

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

WOODLAND PRESBYTERIAN CHURCH

NO:

SECTION:

VERSUS

**MEMORANDUM IN SUPPORT OF
PETITION FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY INJUNCTION AND
DECLARATORY JUDGMENT**

THE PRESBYTERY OF SOUTH LOUISIANA

MAY IT PLEASE THE COURT:

This Memorandum is submitted in support of the Petition of Woodland Presbyterian Church for a temporary restraining order, preliminary injunction during the pendency of this suit, and declaratory judgment.

I. INTRODUCTION

The resolution of competing claims to ownership or use of local church property, though largely a matter of state statutory and case law, is guided by decisions of the United States Supreme Court interpreting the religion clauses of the First Amendment to the U.S. Constitution. Those decisions set the guidelines within which state courts are required to operate. Although Part III will discuss the law at greater length, a brief introductory discussion of the “neutral principles of law” method approved by the U.S. Supreme Court and subsequently adopted by the Louisiana Supreme Court will aid the court in assessing the significance of the facts of this case set out in Part II.

The neutral principles of law method for resolving church property disputes can best be understood in contrast with earlier, now-discarded methods. In Colonial days the “English Rule” was followed, where disputes between a denomination and a congregation, or between factions within a congregation, concerning the ownership or use of local church property were resolved by awarding the property to the party deemed by the civil court to most closely adhere to the founding religious doctrines. In the absence of any express language in the denominational constitution or local charter or deeds establishing a trust, an implied trust was deemed to exist — for the benefit of the party deemed faithful to the true religion. The English Rule was thus also known as the “departure-from-doctrine/implied trust” method. Not surprisingly, this approach

was eventually held incompatible with the establishment clause of the First Amendment to the U.S. Constitution. Civil courts opining on what does or does not conform to correct doctrine is an unacceptable intrusion by civil authority into ecclesiastical affairs and would constitute an impermissible state establishment of religion.¹

With discomfort over the departure-from-doctrine method growing, the U.S. Supreme Court held that a different approach, the “hierarchical method”, was constitutionally permissible (but not mandatory). Watson v. Jones, 13 Wall 679, 20 L.Ed. 666 (1872) held that the U.S. Constitution does not prohibit civil courts from deferring to the decisions on church property disputes made by the highest ecclesiastical tribunals to which the matter may have been appealed in a hierarchical denomination² (usually the diocese in an Episcopal church, the conference in a Methodist church, or the presbytery in a Presbyterian church). States were left free to adopt other methods for resolving church property disputes, such as statutory schemes, so long as the method chosen did not require civil courts to impermissibly base their decisions on religious concepts or on interpretations by civil courts of religious doctrine.

The hierarchical method remains operative in some states today, but it tends in usual practice to favor national denominations to the disfavor of local congregations — a not surprising result given that the ecclesiastical tribunals which decide such matters are created and controlled by the very denominations claiming ownership or use of local church property. Some courts have noted that such one-sided favoritism resulting from civil court deference to

¹ Although problems with the departure-from-doctrine rule became increasingly evident during the 19th and 20th centuries, during which time its use waned, it was not expressly declared unconstitutional until Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Church, 393 U.S. 440 (1969).

² There are numerous forms of church governance. At one end of the spectrum there are wholly autonomous local congregations under a “congregational” form of government (e.g., Baptists). At the other end of the spectrum is a strictly hierarchical, vertical line of authority — from priest to bishop to cardinal to pontiff (e.g., the Roman Catholic Church). In between, there are numerous gradations or intermediate forms. The U.S. Supreme Court, however, has adopted a two-fold classification: congregational or hierarchical. The PCUSA and its predecessor denominations are “Presbyterian” in government, a form which is neither wholly congregational nor strictly hierarchical. With respect to internal, ecclesiastical matters, Presbyterians divide authority between ascending ecclesiastical bodies or “courts” of session, presbytery, synod, and general assembly. The governing body of a local Presbyterian church is its board of elders, called a “session” by Presbyterians. A local Presbyterian church that has incorporated also has a board of directors or trustees of the local church corporation. For corporate and property matters Presbyterians function in a more congregational than hierarchical manner, consistent with Presbyterian denominational constitutions, Presbyterian history and custom, local articles of incorporation, and state law.

denominational authorities was effectively a state establishment of the hierarchical denomination's religion, prohibited under state and federal constitutions.

Recognition of this problem inherent in the hierarchical method eventually led to the approval by the United State Supreme Court of still another method, the “neutral principles of law” method, which now governs resolution of church property disputes here in Louisiana. In Presbyterian Church v. Hull Church, 393 U.S. 440 (1969) the U.S. Supreme Court first said that the neutral principles of law method was also a constitutionally permissible, alternative approach to resolving church property disputes.

Ten years later, in Jones v. Wolf, 443 U.S. 595 (1979), the U.S. Supreme Court elaborated on the meaning of neutral principles of law and advocated its adoption by the states. Under the neutral principles of law method, courts do not merely defer to ecclesiastical decisions. Instead, courts consider the language in religious documents like denominational constitutions but are not to use religious concepts in interpreting them or give undue deference to those religious documents. Further, courts are to undertake examination of all of the property-related documents which may bear on the question of consent and mutual intent — specifically, language in the local property deeds at issue, the local church's corporate charter or articles of incorporation, local resolutions, minutes, or correspondence, and any other evidence relevant to asserting mutual intent and the relationship between the parties.

Because of the importance of Wolf to the present controversy, its key, explanatory passages are excerpted:

[T]he First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. ... As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. ... Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, “a State may adopt any one of various approaches for settling church property disputes as long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.

At least in general outline, we think the “neutral principles of law” approach is consistent with the foregoing constitutional principles. ...

The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to

lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general – flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure the dispute over the ownership of church property will be resolved in accord with the desires of the members.

This is not to say that the application of the neutral-principles approach is wholly free of difficulty. The neutral-principles method ... requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions related to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

Jones v. Wolf at 602-604 (citations omitted).³

The neutral principles of law method was subsequently adopted by the Louisiana Supreme Court in Fluker v. Hitchens, 419 So.2d 445 (La. 1982). In adopting this method, Louisiana went further than the United States Supreme Court by holding that adoption of the neutral principles approach was constitutionally *required* by Article I, Section 8 of the Louisiana Constitution (1974) (and, in the view of the Louisiana Supreme Court, by the First Amendment to the United States Constitution). The Court in Fluker said:

³ The Wolf court's emphasis on mutual intent is seen in its instruction that civil courts should give effect to the result "indicated by the *parties*". Id at 606 (emphasis added). The emphasis on mutual intent also can be seen by Wolf's suggested alternative to amending denominational constitutions: "They (local churches) can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church." Id (parenthesis added). As for the U.S. Supreme Court's other suggested means of potentially obtaining clarification of church property status, amendment to denominational constitutions, Wolf apparently presumed that an amendment to a denominational constitution would necessarily involve local ratification by the other party. As explained in Part II, though, in the PCUSA the process of amending the denominational constitution, the Book of Order, does not involve vote by the other party, the title holder to local property.

State court decisions throughout the United States, discussed in Part III, which have applied neutral principles make it clear that amendment to denominational constitutions to add express trust language is not by itself determinative. Courts following neutral principles of law consider many factors in determining the mutual intent of the parties, which intent must be reflected in some form acknowledged in the law as binding.

Indeed, we think the safeguards against laws establishing religion and prohibiting the free exercise thereof contained in the First Amendment in Article I, Section 8 of our state constitution *necessitate* our adoption of the “neutral principles” approach. Whatever authority or hierarchical organization may have over associated local churches is derived solely from the local church’s consent. Refusal to adjudicate its feud over property rights or contractual obligations, even when no interpretation or evaluation of ecclesiastical doctrine or practice is called for, but simply because the litigants or religious organizations, may deny a local church recourse to an impartial body to resolve a just claim, thereby violating its members rights under the free exercise provision, and also constituting a judicial establishment of the hierarchy’s religion.

Fluker v. Hitchens at 445 (emphasis supplied), citing A. Adams and W. Hanlon, Jones v. Wolf: Church Autonomy and the Religion Clauses of the First Amendment, 128 U. Pen. L. Rev. 1291 (1980). C.f. Hargrave, Louisiana Constitutional Law, 42 La. L. Rev. 596 (1982).

II. FACTS

With neutral principles of law in mind to determine mutual intent, we turn to the facts of the present case.

A. DENOMINATIONAL PROVISIONS

Defendant Presbytery of South Louisiana (“PSL”), first formed in 1973, is a regional administrative unit for the Presbyterian Church (USA) (“PCUSA” or “denomination”, an entity first formed in 1983). PSL is domiciled in East Baton Rouge Parish. The PCUSA currently has approximately 11,000 member churches located throughout the United States, including the State of Louisiana and East Baton Rouge Parish.

The PCUSA was formed in 1983 upon the merger 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 America (hereinafter the “UPCUSA” or the “northern Church”). Prior to the formation of the PCUSA, Woodland Presbyterian Church was affiliated, according to its 1959 Articles of Incorporation, with the PCUS and its-then Presbytery of Louisiana. Upon formation of the PCUSA, the PCUS and the UPCUSA ceased to exist as separate denominations, and the Presbytery of Louisiana (subsequently re-formed as the Presbytery of South Louisiana) ceased being an administrative unit of the PCUS and became an administrative unit of the PCUSA.⁴

⁴ The Presbytery of South Louisiana was first formed in 1973. When First Presbyterian Church was first organized in 1827 it was part of the Presbytery of Mississippi, Synod of Kentucky (which

The Constitution of the PCUSA consists of two parts, the Book of Confessions and the Book of Order. The Book of Confessions contains doctrinal statements. The Book of Order pertains to church governance or polity 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 in the Form of Government of the Book of Order, Chapter VIII, G-8.000 – G-8.700 (Exhibit 4).

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).” As noted, the purported effect of this provision, if legally enforceable under the laws of the State of Louisiana and the facts presented, is to require permission from the PSL in order for petitioner to disaffiliate from the PCUSA and remain in control over the use of property, and the improvements thereon, titled in petitioner’s name.

It was only in the year immediately prior to the 1983 formation of the PCUSA that the PCUS Book of Church Order was amended (reportedly) to add express trust clauses, in Section 6-1, Section 6-2 and 6-3, which first appeared in the 1982/1983 edition of the PCUS Book of Church Order.⁵ (Exhibits 5 and 10)

included all of the territory from which the states of Alabama, Arkansas, Louisiana, Mississippi and Texas were later formed). Subsequently, First Presbyterian Church became part of the Amite Presbytery, Synod of Mississippi. In 1836 the name “Amite Presbytery” was changed to “Louisiana Presbytery”. In 1901 the Synod of Mississippi was divided and a new Synod of Louisiana was organized with three presbyteries: Louisiana, Orleans and Red River. In 1973 the Louisiana and Orleans presbyteries were merged to form the Presbytery of South Louisiana.

These various presbyteries and synods were regional administrative units of broader Presbyterian bodies or denominations. The first formal organization in the United States of the few scattered Presbyterian churches occurred in 1706 in Philadelphia, at which time the Presbytery of Philadelphia was formed. In 1717 the Synod of Philadelphia was organized with four presbyteries. In 1837 a division occurred over doctrinal questions and American Presbyterianism was divided into two main branches known as the “Old School” and the “New School”. Continued controversy led to the withdrawal of the churches in the South in 1861, at which time the Presbyterian Church in the Confederate States of America was organized. In 1865 the General Assembly of that denomination changed its name to the Presbyterian Church in the United States (PCUS), with which First Presbyterian Church was affiliated until 1983.

⁵ These three trust clauses are ambiguous and are of uncertain meaning. Sections 6-1 and 6-2 of the 1982/1983 edition of the PCUS Book of Church Order assert that a particular church holds title to property in trust for *both* the benefit of the particular church (“the corporation” in 6-2) *and* the denomination, which are mutually exclusive propositions. Section 6-3 asserts a trust only in favor of the denomination. The trust asserted in 6-3 includes property held *by* a particular church, but 6-1 and 6-2 already assert a trust for such property — but one which runs in favor of the local church as much as in favor of the denomination. Therefore, the only thing which 6-3 appears to add is an asserted trust in favor of the denomination only for property held *for* (but not *by*) a particular church. Whatever their meaning, the existence of these PCUS trust clauses, added suddenly just before the PCUS ceased to exist, was and is largely unknown to rank and file Presbyterians in local church pews.

The PCUSA Book of Order also contains a clause asserted by the denomination to pertain to ownership. G-8.0600 asserts that only a presbytery has authority to sever the relationship between a particular church and the PCUSA, that in the event of a split (“schism”) within a particular church which the presbytery is unable to reconcile, the presbytery shall determine which faction is the “true church” within the PCUSA and thus purportedly entitled to the local property. G-8.0600 further asserts that in making this determination, the presbytery is not bound by whichever faction receives the majority vote within the particular church at the time of a split. The PCUS Book of Church Order was amended in 1982/83 to add a similar clause (6-5).

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 1982/83 to add a similar clause (G-4).

Although G-8.0501 of the PCUSA Book of Order states that the written permission of the presbytery is required before a particular church can sell, mortgage or otherwise encumber any of its real property, the provisions of the constitution with which Woodland Presbyterian Church was previously subject immediately prior to the formation of the PCUSA, the 1982/83 edition of the PCUS Book of Church Order, did not contain a similar provision but, to the contrary, provided 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.”

G-8.0700 of the PCUSA Book of Order sets forth an exemption from the provisions of Chapter VIII of the PCUSA Book of Order by providing that no particular church of the PCUSA shall be bound by any of the foregoing provisions (in Chapter VIII) if it was not previously subject to a similar provision in the denomination of which it was a part before the creation of the PCUSA — as long as that congregation, within a period of eight years following the establishment of PCUSA, votes to exempt itself from such provision. In the event of such timely vote a particular church “shall hold title to its property and exercise its privileges of

incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the Presbyterian Church USA”.

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 (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 of the local church property. (Exhibit 11)

The PCUSA Book of Order and former PCUS Book of Church Order do 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.

The PCUS Book of Church Order did not require, nor does the PCUSA Book of Order require, that the text of 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.⁶

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 power 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.

⁶ In mandating local church incorporation when permitted by civil law, the PCUSA and its regional body, the PSL, has **acknowledged** that property matters are **not** governed exclusively by the trust or ownership provisions asserted in the PCUSA Constitution **but instead** are determined in accordance with 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”.

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 individual 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.”

According to the constitution of the PCUSA, ecclesiastical authority, instruction and rules are derived from Scripture, as guided first by the Book of Confessions, and derived only secondarily by the Book of Order.

Additionally, as noted above, G-1.0301 of the PCUSA Book of Order expressly states that the provisions of the denominational constitution are **not** to be enforced by the civil power of the state. The PCUSA’s Book of Order provisions asserting a trust over local church property and a right to determine ownership of local church property are thus merely hortatory, simply a proclamation of the ecclesiastical preferences of those who voted to insert such provisions into the Book of Order. They cannot by themselves suffice to create property rights absent the use of ordinary civil means under state law for creating and documenting trusts or other property rights.

The foregoing denominational provisions reflect a confusing and ambiguous denomination intent (or at least denominational desire, for the PCUSA has acknowledged in its own Legal Resource Manual and constitution that property matters are governed by state law which may not coincide with denominational ambitions). The PCUSA constitution itself acknowledges that the authority of the PCUSA is ecclesiastical only and does not extend to civil matters, and that the power of the state, acting through its courts, is **not** to be used to enforce the text of the denominational constitution, including its property provisions. Therefore, enforcement of any denominational claim to a trust or ownership interest must be founded, if it is to be founded at all, on the observance of state law pertaining to the creation of a civil trust or ownership interest. (Exhibits 12, 15)

For the other side of the coin of required *mutual* intent, we must turn to the particular facts relating to Woodland Presbyterian Church.

B. THE LOCAL CHURCH PROVISIONS

Woodland Presbyterian Church (“Woodland”) is a Louisiana corporation domiciled in Orleans Parish. It was founded in 1958. It was first incorporated as a Louisiana nonprofit corporation in 1959, and reincorporated in 2007. (Exhibits 1 and 2)

The immovable property held by Woodland Presbyterian Church which comprises its “main campus” consists of or is situated on tracts acquired prior to PCUSA adoption in 1983 of an express trust clause.

All acquisitions of immovable property held by Woodland Presbyterian Church, and all improvements thereon, movable and immovable, real and personal, were acquired and/or built exclusively as a result of financial contributions made by the members of Woodland Presbyterian Church. No financial contributions were made by the PSL, the PCUS, or the PCUSA.

All deeds of immovable property held by Woodland Presbyterian Church were originally titled in, and at all times have remained titled in, the corporation “Woodland Presbyterian Church” only, and do not mention or refer to a national denomination such as the PCUS or PCUSA or any regional unit such as the PSL, nor contain any language creating or accepting any trust over said property in favor of a national denomination or regional unit such as the PSL.

From the time Woodland Presbyterian Church was founded in 1958, and continuously throughout its existence until 1982, no denomination of which it was affiliated contained a trust, express or implied,⁷ in the denominational constitution. A trust clause, if validly created and enforceable under Louisiana law, would mean that Woodland Presbyterian Church would need the permission of the PSL before it could disaffiliate from the PCUSA and maintain control over the use of the local church property.

⁷ See, G.A. Actions on Church Property from the PCUS, PCUSA, UPC and PC(USA), and 1983 Report of the Ad Interim Committee on the Study of the (PCUS) Book of Church Order. The absence of an implied trust in the PCUS constitution (with which Woodland was affiliated prior to the 1983 formation of the PCUSA) was noted by the U.S. Supreme Court in Jones v. Wolf, supra. Wolf reviewed a prior case, Hull, supra, and its eventual disposition on remand to the Georgia Supreme Court. On remand, the Georgia Supreme Court applied the “neutral principles of law” method and examined the deeds to the disputed property, Georgia state statutes dealing with implied trusts, and the PCUS Book of Church Order. After this review the Georgia Supreme Court found “nothing that would give rise to a trust in any of these documents ...”. Jones v. Wolf, 443 U.S. 595, at 600. citing Presbyterian Church v. Eastern Heights Church, 225 GA 259, 1675 E.2d 698 (1969) (Presbyterian Church II). State Supreme Courts in two other states, Pennsylvania and New York, have likewise concluded that no implied trust was contained in the constitution of the UPCUSA (the other denomination which merged with the PCUS to form the PCUSA). See The Presbytery of Beaver-Butler v. Middlesex Presbyterian Church, et al, 507 Pa. 255, 489 A.2d 1317 (Pa. 1985), and First Presbyterian Church of Schenectady v. United Presbyterian Church of the United States, 62 N.Y.2d 110, 464 N.E.2d 454 (1984).

The process whereby trust clauses (6-1, 6-2 and 6-3 of the 1982/1983 edition of the PCUS Book of Church Order and G-8.0201 of the 1983 PCUSA Book of Order) were adopted did not include a vote by Woodland Presbyterian Church, which is the owner and titleholder of record. Instead, the process involved: a) participation by commissioners (voting delegates) to the General Assembly, which commissioners are chosen by the regional bodies (the presbyteries) in whose favor the asserted trusts would operate, and b) participation by presbyters (voting delegates) meeting in the presbyteries, which presbyters are sent to the meeting of the presbytery by the congregations. However, presbyters are not required under Presbyterian polity to act in a representative capacity on behalf of those congregations.

Following initial approval by commissioners to the General Assembly, the new clauses asserting trusts were adopted into the denominational Constitutions upon ratification by a requisite number of presbyteries — *irrespective* of whether or not the Presbytery of South Louisiana, acting through its then-presbyters, voted in favor of ratification.

Woodland Presbyterian Church timely exercised the exemption of G-8.0700 of the PCUSA Book of Order by a congregational vote at a regularly called meeting on September 25, 1983, unanimously voting to be exempt from provisions of Chapter VIII of the PCUSA Book of Order. (Exhibit 6)

The minutes of that congregational meeting were signed by the senior minister and clerk of session and timely submitted to the PSL which, pursuant to G-9.0407 – 9.0409 of the PCUSA Book of Order, were accepted without objection by the PSL in affirmation that said proceedings were “regular and in accordance with the (denominational) Constitution” and were “prudent and equitable”. (Exhibit 9)

The prior Articles, the Articles of Incorporation of Woodland Presbyterian Church were amended and restated in 2007 to remove anachronistic language (delete reference to the no-longer-existing PCUS) and to conform to developments in corporate law, such as providing for perpetual existence and the indemnification of officers. No mention of denominational affiliation (PCUS or PCUSA) is included. These amended and restated Articles were unanimously adopted at a duly called and noticed meeting of the members of the corporation held on April 15, 2007, which amended and restated Articles were subsequently filed and

recorded with the Louisiana Secretary of State on April 26, 2007. The 2007 Articles have at all times been available to the PSL pursuant to G-9.047 – 9.0409 of the PCUSA Book of Order.

The 2007 Amended and Restated Articles of Incorporation contain no provision accepting a trust, express or implied, over local church property in favor of a national denomination. Article II of the 2007 Articles of Incorporation vest full power and authority in the board of trustees of the local church corporation to receive, hold, encumber, manage, transfer property, real or personal, for the Church (defined as Woodland Presbyterian Church), and to accept and execute deeds of title to such property, to have and exercise all other incidents of ownership without limitation on behalf of the Church.

In accordance with the provisions of Louisiana Nonprofit Corporations Law, Article IX of the 2007 Articles of Incorporation provides that, in addition, the identity of the Corporation, the ownership of the Corporation's assets, and the right to use of the name Woodland Presbyterian Church shall be determined at a duly noticed annual or special meeting of the members by a two-thirds vote of the members present and voting.

At no time has the congregation of the Woodland Presbyterian Church, 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 corporation or of any improvements thereon. At all times the congregation, the session, and the board of trustees have affirmed and reaffirmed their understanding and intent that all property held by the corporation known as "Woodland Presbyterian Church", and any improvements thereon, whether corporeal or incorporeal, movable or immovable, or real or personal, is held by it in full and complete ownership in accordance with its articles of incorporation, and that none of said property is held in trust for the use and benefit of a national denomination or any regional administrative unit such as the PSL.

In 1962/63 Woodland was negotiating with a bank for a loan to finance its planned expansion. The loan was contingent upon paying off a balance then due to National Bank of Commerce and transferring the existing title held by the Board of Domestic Missions to Woodland Presbyterian Church. By letter dated December 27, 1962 Mr. Grover Silvius,

chairman of the diaconate of Woodland Presbyterian Church, wrote a letter to Myron Turfitt, of the New Orleans Presbytery (the PSL's predecessor) saying that, "since the success of our building program depends upon our obtaining clear title to the property" ... request was made that the presbytery agree to transfer title to Woodland Presbyterian Church subject to releasing the Board of Domestic Missions from any further obligations on the balance then due NBC. These arrangements were subsequently worked out and an Act of Cash Sale was executed on July 5, 1963 in which the relevant agency of the PCUSA's denominational predecessor quit claimed any and all interest in the property to Woodland Presbyterian Church. By its terms this conveyance transferred any and all interest the denomination had in the property without reservation or continuing interest. See documentation including the appendices to the Memorandum in Support of Woodlands's Petition.

In 1984 Woodland sought financing for a new sanctuary and negotiated with Hibernia National Bank for a loan of \$750,000. At that time, shortly after the formation of the PCUSA in 1983, there was some discussion apparently about the "connectional" nature of the Church as it pertained to the newly asserted trust language included in the PCUSA Book of Order. The bank didn't have a clear understanding of what all of that meant, but to the extent that the denomination claimed some ownership interest in the local property, Hibernia initially made the loan contingent on the PSL co-signing the loan, guaranteeing repayment. Woodland's minister at the time, Rev. Radford Rader, conveyed Hibernia's requirements to the then moderator of the PSL Council, Mr. Wallace Armstrong, and requested that the PSL Council pass a motion authorizing the Presbytery to co-sign the loan in recognition of the "connectional nature of the Presbyterian Church". Significantly, the PSL declined to do so and refused to guarantee the loan repayment in the event Woodland would ever default. The loan was subsequently made by Hibernia only after limited continuing guarantees were signed by individual members of Woodland, in amounts ranging from \$50,000 to \$75,000 per individual local church member. See documentation included in the appendices to the Memorandum in Support of Woodland's Petition.

Whatever property ramifications flow from the connectional nature of the PCUSA, the PSL did not believe in 1984 that an ownership interest on behalf of the PCUSA or the PSL in

Woodland's property, in trust or otherwise, was one of them. The PSL declined financial responsibility. I am not criticizing the PSL for that decision. I am just bringing the facts of the historical record concerning Woodland to your attention. If the PSL disclaimed any financial responsibility for Woodland's property, a court should not now recognize the denomination has a trust interest which allows the PSL to determine use or control of Woodland property.

The laws of the State of Louisiana, Chapters 1 and 2 of Louisiana Trust Code, R.S. 9:1721, et seq., set forth the exclusive requirements for the creation of a valid trust enforceable in Louisiana. The actions of Woodland Presbyterian Church and its property-related documents recited herein, preclude a finding of any valid creation or acceptance of any trust upon its property in favor of a national denomination under the trust laws of the State of Louisiana, as explained in Part III, below.

III. LAW AND ARGUMENT

A. LOUISIANA

A survey of Louisiana caselaw involving church property discloses several reported decisions that are either not relevant (i.e., they do not address questions of ownership, trusts, revocability, or disaffiliation) or they predate Wolf and the 1982 Louisiana Supreme Court decision in Fluker which adopted the Wolf-authorized "neutral principles" method. Discussed below, then, are the benchmark decision in Fluker and, with the exception of one instructive Third Circuit decision, the pre and post-Fluker decisions of the Louisiana First Circuit Court of Appeal.

Fluker Community Church v. Hitchens, 419 So.2d 445 (La. 1982), is noteworthy for its express adoption of Wolf to apply neutral principles of contract and property law to resolve Louisiana church property disputes, and for its emphasis on the specific language in the property deed involved. At issue was an unincorporated association that functioned for many years as a freestanding religious congregation (society), eventually affiliated with the African Methodist Episcopal Church, and subsequently chose by majority vote to disaffiliate. In a brief opinion, the Louisiana Supreme Court concluded that under the circumstances presented the text of the A.M.E. Discipline (the denominational constitution) *and* the property deed overcame the Louisiana presumption of majority rule, such that the minority faction loyal to A.M.E. had the

right to control the actions of the titleholder to the tract of land at issue and hence had the right to determine the use of the tract.

Actual ownership of the property involved was not at issue; both sides concurred in the validity of the deed which placed title in the local congregation represented by the majority. Because ownership of the property was not contested, there was no occasion for the court to address the comparative rights of the local congregation versus the parent denomination. The validity of any trust under the Louisiana Trust Code was thus not an issue.

The deed expressly titled the property in “Fluker Chapel *A.M.E. Church*, Fluker, Louisiana” (emphasis added by the Louisiana Supreme Court). The Louisiana Supreme Court thus ruled that the local Fluker church had acted exclusively in its capacity as an “A.M.E.” church when it acquired the land. The specific provisions of the A.M.E. Discipline concerning disaffiliation or abandonment therefore was said to reflect the intention of the parties and controlled, allowing the minority faction of the local congregation to control the actions of the majority faction title holder with respect to the use of the tract.⁸

The only germane post-Wolf, post-Fluker Louisiana opinion found outside the First Circuit is Bethany Independent Church v. Stewart, 645 So.2d 715, 93-1252 (La. App. 3rd Cir. 10/5/94), writ denied, 649 So.2d 421, 94-2967 La. 2/9/95. At issue was a local congregation’s disaffiliation from its denomination, The Cumberland Presbyterian Church. Following disaffiliation, the local church re-named itself Bethany Independent Church. The court ruled that the property of the local, unincorporated Presbyterian church belonged to the national denomination. Like Fluker, the court sought to ascertain the intent of the parties before the dispute arose. Applying neutral principles it found that the presumption of rule-by-majority, normally applicable to nonprofit, unincorporated associations under La. R.S. 9:1051, had been

⁸ LeBlanc v. Davis, 432 So.2d 239 (La. 1983) is the only other Louisiana Supreme Court case found which cites Fluker to apply neutral principles to resolve a church dispute. At issue, however, was the dismissal of a pastor rather than a dispute over contested property. The only First Circuit post-Fluker decision reported is Thomas v. Craig, 424 So.2d 1090 (La. App. 1st Cir. 1982). At issue was a dispute in governance between the pastor and the board of deacons. The reported decision does not address a specific controversy over property. The First Circuit acknowledged, though, the jurisdictional distinction between ecclesiastical matters and neutral principles of law, citing Katz v. Singerman, 241 La. 103, 127 So.2d 515 (1961); Wilkerson v. Battiste, 393 So.2d 195 (La. App. 1st Cir. 1980), and; Bourgeois v. Landrum 396 So.2d 1275 (La. 1981). **See also, discussion of the Stipulated Final Judgment, Nov. 6, 2006, in First Presbyterian Church of Baton Rouge v. The Presbytery of South Louisiana, *infra* at Part III.C.**

overcome by the text of property regulations in the denomination's 1984 Confession of Faith (the denomination's constitution) because the statute had not been properly followed. The court concluded, "it was the intention of the parties, agreed upon before the dispute arose, to be bound by the provisions of the Confession of Faith, 1984, including those provisions relative to property". Bethany at 722. The validity under Louisiana's Trust Code of "held in trust" language was apparently not raised by the parties and not addressed by the court.⁹

In addition to Louisiana jurisprudence, Louisiana statutory law is relevant. The laws of the State of Louisiana, Chapters 1 and 2 of Louisiana Trust Code, R.S. 9:1721, et seq., set forth the exclusive requirements for the creation of a valid trust enforceable in Louisiana. The actions of Woodland Presbyterian Church, and its property-related documents, preclude finding any valid creation or acceptance of any trust upon its property in favor of a national denomination under the trust laws of the State of Louisiana. **None** of the following nonexclusive list of particulars has been satisfied with respect to any property held by and titled to the Woodland Presbyterian Church:

- a) An inter vivos (nontestamentary) trust must be by authentic act or by act under private signature in the presence of two witnesses, duly acknowledged by the settlor or by affidavit of one of the attesting witnesses (§ 1752);

⁹ There are a limited number of pre-Wolf, pre-Fluker Louisiana decisions. First Methodist Protestant Church of Baton Rouge v. First Congregational Methodist Church of Baton Rouge, 184 So.2d 265 (La. App. 1st Cir. 1966), rehearing denied 4/4/66; writ refused 6/7/66, pre-dates Wolf by 13 years and Fluker by 16 years. At issue was a dispute over legal title between two Methodist factions. The court used "neutral principles" (without referring to them as such) to examine the denominational Book of Discipline and local articles of incorporation. The facts are unique. Prior to the purported sale of church property by a dissonant local congregation, the Mississippi Conference had declared the petitioner/seller church to be extinct, with the property thus reverting for an interim period to the mother church pursuant to the Book of Discipline. Subsequently, however, the petitioner church was "reactivated" and full title was again vested in the First Methodist congregation. The dissonant faction, the First Circuit ruled, was thus without authority to sell. The legal dispute over property ownership was actually between two separate, local Methodist congregations, and the Conference was not a party to the suit. In affirming the trial court's dismissal of one faction's exception of nonjoinder of an indispensable party, the court ruled that at the time suit was filed the Mississippi Conference "had no claim or interest in the property in question". First Methodist at 268. The validity of any trust under the Louisiana Trust Code was thus not an issue.

Louisiana District Church of the Nazarene v. Church of the Nazarene, 132 So.2d 667, (La. App. 1st Cir. 1961) was an action by a parent church corporation, Louisiana District Church of the Nazarene, to be declared owner of real property standing in the name of its local or subordinate corporate member, the Bible Holiness Church of Ponchatoula (formerly Church of the Nazarene, Ponchatoula, Louisiana). The parent corporation's claim to ownership rested on the alleged subordinate corporation's withdrawal from the parent church without the parent's consent, in alleged violation of the parent church's governing constitution, the Manual of the Church of the Nazarene. The First Circuit relied heavily on the provisions of the Manual and decided in favor of the parent church, following the "hierarchical theory" set forth in Watson v. Jones, 13 Wall. 679, 80 U.S. 674, 20 L.Ed. 666 (1871). Church of the Nazarene is of dubious validity after Fluker.

- b) It must clearly appear that the creation of a trust is intended (§ 1753);
- c) A trustee must be either a natural person with capacity to contract or a bank or trust company organized under Louisiana federal law and domiciled in Louisiana (§ 1783);
- d) If an inter vivos trust includes immovables or other property that title to which must be recorded in order to effect third parties, a trustee shall file the trust instrument for record in each parish in which the property is located (§ 2092);
- e) Trusts for charitable, benevolent or eleemosynary purposes, whether express or implied, are defined as only those where all or a substantial part of the corpus thereof shall have been contributed by the local beneficiaries, who are those who shall have contributed (or whose predecessor beneficiaries shall have contributed) all or a substantial part of the corpus of the trust and who shall locally, immediately and directly enjoy the benefits of the trust (§ 2281).¹⁰

B. OTHER JURISDICTIONS

Although the matter before the court is governed by Louisiana law as bound by federal constitutional principles, recent jurisprudence from other states addressing the same issues offer instructive guidance. Relevant cases from New York, California, Maryland, Pennsylvania, and Texas are briefly reviewed.

1. New York

One of the most recent judicial opinion in the United States on the issues before this Court was decided on August 16, 2006, in The Presbytery of Hudson Valley of the Presbyterian Church (USA), et al v. The Trustees of The First Presbyterian Church and Congregation of Ridgebury, et al (S. Ct. – State of New York, IAS Part – Orange County, Index No. 6144/2005) (The Hon. John K. McGuirk). A copy of this recent opinion is attached to this Memorandum and is commended to this Court for review.

¹⁰ The Louisiana requirements for the valid creation of a trust are particularly stringent, a legacy of Louisiana's civilian heritage. The report by the Law Institute which accompanied the revisions to the Louisiana Trust Code proposed in 1964 explained that, unlike the English common law which recognized implied trusts, the law of Louisiana did not recognize any private trusts prior to 1920. Only in 1920 did the Louisiana legislature first authorize the creation of any kind of trust in Louisiana. Louisiana's earlier prohibitions of any kind of trust, and its present stringent requirements, harken back to Art. 1520 of the Civil Code of 1825 and 1808 which prohibited such "substitutions and fideicommissa", a prohibition which had antecedent authority in Art. 896 of the Code Napoleon. See, Report by the Louisiana Law Institute, Prec. R.S. 9:1721. The Louisiana Trust Code precludes any kind of non-statutory, implied trust (except those where all or a substantial part of the corpus had been contributed by the local beneficiaries who locally, immediately, directly enjoy the benefits of the trust). See R.S. 9:2281. The Louisiana Trust Code also prohibit(s) express trusts that do not conform to the Louisiana statutory requirements.

Following a vote by the congregation of First Presbyterian Church of Ridgebury to disaffiliate from the PCUSA, the regional PCUSA presbytery, The Hudson (River) Presbytery, filed suit against the local church, claiming that the congregation's property belonged to the denomination. Applying "neutral principles of law", the court rejected the PCUSA's argument that it was the rightful owner of the property and was entitled to control its use under the denomination's ownership and trust provisions in Chapter 8 of the PCUSA Book of Order.

The salient facts of the case are analogous to those before this Court. The local Ridgebury congregation was incorporated in 1805. It owned five parcels of property, acquired between 1833 and 1964. In each case the property was deeded in the name of "The Trustees of First Presbyterian Church and Congregation of Ridgebury" without any restriction on the title or particular reference to a national denomination. "More specifically, none of the deeds contain language vesting a present or future interest in the favor of the Hudson River Presbytery or PCUSA." Deciding the case under "neutral principles of law", the New York court turned aside the PCUSA's argument that it was the rightful owner of the property under the denomination's ownership and trust provisions in the PCUSA Book of Order, noting, "It is hornbook property law that only the owner of real property can convey an interest in the property; B cannot create a future interest in A's property without A's consent."

Attorneys for the Hudson River Presbytery and the PCUSA argued that Ridgebury had acquiesced to the denomination's assertion of a right to determine ownership or trust by virtue of its membership in the PCUSA since 1983. The trial court rejected that argument, though, stating, "Mere silence in continuing its membership in the denominational church, absent more, is an insufficient expression of an intent to express a trust." The court further stated that under New York law, "[t]he manifestation of intention requires an external expression of intention as distinguished from undisclosed intention." The court concluded by observing, "The only affirmative action on defendant's part on this subject since 1981 were their explicit manifestation not to hold their property for the benefit of plaintiffs."

2. California

On December 1, 2004, the California Supreme Court declined to review a decision of the California 5th District Court of Appeal, letting stand that lower court's ruling allowing a local Methodist church to revoke the trust language contained in the United Methodist Book of Discipline. This permitted the local congregation to leave the denomination with its property. California-Nevada Annual Conference of United Methodist Church, et al v. St. Luke's United Methodist Church, et al, 121 Cal. App. 4th 754, 17 CAL. RPTR. 3rd 442 (decided August 13, 2004; review denied December 1, 2004).

St. Luke's was first incorporated as a member of the Methodist Church in 1948.¹¹ Subsequent to incorporation St. Luke's acquired title to nine parcels of property, six prior to formation of the United Methodist Church and three after formation. Some of the deeds contained trust language and some did not. While the litigation was pending, St. Luke's amended its articles of incorporation and formally disassociated itself from the United Methodist Church and explicitly declared that all property was held in trust only for the sole benefit of the local church corporation.

The trial court interpreted the California Corporations Code to mean that the settlor (the person who creates a trust) was the United Methodist Church, and that it created a trust in favor of itself and had taken no action to amend its own Book of Discipline to revoke the trust. The appellate court reversed, however, holding that such apparent "self-dealing" was at odds with basic principles of trust law, which did not include the creation of a trust by the declaration of a non-owner that the owner holds property merely as trustee for the non-owner.

¹¹ St. Luke's articles of incorporation stated as among its authorized purposes, "to acquire, manage and hold in trust for the benefit of said St. Luke's Methodist Church, property of every kind and nature, both real and personal ...". In 1968 the Methodist Church united with the Evangelical United Brethren Church to form the United Methodist Church, governed by the denomination's Book of Discipline. Paragraph 2501 of the United Methodist Church Book of Discipline provides in part that "titles to all properties held ... by a local church ... shall be held in trust for the United Methodist Church and subject to the provisions of its Discipline." The denomination is governed by a general conference, but the fundamental administrative unit is termed "annual conferences" which have supervisory responsibility over the local churches within their respective geographic bounds (i.e., akin to a Presbyterian presbytery).

The court of appeal held that the UMC Book of Discipline did not create the trust but that the trust had been created by St. Luke's articles of incorporation, language in several of St. Luke's property deeds, and by St. Luke's demonstrated intent to hold its property in trust for the benefit of the United Methodist Church *and* for its own benefit. Having validly created the trust under California statutory law, St. Luke's had specific authority under the California Corporations Code to revoke the trust, and did so by amending its articles of incorporation to expressly state that it no longer would be affiliated with or subject to the United Methodist Church and that St. Luke's would thereafter hold its property in trust for the sole benefit of the local church corporation.

3. Maryland

Another instructive case is From the Heart Church Ministries, Inc., et al v. African Methodist Episcopal Zion Church, et al, 370 Md. 152, 803 A.2nd 548 (2002). The supreme court for the state of Maryland (called the Maryland Court of Appeals) was asked to address the issue of whether, when a local church withdraws from a religious denomination, the property belongs to the local church or to the denomination. The Maryland court followed "neutral principles" to consider the competing texts of local church property documents and denominational documents.

The trial court ruled in favor of the denomination, its regional conference, and the newly incorporated Full Gospel AME Zion Church, and against From the Heart Church Ministries. However, the Maryland high court accepted the case for review and reversed the lower court.

In reversing and holding for the local congregation, the Maryland Court of Appeals referred to its prior decision in Mt. Olive A.M.E. Church v. Board of Incorporators, 348 Maryland 299, 703 A. 2nd 194 (1997) as providing the appropriate framework:

... [R]esolution of church property disputes demand an analysis that involves the review of all relevant documents and circumstances. Unless the deed to the property clearly provides for the holding of the property in trust for the parent church, it is not enough to consider simply the form of the church government, the constitution or other authoritative sources pertinent to the parent church's claim to the property, consideration must also be given to the Religious Corporations Law, the relations between the parties, and the local

church charter. The latter at the very least provides insight into the relations between the parties and may evidence the local church's consent to the form of government and to be bound by provisions in the parent church's constitution or other authoritative sources pertaining to the ownership and control of its property.

From the Heart at 187, 569, citing Mt. Olive at 320, 204 and quoting Jones v. Wolf (emphasis supplied). The Maryland Court of Appeals said that the trial court had incorrectly based its decision only on factors enumerated in the Book of Discipline which had indicated congregational acceptance of the denomination's polity. But in relying exclusively on provisions in the denomination's constitution, the trial court failed to comply with the directive in Mt. Olive (and Watson v. Jones, supra p. 2) to consider all relevant documents and circumstances. In particular, the trial court failed to consider From the Heart's intentional deeding of the church property in its name only, not in trust, and the national denomination's apparent acknowledgement of and acquiescence for a time in this deeding irregularity.

The trial court also failed to consider the amendments to From the Heart's charter and bylaws to remove references to the AME Zion denomination. In considering only denominational polity, then, the trial court "inappropriately has deferred to the church doctrine; it has relied on religious precepts to enforce From the Heart's Connectional responsibilities". From the Heart at 187, 569. The Maryland Supreme Court further said:

In undertaking an examination of religious documents, such as a church constitution, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust.

Id. at 604.

The Maryland court, in examining the trust language in the AME Book of Discipline, also said that language extended to apply to the situation when a local church is affiliated with a denomination, but it gave no indication that the trust created is irrevocable nor addressed the situation where a local church terminates its affiliation. The court thus concluded:

Consent to holding property in trust during the course of affiliation does not automatically constitute consent to relinquishing that property once the affiliation terminates. This is particularly the case where the trust is revocable and is, therefore, another reason that

there must be a more expanded review of documents and circumstances, as required by Mt. Olive, rather than merely the review of the Church Discipline.

From the Heart at 189, 190, 571

4. Pennsylvania

The Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America, et al v. Middlesex Presbyterian Church, et al, 507 Pa. 255, 489 A.2d 1317, is a 1985 decision by the Supreme Court of Pennsylvania which reversed the appellate court and reinstated the trial court's decision allowing a local congregation to leave the denomination with its property. The case is noteworthy in part because of an antecedent connection to the PC (U.S.A.). In Beaver-Butler, the Pennsylvania Supreme Court adopted the neutral principles approach to hold that the Pennsylvania appellate court erroneously gave undue deference to the UPCUSA denomination.

Middlesex Presbyterian Church is a very old church. It had been affiliated with the UPCUSA and its predecessors since the Presbyterian Church's inception in America in 1799. It was incorporated in 1907 and had been a participating church at that time in the Presbyterian Church in the United States of America (PCUSA), and later with the UPCUSA.¹² On April 6, 1981, Middlesex amended its local charter to disaffiliate from the UPCUSA, effective April 18, 1981. The amendment to modify the UPCUSA Book of Order, however, which inserted language expressly asserting a trust in favor of the UPCUSA, did not become part of the UPCUSA Constitution until May 23, 1981.

The Supreme Court of Pennsylvania found that prior to the creation of express trust language in the UPCUSA constitution, the constitution of the UPCUSA did not contain any trust, explicit or implicit, in the property of member congregations in favor of the UPCUSA. In determining that a trust did not exist the court applied Pennsylvania law which provided that, although no particular form of words or conduct was required to

¹² In 1958 the PCUSA merged with the United Presbyterian Church in North America (UPCNA) to form the United Presbyterian Church in the United States of America (UPCUSA). The UPCUSA was the "northern church" which then merged in 1983 with the "southern church", the Presbyterian Church in the United States (PCUS), to form the present Presbyterian Church (U.S.A.) with which Woodland Presbyterian Church is currently affiliated.

manifest the intention to create a trust, the appearance of all elements of a completed trust must be present:

A trust must be created by clear and unambiguous language or conduct, it cannot arise from elusive statements admitting possible inferences consistent with other relationships.

Id. at 269, quoting Bair v. Snyder County State Bank, 314 Pa. 85, 89, 171 A. 274, 275 (1934).

As in other cases, the focus of the Pennsylvania court's inquiry was the intent of the parties at the time of the alleged creation of the trust by the settlor, Middlesex. In support of its conclusion that Middlesex was the settlor and that it had not intended to create a trust, the Pennsylvania court found the following facts determinative:

The putative settlor in this case was clearly Middlesex. In support of this conclusion we note that the Middlesex church was not a creation or offshoot of the central denomination. Rather, the record establishes that the Middlesex church was created and incorporated on the local level by members of the parish; and that all property was retained in the corporate name of the local church. Subsequently, when the local body voluntarily affiliated with UPCUSA's predecessor, there was no express trust language in the denomination's constitution. Also, it was undisputed that there was never any express trust language in the constitution during the entire period Middlesex remained affiliated with the denomination. In fact, a prior attempt by the predecessor denomination, circa 1929, to include express trust language in the constitution was defeated by the member churches.

The denomination here has cited no evidence that Middlesex ever intended to convey their property interests to them. To the contrary, throughout their entire affiliation Middlesex retained all property in their own corporate name. The commonwealth court's reliance on selected passages from the Book of Order was misplaced in that the court ignored the overall intent of that book as a means of overseeing the *spiritual* development of member churches. In addition, these selected provisions, which at most evidence the putative trustee's desired interpretation, are far from constituting the clear unequivocal evidence necessary to support a conclusion that a trust existed.

Beaver-Butler at 269, 270 (emphasis supplied).¹³

¹³ In Church of St. James the Less [J-18-2005] (decided December 29, 2005), the Supreme Court of Pennsylvania (Eastern District) again had occasion to address the validity of an asserted denominational property trust over local church property. Citing its earlier decision in Beaver-Butler, supra, and applying neutral principles of law, the court ruled against the local church based on the specific facts presented.

The intent of the denomination (the Episcopal Church USA) was made plain by its constitution, the enactment of a new canon in 1979, referred to as the "Dennis Canon", which added a clause which read, "All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this [National Episcopal Church] and the Diocese thereof in which such Parish, Mission

5. Texas

Subsequent to the 1979 decision by the U.S. Supreme Court in Wolf, not all states have had occasion to decide whether to adopt the neutral principles of law method. Some states which had previously adopted the hierarchical method (sometimes called the “deference rule”) have not had occasion to revisit the issue since. The Texas Supreme Court has generally been regarded by lower Texas courts to have adopted the hierarchical method in 1909. Brown v. Clark, 102 Tex. 323, 116 S.W. 360 (1909). The Texas Supreme Court has not granted writs since 1909 to revisit or clarify the matter.

The Schismatic and Purported Casa Linda Presbyterian Church in America, et al v. The Grace Union Presbytery, Inc., et al, 710 S.W.2nd 700 (Court of Appeals of Texas, Dallas) (decided April 18, 1986) is the most recent Texas appellate decision citing Brown. Grace Union concluded that no trust, express or implied, existed over the local church property there at issue. On the separate question of ownership (the body to be correctly identified as the one to whom the property had originally been deeded.), Grace Union interpreted Brown to deem ownership an ecclesiastical issue to be decided by deference to the hierarchical church. Although Texas, unlike Louisiana, is a “hierarchical” state, its caselaw illustrates the relevance which the specific name in which property is titled bears on the question of denominational claim to ownership.

Presbytery of the Covenant v. First Presbyterian Church of Paris, 552 S.W.2d 865 (Tex.Civ.App.-Texarkana 1977, no writ) involved a split between two factions of a PCUS congregation in Paris, Texas. Significantly, the Paris congregation’s articles of incorporation specifically referred to the local church corporation by denominational affiliation, “The First Presbyterian Church U.S. of Paris, Inc.” (i.e., the PCUS). And all of the property deeds also specifically referred to denominational affiliation, naming the property owner either as the “First Presbyterian Church of Paris U.S.” or the corporation

or Congregation is located.” In assessing the intent of the local church, St. James the Less, the court reviewed, among other things, the congregation’s original 1846 charter (articles of incorporation) and amendments in 1919 and 1967 to the charter.

St. James the Less’s own articles expressly prohibited it from ever disaffiliating from the Diocese and the ECUSA, and required that St. James always accede to the authority of the Diocese and the ECUSA. St. James also declared in its articles that if it ever dissolved, its property would be placed in trust for the Diocese.

“First Presbyterian Church U.S. of Paris, Inc.”. The court exercised subject matter jurisdiction to decide the question of ownership, applied the hierarchical method and deferred to the presbytery’s decision to award ownership to the loyalist minority faction.

The court noted that even if it was conceded that the local church owned its property and was free to dispose of it as it wished, the loyalist faction rather than the 100% that voted to disaffiliate constituted the local church when: a) the title holder of record in the property deeds was the “First Presbyterian Church of Paris U.S.” or the “First Presbyterian Church U.S. of Paris, Inc.” and, b) the PCUS hierarchy recognized and identified the loyalist faction as being that PCUS church. Presbytery of the Covenant at 871, 872.

C. ARGUMENT

The facts of this case and the law of Louisiana present a compelling case in favor of Woodland Presbyterian Church. The PSL has no valid claim or right to ownership, nor to determine ownership, of the local church property at issue. Neither the PSL nor any higher ecclesiastical body of the PCUSA or its predecessor denominations contributed any funds for to the purchase of the land, the construction of any improvements thereon, or the furnishing and maintenance of the land and improvements. Not a penny. The property is all titled exclusively in the name of the local church corporation, and the name of that local church corporation makes no reference whatsoever to the “PCUS”, the “PCUSA”, or any other denominational organization. Similarly, all of the property is exclusively deeded in the name of the local church corporation only, without reference to specific denominational organization.

At no time has Woodland Presbyterian Church ever manifested an intent to accept a denomination’s asserted claim, through PSL, to determine ownership of the local church property, or to accept a denomination’s asserted claim that local church property is held in trust for the benefit of PSL or a national denomination. Nor has Woodland Presbyterian Church ever manifested an intent to convey its property to the PSL or any national denomination in trust. To the contrary, Woodland Presbyterian Church; at every opportunity, by the adopting, recording and furnishing of its articles of incorporation, property deeds, and church minutes, specifically denied the denomination’s assertion of a right to ownership or to determine ownership. All of

these actions have been open and public and all of the related documents have been furnished to the PSL, which has accepted them without objection.

The PCUSA confuses two distinctly separate issues. It is one thing for the PCUSA to interpret clause G-8.0600 of its Book of Order to allow it to determine, in the event of an internal split within a local church, which faction will be recognized “within the PCUSA.” It is quite another for the PCUSA to assert that the PCUSA, the PSL, the faction of the local church recognized by PCUSA or anyone else is entitled to property owned by Woodland Presbyterian Church under Louisiana law. If the PCUSA asserts that G-8.0600 allows national church confiscation of local church property, then that clause violates Louisiana law. The PCUSA cannot simply assume that local church property is actually titled in the name of the PCUSA or the PSL and proceed as if its assumption were correct. The title to this local church’s property belongs to Woodland Presbyterian Church.

Likewise, the defendant’s claim of a trust over local church property, which asserts that the local church cannot leave the PCUSA and retain ownership and control of its local property without the Presbytery’s permission, is without merit. No denomination with which the Woodland Presbyterian Church was affiliated had a trust provision, express or implied, in its denominational constitution prior to 1982. The provisions that were added to the 1982/1983 edition of the PCUS Book of Church Order were not approved by (indeed were generally unknown to) the congregation of Woodland Presbyterian Church.

The trust clause that was added in 1983 to the new PCUSA constitution also did not involve approval or concurrence by Woodland Presbyterian Church. To the contrary, Woodland Presbyterian Church has continuously and expressly rejected any assertions of a trust or denominational claims to determine ownership, whether under the PCUS constitution or the PCUSA constitution. The Presbytery cannot sit silent for almost 20 years and now be heard to assert a trust over the property at issue and a right to determine its ownership.

Neither the local church articles of incorporation or property deeds create, acknowledge or accept any trust on church property. The PSL has acknowledged that these church property matters are governed by state law, and the law of the State of Louisiana sets forth the requirements for the creation of a valid trust enforceable in this state at R.S. 9:1721, et seq.

Those requirements have in part been listed above, in Part III.A., and **none** of those requirements have been satisfied with respect to any property held by and titled to Woodland Presbyterian Church. Those requirements are the *exclusive* means by which a trust may be validly created in Louisiana; Louisiana law does not recognize the concept of implied or constructive trusts.

In Fluker, supra, the Louisiana Supreme Court examined both the denominational constitution *and* the local property deeds to determine *mutual* intent and found that the local property was expressly titled in “Fluker Chapel *A.M.E. Church*, Fluker, Louisiana.” [Emphasis added by the Louisiana Supreme Court.] The Louisiana Supreme Court thus concluded that, “Fluker acted solely within its capacity as an A.M.E. local church” when it acquired the property. *Id.* In marked contrast, the title in the deeds for the property held by Woodland Presbyterian Church make no reference to the PCUSA or any of its predecessor denominations such as the PCUS. The deeds to the property are titled only in the name of the local church corporation, which name does not refer to, include, or identify itself with the PCUSA or the PCUS.

The present facts thus also stand in marked contrast to Presbytery of the Covenant, supra, where the court based its decision to award property to the minority faction loyal to the denomination on the fact that the property deeds specifically referred to “First Presbyterian Church of Paris US”. *Id.* at 871, 872 (emphasis in original).

The present facts are more comparable to those in St Luke’s, supra, where the local congregation was incorporated prior to the creation of the current denomination, where most of the property was acquired prior to the formation of the current denomination and where most (in the present case, all) of the property deeds did not contain any trust language. Like the California Corporations Code, Louisiana Trust Law does not allow a non-owner to create a trust unilaterally over someone else’s property and then name itself as the beneficiary. The California court was quick to reject that as “self-dealing”.

What the PSL is attempting to do by asserting a trust or a right to determine ownership under the facts presented is analogous to a non-owner agent for the subdivision in which Your Honor owns a home changing the civic association’s rules to say that if Your Honor ever decides to move out of the subdivision the non-owner agent shall be entitled to determine who owns

Your Honor's house. And as long as Your Honor lives in that house you possess it for the benefit of that non-owner agent, so that if Your Honor ever decided to move and keep ownership or control of the home's equity, Your Honor would need the permission of the non-owner agent. And all this even though the non-owner agent's name is not on the mortgage, has never contributed a penny to paying the mortgage off, and doesn't even help cut the grass.

The facts presented are also analogous to From the Heart, supra (except that Woodland Presbyterian Church. Indeed, the present facts are even stronger than From the Heart. In From the Heart, the property deeds had at one time listed the owner as "Full Gospel A.M.E. Zion Church, Inc.", whereas none of the property deeds for Woodland Presbyterian Church have ever made mention of the PCUS or the PCUSA as a titleholder.

In ruling in favor of the local church, the Supreme Court of Maryland (the Maryland Court of Appeals) noted that the national denomination had apparently acknowledged and acquiesced in the local church's intentional deeding of its local church property in the name of the local church only and without reference to any trust. In the present case, Woodland's possession of the property at issue, as exclusive owner and without a trust in favor of the denomination, has always been open and public. All property deeds, articles of incorporation, and minutes have variously been filed of record in the Secretary of State's Office, and furnished to the PSL in the ordinary course of business. The PSL has had actual and constructive knowledge of these documents, has never challenged them previously, and should not be heard now to contest them belatedly.

The facts of the present case are readily distinguished from St. James the Less, supra, but are akin to Beaver Butler, supra. Unlike St. James the Less, the articles of incorporation for Woodland Presbyterian Church do not expressly prohibit it from disaffiliating with the denomination, nor state that in the event of dissolution its property would be placed in trust for the presbytery. Like the church in Beaver Butler (Middlesex Presbyterian Church), Woodland Presbyterian Church was founded before the creation of the denomination with which it later affiliated. When it did affiliate, there was no express trust language in the denominational constitution. And after the denominational constitution was amended to add provisions which purport to give the denomination a right to determine ownership and which assert that all local

property is held in trust for the denomination, Woodland Presbyterian Church never acquiesced to this but specifically and continuously rejected this, and retained all property in its own corporate name.

Just as the court in Beaver Butler found mutual intent lacking, and noted that a trust cannot arise from “elusive statements admitting possible inferences consistent with other relationships”, Id at 269, so the selected provisions of the Book of Order, on which the PSL relies, “at most evidence the putative trustee’s desired interpretation” Id, and do not even begin to satisfy the stringent and exclusive requirements for the establishment of a valid trust under the Louisiana Trust Code.

The facts before this Court are also closely analogous to those in the August 22, 2006 New York case of Presbytery of Hudson Valley, et al v. First Presbyterian Church of Ridgebury. Both congregations were established prior to the formation of the presbyteries under whose “care” they later came, and before the establishment of the denomination with which they later became affiliated, and prior to the adoption by those denominations of an express trust clause in the denominational constitution. In both cases all property is deeded in the name of the local church corporation only, without reference to the denomination. In both cases there has been no manifestation of an intention to create or accept a trust over a local church property on behalf of the denomination. In both cases the only affirmative action on the part of the local congregation on this subject was an explicit manifestation of just the opposite — not to hold local property for the benefit of the denomination. This most recent court decision in the United States is attached to this Memorandum and its review is commended to this Court.

Finally, the facts in Woodland are in all pertinent respects similar to those of First Presbyterian Church of Baton Rouge vs. The Presbytery of South Louisiana, Suit No. 54705 (Section 22), filed with the 19th Judicial District Court, Parish of East Baton Rouge, on September 6, 2006. That suit was resolved on November 6, 2006 by entry of a Stipulated Final Judgment, in which the defendant recognized all claims by the petitioner and agreed all property held by or for petitioner was owned by the petitioner in full and unfettered ownership without any ownership interest, in trust or otherwise, by the defendant. A copy of this Stipulated Final Judgment is submitted with the Appendices hereto. (Exhibit 18)

IV. THE NECESSITY OF A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

Louisiana Code of Civil Procedure article 3601 provides that “an injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases provided by law.” In order to obtain a preliminary injunction, the moving party must: (1) make a *prima facie* showing that it will prevail on the merits of the suit; (2) show that it is threatened with irreparable harm and is without an adequate remedy at law; (3) show that the threatened harm to the plaintiff outweighs potential for harm or inconvenience to the defendant; and (4) show that issuance of a preliminary injunction will not disserve the public interest. Chandler v. State of Louisiana, 02-1410 (La. App. 1 Cir. 3/28/03), 844 So.2d 905. See also, Freeman v. Treen, 442 So.2d 757 and 761, 763 (La. App. 1 Cir. 1983); Vision Center v. Options, Inc., 596 F.2d 1111 (5th Cir. 1979). “Irreparable injury” is defined as “a loss sustained by an injured party which cannot be adequately compensated in money damages or for which such damages cannot be measured by a pecuniary standard.” Shaw v. Hingle, 94-1579 (La. 1/17/95) 648 So.2d 903 (citing Terrebonne Parish Police Jury v. Matherne, 405 So.2d 314, 319 (La.1981)).

A showing of irreparable harm is not required when the deprivation of a constitutional right is involved, as is the case before the court. Chandler, 844 So.2d at 909, citing Brennan v. Bd. of Supervisors of Trustees for Univ. of Louisiana Sys., 95-2396 (La. App. 1 Cir. 3/27/97), 691 So.2d 324. Nor is a showing of irreparable harm required when the moving party demonstrates that the action sought to be enjoined is in violation of prohibitory law or the deprivation of a constitutional right is involved. Chandler, 844 So.2d at 909, citing Paradigm Ins. Co. v. Louisiana Patient’s Compensation Fund Oversight Bd., 95-1727 (La. App. 1 Cir. 9/27/96), 680 So.2d 783, 785).

As noted above, LA C.C.P. art. 3601 provides that “an injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, *or in other cases provided by law.*” (*emphasis added.*) The case at hand alternatively or additionally falls under the category of “other cases provided by law”. Louisiana Code of Civil Procedure article 3663 “specifically provides injunctive relief in two separate cases: (1) as an ancillary remedy in a possessory action, and (2) as the relief to be granted in an injunction suit brought to enjoin

trespassers and other disturbers, and which is neither a possessory nor a petitory action.” Barrilleaux v. NPC, Inc., 1997-2040 (La. App. 1 Cir. 12/29/97), 704 So.2d 449, 451 (citing Official Revision Comments to art. 3663; Ryan v. Pekinto, 387 So.2d 1325, 1329 (La. App. 1 Cir. 1980)).

Injunctive relief is available to protect ownership, possession and enjoyment of immovable property. LA C.C.P. art. 3663 provides, in pertinent part, that injunctive relief, “to protect or restore possession of immovable property or of a real right therein, is available to ... a person who is disturbed in the possession which he and his ancestors in title have had for more than a year of immovable property or of a real right therein of which he claims the ownership, the possession, or the enjoyment.” A preliminary injunction which is brought to protect rights in real property does not require any showing of irreparable harm. Barrilleaux, 704 So.2d at 451; Monroe Real Estate & Devt. Co. v. Sunshine Equipment Co., Inc., 35,555 (La. App. 2 Cir. 1/23/02), 805 So.2d 1200. “An owner of immovable property is provided injunctive relief against a trespasser to protect ownership and possession without a showing of irreparable injury.” Barrilleaux, 704 So.2d at 451 (citing Adcock v. Marshall Exploration, Inc., 434 So.2d 471, 473 (La. App. 2 Cir. 1983)).¹⁴

The facts, law and argument set forth above demonstrate a substantial likelihood, indeed present a compelling case, that petitioners will prevail on the merits. A monetary judgment is not an adequate remedy; a temporary restraining order and a preliminary injunction are required to prevent the deprivation of constitutional rights, to prevent a violation of prohibitory law, to protect ownership and possession of immovable property, and/or to prevent irreparable harm to the work and well being, the mission and ministry, of petitioner.

This Court is not being asked to referee a theological dispute nor render a decision based on religious doctrine. However, some basic understanding of the ecclesiastical environment in which the present suit arises, the current threat posed by the PCUSA against Woodland

¹⁴ The essential element in an action seeking injunctive relief to prevent trespass is that movant has actually or constructively possessed the property for more than one year prior to the disturbance. Bagents v. Crowell Long Leaf Lumber Co., 20 So.2d 641 (La. App. 1 Cir. 1945). To constitute a trespass, there must be an unlawful physical invasion of the property or possession of another. Barrilleaux, 704 So.2d at 451 (citing Dickie’s Sportsman’s Centers v. Department of Transp. And Devt., 477 So.2d 744, 750 (La. App. 1 Cir. 1985)).

Presbyterian Church, will explain why a temporary restraining order and a preliminary injunction are necessary.

Throughout the United States local Presbyterian congregations that are traditional in viewpoint have become increasingly opposed to the direction that the General Assembly of the PCUSA, its administration, and many of its regional governing structures, its presbyteries, have taken. An uneasy merger first created the PCUSA in 1983, and concern that was present from the start in some quarters grew more widespread with the release in 1991 of a PCUSA-sponsored Sexuality Report which promoted a concept called “sexual justice-love”. This nebulous concept condoned any sexual arrangement said to be consistent with “the Jesus story” of “genuine love” and “caring justice”. Although the Sexuality Report was not officially accepted by the General Assembly at that time, its philosophy was increasingly reflected in the life of the PCUSA.

Concern about the direction of the PCUSA escalated in 1993, when a PCUSA-funded “Reimagining God” conference was held. Widely published reports of that conference revealed promotion of a “new trinity” consisting of the goddesses Kali (a goddess of vengeance, worshiped by the ritual smashing of coconuts representing the heads of one’s enemies), Kamin (a goddess who sits astride a dragon), and Iman.

In a conservative counter movement, a “fidelity in marriage/chastity in singleness” requirement was approved in 1997, which amended the Book of Order to reiterate and emphasize that the standards for ordination for a minister or officer within the PCUSA included the requirement that sex be limited to heterosexual marriage (PCUSA Book of Order G.-8.0106b.). Two subsequent efforts to repeal and eliminate this standard were defeated by increasing majorities of the presbyteries (to amend the Book of Order requires approval at a General Assembly and subsequent ratification by a majority of presbyteries).

Recently, however, dissatisfaction with the PCUSA’s direction has reached a crescendo in many segments of the denomination. Notwithstanding the repeated affirmation by a majority of presbyteries of the “fidelity/chastity” standard, the 217th General Assembly of the PCUSA, meeting in Birmingham, Alabama in June, 2006, effectively amended the denominational constitution unilaterally, using a procedural device that does not require ratification by the presbyteries. The result of this amendment has put in place a “local option” policy within the

PCUSA. Under this new “local option” policy, each session and presbytery now may determine for itself whether or not the fidelity/chastity ordination standard, or any other ordination standard, though technically remaining in the text of the Book of Confessions or Book of Order, is actually “essential” and binding. In other words, ordination standards are now “discretionary standards” — an oxymoron. The effect of this “local option” is both (a) the jettisoning of uniform teaching on sexual morality or other commonly held, historic matters of belief or practice that have marked the Christian Church for two millennia and (b) the removal of any uniform ordination standards that have also functioned as a basis for a common denominational life.

Further exacerbating tension with the PCUSA was a decision by the 217th General Assembly to officially receive a study paper on the Trinity which, as distinguished from the traditional formulation of “Father, Son and Holy Spirit”, has offered a new formulation of “Mother, Child and Womb” for additional use in the PCUSA.

For many, the actions of the 217th General Assembly have been the straw that broke the camel’s back. Numerous “renewal groups” from the traditional or conservative wing within the PCUSA, representing hundreds of thousands of Presbyterians, are meeting in national conclaves scheduled between July, 2006 and September, 2007 to exercise their rights of free speech and assembly and consider a variety of responses, and have already called for a suspension of donations to the General Assembly of the PCUSA and the exploration of possible exit strategies from the denomination. At least one prominent renewal group has recently adopted a resolution calling on the chief officer of the PCUSA and on presbytery officials throughout the United States to declare by August 15, 2006, a moratorium on any retaliatory or disciplinary action by the denomination against dissenting traditionalists. The PSL did not respond to that request for a moratorium and on August 22, 2006 the top officials of the PCUSA, the Stated Clerk and Moderator, issued a letter rejecting the request to use their good offices and influence to call for a moratorium. (Exhibits 16, 17)

The reaction by denominational officials to the growing dissent has been one of alarm. The PCUSA has already lost over 25% of its members since it was created 23 years ago, and is losing additional members at an average rate of 50,000 people per year. The PCUSA has

estimated that this rate will likely climb to 75,000 to 80,000 per year in the foreseeable future. The threat of denominational confiscation of local church property is generally believed to be one of the few remaining things that is keeping numerous congregations from severing their ties with the denomination. Acting through the arm of its presbyteries, the PCUSA has thus tried to squelch the growing dissent and the escalating threat of denominational breakup by taking aggressive action against local congregations that are voicing dissent from PCUSA decisions.

In further illustration of the aggressive tactics being used 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.”

In globo Exhibit 15. See also, Exhibit 13.

It is in this unfortunate climate that Woodland Presbyterian Church has sought a judicial declaration of its property rights. It has no choice but to seek such a declaration. The session of Woodland Presbyterian Church may call a congregational meeting to discuss and vote on various matters, including but not limited to the initiation of a local capital improvement fund drive. Efforts to promote an effective, local capital fund drive for local church improvements, and the ability to obtain any necessary bank financing for capital improvements, including the granting of mortgages and security interests which may be required, will be stymied in the absence of the injunctive and declaratory relief petitioner seeks.

At the congregational meeting which the session of Woodland Presbyterian Church intends to call, discussion and vote may also be held on the continuation or discontinuation of some or all of the voluntary per capita payments made by Woodland Presbyterian Church to governing bodies of the PCUSA. Such congregational meetings are a public forum for congregational members and some members will wish to discuss the pros and cons of continued affiliation with the PCUSA — even though neither the session, the board of trustees, nor the ordained staff of Woodland Presbyterian Church have voted or otherwise recommended disaffiliation from the PCUSA. Nevertheless this suit, given the current regional and national climate, will be viewed by the PCUSA as a shot across its bow and a possible first step towards disaffiliation. The threat of imminent retaliatory action by the denomination is present.

Already, PCUSA presbyteries, 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 church locks and otherwise seize local church property, and c) appointed "administrative commissions" to assert "original jurisdiction" to supplant existing congregational governance by removing, without notice or hearing, dissenting ministers and sessions, thereby

permitting the PCUSA presbytery to effectively confiscate local church property and deal with it as if its own.

And if a presbytery is reluctant to take control over a local church that dissents from the aberrant positions taken by the PCUSA, the PCUSA has threatened the unprecedented takeover of presbyteries. 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 PSL, 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 control of the presbytery. (Exhibit 14)

To repeat, the petitioner is not asking the Court to wade into the thicket of theological controversy nor render a decision based on the Court’s assessment of what does or does not constitute proper religious doctrine. The present case is about property, and its resolution is to be found in the application of neutral principles of law. This brief discussion, though, on the underlying controversy within the PCUSA explains why property issues have come to the fore, and why protection is needed, in the form of a TRO and a preliminary injunction, from retaliatory action by the PSL.

The chilling effect of confiscatory denominational actions, taken or threatened, is immediate and unmistakable. Woodland Presbyterian Church is a not-for-profit corporation whose primary purpose is not monetary but spiritual and philanthropic. Given the nature of the mission and ministry of Woodland Presbyterian Church, an award of monetary damages would not be an adequate remedy at law.

Should the PSL seek to change the locks on the church doors, cloud title or confiscate property, appoint an administrative commission, or otherwise try to usurp the authority of the governing body and local ministers of Woodland Presbyterian Church, there would be a massive disruption in the life of the local congregation, as members disengage or depart. Donations would drastically diminish, and all of the Woodland-supported ministries would be irreparably damaged. No amount of a subsequent monetary award would be an adequate remedy.

The actions taken and the actions threatened by PCUSA presbyteries, including the PSL, described in the petition 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 I, Section 7 of the Louisiana Constitution, the religion clauses of the First Amendment to the United States Constitution and Article I, Section 8 of the Louisiana Constitution, the due process guarantees of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Louisiana Constitution, and substantive property rights guaranteed under Article I, Section 4 of the Louisiana Constitution. The effect of such actions, if taken in whole or in part or threatened by the PSL, would chill if not violate the foregoing, protected rights, interfere with appropriate local church governance of congregational matters and impede the ability of the congregation of Woodland Presbyterian Church to hold a congregational meeting free of improper interference.

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 the Woodland Presbyterian Church and its local church corporation outweigh any possible injury to the PSL which might result from the granting of temporary relief and a preliminary injunction, said relief and injunction being in the public interest. Such *temporary* restraining order and *preliminary* injunction do not constitute civil court trespass into the prohibited ecclesiastical realm of permanent appointment or removal of ministers but instead merely preserves the status quo during the pendency of this suit. Thompson v. Bank One of Louisiana, 925 So.2d 555, 2005-1101 (La. App. 4 Cir. 1/11/06).

Petitioner believes that there is a substantial likelihood it will prevail on the merits of its suit for declaratory judgment, that no trust attaches to any local property held by or titled in the name of the local church corporation, and any improvements thereon, in favor of a national denomination, and that the local church corporation holds all property titled in its name in full ownership without regard to arbitrary ecclesiastical edicts that would declare the “true church” within the PCUSA as property owner.

V. CONCLUSION

For the reasons set forth, Woodland Presbyterian Church urges the court to grant a temporary restraining order, preliminary injunction and a declaratory judgment as follows:

- 1) Temporary Restraining Order - restraining and enjoining defendant The Presbytery of South Louisiana and any of its agents, employees or other persons or entities acting on its behalf or in its stead, from filing any documents in the mortgage and conveyance records of Orleans Parish the effect of which would be to place a cloud on the title of property titled in the name of petitioner, or otherwise taking any action to claim ownership of local church property whether corporeal or incorporeal, movable or immovable, or real or personal, or a right to determine ownership of local church property, in the possession of, control of, or owned by Woodland Presbyterian Church; and further restraining defendant PSL 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 Woodland Presbyterian Church, including but not limited to seeking to change the locks of Woodland Presbyterian Church, initiating any disciplinary action against the ministers or members of Woodland Presbyterian Church, appointing an administrative commission, or otherwise interfering in any way with the rights and responsibilities of the ministers or other employees of Woodland Presbyterian Church, the governing body of Woodland Presbyterian Church (the session), its congregation, or the governing body of its local church corporation the Woodland Presbyterian Church (the board of trustees);
- 2) Preliminary Injunction - enjoining defendant during the pendency of this suit, from any of the acts described in paragraph 1) of this prayer; and
- 3) Declaratory Judgment - declaring that all property held by or titled in the name of the petitioner, and any improvements thereon, whether corporeal or incorporeal, movable or immovable, or real or personal, is held free of any trust for the use and benefit of the PCUSA or other national denomination, or any of its regional administrative units such as the PSL, and that the petitioner holds all property titled in its name, and all improvements thereon, in full and complete ownership pursuant to the laws of the State of Louisiana and as set forth in petitioner's articles of incorporation, and that neither the PCUSA nor any of its regional administrative units such as the PSL has any right, title or interest in said property nor right to determine the ownership thereof.

Respectfully submitted,

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