

STATE OF MISSISSIPPI
IN THE CHANCERY COURT OF PIKE COUNTY, MISSISSIPPI

2006 DEC -7 PM 4:19

J. J. WHITE MEMORIAL PRESBYTERIAN
CHURCH OF McCOMB

WITNESSED BY THE COURT
WITNESSED BY THE PETITIONER

VS.

Angela L. White
CHANCERY CLERK NO. _____

PRESBYTERY OF MISSISSIPPI

DEFENDANT

PETITION FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY INJUNCTION AND DECLARATORY JUDGMENT

Comes now J. J. White Memorial Presbyterian Church of McComb, through undersigned counsel, and respectfully petitions this Court for a Temporary Restraining Order, Preliminary Injunction and Declaratory Judgment, and in support thereof, would represent and show the following facts, to-wit:

1. J. J. White Memorial Presbyterian Church of McComb is a domestic non-profit corporation domiciled in Pike County, Mississippi founded in 1876 and first incorporated in 1953.

2. The Defendant, Presbytery of Mississippi is a domestic non-profit corporation domiciled in Forrest County, Mississippi. Said Defendant is a regional administrative unit for the Presbyterian Church (USA) ("PCUSA" or "denomination"), which denomination was formed in 1983, and currently has approximately 11,000 member churches located throughout the United States, including the State of Mississippi and Pike County, Mississippi. The Defendant may be served with the process of this Court by service upon its Executive Presbyter, Dr. William A. DePrater and/or Rev. John C. Dudley, Stated-Clerk at 710 South 28th Avenue, Suite A, Hattiesburg, Mississippi 39402.

3. This Court has jurisdiction over the subject matter of this action and venue is properly laid in Pike County, Mississippi, as your Petitioner's property is all situated in Pike County, Mississippi.

4. The real property owned by J. J. White Memorial Presbyterian Church of McComb consists of or is situated on tracts acquired by conveyances dating from 1883 until 2003. J. J. White Memorial Presbyterian Church of McComb currently has an option to purchase one tract of property (Tract VII below) which option expires in calendar year 2008. Those properties are described as follows:

TRACT I

Lots 1 and 2 in Square S of the City of McComb City, Pike County, Mississippi, together with improvements situated thereon and all appurtenances thereunto belonging. (Acquired January 11, 1883)

TRACT II

Beginning at a point on the Eastern boundary of Square S on Third Street where the South line of an alley running East and West intersects the said boundary and street 182 feet 8 inches South of the Northeast corner of said Square; and running from said point of beginning in a Westerly direction along said alley parallel with the Northern boundary of Square 79 and two-thirds feet; thence Southerly parallel with the Eastern boundary of the Square 25 feet; thence Easterly parallel with the Northern boundary of the Square 79 and two-thirds feet to its Eastern boundary on said Third Street; thence Northerly along said boundary and street 25 feet to the point of beginning; said property being located in Square S, City of McComb City, Pike County, Mississippi, together with all improvements thereon and appurtenances thereunto belonging. (Acquired January 8, 1965)

TRACT III

Beginning at a point on the South boundary line of Square "S" on Minnesota Avenue at a point 79 2/3 feet in a Westerly direction from the Southeast corner of said Square "S", and running thence Northerly at a right angle 150 feet to an alley, thence Westerly along the alley parallel with said Southern boundary 53 2/3 feet, thence Southerly parallel with the Eastern boundary of said Square "S" 150 feet to the said Southern boundary on Minnesota Avenue, thence Easterly along said Southern boundary and avenue 53 2/3 feet to point of beginning, together with all the improvements thereon and appurtenances thereunto belonging,

situated in Square "S", in the City of McComb, Pike County, Mississippi. (Acquired June 2, 1987)

TRACT IV

Commencing at the Southeast corner of Lot 10, Square "S", City of McComb City, Pike County, Mississippi, run thence West 45 feet; run thence North 130 feet; run thence East 45 feet; run thence South 130 feet to the point of beginning, being a parcel of land located in Lot 10, Square "S", City of McComb City, Pike County, Mississippi. (Acquired June 2, 1987)

TRACT V

Commencing 25 feet South of the Northeast corner of Lot 11, Square "S" of the City of McComb City, Pike County, Mississippi, and run thence West 79 2/3 feet; thence South 25 feet 9 inches; thence East 79 2/3 feet to the West boundary of Third Street; thence North 25 feet 9 inches to point of beginning. (Acquired January 8, 1993)

TRACT VI

Commence at a found iron marking the Northeast corner of Lot 1, Square "S", City of McComb City, Pike County, Mississippi, and run North 59 degrees 34 minutes 22 seconds West, 100.00 feet along the South boundary of Delaware Avenue to a found iron at the Northeast corner of Lot 3, Square "S", and point of beginning. From point of beginning, run South 30 degrees 25 minutes 29 seconds West, 170.00 feet along the East boundary of said Lot 3, Square "S" to a found nail at the Southeast corner of said Lot 3, Square "S"; thence run North 59 degrees 34 minutes 31 seconds West, 3.00 feet along the North boundary of an alley to a set concrete nail; thence leaving alley, run North 30 degrees 25 minutes 29 seconds East, 170.00 feet to a set iron on the South boundary of Delaware Avenue; thence run South 59 degrees 34 minutes 31 seconds East, 3.00 feet along said South boundary of Delaware Avenue to the point of beginning. Said property being a 3.00 foot strip along the East boundary of Lot 3, Square "S", City of McComb City, Pike County, Mississippi, and contains 0.012 acres, more or less. (Acquired December 23, 2003)

TRACT VII

Lot 5, Square "S", West McComb, City of McComb City, Pike County, Mississippi. (Option to Purchase originally acquired April 15, 2004)

5. All acquisitions of real property and the option to purchase held by J. J. White Memorial Presbyterian Church of McComb were acquired and/or built exclusively as a result of financial contributions made by the members of J. J. White Memorial Presbyterian Church

of McComb with a clear understanding that the property and improvements were and would continue to be owned by J. J. White Memorial Presbyterian Church of McComb. No financial contributions were or have been made by the PCUSA or any predecessor denomination toward purchase or maintenance of any real or personal property owned by J. J. White Memorial Presbyterian Church of McComb.

6. All deeds to the real property held by J. J. White Memorial Presbyterian Church of McComb are and were originally titled in "J. J. White Memorial Presbyterian Church" or the Trustees of J. J. White Memorial Presbyterian Church or its predecessor as to Tract I above described, ("Trustees of First Presbyterian Church") only, and do not mention or refer to the PCUSA, or any predecessor denomination in identifying the record title holder nor do such deeds contain any language creating or accepting any trust over said property in favor of a national denomination or any of its regional administrative units such as the Presbytery of Mississippi. Said property has continuously been so titled in the public mortgage and conveyance records of the County of Pike, State of Mississippi.

7. The PCUSA was formed by the merger in 1983 of the Presbyterian Church in the United States (hereinafter the "PCUS", or the "Southern Church") and the United Presbyterian Church in the United States of American (hereinafter the "UPCUSA" or the "Northern Church"). Prior to the formation of the PCUSA, J. J. White Memorial Presbyterian Church of McComb was affiliated with the PCUS. Upon formation of the PCUSA, the PCUS and the UPCUSA both ceased to exist as separate dominations, and the Presbytery of Mississippi ceased being a regional administrative unit of the PCUS and became a regional administrative unit of the PCUSA.

8. The Constitution of the PCUSA consists of two parts, the Book of Confessions (Part I) and the Book of Order (Part II). The Book of Confessions contains doctrinal statements and statements of church governance (polity). The Book of Order focuses on church governance and divides itself into three main sections: the Form of Government, the Directory of Worship and the Rules of Discipline. The provisions in the PCUSA Constitution relating to property are found primarily, but not exclusively in the Form of Government of the Book of Order, Chapter VIII, G-8.0000 - G-8.0700.

9. The PCUSA Book of Order includes a clause, G-8.0201, which asserts that "All property held by or for a particular church. . . is held in trust nevertheless for the use and benefit of the Presbyterian Church (USA)." This clause, and its predecessor trust clauses in the PCUS Book of Church Order, are not applicable to Petitioner's property and are not legally enforceable under the Constitution or the Laws of the State of Mississippi.

10. The PCUSA Book of Order contains a clause asserted by the denomination to pertain to ownership. G-8.0600 asserts that a PCUSA presbytery (such as Defendant, Presbytery of Mississippi) may dictate ownership of local church property located within the geographic bounds of the presbytery. The PCUS Book of Church Order was amended in 1982/1983 to add a similar clause (6-5). On information and belief, the PCUS Book of Church Order did not previously contain a similar clause. It is Petitioner's position that G-8.0600 and any predecessor clause in the PCUS Book of Church Order are not applicable to Petitioner's property and are not legally enforceable under the Constitution or the laws of the State of Mississippi.

11. G-8.0301 of the PCUSA Book of Order pertains to disaffiliation and provides that when a local church ceases to be a particular church of the PCUSA, its property shall be "held,

used, applied, transferred, or sold as provided by the presbytery.” The PCUS Book of Church Order was amended in 1982/1983 to add a similar clause (6-4). On information and belief, the PCUS Book of Church Order did not previously contain a similar clause. It is the Petitioner’s position that G-8.0301 and any predecessor clause in the PCUS Book of Church Order are not applicable to Petitioner’s property and are not legally enforceable under the U. S. Constitution or the laws of the State of Mississippi.

12. Although G-8.0501 of the PCUSA Book of Order states that written permission of the presbytery is required before a particular church can sell, mortgage or otherwise encumber any of its real property, Chapter 6 of the 1982/1983 edition of the PCUS Book of Church Order did not contain such a requirement but, to the contrary, stated at 6-8, that “Nothing in this chapter shall be construed to require a particular church to seek or obtain the consent or approval of any church court above the level of the particular church in order to buy, sell or mortgage the property of that particular church in the conduct of its affairs as a church of the PCUS.”

13. In addition, other property provisions in Chapter VIII of the PCUSA Book of Order that are not substantially similar to provisions in Chapter 6 of the 1982/1983 edition of the PCUS Book of Church Order are also not applicable to the J. J. White Memorial Presbyterian Church of McComb.

14. The PCUSA Book of Order sets forth “Historic Principles of Church Order” which state at G-1.0301(1) that, as a matter of religious freedom, provisions of the denominational constitution are not to be enforced through the powers of civil courts. (G-1.0301(1) states:

(a) That “God alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men which are in anything contrary to his Word, or beside it, in matters of faith or worship.”

(b) Therefore we consider the rights of private judgment, in all matters that respect religion, as universal and unalienable: We do not even wish to see any religious constitution aided by the civil power, further than may be necessary for production and security, and at the same time, be equal and common to all others.

15. Part I of the constitution of the PCUSA, the Book of Confessions, sets forth the principle that the collective organization or gathering (communion) of Christians under a Presbyterian form of government should not burden or infringe existing property rights. The Westminster Confession of 1647, included in the Book of Confessions, states at 6.148: "Nor doth their communion one with another as saints take away or infringe the title or property which each man hath in his goods and possessions."

16. At no time has the Congregation of J. J. White Memorial Presbyterian Church of McComb, its governing body (the session) or the governing body of its local church corporation (the board of trustees) ever concurred in, accepted or otherwise indicated acquiescence to the denomination's assertion of a trust over local church property nor any denominational claim to determine ownership of property titled in the name of the local church or of any improvements thereon. At all times the congregation, the session, and the board of trustees have reaffirmed their understanding and intent that all property held by J. J. White Memorial Presbyterian Church of McComb, and any improvements thereon, real or personal, is held by it in full and complete fee simple title and ownership, and that none of said property is held in trust for the use and benefit of a national denomination or any of its regional administrative units such as the Presbytery of Mississippi.

17. The laws of the State of Mississippi, §91-9-1, et seq. of the Mississippi Code of 1972, as amended, its predecessor, §269 of the Miss. Code of 1942, and its predecessor, §348 of the Miss.

Code of 1930, set forth the exclusive means by which a trust in real property may be validly established in Mississippi. Absent conformity with these requirements, a trust does not exist in Mississippi; Mississippi law has never recognized the common law concept of implied trusts or creations of trust or confidence of or in any land, not in writing, signed by the party who declares or creates such trust.

18. The property-related documents of J. J. White Memorial Presbyterian Church of McComb preclude a finding of the existence of any trust with respect to its property in favor of a national denomination. Specifically, but not exclusively, none of the following requirements of Mississippi trust law, M.C.A. §91-9-1, et seq., (1972, as amended) have been satisfied with respect to any property held by and titled to the J. J. White Memorial Presbyterian Church of McComb, and any improvements thereon, as regards a trust in favor of a national denomination, to wit:

- a) A declaration or creation of trust or confidence of or in any land shall be made and manifested by a writing, signed by the party who declares or creates such trust.
- b) The trust or a certificate of the trust in accordance with §91-9-7, shall be lodged with the Clerk of the Chancery Court of the proper county to be recorded, and the trust shall only take effect from the time it or a certificate is so lodged of record.

It is respectfully submitted that this Court is precluded from adjudicating the existence of any trust with respect to its property in favor of a national denomination including, but not necessarily limited to the PCUSA.

19. Section G-7.0401 of the PCUSA Book of Order states that, "Whenever permitted by civil law, each particular church shall cause a corporation to be formed and maintained. The

PCUS Book of Church Order also contains clauses authorizing and encouraging incorporation under state law (6-1, 6-2 of the 1982/1983 edition). The PCUSA Book of Order not only mandates incorporation where permitted by civil law, but also provides, at G-7.0402, that the corporation so formed shall be the title holder of record for the local church property.

20. In mandating local church incorporation when permitted by civil law, the PCUSA and its regional administrative unit, the Presbytery of Mississippi, have acknowledged that property matters are not governed exclusively by the trust or ownership provisions asserted in the PCUSA Constitution, or the constitutions of its predecessor denominations, but instead are subject to the laws of the state in which the property is located. The PCUSA has expressly acknowledged this in its Legal Resource Manual for Presbyterian Church (USA) Middle Governing Bodies and Churches 2000-2003 ("Almost all property matters are governed by state law ..."). G-9.0102 of the PCUSA Book of Order further distinguishes the spiritual realm from civil authority by providing, "Governing bodies of the church are distinct from the government of the state and have no civil jurisdiction or power to impose civil penalties. They have only ecclesiastical jurisdiction."

21. On information and belief, all corporate records of J. J. White Memorial Presbyterian Church of McComb including, but not limited to its Articles of Incorporation were destroyed by fire. As noted in the records maintained by the Secretary of State for the State of Mississippi, the corporate name "J. J. White Memorial Presbyterian Church of McComb" is the same as the record title holder of the property, "J. J. White Memorial Presbyterian Church" or "the Trustees of J. J. White Memorial Presbyterian Church of McComb." Moreover, inasmuch as there was no trust language in the 1953 PCUS Constitution, there was no language creating or accepting

a trust in or by the corporation. Pursuant to Mississippi non-profit corporation law, plenary authority on corporate matters is vested in the Board of Trustees, subject only to congregational approval as needed.

22. As a corollary to G-9.01012 of the PCUSA Book of Order, which states that the PCUSA and its administrative units such as the Presbytery of Mississippi have only ecclesiastical jurisdiction and do not have authority over civil matters (in recognition that property matters are to be governed by state law), G-1.0301(b) of the PCUSA Book of Order states that the provisions of the denominational constitution are not, as a matter of the free exercise of religion, to be enforced by the civil power of the state through its courts. Thus, while this court has subject matter jurisdiction to resolve the property dispute before it, it cannot do so by applying the PCUSA Book of Order property provisions, as such would constitute an unlawful church establishment prohibited by both the First Amendment to the United States Constitution and by the PCUSA's own constitution. Rather, any trust or other property interest in favor of the Presbytery of Mississippi or PCUSA must be founded only upon mutual intent evidenced by the use of ordinary civil means pursuant to state law.

23. The PCUSA Book of Order does not, and the former PCUS Book of Church Order did not, require that a local church corporation be identified with the denomination in the text of its articles of incorporation, nor require inclusion of the name of the denomination (PCUS or PCUSA) in its corporate name.

24. The PCUS Book of Church Order did not require, nor does the PCUSA Book of Order require, that any property deeds include trust clauses in favor of a national denomination, nor do they otherwise require referral, mention, or inclusion of a national denomination such

as the PCUS or PCUSA in the name or identity of the title holder to property.

25. In calendar year 2003, the session and the congregation of J. J. White Memorial Presbyterian Church of McComb initiated a complete renovation of its main church building at a cost in excess of \$2,000,000.00. The scope of such capital improvements required bank financing to be paid from pledges from the congregation to the fund drive. J. J. White Memorial Presbyterian Church of McComb has granted deeds of trust and security interests in a portion of the local church property to secure payment of the price for the capital improvements aforesaid. Such loans may require refinancing, and absent resolution of the questions presented herein regarding title to the property owned by J. J. White Memorial Presbyterian Church of McComb, the church will be unable to provide acceptable title insurance on its property. Moreover, the underwriting of any extension of credit is significantly impacted by the status of ownership of local church property.

26. Efforts to continue an effective local capital fund drive to pay for improvements to local church property will be stymied in the absence of the injunction and declaratory relief Petitioner seeks. Few will give to fund improvements to facilities, the ownership of which is claimed by others.

27. Congregational meetings by nature present an open forum, and some members of the congregation are expected to initiate discussion of whether to continue or discontinue affiliation with the PCUSA. While it is presently not known how the congregation would vote on these related issues, in the absence of a temporary restraining order and preliminary injunction, the Presbytery of Mississippi could (and on the basis of actions elsewhere by the PCUSA, presbyteries would) attempt to take preemptive action to preclude or predetermine such vote(s)

through depriving Petitioner of its rights under Mississippi law and the Mississippi and United States Constitutions.

28. According to the PCUSA Book of Order, at G.-9.0503a.(4), G-11.0103.s. and G-11.0502j, when there is a “report that a particular church is affected with disorder, a presbytery can, *without prior notice or hearing* , appoint an “administrative commission” to indefinitely assume “original jurisdiction of the existing session” (i.e. remove and replace the governing body of the particular church) and act to “correct the difficulties,” which can include the power to “dissolve a pastoral relationship” (i.e. remove and replace the local pastor). The use of an administrative commission, though purportedly for ecclesiastical governance, is the mechanism or device used by the PCUSA in its efforts to seize ownership and control over local church property.

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

presbytery to effectively confiscate local church property and deal with it as if it were its own. There is a likelihood that the filing of this petition will be perceived to be dissent, causing the Presbytery of Mississippi to act in such a manner.

30. Further heightening the threat to local congregations, the PCUSA, through its Office of General Assembly (Department of Constitutional Services), on or about August 10, 2006, issued "Advisory Opinion Note 19", which states in part III thereof that if a presbytery, such as the Presbytery of Mississippi, fails to appoint an administrative commission to take over control of a local church voicing dissent over denominational policies then the next higher ecclesiastical authority, the synod, may appoint an administrative commission to take over control of the presbytery. Notwithstanding the recent adoption of a task force report by the Presbytery of Mississippi which concedes Petitioner's assertion of its property rights and states that Presbytery will not oppose those rights, Advisory Opinion Note 19 indicates there remains a threat of hostile local church take over by higher ecclesiastical authorities who may seek to act by or through the Presbytery of Mississippi. The Presbytery of Mississippi policy statement is marked Exhibit "A" hereto. Advisory Opinion Note 19 will be furnished to the Court at its hearing of this cause.

31. In further illustration of the aggressive tactics being taken by PCUSA presbyteries and their use of "administrative commissions" as the mechanism or device to try and seize denominational ownership and control over local church property, the PCUSA has prepared legal strategy memoranda, waived any privilege of confidentiality and disclosed them to the press and public. These memoranda have been publicly available on the internet since at least August 9, 2006 and are available through a Google search of Presbyterian Church (USA) and property

law, and two mouse clicks. No attempt has been made by the PCUSA to dispute the authenticity of these memoranda, to retrieve them, or to prohibit their further circulation. These PCUSA memoranda:

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

32. In response to this escalation of retaliatory behavior, a conclave of traditional Presbyterians, gathered from around the United States, passed a resolution on July 22, 2006, asking PCUSA denominational officials to declare a moratorium" on retaliatory action in the form of discipline, administrative commissions or other punitive measures, stating:

"... we call upon the Moderator of the PCUSA and all general presbyters to announce and adopt a moratorium on discipline of ordained members engaged in discourse regarding the issues of theology and polity which confront our denomination, including those discussions which may lead to a

consideration of departure from the denomination. We call upon you to announce a moratorium on actions to seize or encumber property, interfere with the operations of duly elected session members, or otherwise exercise or initiate discipline upon ordained members of our denomination for engaging in such discussions on either side of the debate.

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

33. The actions by PCUSA and/or presbyteries described above violate state property law and trust law, free speech rights guaranteed by the First and Fourteenth Amendments to the United States Constitution and by Article III, Section 24 and Section 25 of the Mississippi Constitution. The effect of such actions, if taken in whole or in part or threatened by the Presbytery of Mississippi, would chill if not violate the foregoing, protected rights, interfere with appropriate local church governance of congregational matters, impede the ability of the congregation of J. J. White Memorial Presbyterian Church of McComb to hold a congregational or corporate meeting free of improper interference, and cloud the title of property held by J. J. White Memorial Presbyterian Church of McComb.

34. J. J. White Memorial Presbyterian Church of McComb is a non-profit corporation. Its primary purpose is not monetary but spiritual and philanthropic. A monetary award is thus an insufficient remedy at law. Absent a temporary restraining order and preliminary injunction, the rights of Petitioner and the Ministry of J. J. White Memorial Presbyterian Church of McComb will be irreparably harmed and injured. J. J. White Memorial Presbyterian Church of McComb has an approximate membership of 350 with an annual budget of approximately \$417,000.00. It employs six persons full time and others part-time. The Church supports numerous ministries and missionaries. No amount of money would be an adequate remedy to

compensate the irreparable damage that would be done to the mission of ministries of J. J. White Memorial Presbyterian Church of McComb which would occur as a result of confiscatory or disciplinary action initiated by the Presbytery of Mississippi in retaliation for the exercise of Petitioner's lawful rights to its property.

35. In a meeting of the Presbytery of Mississippi convened Thursday, November 30, 2006, the Presbytery of Mississippi passed a Policy Statement marked Exhibit "A" hereto, which, among other matters not herein relevant, contained the following policy statements:

- a) The Presbytery of Mississippi recognizes all its particular churches as having the ability to sell, lease, mortgage or otherwise encumber any of their real property without further written permission of the presbytery;
- b) The Presbytery of Mississippi recognizes all its particular churches as having the ability to acquire real property subject to an encumbrance or condition without further written permission of the presbytery;
- c) The Presbytery of Mississippi resolves that it shall take no action to enforce any general trust interest claimed by any higher governing body against any property, real or personal, held by any of its particular churches while they remain under its jurisdiction;
- d) The Presbytery of Mississippi resolves that it will not resist any particular church of the Presbytery of Mississippi which would ask the courts of the State of Mississippi to clear its property of any claims made by higher governing bodies against that property;

36. A temporary restraining order and preliminary injunction during the pendency of this suit is necessary to stay the hand of the Presbytery of Mississippi from appointing an administrative commission that would, without just cause, usurp and replace the authority of the pastor, the session, or the board of trustees of J. J. White Memorial Presbyterian Church of McComb. Said restraining order and preliminary injunction would protect the members of J. J. White Memorial Presbyterian Church of McComb who, under Mississippi non-profit

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

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

38. Petitioner seeks a declaratory judgment: (a) that all property held by or for J. J. White Memorial Presbyterian Church of McComb, and any improvements thereon, whether real or personal, movable or immovable, is held without any trust in favor of a national denomination or any of its regional administrative units, such as the Presbytery of Mississippi; (b) that all property held by or titled in the name of the local church is held by it in full and exclusive ownership; and (c) that neither the PCUSA nor the Presbytery of Mississippi has any right, title or interest in said property, nor right to determine the ownership thereof.

39. There is a substantial likelihood that J. J. White Memorial Presbyterian Church of McComb will prevail on the merits of its suit for declaratory judgment.

WHEREFORE, PREMISES CONSIDERED, Petitioner, J. J. White Memorial Presbyterian Church of McComb prays that a temporary restraining order and preliminary injunction be issued herein and a declaratory judgment be issued herein, granting to your Petitioner the following relief:

1) A Temporary Restraining Order, restraining and enjoining The Presbytery of Mississippi and any of its agents, employees or other persons or entities acting on its behalf or in its stead, from (a) filing any documents in the mortgage and conveyance records of Pike County, Mississippi, the effect of which would be to place a cloud on the title of any property titled in the name of Petitioner, its Trustee's, or its corporate name, or otherwise taking any action to claim ownership of local church property whether real or personal, or a right to determine ownership of local church property, in the possession of, control of, or owned by J. J. White Memorial Presbyterian Church of McComb; and, (b) Further restraining the Presbytery of Mississippi and any agents, employees or other persons or entities acting on its behalf or in its stead, from asserting any rights to the property of J. J. White Memorial Presbyterian Church of McComb, including but not limited to seeking to change the locks of J. J. White Memorial Presbyterian Church of McComb, initiating any disciplinary action against the ministers or members of J. J. White Memorial Presbyterian Church of McComb, appointing an administrative commission, or otherwise interfering in any way with the rights and responsibilities of the ministers or other employees of J. J. White Memorial Presbyterian Church of McComb, the governing body of J. J. White Memorial Presbyterian Church of McComb, (the session), its congregation, or the

governing body of its local church corporation, J. J. White Memorial Presbyterian Church of McComb (the board of trustees);

2) A Preliminary Injunction, enjoining the Presbytery of Mississippi during the pendency of this suit, from any of the acts described in paragraph 1) of this prayer;

3) A Declaratory Judgment, declaring that all property held by or titled in the name of the petitioner, and any improvements thereon, whether real or personal, is held without trust for the use and benefit of the PCUSA or any other national denomination, or any of its regional administrative units such as the Presbytery of Mississippi, and that the petitioner holds all property titled in its name, or the name of its Trustees, and all improvements thereon, in full and complete fee simple ownership pursuant to the laws of the State of Mississippi, and that neither the PCUSA nor any of its regional administrative units such as the Presbytery of Mississippi, nor any person, entity, administrative unit, agency, commission, committee, or governing body acting on behalf of the Presbytery of Mississippi, or in its stead, or claiming by, through or under the Presbytery of Mississippi has any right, title or interest in said property nor right to determine ownership thereof; and,

That the Presbytery of Mississippi be served with a copy of the above and foregoing petition, and summoned to respond to said petition and to appear before this Honorable Court at a date and time fixed by this Court to show cause, if any it can, why a Temporary Restraining Order and a Preliminary Injunction should not issue as prayed for; and,

After all due proceedings be had, a Declaratory Judgment issue as prayed for in favor of J. J. White Memorial Presbyterian Church of McComb; and,

For all other relief, either general or special, to which your Petitioner is entitled.

Respectfully submitted,

J. J. WHITE MEMORIAL PRESBYTERIAN
CHURCH OF McCOMB

BY: ROBISON & HOLMES, PLLC



OF COUNSEL

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STATE OF MISSISSIPPI

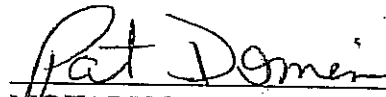
COUNTY OF PIKE

Personally appeared before me, the undersigned authority for the state and county aforesaid, J. STEVE BLUE, Trustee of and for the J. J. White Memorial Presbyterian Church of McComb, who being first duly sworn, stated under oath that the matters and things contained in the above and foregoing Petition for Temporary Restraining Order, Preliminary Injunction and Declaratory Judgment are true and correct as therein stated.



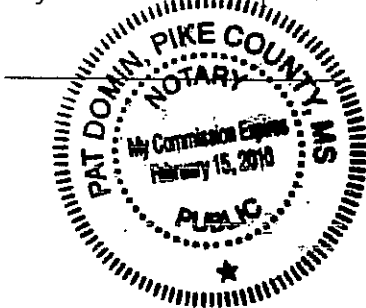
J. STEVE BLUE

SWORN TO AND SUBSCRIBED BEFORE ME, this the 27th day of December, 2006.



NOTARY PUBLIC

My commission expires:



The Presbytery of Mississippi desires to retain all of its congregations as sister churches based on our organic spiritual unity found in the grace of the Lord Jesus Christ, the love of God; and the fellowship of the Holy Spirit. Our unity rests in Christ, not in real estate. Quoting Isaiah 66:1-2, Stephen admonished his critics, "Yet the Most High does not dwell in houses made with hands" (Acts 7:48). It has ever been thus in Israel and in this Presbytery. Property should neither hold us together nor pull us apart.

Matters concerning property within the bounds of the Presbytery of Mississippi would be largely academic, were it not for current events in the Presbyterian Church (U.S.A.). In April of 2006, the Trustees of Eastern Oklahoma Presbytery filed an affidavit placing a claim on all the real property belonging to congregations within the bounds of that presbytery. This was a strategy recommended in a paper entitled "Church Property Disputes" which was produced for the Stated Clerk of the General Assembly. Many congregations throughout the Presbyterian Church thus believe they have reason to fear coercive action by their presbyteries.

The First Presbyterian Church of Baton Rouge, for example, has asked the courts of Louisiana to issue a declaratory judgment that the congregation alone owns its property, and the Presbytery of South Louisiana has concurred with that request.

It is solely to allay such fears that the Presbytery reiterates and reaffirms its historic stand with respect to property issues. The Presbytery offers this Statement of Policy to its particular churches as the definitive statement on how this Presbytery interprets and intends to enforce the Book of Order with respect to real property.

II. Policy Statement

The Presbytery of Mississippi hereby:

1. Desires all its particular churches to remain in fellowship with each other under the jurisdiction of the Presbytery;
2. Resolves that pure preaching of the gospel and right administration of the sacraments are constitutive of the church, that our unity, purpose, and mission are found in Jesus Christ and nowhere else, and that decisions affecting ownership of property are subordinate to, and should support, our spiritual unity in Christ;
3. Resolves that the Great Ends of the Church found in G-1.0200 summarize the mission of this Presbytery and explain the purpose for the existence of the Presbyterian Church (U.S.A.);
4. Resolves that whenever particular churches of this Presbytery pursue the Great Ends of the Church they are in fact using their property for the benefit of this Presbytery and of the Presbyterian Church (U.S.A.);
5. Trusts its particular churches to make their own decisions concerning how best to use their property to accomplish the Great Ends of the Church;
6. Resolves that property has not been, is not, and shall not be a basis for our unity or an opportunity for division among us;
7. Recognizes that many of its particular churches believe they hold clear title to their own property;
8. Recognizes all its particular churches as having the ability to sell, lease, mortgage, or otherwise encumber any of their real property without further written permission of the Presbytery;
9. Recognizes all its particular churches as having the ability to acquire real property subject to an encumbrance or condition without further written permission of the Presbytery;

10. Resolves that it shall take no action to enforce any general trust interest claimed by any higher governing body against any property, real or personal, held by any of its particular churches while they remain under its jurisdiction;
11. Resolves that it will not resist any particular church of the Presbytery of Mississippi which would ask the courts of the State of Mississippi to clear its property of any claims made by higher governing bodies against that property; and
12. Resolves that nothing contained within this policy statement shall abrogate the authority and responsibility of Presbytery under sections G-8.0401 and G-8.0601 of the Book of Order; and
13. Orders that these statements be transmitted through the sessions of all the particular churches of the Presbytery.

III. Theological Reflection and Rationale

1. The Church is founded by Jesus Christ and should embrace his methods and his values. The Holy Spirit is building the church "upon the foundation of the apostles and prophets, Christ Jesus himself being the cornerstone" (Ephesians 2:20). Jesus established the church by calling and

gathering the apostles to himself. He trained, taught, and commissioned them to preach, teach, make disciples, baptize, and celebrate the Lord's Supper with the risen Lord. Our Book of Order recognizes that it is Christ who calls the Church into being, giving it all that is necessary for its mission, edification, and service.

2. Jesus did not call or train the church to deal with real property. When we turn to what Jesus had to say, this is what we find: When a man asked Jesus to settle an estate with his brother, Jesus replied:

"Man, who has made me a judge or divider over you" (Luke 12:14)? Jesus refused to get involved with the property issue. Instead, Jesus used this occasion to warn people not to covet and place one's trust in larger barns.

When the sons of Zebedee were vying for power, Jesus said, "You know that those who are supposed to rule over the Gentiles lord it over them, and their great men exercise authority over them. But it shall not be so among you" (Mark 10:42-44).

"Foxes have holes, and birds of the air have nests; but the Son of man has nowhere to lay his head" (Matthew 8:20).

3. The Goal of the Church is not ownership but discipleship. "It belongs to Christ alone to rule, to teach, to call, and to use the Church as he wills, exercising his authority by the ministry of women and men for the establishment and extension of his kingdom" (G-1.0100(b)). Thus, the goal of the church is not to acquire, own, manage, buy, or sell real property.

The goal of the church is to extend Christ's reign on earth.

4. According to John Calvin, the marks of the church are the preaching of the gospel and the right administration of the Sacraments. Real estate is not and never has been one of the marks of the church. In the early church, congregations did not own real estate. People met in houses, often in secret. Our Book of Order and its historic principles of Church Government are derived from the example of the apostles and the practice of the primitive Church. This includes their attitude towards property.

church at Corinth: The weapons of our warfare are not worldly [physical] but spiritual (2 Cor. 10:4). In the Institutes of the Christian Religion John Calvin carefully describes the spiritual character of ecclesiastical jurisdiction. The spiritual power of the church—to resist offenses and eliminate scandal—should be "completely separated from the right of the sword" (Institutes IV.xi.5). The church does not exercise "power through fines or prisons or other civil penalties," but through the power of the Word. This power is exercised by preaching, admonishing and use of "the final thunderbolt:" excommunication (Institutes IV.xi.5).

Calvin thundered against the church's attempt to usurp and wield civil power. He cites with approval Ambrose's statement: "To the emperor belong the palaces; to the priest the churches" (Institutes IV.xi.8). He also cites Bernard, who admonished Pope Eugenius to refrain from making decisions regarding property: "What seems the greater honor to you: to forgive sins or to divide estates? There is no comparison. These base and earthly things have their own judges, the kings, and princes of the earth. Why do you invade another's border?" He again cites Bernard: "This is the form of apostleship: lordship is forbidden; ministry is bidden." (Institutes IV.xi.11).

Calvin also recalls a time, under Pope Gregory, when priests and bishops confiscated land. "Gregory then called a council of bishops together, inveighed stoutly against that profane custom, and asked whether they would anathematize the cleric who tried to occupy some possession by inscribing a title on his own initiative; similarly, a bishop who either ordered it done or let it go unpunished. All declared, 'Anathema'" (Institutes IV.xi.14).

6. The Church should always operate out of love and fairness, so as to build up and not injure the faith of its members. Calvin discusses the fact that the church's rule-making authority is subject always to the requirement that it not violate love. The church in Jerusalem decreed that the Gentile Christians should observe certain dietary laws, etc., (Acts 15:20). Calvin comments: "This is no new law laid down by the apostles, but the divine and eternal command of God not to violate love" (Institutes IV.x.21). Calvin concedes that constitutions are necessary to keep peace and order, but they must be "founded upon God's authority, drawn from Scripture, and, therefore, wholly divine" (Institutes IV.x.30). When Jesus is silent on a point, the church may impose rules for order and decorum, but they should be tested by the law of love. "But love will best judge what may hurt or edify; and if we let love be our guide, all will be safe" (Institutes IV.x.30). "[W]e are mutually bound, one to another, to nourish mutual love" (Institutes IV.x.31).

7. In applying the law of love, the Presbytery should honor local custom.

"Nevertheless, the established custom of the region, or humanity itself and the rule of modesty, dictate what is to be done or avoided in these matters" (Institutes IV.x.31).

8. In accordance with the mission of the church – to extend the reign of Christ in the world by pursuing the Great Ends of the Church – decisions by the church should be made with a view to the up-building of the witness of the local congregation. Fighting over title to real property damages faith and destroys the witness of the church.

9. In Mississippi, land and identity are deeply intertwined. This Presbytery has always regarded real property as part of the local congregation's core identity. During the 1970s, a number of congregations in Mississippi elected to withdraw and join other Reformed denominations.

These were difficult and heartbreaking decisions. Some of the decisions to leave were fueled by anxiety over what would become of the church property if they remained with the denomination. Many of the congregations who chose to remain in the PCUS believe that, when they exercised the exemption clause provided in G-8.0701, they retained their property free of any denominational claims. Feelings about ownership of real property run very deep in this Presbytery and we have learned, by hard experience, to err on the side of grace in dealing with such matters.

...the policy of this Presbytery not to use real property as a weapon or bargaining chip. Although the Presbytery has an encouraging role to play, especially in the formation of new congregations, it continues to be the responsibility of the congregations themselves to pay for their buildings and to maintain them, in order that the mission of the Church might be carried out in particular places.

11. This statement is in no way intended to abrogate the Presbytery's role in determining what happens to the property of a congregation which is dissolved or in schism or which seeks to be dismissed from the Presbyterian Church, (U.S.A.). Instead, this statement seeks to reassure all the particular congregations of the Presbytery of Mississippi that, while they remain in

fellowship with us, their property is safe for them to use and develop as they see fit.

12. This statement is an attempt to be faithful to the Constitution of the Presbyterian Church (U.S.A.). Because of incomplete records, the Presbytery has long assumed that all its congregations that were formerly members of the PCUS did exercise the clause in G-8.0701 that allowed them to be exempt from needing the permission required in G-8.0501 and 0502. G-8.0501 does not stipulate that the permission given to particular churches to sell, mortgage, or encumber real property, or to buy property subject to encumbrances or conditions, must be done on a case-by-case basis.

Likewise, there is no stipulation in G-8.0502 that permission to lease property must be given on a case-by-case basis. By granting the permission required in G-8.0501 and 0502 to all its particular churches, the Presbytery thus seeks to treat all of them equally and fairly.

13. Although this Presbytery can build a culture of trust within its bounds, it cannot act on behalf of higher governing bodies. It is possible that, while the Presbytery calls for love and justice to be demonstrated where it comes to congregational property, higher governing bodies may continue to claim ownership of the property belonging to the congregations of the Presbytery. Only the courts of the state of Mississippi can make final determinations concerning the validity of such claims. As a matter of pursuing the love and justice of Jesus Christ, the Presbytery of Mississippi will not interfere with any of its particular churches which desire to act to clear their titles of any claims made on them by the higher governing bodies of the Presbyterian Church (U.S.A.).

IV. Conclusion

In making this statement, the Presbytery expresses its trust in its congregations, and earnestly desires that its congregations would trust that this Presbytery will do nothing detrimental to the health or strength of any of its particular churches. We take this position in compliance with the Book of Order, and solely for the furtherance of the great ends of the church. It is our belief that in this place and at this time, the mercy and grace of Jesus Christ is best demonstrated by avoiding conflict over property issues. This is not a new position for our Presbytery. It is how we have handled such matters in the past, and how we intend to continue to deal with them as we move forward.