ohio Supreme Court, PCUSA is a hierarchical denomination of which Hudson Presbyterian is undoubtedly a part. State ex. rel. Morrow v. Hill, supra.

(d) **As part of a hierarchical denomination, Hudson Presbyterian is subject to PCUSA’s *Book of Order***

Hudson Presbyterian is part of a hierarchical structure, i. e., PCUSA. It has, in its documents, its participation within the denomination and presbytery, and in its conduct (including religious worship services), acted as part of, agreed to, and submitted to PCUSA’s hierarchical structure.

Hudson Presbyterian was formed as part of Eastminster and PCUSA (as successor to UPCUSA), and expressly acknowledged in its articles of incorporation and by-laws that it was part of the denomination and subject to PCUSA's Constitution (including the *Book of Order*). *From that point on, Hudson Presbyterian has never had the unilateral right to disaffiliate from or alter its relationship to PCUSA, Eastminster, and Book of Order, any more than Summit County could unilaterally detach itself from the state of Ohio.* The only means by which Hudson Presbyterian can change the aforesaid relationships and detach (disaffiliate) from PCUSA are set forth in the *Book of Order*. Only the applicable presbytery (Eastminster) has authority "to divide, dismiss, or dissolve churches . . ." (G-11.0103(i)), and a particular church's relationship to PCUSA "can be severed *only* by constitutional action on the part of the Presbytery." (G-8.0601). (Emphasis added).

There is no other way for Hudson Presbyterian to leave (disaffiliate from) PCUSA. *This Court cannot create such a right in contravention of the Book of Order and of the hierarchical relationship among PCUSA, Eastminster, and Hudson Presbyterian.* See Serbian Eastern Orthodox Diocese supra.; Kedroff v. St. Nicholas Cathedral (1952), 344 U. S. 94, 97 L. Ed. 120, 73 S. Ct. 143.

- (e) **Hudson Presbyterian and its property are subject to an express trust interest in favor of the Presbyterian denomination, pursuant to the Book of Order**

As previously noted, the *Book of Order* has continuously, since the day Hudson Presbyterian was formed, contained an express trust in favor of PCUSA in all of Hudson Presbyterian's property. The manner in which this was done complies fully with the decision in Jones v. Wolf, supra., which recognized that one way a hierarchical church

could create such a trust interest would be in its constitution. It said “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 \* \* \*.” 443 U. S. at 606. (Bracketed language added). The United States Supreme Court did not require that the trust be included in the deed of the church or in a specific trust agreement. It sufficed that the trust language be in the hierarchical church constitution to qualify as an *express trust*. Once that finding is made, the court went on to say the civil courts were then bound to give effect to the result indicated in the trust language.

Ohio courts also recognize that courts may look beyond deeds and articles of incorporation to church constitutions, minutes, and similar documents to determine ownership of or a trust in property in hierarchical churches. Southern Ohio State Executive Offices of Church of God, supra. Such documents may be considered by a court even though they may contain passages of an ecclesiastical nature. 61 Ohio App. 3d at 539; 573 N. E. 2d at 180.

G-8.0201 of Book of Order expressly states that the property of a particular church “is held *in trust* nevertheless for the use and benefit of Presbyterian Church (U. S. A.).” (Emphasis added). Plaintiff cannot be allowed to take this property away from and out of PCUSA.

- (f) **Hudson Presbyterian is subject to Eastminster’s decision as to who is the True Church in Hudson, and thus which part of the congregation is entitled to possession and use of the property.**

Eastminster declared that the minority group was designated the True Church at Hudson Presbyterian entitled to use and possession of the property at issue. The *Book of*

*Order* (G-8.0301 and G-8.0601) gives presbyteries, as governing bodies within PCUSA, authority to direct the use and direction of such property when a particular church is in schism or uses the property other than as a particular church within PCUSA.

There is a *schism* at Hudson Presbyterian. Part of the congregation has voted to leave PCUSA. Part of the congregation has voted to stay within PCUSA. Eastminster has identified the latter as the True Church in Hudson, and the courts are bound by that ecclesial decision. Hudson Presbyterian, having expressly adopted the *Book of Order*, through its articles of incorporation, and having acknowledged therein and in its by-laws that the corporation has submitted to the authority of PCUSA, should also be bound by that decision.

In Jones v. Wolf, *supra.*, the Supreme Court stated:

“Most importantly, any rule of majority representation can always be overcome, under the neutral principles approach, either by providing, in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way, or by providing that the church property is held in trust for the general church and those who remain loyal to it.” 443 U. S. at 607-608.

In the instant case, PCUSA’s Constitution provides that presbyteries (such as Eastminster) shall direct the use and possession of property when a particular church is in schism or no longer functions as a particular church of the denomination. Eastminster did so, declaring the minority faction as the True Church. Pursuant to Jones v. Wolf, Eastminster has determined the identity of the local True Church by other than majority rule. This Court must defer to Eastminster’s determination and permit Eastminster to award use and possession of the church property to the True Church in Hudson.

(g) **Alternatively, Eastminster and the other governing bodies of PCUSA are entitled to a constructive trust in the property of Hudson Presbyterian.**

In addition to the express trust imposed by the *Book of Order*, the authority of which Hudson Presbyterian acknowledged in its articles of incorporation and by-laws, the Court could and should also find existence of a *constructive trust* in favor of PCUSA, because a substantial portion of the cost of the real estate and improvements were funded by PCUSA's governing and constituent bodies (in addition to other subsidies to the church's operations in its early years). A constructive trust is defined by the Ohio Supreme Court in Univ. Hosps of Cleveland, Inc. v. Lynch (2002), 96 Ohio St. 3d 118, 2002-Ohio-3748, para. 59-60, as:

“[A] trust by operation of law which arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to the property which he ought not, in equity and good conscience, hold and enjoy. It is raised by equity to satisfy the demands of justice. Ferguson v. Owens (1984), 9 Ohio St. 3d 223, 225, 9 OBR 565, 459 N. E. 2d 1293, quoting 76 American Jurisprudence 2d (1975) 446, Trust, Section 221.

The imposition of a constructive trust is usually associated with the acquisition of property by fraud. Aetna Life Ins. Co. v. Hussey (1992), 63 Ohio St. 3d 640, 642, 590 N. E. 2d 724. Unjust enrichment of a person occurs when he or she has and retains money or benefits which in justice and equity belong to another. Hummel v. Hummel (1938), 133 Ohio St. 520, 528, 11 Ohio. Op. 221, 14 N. E. 2d 923. A constructive trust is imposed not because of the intention of the parties but because the person holding the title to property would profit by a wrong, or would be unjustly enriched if he were permitted to keep the property. Restatement of the Law, Restitution, Section 160, Comment *b*.”

In the instant case, Plaintiff has an equitable duty to convey Hudson Presbyterian's property and assets to the True Church faction identified by Eastminster. Hudson Presbyterian was given grants of over \$137,000 to get the church up and running. The majority of the cost of the initial church construction was provided through grants and loans by PCUSA's various governing bodies. That church is now worth almost three million dollars, due to real estate price appreciation.

Plaintiff has slandered PCUSA by calling it a "dying unfaithful denomination that has lost its way and refuses to return." Plaintiff, acting through its disloyal pastor, has said that "Jesus is no longer supreme in the PCUSA." In addition, Plaintiff, through its pastor, has said that "the PCUSA . . . is intent on continuing toward decline and death." Plaintiff, and the pastor that was hired more than decade *after* the church building was built, now attempt to take that church from the faithful followers. Such unjust enrichment must not be allowed. It is the True Church congregation that remains a part of PCUSA and selflessly provided funds to build Hudson Presbyterian that should be awarded the Hudson Presbyterian property.

*Plaintiff and its pastor must not be allowed to abscond from PCUSA and Eastminster, with the Hudson Presbyterian property, to the detriment of the substantial number within the Hudson Presbyterian congregation who have supported a PCUSA church for years and wish to remain part of PCUSA.*

Whether the trust interest is characterized as "express" or "constructive," it clearly exists in favor of PCUSA (and Eastminster) and is enforceable. Further, fundamental fairness dictates that Plaintiff not be *unjustly enriched* at the expense of PCUSA and its governing bodies or at the expense of that part of the congregation that wishes to remain

a part of PCUSA. This is fair and just in that all contributions to Hudson Presbyterian (prior to November 5, 2006) were made to a particular church of PCUSA, not to an independent or unaffiliated church.

(h) **The Hudson Presbyterian trust interest is not revocable**

Hudson Presbyterian (as an entity) did not have the authority to revoke the express trust in the *Book of Order*. In 1982, when Hudson Presbyterian was formed by Eastminster Presbytery as a particular church of the UPCUSA, its articles of incorporation stated that the corporation would submit to the authority and form of government of the denomination. That form of government has, at all times, contained an express trust in favor of UPCUSA and thereafter PCUSA.

Although an attempt was made to amend the articles of incorporation, it failed due to the fact that it was changed by the session and not by the members. Therefore, the original articles of incorporation govern today, which require Hudson Presbyterian to submit to the denomination's form of government and the express property trust contained in its Constitution. The September 23, 2006 session resolution purporting to revoke the trust is invalid because session resolutions cannot be recognized if they are contrary to the plain language of the articles of incorporation describing the corporate purpose and PCUSA's constitution.

In 1982, Hudson Presbyterian was created by and within a hierarchical denomination that had a property trust clause. The denomination provided a majority of the funds for building of the church. *Hudson Presbyterian knew what the terms of the trust were when it was formed, incorporated and when it accepted the denomination's*

money. It cannot now deny existence of the property trust and revoke it unilaterally. The property trust can only be changed by amending the *Book of Order*.

(i) **Hudson Presbyterian did not have unilateral authority to disaffiliate from PCUSA**

Hudson Presbyterian, as an entity, does not have unilateral authority to leave PCUSA. PCUSA's Constitution (*Book of Order*), Section G-8.0601 specifically provides:

“The relationship to the Presbyterian Church (U. S. A.) of a particular church can be severed only by constitutional action on the part of the Presbytery.”

Therefore, no actions of Hudson Presbyterian alone can sever its relationship to PCUSA.

*Its pastor and those congregants who are dissatisfied with PCUSA can walk away as individuals but not with the particular church and not with the property.* That property must remain with PCUSA so that Eastminster can help retain a Hudson congregation that is part of PCUSA.

Plaintiff's case is based solely on documents that were deceptively sold to the congregation, were illegally and sloppily adopted, and violate Hudson Presbyterian's own governing documents, the *Book of Order*, and neutral law principles. A body of law has developed in this country that says, in essence, that use by an individual church of charter or by-law amendments to sever a connection with its denomination is void. This has been expressed in different ways in different states, as some below examples illustrate.

In Florida, its supreme court said, in Rekas v. Polish National Catholic Church, Western Diocese (1958), 102 So. 2d 705, 706:

“It seems at this point that the parties attempted to make their secession effective by the simple process of amending the charter. They could not thus cut the umbilical cord connecting the Holy

Cross with the mother church *much less take the church with them*, so to speak, when they departed.” (Emphasis added).

Another Florida court said, in Presbytery of the Everglades v. Morgan (1961), 125 So. 2d 762, at 765-766:

“In a representative form of church government, individual members of a particular church or congregation are free to withdraw their membership at any time from such church or congregation, but they are not permitted to take the church or property with them. \* \* \* In this instance, their actions in attempting to appropriate the church property for uses inconsistent with and in violation of higher church authority were void.”

The Michigan Supreme Court has faced this issue twice, holding in favor of the affected denomination each time. Second Protestant Reformed Church of Grand Rapids v. Blankenspoor (1975), 350 Mich. 347, 86 N. W. 2d 301, and Borgman v. Bultema (1921), 213 Mich. 684, 192 N. W. 91. In the latter case, the court said, at 192 N. W. 96:

“The amendment attempted is void. *It is an effort to set up in this church of presbyterial form of government a congregational form of government.* \* \* \* . . . (t)he defendants and the members of this church undoubtedly possessed the right to withdraw from it, with or without reason. But they could not take with them, for their own purposes, or transfer to any other religious body, the property dedicated to and conveyed for the worship of God under the discipline of this religious association; *nor could they prevent its use by those who choose to remain in the church and who represent the regular church organization.*” (Emphasis added).

See also Russian-Serbian Holy Trinity Orthodox Church of St. Paul v. Kulik (1938), 202 Minn. 560, 279 N. W. 2d 364, 368, and the recent decision of In re Church of St. James the Less (2003), Pa. S. Ct. Eastern District, in this regard.

While these are not Ohio decisions, their logic is inescapable, and they comport with fundamental fairness. There is nothing preventing Pastor Bogue and those who want to leave PCUSA from leaving, but they cannot leave with the church and its

property in violation of the *Book of Order* and Hudson Presbyterian's own governing documents, and in derogation of the rights of the denomination and the True Church minority at Hudson Presbyterian who do not wish to leave the denomination.

(j) **Hudson Presbyterian's own governing documents support an express property trust, and the changes in these documents and the vote to disaffiliate did not change Hudson Presbyterian's relationship to PCUSA**

As previously noted, Hudson Presbyterian's original articles of incorporation and by-laws expressly provide that they are controlled by PCUSA's Constitution (which includes the *Book of Order*). Articles 18 and 19 of the by-laws further provided that neither the by-laws or charter could be amended to conflict with that Constitution. That did not stop the entity now calling itself Hudson Presbyterian from amending both to authorize conduct that is expressly contrary to PCUSA's *Book of Order*. *As these amendments violated Ohio law and the then-existing by-laws, they are void ab initio and of no legal consequence.*

(a) **The changes to the articles of incorporation were illegal and thus ineffective**

The changes in the articles of incorporation were by vote of the session, not the membership of the church, contrary to Ohio Revised Code, Sec. 1702.38, which expressly provides that articles can only be amended by a majority of the corporation's voting members. Also, the articles of incorporation were not approved by a quorum of at least twenty-five, as required by Hudson Presbyterian's then existing by-laws. On either of these grounds, the changes to the articles of incorporation are *invalid* and of no legal consequence. Thus, the prior articles of incorporation, that place Hudson Presbyterian under PCUSA's Constitution and under Eastminster govern.

(b) **The changes to the by-laws violated the articles of incorporation and prior by-laws, and are thus ineffective**

The new by-laws were an attempt to fundamentally alter the relationship between Hudson Presbyterian and PCUSA. These by-laws, insofar as they fundamentally altered provision 1 (which makes the church subject to PCUSA's Constitution) and provisions 18 and 19 (which required the church's by-laws and corporate charter to comply with PCUSA's Constitution), violate the fourth of Hudson Presbyterian's articles of incorporation, which specifically authorizes adoption of by-laws only "in conformity with the provisions of the constitution . . ."

The amendments creating the new (2006) by-laws also violated provisions 18 and 19 of the prior by-laws, *which expressly limit permissible amendments*. Under R.C., Sec. 1702.11 (A)(11), by-laws may provide the means by which they (referred to as regulations therein) may be changed. Sec. 1702.11 (D) provides that only changes made in accordance with the prior by-laws (or by the membership, if the prior by-laws do not prescribe how they may be changed) are effective and binding.

On either of the above grounds, the by-laws changes were illegal and thus ineffective, and the prior by-laws control.

(c) **The vote to disaffiliate did not change the articles of incorporation or by-laws and are thus a corporate non-event**

The vote to disaffiliate was nothing more than that, a vote to disaffiliate. This vote did not purport to change either the articles of incorporation or by-laws. It is thus a corporate non-event.

As all of the 2006 amendments were improper, they are ineffective, and Hudson Presbyterian remains under its prior articles of incorporation and by-laws, which

expressly submit that church to PCUSA's Constitution, including its *Book of Order* and its property trust clause.

Eastminster is thus entitled to the Court's declaration that it is entitled to take *all* action with respect to the church's property and the church itself as permitted in PCUSA's *Book of Order*.

**(k) The Court should not interfere with Eastminster's actions with respect to Hudson Presbyterian's pastor and session**

Courts may not interfere with matters of internal church government or adjudicate controversies over religious doctrine and practice. Resolution of religious disputes is for ecclesiastical and not civil tribunals. Serbian Eastern Orthodox Diocese, supra., 426 U. S. 696. The United States Supreme Court has consistently held that courts are required to defer to church governing bodies on resolution of issues of religious doctrine or polity. Watson v. Jones, supra.

This Court's granting of Plaintiff's *ex parte* request to temporarily restrain Eastminster from taking any action to investigate, discipline, or replace Hudson Presbyterian's session or pastor violated the First and Fourteenth Amendments to the United States Constitution.

That the dispute involves church property does not itself convert it into a civil action over which a court possesses jurisdiction to enjoin a religious body's ecclesiastical obligations. Kedroff v. Saint Nicholas Cathedral (1952), 344 U. S. 94. Even where property rights follow as an incident from decisions of church custom or law on ecclesiastical issues, church rule controls. Serbian Eastern Orthodox Diocese, supra. 426 U. S. at 709. See also Kreshik v. Saint Nicholas Cathedral (1960), 363 U. S. 190, holding that New York courts could not substitute their judgment for that of the Russian

Orthodox Church with respect to which church official was entitled to control the use of a cathedral in New York.

Religious entities, such as PCUSA and Eastminster, are independent from secular control and have the power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. The Court of Appeals has stated that “the question of who will preach from the pulpit of a church is an ecclesiastical question, review of which by the civil courts is limited by the First and Fourteenth Amendments to the United States Constitution.” Tibbs v. Kendrick (1994), 93 Ohio App. 3d 35, 41. Decisions of church bodies on ecclesiastical matters, such as appointment of clergy, although affecting civil rights, are accepted in litigation before Ohio courts as conclusive. Dragelevich v. Rajsich (1970), 24 Ohio App. 2d 59, 64.

Both Eastminster and Hudson Presbyterian are governed by long-standing procedures and polity set forth in the *Book of Order*. The *Book of Order* expressly assigns certain supervisory power and authority to Eastminster.

In PCUSA, polity cannot be separated from the church’s doctrine; governance of the Church is inherently ecclesiastical in nature. As made clear from PCUSA’s governing documents, its constituent parts constitute an organic whole, called into being by God and ordered pursuant to a hierarchy of governing bodies who share together in discerning and directing denominational affairs. (G-4.0102, and 4.0300-0304, 9.0100 et. seq.). Whether and how governance decisions are made is entirely a function of the application of PCUSA’s polity as dictated and ultimately controlled by its religious doctrine.

The Court's prior orders are preventing proper governance of Hudson Presbyterian under the *Book of Order* and preclude Eastminster from following the procedure set forth in the *Book of Order* by which it may conduct its doctrinal mission, oversee its member churches and supervise its minister members. (G-11.0103(a)-(c), (g)). These orders have prevented Eastminster from conducting services in Hudson for the part of the congregation (the True Church) that is opposed to disaffiliation. This is an intrusion into the internal conduct of this hierarchical denomination.

Each of these activities that have been precluded by court order impose upon Eastminster's ecclesial rights. These rights cannot be constitutionally interfered with by this or any civil court. But, that is precisely what has happened in this case, beginning with the original *ex parte* order of this Court. This violates the First and Fourteenth Amendments of the Constitution. The Court's orders unconstitutionally inhibit the free exercise of religion by Eastminster and PCUSA.

This Court can right the wrong that has been done by vacating all surviving aspects of the temporary restraining order and preliminary injunction that restrain Eastminster in its governance of Hudson Presbyterian.

#### **IV. Conclusion**

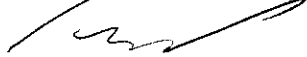
Plaintiff, in violation of Ohio law, of Hudson Presbyterian's own articles of incorporation and by-laws, and of the Constitution of the denomination that formed the church, is attempting to take the church and its assets from the denomination and its loyal members. Plaintiff, not Eastminster, chose this forum. Eastminster believes the dispute herein is an internal PCUSA matter, to be determined by its hierarchy according to its

Constitution, and is participating herein solely to protect the interests of the denomination and the True Church members at Hudson Presbyterian.

Defendant, Eastminster Presbytery, requests this Court's judgment (a) ordering Plaintiff to immediately relinquish possession of the corporation and all of its and Hudson Presbyterian's assets in favor of Eastminster, for the benefit of the True Church congregation, (b) dismiss the Complaint with prejudice, and (c) grant Eastminster's Counterclaim.

Respectfully submitted,

**STARK & KNOLL CO., L.P.A.**



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 16th day of April, 2007, by e-mail delivery [per stipulation of the parties] upon the following:

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