

IN THE CIRCUIT COURT OF ALCORN COUNTY, MISSISSIPPI

FIRST PRESBYTERIAN CHURCH
OF CORINTH, MISSISSIPPI

PLAINTIFF

v.

CIVIL ACTION NO. CV07-053AA

PRESBYTERY OF SAINT ANDREW,
PRESBYTERIAN CHURCH U.S.A., INC.

DEFENDANT

**ANSWER, DEFENSES AND COUNTERCLAIM OF
PRESBYTERY OF SAINT ANDREW, PRESBYTERIAN CHURCH U.S.A., INC.**

Comes Now Defendant, Presbytery of Saint Andrew, Presbyterian Church U.S.A., Inc. ("Presbytery"), and for its Answer to the Complaint of Plaintiff, First Presbyterian Church of Corinth, Mississippi ("FPC Corinth"), states as follows:

Introductory Statement

The sole Defendant in this case, the Presbytery, is a middle governing body of the Presbyterian Church U.S.A., Inc. ("PCUSA") and is bound to follow the Constitution of the PCUSA. The Constitution of the PCUSA is divided into two parts, the Book of Confessions and the Book of Order. The Book of Order is divided into three sections: 1) the Form of Government, 2) the Directory for Worship, and 3) the Rules of Discipline. The Book of Order is applicable to most of the issues addressed in FPC Corinth's Complaint, and the Presbytery intends to abide by The Book of Order as it addresses the issues raised in the Complaint.

Responses to FPC Corinth's Complaint

1. Upon information and belief, the allegations in paragraph 1 as to FPC Corinth being a religious society and its physical address are admitted. However, the Presbytery is without sufficient information or belief as to what actual parties or individuals the styled name "First Presbyterian Church of Corinth, Mississippi" represents. Thus the Presbytery is without

sufficient information or belief as to whether the real parties in interest are represented in this case and must plead a MRCP 12(b)(6) motion to dismiss pursuant thereto. The Book of Order provides the procedure and process for identifying different parties and individuals involved in a schism in a particular PCUSA church in order to determine who represents the “true church” as defined by the Book of Order, and those ecclesiastical procedures have been prevented from being followed due to the filing of FPC Corinth’s complaint and the Court’s issuance of the temporary restraining order.

2. The allegations contained in paragraph 2 of the complaint are denied as stated. The Presbytery is a “middle governing body” of the PCUSA with ecclesiastical jurisdiction over certain congregations in specific counties located in northern Mississippi. The Presbytery’s Stated Clerk is Greg Goodwiller, and its offices are located at 24 County Road 231, Oxford, Mississippi 38655.

3. The allegations contained in paragraph 3 of the complaint are denied as stated. The Complaint raises questions concerning FPC Corinth’s right to hold and use the property upon which the physical church sits, apart from religious purposes and its connection to the Presbytery. These issues concern ecclesiastical governance founded upon Presbyterian belief and doctrine contained in the PCUSA Constitution. Further, the Presbytery reserves the right to move the Court for a transfer of this cause of action to the Chancery Court of Alcorn County.

4. The allegations contained in paragraph 4 of the complaint are admitted upon information and belief.

5. The allegations contained in paragraph 5 of the complaint are denied as stated. The Presbyterian Church in the United States (“PCUS” or “Southern Church”) did not come into

existence until 1865. FPC Corinth was formed in 1858.

6. The allegations contained in paragraph 6 of the complaint are denied as stated. The Articles of Agreement uniting the PCUS and the United Presbyterian Church in the United States of America (“UPCUSA”) specifically note that “the reunited Church will be in all ecclesiastical, judicial, legal and other respects the *continuing* entity of the Presbyterian Church in the United States and The United Presbyterian Church in the United States of America” (emphasis added). See *Articles of Agreement, PCUS & UPC Reunion, Preamble*, par. 1 (attached as Exhibit A). Therefore, the two antecedent denominations did not “cease to exist” at the time of reunion, but continue to exist in their new form, which was duly authorized by the majority votes of the two denominational bodies and confirmed by the majority votes of the presbyteries of the two bodies.¹

7. The allegations contained in paragraph 7 of the complaint are admitted upon information and belief.

8. The allegations contained in paragraph 8 of the complaint are denied as stated. The Court cannot resolve or consider issues of religious doctrine and practice. Even so, the 217th General Assembly made no declaration or approved any report as alleged. The 217th General Assembly voted to “receive” and commend for study a report entitled “The Trinity: God’s Love Overflowing,” which is believed to be the report referred to by FPC Corinth. The

¹Furthermore, Article 13 of the Articles of Agreement specifically created a “window of opportunity” for congregations that were a part of the PCUS (including FPC Corinth) to leave the new denomination for a period of up to eight years after reunion. Official FPC Corinth documents from that time period indicate that FPC Corinth was well aware of Article 13, and as it never availed itself to the dismissal procedure during said 8 year period, it bound itself to the final provision of Article 13, which states: “Any petition for dismissal with property filed later than eight years from the consummation of union shall be handled under the appropriate provisions for such a request in the Form of Government.” *Articles of Agreement, PCUS & UPC Reunion*, Art. 13.4.

allegations made by FPC Corinth in paragraph 8 of the complaint are made without the proper context of the entire report and mis-characterize the essence and nature of the report. As to the remaining allegations in paragraph 8 of the complaint, the Presbytery is without sufficient information or knowledge to form a belief as to their truth, and thus denies same.

9. The Presbytery denies that a congregation, namely FPC Corinth, has the authority under the Book of Order to depart from the PCUSA communion without the approval of the Presbytery. Except to the extent indicated herein the allegations contained in paragraph 9 are denied.

10. The allegations contained in paragraph 10 of the complaint are admitted.

11. The allegations contained in paragraph 11 of the complaint are admitted

12. The allegations contained in paragraph 12 of the complaint are denied as stated.

The real property where FPC Corinth is located is held in trust for the use and benefit of St. Andrew Presbytery, Presbyterian Church (U.S.A.) according to the Book of Order. The Presbytery is bound to follow the express mandate of the Book of Order as it relates to congregational disputes and *schisms* and issues relating to the membership, leadership, pastors and the real property of churches and schisms within the PCUSA.

13. The allegations contained in paragraph 13 of the complaint are denied as stated. FPC Corinth initiated litigation at the outset, rather than submit to the Presbytery's ecclesiastical bodies. The Presbytery's Committee on Ministry ("Committee") did authorize the Executive Presbyter/Stated Clerk, Greg Goodwiller, to engage the Presbytery's attorney to investigate potential legal matters as the Presbytery continued with its work with FPC Corinth pursuant to the Book of Order. FPC Corinth filed the instant action before any investigation occurred or

could be considered by the Presbytery.

14. The allegations contained in paragraph 14 of the complaint are denied.

15. The allegations contained in paragraph 15 of the complaint are denied.

16. The allegations contained in paragraph 16 of the complaint are denied as stated.

The Committee's January 24, 2007 letter to Revered Elliott speaks for itself. Reverend Elliott, in an email of November 30, 2006 to Greg Goodwiller, the Stated Clerk of the Presbytery, stated: "I have decided to fully support the decision of the session of FPC, Corinth, which is to go in the direction of leaving the PCUSA within 18 months." (Attached as Exhibit B). Due to this declaration, the Committee felt it necessary to inform Revered Elliott that advocacy for the position of leaving the PCUSA would not be considered "approved work" by the Presbytery.

17. It is admitted that the Presbytery met on February 6, 2007, in Leland, Mississippi. Nothing which FPC Corinth "anticipated" as alleged in paragraph 17 of the complaint occurred or was on the Presbytery's agenda for the meeting. Moreover, the Book of Order provides extensive due process that would have protected FPC Corinth from any immediate action. It is denied that "immediate irreparable harm and injury" could have occurred as the result of any action taken at one particular meeting of the Presbytery. FPC Corinth obtained an ex parte temporary restraining order which prevented the Presbytery from even discussing whether an administrative commission should be formed or to discuss the issues alleged in the complaint. Except to the extent indicated herein the allegations contained in paragraph 17 of the complaint are denied.

18. The allegations contained in paragraph 18 are denied as stated. Paragraph 18 of the complaint does not contain any allegations of fact against the Presbytery. The relief referred

to, however, would require this Court to impose its own will in the place of constitution of the PCUSA, which is devoutly followed by the Presbytery, and all of its provisions regarding care and oversight, which would severely interfere with the Presbytery's free exercise of religion. Congregations in the PCUSA tradition are not autonomous bodies. The Book of Order expressly states: "The several different congregations of believers, taken collectively, constitute one Church of Christ, called emphatically the Church; that a larger part of the Church, or a representation of it, should govern a smaller, or determine matters of controversy which arise therein; that, in like manner, a representation of the whole should govern and determine in regard to every part, and to all the parts united: that is, that a majority shall govern; and consequently that appeals may be carried from lower to higher governing bodies, till they be finally decided by the collected wisdom and united voice of the whole Church. For these principles and this procedure, the example of the apostles and the practice of the primitive Church are considered as authority." See Book of Order, G-1.0400. FPC Corinth improperly seeks redress in the courts for what is within the exclusive province of the Presbytery.

19. The allegations contained in paragraph 19 of the complaint are denied as stated. The Book of Order states: "All governing bodies of the church are united by the nature of the church and share with one another responsibilities, rights, and powers as provided in this Constitution. The governing bodies are separate and independent, but have such mutual relations that *the act of one of them is the act of the whole church performed by it through the appropriate governing body*. The jurisdiction of each governing body is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries, and with the acts of each subject to review by the next higher governing body." G-9.0103 (emphasis added). FPC

Corinth "purchased and maintained all of the Church property," in trust on behalf of the PCUSA according to the Book of Order, and FPC Corinth should be estopped from denying this.

20. The Presbytery admits that the subject property consists of tracts described in the deeds attached to the complaint as exhibit D to the complaint. These and other recorded documents acknowledge that the subject property is held by the "Trustees of the First Presbyterian Church, U.S., Corinth, Mississippi." As the church's denomination of membership at this time was the "Presbyterian Church, U.S.," this is a clear acknowledgment by FPC Corinth that its property is now held in trust by its Trustees for the use and benefit of the St. Andrew Presbytery of the Presbyterian Church (U.S.A.), in fulfilling its mission in Corinth, Mississippi. Also recorded in the land records of Alcorn County, Mississippi is an Amendment and Notice, executed on June 26, 1961, and filed with the Chancery Clerk of Alcorn County on or about July 23, 1961, giving notice to the world that any and all properties associated with the PCUS (now the PC(U.S.A.)) located in Alcorn County, Mississippi, are a part of a larger Presbytery of St Andrew (attached hereto as Exhibit C). Except to the extent indicated herein the allegations contained in paragraph 20 of the complaint are denied.

21. The allegations contained in paragraph 21 of the complaint are denied. The deeds are titled in the name of the Trustees of FPC Corinth. Again, the Book of Order states that the actions of bodies within the Church are the actions of the whole Church taken through that particular body, and such action is subject to the review and control of higher bodies. FPC Corinth remained in the denomination after its General Assembly adopted a property trust clause which declared that all property held by a particular church, Presbytery or synod was held for the use and benefit of the PCUSA and permitted churches objecting to the trust clause eight years to

decide whether to “opt out” of the denomination. FPC Corinth remained in the denomination thereafter and is therefore subject to the trust clause codified in the Book of Order at G-8.0201. Except to the extent indicated herein the allegations contained in paragraph 21 are denied and FPC Corinth should be estopped from denying that the subject property is held in trust for the use and benefit of the PCUSA.

22 . The financial contributions of the members of FPC Corinth to acquire, build, and/or improve the Church Property constitute *contributions of members of the PCUSA* working on behalf of their particular congregation within the PCUSA to build up and support the ministry of their congregation of the PCUSA in Corinth, Mississippi. Members of the FPC Corinth presumably took tax deductions from their contributions under a “Group Ruling” exemption granted by the Internal Revenue Service in 1954 which covers “you [the General Assembly] and your synods, prebyteries and churches” which are also referred to as “subordinate units” in the IRS Determination Letter (attached hereto as Exhibit D). Except to the extent indicated herein the allegations contained in paragraph 22 of the complaint are denied.

23. Denied as stated, except to the extent indicated in the Presbytery’s responses to the allegations contained in paragraphs 19, 21 and 22.

24. The allegations contained in paragraph 24 of the complaint are admitted.

25. The Presbytery admits that Clause G-8.0201 of the Book of Order states that, “(a)ll property held by or for a particular church . . . is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).” Except to the extent indicated herein the remaining allegations contained in paragraph 25 of the complaint are denied. Further, FPC Corinth should be estopped from asserting the aforementioned clause is not legally enforceable.

26. Clause G-8.0301 of the Book of Order referred to in paragraph 26 of the complaint states: “whenever property of, or held for, a particular church of the Presbyterian Church (U.S.A.) ceases to be used by that church as a particular church of the Presbyterian Church (U.S.A.) in accordance with this Constitution, such property shall be held, used, applied transferred or sold as provided by the presbytery.” Clause G-8.0600, 8.0601 of the Book of Order referred to in paragraph 26 of the complaint states: “The relationship to the Presbyterian Church (U.S.A.) of a particular church can be severed only by constitutional action on the part of presbytery (G-11.0103). If there is a schism within the membership of a particular church and Presbytery is unable to affect a reconciliation or division into separate churches within the Presbyterian Church (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 the Presbyterian Church (U.S.A.). This determination does not depend upon which faction received a majority vote within the particular church at the time of the schism.” Thus, according to the Book of Order, it is within the exclusive province of the Presbytery and its ecclesiastical bodies to determine schism issues, including property issues, such as those now before the Court. Except to the extent indicated herein, the Presbytery denies the allegations contained in paragraph 26 of the complaint.

27. The property trust clause is central to Chapter VIII of the Book of Order and, in many respects, the life of the PCUSA. It establishes, as all Presbyterians know, that our church is not congregational in its structure, it is connectional and hierarchal, and thus the subject property is held in trust. Except to the extent indicated herein, the Presbytery denies the allegations stated in paragraph 27 of the complaint.

28. The Presbytery acknowledges that a portion of the Book of Order was quoted in paragraph 28 of the complaint. The Presbytery denies the Plaintiff's characterization of that provision. The Presbytery asserts that the Book of Order should be read as a whole including Clause (G-9.0103) which states in part "(t)he jurisdiction of each governing body is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries and with the acts of each subject to review by the next higher governing body." Except to the extent indicated herein, the allegations contained in paragraph 28 of the complaint are denied.

29. The allegations contained in paragraph 29 of the complaint are denied. Moreover, paragraph 29 of the complaint contains the argument of counsel, and as such the assertions do not require specific response. Even so, the Presbytery asserts once more that the provisions of the Book of Order speak for themselves and should be read as a whole.

30. The averments of paragraphs 30 contain legal arguments by FPC Corinth and level no allegations of fact against the Presbytery, and thus require no response. Statutory and case law in Mississippi speaks for itself and is interpreted according to the fact scenario to which it is applied. Out of an abundance of caution the allegations contained in paragraph 30 are denied.

31. See response to paragraph 30. Out of an abundance of caution, FPC Corinth's interpretation of Mississippi law is denied.

32-35. The allegations contained in paragraphs 32 through 35 of the complaint contain legal arguments and require no formal response from the Presbytery. Further, the Presbytery is without sufficient information or belief as to some of the statements in paragraphs 32-35, and

therefore the entirety of the statements are denied at this time. However, the Presbytery asserts that in July of 1962, notice was filed in the Alcorn County Chancery Clerk's office of the Presbytery's jurisdiction over FPC Corinth and the property upon which it is located. In addition, FPC Corinth failed to act in accordance with Article 13 of the Articles of Agreement, as discussed in footnote 1, and as a result FPC Corinth subjected itself to the jurisdiction and authority of the property provisions of the Book of Order, and should be estopped from denying the trust provisions contained in the Book of Order or the language contained in the instruments of record which declare that the subject property was held for and on behalf of a church within the PCUSA denomination. Except to the extent indicated herein the Presbytery denies the allegations contained in paragraphs 32 to 35 of the complaint.

36. The allegations contained in paragraph 36 of the complaint are denied. Moreover, the Presbytery asserts FPC Corinth, in a 1984 Overture (attached hereto as Exhibit E), indicated that it was well aware of the property provisions of the Book of Order at a time when it had the full opportunity to be dismissed from the PCUSA union, with its church property, in accordance with Article 13 of the Articles of Agreement.

37-38. The allegations contained in paragraph 37 and paragraph 38 of the complaint are denied, particularly as those paragraphs take issue with the Presbyterian form of government contained in the Book of Order, to which FPC Corinth is subject. The allegations contained in paragraph 37 and paragraph 38 of the complaint relate to church polity and governance which is within the exclusive province of the ecclesiastical bodies within the Presbytery, subject to the Book of Order, and are not subject to the purview or scrutiny of any court. Indeed, the Book of Order clearly states that "Presbyters are not simply to reflect the will of the people, but rather to

seek together to find and represent the will of Christ” (G-4.0301d).

39. The allegations contained in paragraph 39 of the complaint contain legal arguments that require no response. Notwithstanding, the factual allegations contained in paragraph 39 are denied as stated.

40-42. The allegations contained in paragraph 40 through paragraph 42 of the complaint are denied as stated. The allegations contained therein relate to ecclesiastical polity and governance which is within the exclusive province of the ecclesiastical bodies within the Presbytery and subject to the Book of Order, which is not subject to the purview or scrutiny of any court. Though the Court may not delve into the issues concerning ecclesiastical governance, an administrative commission has not been appointed by the Presbytery, the Presbytery having been enjoined from doing so by this Court prior to the last Presbytery meeting. The Presbytery possesses the responsibility to provide care and oversight to its ministers, members and congregations and its decisions are subject to review by both administrative and judicial review processes within the PCUSA hierarchal structure. In addition, each pastor of a PCUSA church is a member of the presbytery in which the church sits and that pastoral relationship may only be dissolved by a presbytery. Thus, the pastor of FPC Corinth, Reverend Don Elliot, is a member of St. Andrew Presbytery, not FPC Corinth.

41. The measures alleged in paragraph 41 of the complaint had not been discussed or contemplated by the Presbytery, and accordingly the allegations are denied.

42. The allegations contained in paragraph 42 of the complaint are denied as stated. Insofar as the allegations ask this Court to delve into the ecclesiastical polity of the PCUSA and the Presbytery, the allegations are beyond the purview of this Court pursuant to the First

Amendment and the established case law interpreting same. The subject property in this case is held in trust for the use and benefit of the Presbytery and the PCUSA. The PCUSA constitutional provisions under which congregations hold property for the benefit of the PCUSA arise out of and reflect our theological conviction that this denomination constitutes one indivisible body which itself is part of the body of Christ, and which encompasses not only the visible church today but our forbearers and heirs in one holy, catholic and apostolic church. According to the Book of Order, any action or inaction is subject to review by a higher hierarchal body.

43. The allegations contained in paragraph 43 of the complaint are denied and the Presbytery asserts that no “measures” as referred to in paragraph 43 by FPC Corinth have been contemplated or discussed by the Presbytery.

44-45. The allegations contained in paragraph 44 and paragraph 45 of the complaint are denied as stated, particularly as those allegations relate to any occurrence, action or inaction by the Presbytery. The stated clerk of the PCUSA is not a party to this litigation nor is he a member of the Presbytery. The Presbytery can only speak for itself. It is, however, required to abide by the Book of Order. Interpretation of the Book of Order and its application is beyond the purview of this Court as those are ecclesiastical matters protected by the First Amendment.

46-47. The allegations contained in paragraph 46 and paragraph 47 of the complaint are denied.

48. In response to paragraph 48 of the complaint, the Presbytery incorporates by reference paragraphs 1-47 as if fully set forth herein.

49-50. The Plaintiff’s Complaint raises ecclesiastical questions concerning the right to

hold and use the property upon which FPC Corinth physically sits for its own purposes, apart from the religious purposes of the Presbytery. The First Amendment circumscribes the role courts may take in church property disputes particularly, where, as here, the underlying issues concern ecclesiastical governance founded upon Presbyterian belief and doctrine which reflects its theological conviction concerning how churches within the PCUSA hold property.

Accordingly, the Presbytery denies the jurisdiction of this court to resolve the issue and asserts that the court must defer this ecclesiastical issue to the Presbytery. Except to the extent indicated herein, the Presbytery denies the allegations stated in paragraphs 49 and 50 of the complaint and denies that FPC Corinth is entitled to a declaratory judgment in its favor as prayed for therein. To the extent the Court declares any rights relating to the property upon which FPC Corinth is located, the Presbytery asserts that the Court should declare that the real property is held in trust for the use and benefit of the Presbytery and the PCUSA as indicated in the Book of Order and referred to in the recorded instruments filed of record in Alcorn County.

51-57. FPC Corinth is not entitled to the injunctive relief prayed for in paragraphs 51 through 57 of the complaint. Moreover, the “threatened actions” alluded to therein have not been discussed or contemplated by the Presbytery as indicated heretofore. In response to those allegations the Presbytery would show that FPC Corinth improperly asks this Court to:

(a) become entangled in ecclesiastical issues to circumvent the application of the Book of Order by the Presbytery, and to prevent the free assembly of the Presbytery to discuss issues raised in the complaint or the Presbytery’s formation of an administrative commission; and to further prevent the Presbytery from even discussing the issues raised or trying to resolve a conflict among the members of that church, its elders, its Minister, and the Presbytery.

(b) To make ecclesiastical determinations relating to the relationship between a church, its Ministers of Word and Sacrament, its session and the Presbytery, including who may serve as Ministers of the Word and Sacrament and as the church's session and further including whether the Presbytery has a role in making these determinations in accordance with the Book of Order of the PCUSA, and

(c) To address questions relating to the governance of its congregations and the conduct of its sessions, minister and members – a governance to which all the ministers and elders agreed to submit to when they were ordained and installed in their respective offices as required by the Book of Order of the PCUSA. The First Amendment precludes this Court from inquiring into the wisdom, interpretation or application of the Book of Order or to consider whether the Presbytery or the PCUSA has departed from doctrine or Scripture as alleged in the complaint. The essence of FPC Corinth's complaint asks the court to weigh church doctrine and its own interpretation of Scripture against the alleged actions of the General Assembly of the PCUSA, to determine whether FPC Corinth is justified in desiring to depart from the denomination. Any consideration of these issues by the Court is proscribed by the First Amendment of the United States Constitution as an infringement on the free exercise of religion and a violation of the separation of church and state.

In its complaint, FPC Corinth asks the court to make determinations concerning ecclesiastical and church governance issues of the Presbytery as alleged in paragraphs 51 through 57 of the complaint and the relief prayed for thereafter. The First Amendment, again, proscribes this Court's intrusion into these ecclesiastical and religious matters. This Court must defer to the ecclesiastical bodies of the Presbytery when questions of discipline, church leadership, the

custom and practice of the PCUSA regarding ministers of the Word and Sacrament, church lay leadership, and matters relating to the real property upon which FPC Corinth sits, insofar as the interpretation, application or the validity of the Book of Order applies to any of those issues.

Accordingly, the relief requested should be denied.

58. The allegations contained in paragraph 58 of the complaint are denied.

59. The Presbytery denies that FPC Corinth is entitled to any of the relief requested in the paragraphs beginning with the phrase “WHEREFORE, premises considered....”

Affirmative Defenses

60. As stated above, the Constitution of the PCUSA includes the Form of Government, which is a detailed formal structure of the PCUSA. The PCUSA is a connectional, hierarchal church – no PCUSA local churches stand alone as do other congregational churches. The particular churches of the PCUSA, wherever they are, taken collectively, constitute one church. The PCUSA is governed by representative bodies composed of both elders and ministers of the Word and Sacrament. These governing bodies are called session (of the particular church), presbytery, synod, and the General Assembly. The nature of Presbyterian order is such that it shares power and responsibility. The system of governing bodies, whether they have authority over one or many churches, sustains mutual relationships within the structures as to express the unity of the church. The jurisdiction of each governing body is subject to review by the next higher governing body. A higher governing body has the right to review and has control over a lower governing body. A larger part of the church, or a representation of it, shall govern a small part of the church and determine matters of controversy that arise therein. A representation of the whole will govern and determine in regard to every part and to all the parts united so that

appeals may be carried from lower to higher governing bodies, until they be finally decided by the collected wisdom and united voice of the whole church. The provisions of the PCUSA Constitution prescribing the manner in which decisions are made, reviewed, and corrected within the PCUSA are applicable to all matters pertaining to property. The applicable procedures outlined in the PCUSA Constitution should be deferred to for the resolution of the claims asserted in the Complaint. The decision of the ecclesiastical bodies of the PCUSA is a final and binding decision enforceable by the civil courts but is not open to review on the merits by civil courts. The provisions of the PCUSA Constitution regarding care and oversight, which draw from the example cited above as to the apostles and the practice of the early church as indicated in Scripture serves as the authority upon which the PCUSA is organized. This Court is required to give deference to the provisions of the PCUSA Constitution which carry out and apply those beliefs.

61. The PCUSA being a hierarchal and connectional church, this Court must give deference to the rulings and holdings of the ecclesiastical courts in accordance with the PCUSA Constitution.

62. FPC Corinth is estopped from denying the existence of a trust in favor of the Presbytery and waived whatever right it may have had to claim full ownership of the property upon which FPC Corinth is located. As indicated heretofore, Article 13 of the Articles of Agreement specifically created a “window of opportunity” for congregations that were a part of the PCUS (including FPC Corinth) to leave the new denomination for a period of up to eight years after reunion. Official FPC Corinth documents from that time period indicate that FPC Corinth was well aware of Article 13, and as it never availed itself to the dismissal procedure

during said 8 year period, it bound itself to the final provision of Article 13, which states: “Any petition for dismissal with property filed later than eight years from the consummation of union shall be handled under the appropriate provisions for such a request in the Form of Government.” *Articles of Agreement, PCUS & UPC Reunion*, Art. 13.4. Accordingly, this Court should declare that the property, both real and personal, associated with FPC Corinth is held in trust for the use and benefit of the Presbytery.

COUNTERCLAIM

Comes now the Presbytery, and asserts its counterclaim against FPC Corinth. The Presbytery hereby incorporates all of its statements and averments contained above in its Answer and Defenses, and would further state as follows:

1. In 1858, a church was organized in Corinth, Mississippi, under the name First Presbyterian Church of Corinth, Mississippi (“FPC Corinth”).

2. FPC Corinth was created as a local congregation or particular church of the United Presbyterian Church in the United States of America (“UPCUSA”) until 1865, when it became a member of the Presbyterian Church in the United States (“PCUS” or “Southern Church”) following the Civil War.

3. In 1983, the PCUS merged with the United Presbyterian Church in the United States of America (“Northern Church”) to form the PCUSA, to which FPC Corinth became a member.

4. As a particular church of the PCUSA and its predecessor national organizations, FPC Corinth has been, since its inception, subject to the jurisdiction and control of the Presbytery

as to certain matters, including property issues. The hierarchal structure of the PCUSA, from the local church upward, is as follows: local Church and its Session – Presbytery – Synod – General Assembly.

8. As stated, on June 10, 1983 the Southern Church and the UPCUSA reunited to form the PCUSA. As part of that reunion, the PCUSA adopted a constitution which provided control by a presbytery over certain property issues relating to local churches and their sessions.

9. The Constitution of the PCUSA is divided into two parts, the Book of Confessions and the Book of Order. The Book of Order is divided into three sections: 1) the Form of Government, 2) the Directory for Worship, and 3) the Rules of Discipline.

10. Upon the reunion, FPC Corinth became a particular church of the PCUSA, and agreed to be governed by and subject to all of the provisions of the Constitution of the PCUSA, including but not limited to the following provisions:

Whenever a particular church is formally dissolved by the presbytery, or has become extinct by reasons of the dispersal of its member, the abandonment of its work, or other cause, such property as it may have shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct . . . (G-8.0401)

A particular church shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church. (G-8.0501)

A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church. (G-8.0502)

Whenever property of, or held for, a particular church of the Presbyterian Church (U.S.A.) ceases to be used by that church as a particular church of the Presbyterian Church (U.S.A.) in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery. (G-8.0301)

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. (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 with the Presbyterian Church (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 the Presbyterian Church (U.S.A.). This determination does not depend upon which faction receiving the majority vote within the particular church at the time of schism. (G-8.0601)

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.). (G-8.0201)

10. Futhermore, Article 13 of the Articles of Agreement, PCUS & UPC Reunion, created a “window of opportunity” for congregations that were a part of the Southern Church, including FPC Corinth, to leave the new denomination (PCUSA) for a period of up to eight years after the reunion and retain rights in their property. FPC Corinth was expressly aware of this provision, as indicated by official documents and other evidence, and failed to avail itself of the article’s generous time window, and thus is now bound by the final provision of Article 13, which states: “any petition for dismissal with property filed later than eight years from the consummation of union shall be handled

under the appropriate provisions for such a request in the Form of Government.”

11. Deeds relating to the subject property and other recorded documents acknowledge that the subject property is held in trust by the trustees of the First Presbyterian Church, U.S.A. located in Corinth, Mississippi. Also recorded in the land records of Alcorn County, Mississippi is an Amendment and Notice, executed on June 26, 1961, and filed with the Chancery Clerk of Alcorn County on or about July 23, 1961, giving notice to the world that any and all properties associated with the PCUSA located in Alcorn County, Mississippi, are a part of a larger Presbytery of St. Andrew.

12. FPC Corinth has expressly and repeatedly acknowledged and subjected itself to the authority of the Presbytery of St. Andrew (and the greater hierarchal communion of the PCUSA) over the course of decades by numerous acts, including but not limited to the following:

- their Pastors’ full participation in the life and governance of the church – attending meetings of the presbytery, voting on amendments to the Constitution, and serving on committees and commissions (Rev. Elliott is the immediate past moderator of the Committee on Ministry and in that capacity, inter alia, signed one or more documents terminating pastoral relationships at that committee’s direction in accordance with the Constitution)
- annual submission of the session’s minutes for review in accordance with G-9.0407d(1)
- the election by the session of commissioners to stated and called meetings of the presbytery
- the recent service of a youth member of the congregation (upon

recommendation by the session and election by the presbytery) as a Youth Advisory Delegate to the 215th General Assembly of the PCUSA and of an elder (upon recommendation by the session and election by the presbytery) as an Elder Commissioner to the 216th General Assembly of the PCUSA.

13. The PCUSA Constitution contains express governing provisions for procedure and due process if a faction of individual congregants in a PCUSA church desire to depart from the PCUSA communion. There is no unilateral right of a PCUSA congregation to depart from the denomination or its presbytery of membership. FPC Corinth, to this point, has refused to abide by or avail itself to the provisions of the PCUSA Constitution in this dispute.

14. From July of 2006 forward, FPC Corinth, its Session, and its Minister, have been taking steps, outside the governing procedure of the PCUSA Constitution, to depart the PCUSA denomination without regard to any provisions, including the property provisions, of the PCUSA Constitution, in violation of their oath and promise to submit to the authority of the Presbytery and the PCUSA Constitution. On November 30, 2006, Revered Gregory Goodwiller, the Stated Clerk of the Presbytery, received an email message from the Minister of FPC Corinth, Don Elliot, which stated in relevant part: "I have decided to fully support the decision of the session of FPC, Corinth, which is to go in the direction of leaving the PCUSA within 18 months." In response thereto, the Presbytery's Committee on Ministry felt compelled to inform Elliot, in a letter dated January 24, 2007 that advocating for FPC Corinth's departure from the PCUSA would not be considered an "approved work."

15. The First Amendment to the United States Constitution severely circumscribes the role that civil courts may play in resolving church property disputes. *Presbyterian Church v. Hull*

Church, 393 U.S. 440 (1969). This Court is required by the First Amendment to “defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchal church organization.” *Jones v. Wolf*, 443 U.S. 595 (1979).

16. The issues of both church doctrine and polity are strictly off limits to civil courts and the fact that an issue concerns only polity and not doctrine does not lessen the stringent First Amendment protections which apply. *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

17. The U.S. Supreme Court decisions in *Jones v. Wolf* and *Maryland & Virginia Churches v. Sharpsburg Church*, 396 U.S. 367 (1970) adopted the use of the “neutral principles” doctrine as a constitutionally valid method for the resolution of church property disputes. Pursuant to the neutral principles doctrine, a court may review controlling legal and religious documents, in purely secular terms, in order to resolve issues that do not involve church polity and doctrine, such as a determination of ownership of property. *Wolf*, 443 U.S. at 604. However, the *Wolf* decision went further, holding that ***when a church constitution is determined to have an applicable provision the neutral principles analysis is completed at that point***, and from that point forward, the issue in dispute is rightly categorized as one of church polity and deference to the church and its own procedures and process is required by the First Amendment. *Id.* at 607-08.

18. In the case at bar, the PCUSA Constitution has numerous provisions applicable to this property dispute, including but not limited to those outlined above, and thus the property issue should be considered one of church polity and deference should be given to the PCUSA provisions governing the resolution of the disputed issue.

WHEREFORE, PREMISES CONSIDERED, the Presbytery respectfully seeks the following

declaratory and injunctive relief from this Court:

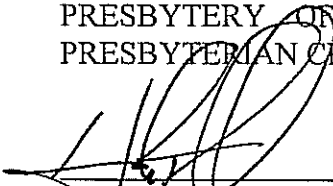
19. To declare, after conducting an initial secular examination of the evidence pursuant to the “neutral principles” doctrine, that the PCUSA is a hierarchal, connectional church and that FPC Corinth is subject to the PCUSA Constitution; and that the PCUSA Constitution has applicable provisions to this property dispute and deference must be given to the PCUSA’s governance and dispute resolution procedures; and thus the case must be dismissed or indefinitely held in abeyance pending review and decision on the dispute through the appropriate PCUSA governance procedures. Or, in the alternative, if the Court fails to give deference to the dispute resolution procedures afforded by the PCUSA Constitution, declare that the subject property is held in trust for the use and benefit of the Presbytery pursuant to applicable federal and state case law precedent.

20. To hold, pursuant to a neutral principles analysis of the applicable provisions of the Book of Order, that FPC Corinth does not have the power or authority to take, hold or convey the real and personal property identified in the complaint without approval from the Presbytery, and that no such approval action has occurred. Thus, to enjoin FPC Corinth from further encumbering, selling, divesting, or otherwise transferring any property, real or personal, until such time as the Presbytery makes a determination of the issues relating to FPC Corinth, its minister, its elders, its membership and leadership, pursuant to ecclesiastical governance founded upon Presbyterian belief and doctrine.

21. Any further relief that this Court deems proper.

Respectfully submitted this the 28th day of February, 2007.

PRESBYTERY OF SAINT ANDREW,
PRESBYTERIAN CHURCH U.S.A, INC.



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CERTIFICATE OF SERVICE

I, J. Hale Freeland, do hereby certify that I have this day served a true and correct copy of the foregoing Answer, Defenses, and Counterclaim, via U.S. Mail, postage prepaid, upon the following:

Walker W. Jones III, Esq.
Everett E. White, Esq.
Baker, Donelson, Bearman,
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This the 28th day of February, 2007.



J. HALE FREELAND