

IN THE DISTRICT COURT IN AND FOR
BUENA VISTA COUNTY, IOWA

THE PROSPECT HILL PRESBYTERY OF)
THE PRESBYTERIAN CHURCH (USA), and)
REV. DUANE QUEEN, as CHAIR OF THE)
ADMINISTRATIVE COMMISSION appointed by)
the PRESBYTERY with respect to the RIVERSIDE)
PRESBYTERIAN CHURCH, LINN GROVE, IOWA)

Plaintiffs,

vs.

RUSSELL WESTBROOK,)
DENNIS SOMERS, and)
SESSION OF RIVERSIDE PRESBYTERIAN)
CHURCH, LINN GROVE, IOWA,)

Defendants.

EQUITY NO. 89CV026725

PETITION

FILED
OCT 16 11 31 AM '83
DISTRICT COURT
BUENA VISTA COUNTY
IOWA

1. Plaintiff Presbyterian Church (USA) is the national organization of Christian believers that has adopted and proclaimed the *Book of Order* as governing the church's form of government, worship, and discipline. Currently, the Presbyterian Church (U.S.A.) has its denominational offices in Louisville, Kentucky, and is comprised of approximately 2.4 million members, 11,100 congregations and 14,000 ordained and active ministers. It was formed in 1983 as a result of a reunion between the Presbyterian Church in the U.S. (PCUS), the so-called "southern branch," and the United Presbyterian Church in the U.S.A. (UPCUSA), the so-called "northern branch."

2. Under the Presbyterian Church (USA)'s form of government, each local church affiliated with the Presbyterian Church (USA) is governed by the Session, comprised of the local church's pastors and ruling elders elected by church membership. The next higher level of church governance is the Presbytery, consisting of ministers and lay representatives of each Session within a particular geographic area. Representatives of the Presbyterian Church (USA)'s 173

Presbyteries in the United States are consolidated into 16 regional governing bodies called Synods. The highest governing body in the Presbyterian Church (USA) is the General Assembly, comprised of elected representatives from each of these Presbyteries.

3. As delineated in the *Book of Order*, Presbyterian Church (USA)'s government reflects a hierarchical scheme of ecclesiastical government, with the local churches subordinate to the larger church; adopting the principle that the majority shall govern, and consequently that appeals may be carried from the lower to higher governing bodies, till matters of controversy be finally decided by the collective wisdom and united voice of the whole Church.

4. Defendant Russell Westbrook is acting as the pastor of the Riverside Presbyterian Church in Linn Grove, Iowa.

5. Defendant Dennis Somers is the Clerk of the Session of Riverside Presbyterian Church in Linn Grove, Iowa.

6. Plaintiff Prospect Hill Presbytery is the governing body of Presbyterian Church (USA) to which affiliated local Presbyterian churches in northwest Iowa report.

7. The Riverside Presbyterian Church in Linn Grove, Iowa is one of the local churches affiliated with the Presbyterian Church (USA) within the geographic area covered by Prospect Hill Presbytery. Its governing body, the Session, reports to Prospect Hill Presbytery, and is subject to the regulations contained in the *Book of Order*, including governance by the Prospect Hill Presbytery and its Administrative Commission. It has been affiliated with the Presbyterian Church (USA) and its predecessors for over 50 years.

8. Among the duties delegated to Prospect Hill Presbytery under the *Book of Order* is the obligation to dismiss, remove, and discipline ministers; to assume the responsibilities and powers of an affiliated Presbyterian church in northwest Iowa if that local church's Session fails to comply with its obligations under the Presbyterian Church (USA)'s *Book of Order*; and to monitor and review the records of its churches for any irregularity or delinquency that may have occurred, and if such has occurred, to take such action in accordance with the *Book of Order* to re-establish

compliance with the Presbyterian Church (USA)'s Constitution.

9. On June 28, 2006, the Session of the Riverside Presbyterian Church in Linn Grove, with the acquiescence and approval of its minister, Russell Westbrook, voted to recommend to its church membership that it secede from the Presbyterian Church (U.S.A.) and seek union with another denomination.

10. On August 2, 2006, Dennis Somers, Clerk of the Session of the Riverside Presbyterian Church, reported to the Prospect Hill Presbytery that membership of the church had adopted the motion to secede as recommended by its Session. Mr. Somers requested that the "Prospect Hill Presbytery release our congregation with all assets and property" to join another denomination.

11. Under the *Book of Order*, all property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

12. In accordance with the *Book of Order*, whenever property of, or held for, a particular church of the Presbyterian Church (U.S.A.) ceases to be used by a particular church of the Presbyterian Church (U.S.A.), such property shall be held, used, applied, transferred, or sold as provided by the presbytery.

13. Under the *Book of Order*, the relationship between a local church and the Presbyterian Church (USA) can be severed only by constitutional action taken on the part of the Presbytery, the body responsible for the mission and government of the church throughout its geographical district and therefore vested with the responsibility and power to divide, dislmas or dissolve churches in consultation with their members. There is no unilateral right for a Presbyterian Church (U.S.A.) Congregation to depart from the denomination or its presbytery of membership.

14. Under the *Book of Order*, the process mandated for a Presbytery to inquire into and

settle difficulties or schisms within a church is through the appointment of an Administrative Commission, entrusted with the function to visit particular churches or governing bodies reported to be affected with disorder and to inquire into and settle those difficulties.

15. In response to the notice from Dennis Somers, Clerk of the Session of the Riverside Presbyterian Church, the Prospect Hill Presbytery gave notice to members of the Presbytery, including the representatives from the Riverside Presbyterian Church, that a special meeting of the Prospect Hill Presbytery would be held on August 14, 2006 for the purpose of determining whether an Administrative Commission should be established and given the power to assume original jurisdiction and the responsibilities and powers otherwise given the Riverside Church, all as required under the *Book of Order* when the relationship between the Presbyterian Church (USA) and a particular church is sought to be severed.

16. At the special meeting of the Prospect Hill Presbytery held on August 14, 2006 and in accordance with the provisions of the *Book of Order*, the Prospect Hill Presbytery formed an Administrative Commission, with Plaintiff Duane Queen as chairperson, empowered as follows:

- A. To dissolve the pastoral relationship between Rev. Russell Westbrook and the Riverside Presbyterian Church in Linn Grove, Iowa, if they deem it appropriate;
- B. To review the rolls of the Riverside Presbyterian Church, to determine if there are members who wish to remain in the Presbyterian Church (U.S.A.);
- C. To meet with the session of the Riverside Presbyterian Church in Linn Grove, to determine (1) if they are willing to remain faithful to their ordination vows of the Presbyterian Church (U.S.A.); (2) whether they are committed to that action taken on June 28, 2006, to recommend that the Riverside Presbyterian Church secedes from the Presbyterian Church (U.S.A.); and to the vote taken by the congregation on July 30, 2006, to adopt that recommendation.
- D. To assume original jurisdiction and the responsibilities and powers given to a particular church as necessary for the mission and government of the Riverside

Presbyterian if the Administrative Commission finds that the Riverside Session is committed to the initiated action on June 28, 2006.

- E. To report back to the presbytery, at its regular meetings, making any recommendations concerning the future of the congregation, its property and assets.

17. As a result of action taken at the special meeting of the Prospect Hill Presbytery held August 14, 2006, the Presbytery on August 17, 2006 sent notice to Rev. Russell Westbrook placing him on administrative leave effective Monday, August 21, 2006. The terms of the administrative leave included the prohibition against Russell Westbrook going to the Presbyterian church building in Linn Grove or communicating with its members.

18. On August 19, 2006 the Session of the Riverside Presbyterian Church in Linn Grove notified the Prospect Hill Presbytery that it would "no longer acknowledge the authority of the presbytery of Prospect Hill over Riverside Presbyterian Church" and refused to meet with the Administrative Commission appointed by the Prospect Hill Presbytery. During the same period, Russell Westbrook continued to act as the Riverside Presbyterian Church's minister, leading Sunday services and communicating with members in direct violation of the terms of the administrative leave on which he was placed.

19. By letter dated September 8, 2006 the Administrative Commission gave notice to Russell Westbrook that his relationship with the Riverside Presbyterian Church was dissolved by action of the Administrative Commission of Prospect Hill Presbytery as a result of Rev. Westbrook's failure to abide the terms of the Administrative Leave, and he was directed to either vacate the church manse or enter a rental agreement within thirty days of the notice.

20. As of the date of the filing of this petition, Russell Westbrook has failed to terminate his relationship with the Riverside Presbyterian Church; nor has he vacated the church manse or entered a rental agreement as directed by the Administrative Commission of Prospect Hill Presbytery.

21. By letter dated September 8, 2006 the Administrative Commission gave notice to Dennis Somers, as Clerk of the Session of the Riverside Presbyterian Church, to supply the membership records of the church to the Administrative Commission of Prospect Hill Presbytery.

22. As of the date of the filing of this petition, Dennis Somers, Clerk of the Session of the Riverside Presbyterian Church has failed and refused to supply the membership records of the church to the Administrative Commission of Prospect Hill Presbytery as required under the *Book of Order*.

23. By letter dated November 29, 2006, the Session of the Riverside Presbyterian Church was notified that the Administrative Commission of the Prospect Hill Presbytery had determined it appropriate to assume original jurisdiction and the responsibilities and powers given to a particular church as necessary for the mission and government of the Riverside Presbyterian Church.

24. As of the date of the filing of this petition, the defendants have refused to comply the notice of the Administrative Commission's assumption of original jurisdiction and have failed and refused to deliver to the Presbytery or its Administrative Commission possession of the Riverside Presbyterian Church building, manse, personal property, accounts and records and have converted the same to a use inconsistent with the terms of the trust under which defendants hold the property, that being for the use and benefit of the Presbyterian Church (U.S.A.).

25. Plaintiffs petition the Court to exercise its equitable powers to issue an injunction because mere monetary compensation and other remedies at law are not adequate and substantial injury or damage would result unless the injunction is granted.

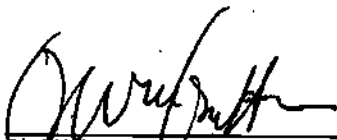
WHEREFORE, plaintiffs request the court enter an order declaring and confirming that all property of the Riverside Presbyterian Church in Linn Grove, Iowa is held in trust for the use and benefit of the Presbyterian Church (U.S.A.) and restraining the defendants from:

- A. Preventing access to pulpit supply by a person authorized by the Administrative

Commission, Prospect Hill Presbytery or the Presbyterian Church (U.S.A.).

- B. Preventing access to the property and records of the Riverside Presbyterian Church in Linn Grove, Iowa by the Administrative Commission, the Prospect Hill Presbytery or the Presbyterian Church (U.S.A.);
- C. Encumbering, selling or transferring the property of the Riverside Presbyterian Church in Linn Grove, Iowa;
- D. Using money in any bank account for any purpose other than to pay standard operational expenses for maintaining the church property and ordering an accounting of all funds collected and expended after August 19, 2006, the date that the Session of the Riverside Presbyterian Church in Linn Grove notified the Prospect Hill Presbytery that it would "no longer acknowledge the authority of the presbytery of Prospect Hill over Riverside Presbyterian Church."

Plaintiffs further request the court enter an order directing that all property and records of the Riverside Presbyterian Church in Linn Grove, Iowa removed from the local church be returned to the Presbytery, that possession of said property and records be delivered to the Presbytery, and damages be awarded for its wrongful detention.



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ATTORNEY FOR PLAINTIFFS

STATE OF IOWA

BUENA VISTA COUNTY


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Verification

We are authorized representatives and agents of the plaintiffs in the above-entitled action. Each of us has read the foregoing petition and know its contents. The matters alleged therein are true from our personal knowledge or stated upon our best information and belief to be true and correct.

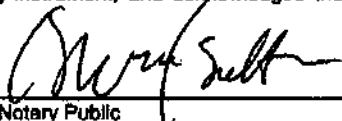


William A. Byrd
INTERIM EXECUTIVE PRESBYTER
THE PROSPECT HILL PRESBYTERY OF
THE PRESBYTERIAN CHURCH (USA),



Rev. Duane Queen, as CHAIR OF THE
ADMINISTRATIVE COMMISSION with
RIVERSIDE PRESBYTERIAN CHURCH,
LINN GROVE, IOWA

On this 16th day of February, 2007, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appear William A. Byrd
and Duane Queen to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that each executed it as his voluntary act and deed.



Notary Public