

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

WOODLAND PRESBYTERIAN CHURCH NO: SECTION:

VERSUS

**PETITION FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY INJUNCTION AND
DECLARATORY JUDGMENT**

THE PRESBYTERY OF SOUTH LOUISIANA

NOW INTO COURT, through undersigned counsel, comes petitioner, Woodland Presbyterian Church, a Louisiana nonprofit corporation, domiciled in the Parish of Orleans, and respectfully represents:

THE PARTIES

1.

Woodland Presbyterian Church (“Woodland”) is a Louisiana nonprofit corporation domiciled in Orleans Parish, founded in 1958 and first incorporated in 1959.

2.

Made defendant is the Presbytery of South Louisiana (“PSL”), a Louisiana nonprofit corporation, formed in 1973, and domiciled in East Baton Rouge Parish. [The PSL is a regional administrative unit (akin to a diocese) for the Presbyterian Church (USA) (“PCUSA” or “denomination”, which denomination was formed in 1983 and currently has approximately 11,000 member churches located throughout the United States, including the State of Louisiana and East Baton Rouge Parish)].

JURISDICTION AND VENUE

3.

This court has jurisdiction to hear and decide this church property matter under Jones v. Wolf, 443 U.S. 995 (1979) and Fluker v. Hitchens, 419 So.2d 445 (La. 1982).

4.

Venue is proper in East Baton Rouge Parish, as the defendant is domiciled in East Baton Rouge Parish.

OWNERSHIP OF LOCAL CHURCH PROPERTY

5.

Woodland Presbyterian Church was founded in 1958. It was first incorporated as a Louisiana nonprofit corporation in 1959, and reincorporated in 2007.¹

6.

All real property held by Woodland Presbyterian Church that comprises its main campus consists of or is situated on tracts acquired prior to the PCUSA and the PSL began their existence and after the PCUSA's purported adoption in 1983 of an express trust clause discussed herein.

7.

All acquisitions of real property held by Woodland Presbyterian Church which comprises its main campus, and all improvements thereon, whether corporeal or incorporeal, movable or immovable, real or personal, were acquired and/or built exclusively as a result of financial contributions made by the members of Woodland Presbyterian Church with the clear understanding that the property and improvements were and would continue to be owned by Woodland Presbyterian Church. No financial contributions were made by the PSL, the PCUSA or any predecessor denomination.

8.

All deeds of real property held by Woodland Presbyterian Church which comprise its main campus 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 PCUSA nor contain any language creating or accepting any trust over said property in favor of a national denomination or any of its regional administrative units such as the PSL. Said property has continuously been so titled in the public mortgage and conveyance records of the Parish of Orleans, State of Louisiana.

9.

The PCUSA was formed by the merger in 1983 of the Presbyterian Church in the United States (hereinafter the "PCUS" or the "southern church") and the United Presbyterian Church in the United States of America (hereinafter the "UPCUSA" or the "northern church"). Prior to the formation of the PCUSA, Woodland Presbyterian Church was affiliated, according to its 1959

¹ Exhibits in support of this petition are submitted with Petitioner's Memorandum in Support.

Articles of Incorporation, with the PCUS and its then-Presbytery of Louisiana. Upon formation of the PCUSA, the PCUS and the UPCUSA both ceased to exist as separate denominations, and the Presbytery of Louisiana (subsequently re-formed as the Presbytery of South Louisiana) ceased being a regional administrative unit of the PCUS and became a regional administrative unit of the PCUSA.

10.

The Constitution of the PCUSA consists of two parts, the Book of Confessions (Part I) and the Book of Order (Part II). The Book of Confessions contains doctrinal statements and statements of church governance (polity). The Book of Order focuses on church governance and divides itself into three main sections: the Form of Government, the Directory of Worship and the Rules of Discipline. The provisions in the PCUSA Constitution relating to property are found primarily but not exclusively in the Form of Government of the Book of Order, Chapter VIII, G-8.000 – G-8.700.

11.

The PCUSA Book of Order includes a clause, G-8.0201, which asserts that, “All property held by or for a particular church ... is held in trust nevertheless for the use and benefit of the Presbyterian Church (USA).” This clause, and its predecessor trust clauses in the PCUS Book of Church Order (Exhibit 7), are not applicable to petitioner’s property and are not legally enforceable under the Constitution or the laws of the State of Louisiana.

12.

The PCUSA Book of Order contains a clause asserted by the denomination to pertain to ownership. G-8.0600 asserts that a PCUSA presbytery (such as PSL) may dictate ownership of local church property located within the geographic bounds of the presbytery. The PCUS Book of Church Order was amended in 1982/83 to add a similar clause (6-5). On information and belief, the PCUS Book of Church Order did not previously contain a similar clause. It is petitioner’s position that G-8.0600 and any predecessor clause in the PCUS Book of Church Order are not applicable to petitioner’s property and are not legally enforceable under the Constitution or the laws of the State of Louisiana.

13.

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 (6-4). On information and belief, the PCUS Book of Church Order did not previously contain a similar clause. It is the petitioner’s position that G-8.0301 and any predecessor clause in the PCUS Book of Church Order are not applicable to petitioner’s property and are not legally enforceable under the Constitution or the laws of the State of Louisiana.

14.

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, Chapter 6 of the 1982/1983 edition of the PCUS Book of Church Order did not contain such a requirement but, to the contrary, stated at 6-8, that “Nothing in this chapter shall be construed to require a particular church to seek or obtain the consent or approval of any church court above the level of the particular church in order to buy, sell or mortgage the property of that particular church in the conduct of its affairs as a church of the PCUS.”

15.

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

16.

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.

17.

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

18.

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.

19.

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 (local congregation) of the PCUSA shall be bound by any of the 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.”

20.

Woodland Presbyterian Church timely exercised the exemption clause of G-8.0700 of the PCUSA Book of Order at a regularly called meeting on September 25, 1983, unanimously adopting a resolution to be exempt from all provisions of Chapter VIII of the PCUSA Book of Order.

21.

Following the unanimous congregational approval, 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 Constitution” and were “prudent and equitable.”

22.

From the time Woodland Presbyterian Church was founded in 1958, and continuously throughout its existence until 1982, no denomination with which it was affiliated contained an express trust clause in the denominational constitution. Prior to the addition of express trust language in the 1982/1983 edition of the PCUS Book of Church Order, the PCUS Book of Church Order did not contain an implied trust over local church property.

23.

Leading up to and in connection with the merger of the “southern church” and the “northern church,” in the year immediately prior to the 1983 formation of the PCUSA, 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. These three trust clauses are ambiguous, inconsistent 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. Section 6-3 asserts a trust in favor of the denomination.

24.

The process whereby property 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 or result from any vote, approval or action by the petitioner, which is the owner and titleholder of record of the property in question. Instead, the process involved: a) participation by commissioners (voting delegates) to the General Assembly, which commissioners are chosen by regional bodies (the presbyteries) who would be beneficiaries of the asserted trusts, and b) participation by presbyters (voting delegates) to the presbyteries, which presbyters are sent to the meeting of the presbytery by the congregations. However, those presbyters are not required under Presbyterian governance to act in a representative capacity on behalf of the congregations.

25.

Following initial approval by the commissioners to General Assembly, the new clauses that asserted trusts were added to the denominational Constitutions upon ratification by a requisite number of presbyteries — irrespective of whether or not the PSL, acting through its then-presbyters, voted in favor of ratification.

26.

Regardless of how one interprets the ambiguous and inconsistent trust clauses in Chapter 6 of the PCUS Book of Church Order, the action by Woodland Presbyterian Church at its September 25, 1983, congregational meeting, which minutes have been received and approved by the PSL, manifest an intent by Woodland Presbyterian Church to reject any ownership claims by a denomination, or claims by the denomination of a right to determine ownership, and to reject the concept of holding or conveying any of its property in trust, or creating or establishing a trust, for the use and benefit of a national denomination, whether the PCUSA or the PCUS, all of which was done in compliance with the procedures established by G-8.0700 of the PCUSA Book of Order.

27.

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

28.

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 of its regional administrative units such as the PSL.

29.

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.

30.

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.

31.

The 1959 and 2007 Articles of Incorporation of Woodland Presbyterian Church provide that the board of trustees shall exercise all powers of the corporation. The 1959 and 2007 Articles of Incorporation of the Woodland Presbyterian Church grant without limitation full authority on all property matters variously to the local board of trustees and the congregation.

32.

Neither the 1959 Articles nor the 2007 Articles of Woodland Presbyterian Church contain any provision creating or establishing any trust, express or implied, upon the property title in the name of the local church corporation in favor of a national denomination. Said Articles were never amended to add such trust provisos. Neither the congregation, the session or the board of trustees of Woodland Presbyterian Church have ever adopted a corporate or congregational resolution creating or establishing a trust pertaining to property held by and titled in the name of the local church corporation.

33.

The Articles of Incorporation of Woodland Presbyterian Church were amended and restated in 2007 to remove outdated, anachronistic language and to conform to recent developments in corporate law concerning perpetual existence, indemnification and other matters. No mention of denominational affiliation (whether PCUS or PCUSA) is included. Said amendments and restatement were adopted at a duly called and noticed meeting of the members of the corporation held on April 15, 2007. The amended and restated 2007 Articles were subsequently filed and recorded with the Louisiana Secretary of State on April 26, 2007. The 2007 Articles have also been available at all times to the PSL pursuant to G-9.047 – 9.0409 of the PCUSA Book of Order.

34.

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.

35.

Article II of the 2007 Articles of Incorporation of Woodland Presbyterian Church 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. Consistent with the provisions of Louisiana Nonprofit Corporations Law, Article IX of the 2007 Articles of Incorporation further 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.

36.

In January and February of 1984 Woodland Presbyterian Church sought financing for a new sanctuary and negotiated a \$750,000 loan from Hibernia National Bank, contingent on the PSL co-signing the loan guaranteeing repayment, which contingency was required by Hibernia due to the PSL's "connectional relationship" with Woodland. The PSL, however, refused to co-sign the loan and the loan was only made by Hibernia when individual members of Woodland signed personal guarantees in February, 1984.

**LOUISIANA LAW DOES NOT PERMIT THE
ESTABLISHMENT OF A TRUST IN THE MANNER
ASSERTED BY THE PRESBYTERY OF SOUTH LOUISIANA**

37.

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 means by which a trust may be validly established in Louisiana. Absent conformity with these requirements, a trust does not exist in Louisiana; Louisiana law does not recognize the common law concept of constructive or implied trusts.

The actions of Woodland Presbyterian Church and its property-related documents recited herein, preclude a finding of the existence of any trust with respect to its property in favor of a national denomination. Specifically, but not exclusively, none of the following requirements of Louisiana trust law, La. R.S. 9:1721, et seq., have been satisfied with respect to any property held by and titled to the Woodland Presbyterian Church, and any improvements thereon, as regards a trust in favor of a national denomination, to wit:

- 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);
- 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 limited to 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).

**THE PCUSA AND THE PCUS HAVE RECOGNIZED THAT
CHURCH PROPERTY MATTERS ARE SUBJECT TO STATE LAW**

Section G-7.0401 of the PCUSA Book of Order states that, “Whenever permitted by civil law, each particular church shall cause a corporation to be formed and maintained.” The PCUS Book of Church Order also contains clauses authorizing and encouraging incorporation under state law (6-1, 6-2 of the 1982/1983 edition). The PCUSA Book of Order not only mandates incorporation where permitted by civil law, but also provides, at G-7.0402, that the corporation so formed shall be the title holder of record of the local church property.

40.

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

41.

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

42.

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

**THE NEED FOR A TEMPORARY RESTRAINING
ORDER AND INJUNCTIVE RELIEF**

43.

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 improvements. The scope of any planned capital improvements may require bank financing to be paid through pledges to a fund drive. The financing may require that Woodland Presbyterian Church grant mortgages and security interests in the local church property to secure the repayment thereof. Woodland Presbyterian Church will not be able to provide acceptable title insurance on its property until such time as the questions presented herein are resolved. Moreover, the underwriting of any extension of credit is significantly impacted by the status of ownership of local church property.

44.

Efforts to promote an effective, local capital campaign for any improvements to the local church property will be stymied in the absence of the injunctive and declaratory relief petitioner seeks. Few will give to fund improvements to facilities the ownership to which is claimed by others.

45.

At any congregational meeting which the session of Woodland Presbyterian Church may 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 the PCUSA. Congregational meetings by nature present an open forum, and some members of the congregation will initiate discussion of whether to continue or discontinue affiliation with the PCUSA. While it is presently unknown how the congregation would vote on these related issues, in the absence of a temporary restraining order and preliminary injunction, the PSL could (and on the basis of actions elsewhere by PCUSA presbyteries, would) attempt to take preemptive action to preclude or pre-determine such vote(s) through depriving petitioner of its rights under Louisiana law and the Louisiana and United States Constitutions.

46.

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

47.

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 locks on local church property and otherwise seize local church assets; and c) appointed “administrative commissions” to assert “original jurisdiction” to supplant existing congregational governance by removing, without notice and opportunity for hearing, dissenting ministers and sessions, thereby permitting the PCUSA presbytery to effectively confiscate local church property and deal with it as if its own. There is a likelihood that the filing of this petition will be perceived to be dissent, causing the PSL to act in such a manner.

48.

Further heightening the threat to local congregations, the PCUSA, through its Office of General Assembly (Department of Constitutional Services), on or about August 10, 2006 issued “Advisory Opinion Note 19”, which states in part III thereof that if a presbytery, such as the 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 over control of the presbytery.

49.

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.”

50.

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

“ ... we call upon the Moderator of the PCUSA and all general presbyters to announce and adopt a moratorium on discipline of ordained members engaged in discourse regarding the issues of theology and polity which confront our denomination, including those discussions which may lead to a consideration of departure from the denomination. We call upon you to announce a moratorium on actions to seize or encumber property, interfere with the operations of duly elected session members, or otherwise exercise or initiate discipline upon ordained members of our denomination for engaging in such discussions on either side of the debate.

51.

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

52.

The actions by PCUSA presbyteries described above violate state property law and trust law, free speech rights guaranteed by the First and Fourteenth Amendments to the United States Constitution and by Article 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, impede the ability of the congregation of Woodland Presbyterian Church to hold a congregational or corporate meeting free of improper interference, and cloud the title of property held by Woodland Presbyterian Church.

53.

Under Louisiana law a showing of irreparable harm is not required when the deprivation of a constitutional right is involved. Nor is a showing of irreparable harm required under Louisiana law when the moving party demonstrates that the action sought to be enjoined is in violation of prohibitory law.

54.

Under Louisiana law a showing of irreparable harm is not required to protect real property rights, to protect the ownership, possession and enjoyment of immoveable property.

55.

Woodland Presbyterian Church is a not-for-profit corporation. It's primary purpose is not monetary but spiritual and philanthropic. A monetary award is thus an insufficient remedy at law. Absent a temporary restraining order and preliminary injunction, the rights of petitioners and the ministry of Woodland Presbyterian Church will be irreparably injured.

56.

A temporary restraining order and preliminary injunction during the pendency of this suit is necessary to stay the hand of the PSL from appointing an administrative commission that would, without just cause, usurp and replace the authority of the pastor, the session, or the board of trustees. Said restraining order and preliminary injunction would protect the members of Woodland Presbyterian Church who, under Louisiana nonprofit corporation law, are also the members and, in effect, the shareholders of the local church corporation. Said restraining order and preliminary injunction would preserve the status quo until such time as the question of ownership and use of the property of Woodland Presbyterian Church can be determined by this Court. Absent said temporary restraining order and preliminary injunction the rights of petitioner, the governing body of Woodland Presbyterian Church (the session), and the members of the congregation of Woodland Presbyterian Church, and Woodland Presbyterian Church property rights will be irreparably injured.

57.

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 a temporary restraining order and a preliminary injunction, said relief and injunction being in the public interest.

DECLARATORY RELIEF

58.

Petitioner seeks a declaratory judgment: (a) that all property held by or for Woodland Presbyterian Church, and any improvements thereon, whether real or personal, corporeal or incorporeal, movable or immovable, is held without any trust in favor a national denomination or

any of its regional administrative units, such as the PSL; (b) that all property held by or titled in the name of the local church corporation is held by it in full and exclusive ownership; and (c) that neither the PCUSA nor the PSL has any right, title or interest in said property, nor right to determine the ownership thereof.

59.

There is a substantial likelihood that Woodland Presbyterian Church will prevail on the merits of its suit for declaratory judgment.

WHEREFORE, Petitioner, Woodland Presbyterian Church, prays that a temporary restraining order and preliminary injunction be issued herein and a declaratory judgment be issued herein 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 (a) 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 any 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 (b) further restraining defendant The Presbytery of South Louisiana 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, initiating any disciplinary action against the ministers or members of Woodland, appointing an administrative commission, or otherwise interfering in any way with the rights and responsibilities of the ministers or other employees of Woodland, the governing body of Woodland (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;
- 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 without trust for the use and benefit of the PCUSA or other national denomination, or any of its regional administrative units such as the Presbytery of South Louisiana, 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 Presbytery of South Louisiana has any right, title or interest in said property nor right to determine the ownership thereof;
- 4) that defendant be served with a copy of the above and foregoing petition and order;
- 5) that defendant be cited to answer said petition and to appear before this Honorable Court at a date and time fixed by this Court to show cause why a preliminary

injunction should not issue as prayed for and, after all due proceedings had, a declaratory judgment issue as prayed for in favor of petitioner;

- 6) for all general and equitable relief, and;
- 7) for all costs of these proceedings.

Respectfully submitted,

TAYLOR, PORTER, BROOKS & PHILLIPS, L.L.P.
Lloyd J. Lunceford (#8439)
Brett P. Furr (#17572)
Eugene R. Groves (#6358)
Preston J. Castille, Jr. (#23448)
P.O. Box 2471
Baton Rouge, LA 70821
Telephone: (225) 387-3221
Facsimile: (225) 346-8049
ATTORNEYS FOR WOODLAND PRESBYTERIAN
CHURCH

PLEASE SERVE:

THE PRESBYTERY OF SOUTH LOUISIANA

Through its agent for service of process:

William H. Bottomly, III
4800 Zenith St., Apt. 234
Metairie, LA 70001

VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the Parish aforesaid, personally appeared:

DICK PINER

who, being first duly sworn, did depose and say that he is secretary of the Board of Trustees for Woodland Presbyterian Church, a Louisiana corporation and the petitioner herein, that he has read the above and foregoing Petition for a Temporary Restraining Order, Preliminary Injunction and Declaratory Judgment and is familiar with the facts alleged therein, and that all information contained in the aforesaid petition is true and correct to the best of his knowledge, information and belief.

DICK PINER

SWORN TO AND SUBSCRIBED, before me, on this _____ day of _____, 2007 in Baton Rouge, Louisiana.

NOTARY PUBLIC

_____, Bar Roll Number: _____
Commission expires: _____