

IN THE SUPREME COURT  
STATE OF GEORGIA

PRESBYTERY OF GREATER )  
ATLANTA, INC., )  
 )  
Appellant, )  
 )  
v. ) CASE NO. S11G0587  
 )  
TIMBERRIDGE PRESBYTERIAN )  
CHURCH, INC., )  
 )  
Appellee. )

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APPELLEE TIMBERRIDGE PRESBYTERIAN CHURCH, INC.'S  
NOTICE OF INTENT AND MOTION FOR STAY OF REMITTITUR

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**IN THE SUPREME COURT  
STATE OF GEORGIA**

<b>PRESBYTERY OF GREATER</b>	)	
<b>ATLANTA, INC.,</b>	)	
	)	
<b>Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO. S11G0587</b>
	)	
<b>TIMBERRIDGE PRESBYTERIAN</b>	)	
<b>CHURCH, INC.,</b>	)	
	)	
<b>Appellee.</b>	)	

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**APPELLEE TIMBERRIDGE PRESBYTERIAN CHURCH, INC.'S  
NOTICE OF INTENT AND MOTION FOR STAY OF REMITTITUR**

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Appellee Timberridge Presbyterian Church, Inc., hereby provides notice of its intent to file a petition for writ of certiorari to the United States Supreme Court and moves this Court to enter an order, staying remittitur in this Court while Appellee seeks said writ of certiorari in the United States Supreme Court. Georgia Supreme Court Rule 61 provides:

STAY OF REMITTITUR. Any party desiring to have the remittitur stayed in this Court in order to appeal to, or seek a writ of certiorari in, the United States Supreme Court shall file in this Court a motion to stay the remittitur with a concise statement of the issues to be raised on appeal or in the petition for certiorari. Such notice shall be filed at the time of filing a motion for reconsideration or, if no motion for reconsideration is filed, within the time allowed for the filing of the same. See Rule 27.

A stay of remittitur will not be granted by this Court from the denial of a petition for certiorari.

In addition, 28 U.S.C. § 2101 provides, in pertinent part:

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

Appellee hereby provides notice of its intent to file a petition for writ of certiorari to the United States Supreme Court for review of this Court's decision dated November 21, 2011. Appellee's petition must be filed no later than ninety (90) days from the date of the judgment or a decision on reconsideration of the judgment. 28 U.S.C. § 2101(c). The filing of the petition for writ of certiorari to the United States Supreme Court does not prevent judgment of this Court from becoming final until the United States Supreme Court acts upon the petition, where no stay of mandate has been issued. Glick v. Ballentine Produce, Inc., 397 F.2d 590 (8th Cir. 1968). The

petition for writ of certiorari alone does not stop remittitur. Byrne v. Roemer, 847 F.2d 1130 (5th Cir. 1988). However, Rule 61 of the Rules of the Georgia Supreme Court and 28 U.S.C. § 2101(f) empower this Court to stay remittitur, pending a decision by the United States Supreme Court on Appellee's petition for writ of certiorari. Appellee respectfully moves this Court to exercise its power to stay remittitur in this important case, pending Appellee's application for review by the United States Supreme Court.

**I. STATEMENT OF THE ISSUES TO BE RAISED BY WRIT OF CERTIORARI.**

In its petition for writ of certiorari to the United States Supreme Court, Appellee intends to raise the following issues:

- A.** Whether This Court Incorrectly Applied the Holding and Guidelines of the United States Supreme Court in Jones v. Wolf, 443 U.S. 595 (1979) in its Analysis of Neutral Principles, thereby violating the First Amendment to the Constitution of the United States of America.
- B.** Whether This Court Violated the First Amendment to the Constitution of the United States of America by Impermissibly Deciding Ecclesiastical Matters Rather than Applying Neutral Principles.
- C.** Relatedly, whether the United States Supreme Court Should Resolve the Conflicting Opinions of Numerous High Courts Across the Nation as to Application of

Neutral Principles Authorized by the Decision in Jones v. Wolf, 443 U.S. 595 (1979).

**II. THIS COURT SHOULD GRANT A STAY OF REMITTITUR.**

**A. This Court Should Conserve Judicial Resources.**

This Court should stay remittitur to conserve Georgia's judicial resources. In its decision dated November 21, 2011, this Court ruled that the local church property where Appellee has worshiped for over a century is impressed with an implied trust in favor of a national denomination that has only been in existence for approximately thirty years. This decision reverses one of three enumerations of error ruled upon by the Georgia Court of Appeals in its decision dated November 30, 2010.

If this case is now remitted to the Court of Appeals, prior to a decision by the United States Supreme Court as to Appellee's petition for writ of certiorari, then the Court of Appeals will be required to consider the remaining enumerations of error, even though there is a distinct possibility that the United States Supreme Court will grant certiorari in a case of constitutional significance where this Court's decision was rendered by a vote of 4-3. It is a virtual certainty that, regardless of the ruling by the Court of Appeals on the remaining issues, further review to this Court will be sought. This scenario will result in an inefficient use of scarce judicial resources, and, by itself, warrants a stay of remittitur.

**B. Appellee Will Sustain Irreparable Harm.**

This Court should stay remittitur to prevent irreparable harm to Appellee. See, Barnes v. E-Systems, Inc. Group Hosp. Medical & Surgical Ins. Plan, 501 U.S. 1301, 112 S.Ct. 1 (1991) (finding irreparable harm must be considered when deciding whether to stay judgment). In the event of remittitur to the Court of Appeals and subsequently to the trial court, Appellee will immediately be subject to injunctive relief ordered by the trial court, including ejectment from the local church property; the surrender of all property real and personal; and an order enjoining Appellee from using, occupying, possessing, depleting, squandering, encumbering, mortgaging or wasting the property. (R-920.) By its terms, the trial court's order is effective upon remittitur. Therefore, absent a stay, Appellee will be deprived of its place of worship not only during the holy season of Advent and Christmas but also during a time period when it will be pursuing a petition for writ of certiorari to the United States Supreme Court, challenging the very constitutionality of such injunctive relief. As a result, this Court should stay remittitur to prevent irreparable harm.

**C. The Local Church Property Must Be Preserved.**

As a matter of equity, this Court should stay remittitur in order to preserve the local church property while the full appellate process is exhausted. Barnes v. E-Systems, Inc. Group

Hosp. Medical & Surgical Ins. Plan, 501 U.S. 1301, 112 S.Ct. 1 (1991) (finding that equitable factors may be considered when deciding whether to stay judgment). It is undisputed that Appellee is entitled to pursue relief at the United States Supreme Court. 28 U.S.C. § 2101. In the event of interim remittitur to the trial court, the national denomination is not prohibited from selling or otherwise disposing of the local church property at issue in this dispute. This Court should stay remittitur in order to prevent such an inequitable result.

Furthermore, although counsel for the Appellant argued at the October 19, 2009 oral argument in this Court that the Appellant would assume ownership of the local church property if it was ultimately successful in this litigation, as well as the mortgage which is inherent in such ownership, Appellant later filed a supplemental brief in this Court asserting that "title to the property will remain in [Timberridge Presbyterian Church, Inc.] Thus, any outstanding debt secured by the property will also remain a [Timberridge Presbyterian Church, Inc.] obligation. [The Presbytery] will not assume any of [Timberridge Presbyterian Church, Inc.'s] debts." (Appellee's Supplemental Brief, p. 2 (emphasis in original).)

As the record reflects, there will be no church to assume the current obligations of the local church property as a result of this Court's decision, nor will the Appellant assume those

obligations. Id.; see also, R-1158. Therefore, a stay is imperative to preserve the potential rights and obligations of all parties and to prevent a likely foreclosure and loss of the local church property, pending exhaustion of the full appellate process.

**D. A Stay Will Serve the Public Interest.**

This Court should grant a stay of remittitur to serve the public interest. Barnes v. E-Systems, Inc. Group Hosp. Medical & Surgical Ins. Plan, 501 U.S. 1301, 112 S.Ct. 1 (1991) (finding that the interests of the public may be considered when deciding whether to stay judgment). As evidenced by the numerous amicus curiae filings in this Court, many citizens of this State have a vested interest in the outcome of this appeal. Thousands of church-goers throughout the State will be impacted by this Court's ruling both here and in the case of Rector, Wardens and Vestrymen of Christ Church Savannah, et al. v. Bishop of the Episcopal Diocese of Georgia, Inc., et al. (S10G1909). A stay of remittitur in this case, while Appellee pursues its petition for writ of certiorari to the United States Supreme Court, will serve the public interest by ensuring that irreparable harm and adverse consequences do not befall Appellee or the numerous other churches similarly situated and evidenced by amicus curiae appearing in this appeal. As a result, this Court should grant Appellee's motion to stay remittitur.

This 1st day of December, 2011.

Respectfully submitted,

TALLEY, FRENCH & KENDALL, P.C.

/s/ Michael C. Kendall

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TIMBERRIDGE PRESBYTERIAN )  
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 )  
Respondent. )

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the within and foregoing **Appellee Timberridge Presbyterian Church, Inc.'S Notice of Intent and Motion for Stay of Remittitur** was served upon all parties via the Court's electronic filing system, with notice being forwarded electronically to the following counsel of record:

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This 1st day of December, 2011.

/s/ Michael C. Kendall  
Michael C. Kendall