

*Noted
to Paul*

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011-CA-0205

CARROLLTON PRESBYTERIAN CHURCH

VERSUS

THE PRESBYTERY OF SOUTH LOUISIANA OF
THE PRESBYTERIAN CHURCH (USA)

A CIVIL CASE

MOTION FOR RECONSIDERATION
OF DECISION NOT TO PUBLISH

Respectfully Submitted,

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Carrollton Presbyterian Church*

COURT OF APPEAL
1ST CIRCUIT
FILED

2011 SEP 22 PM 4: 02

CHRISTINE L. CROW
CLERK

MOTION FOR RECONSIDERATION
OF DECISION NOT TO PUBLISH

NOW INTO COURT, through undersigned counsel, comes Carrollton Presbyterian Church ("Carrollton") and respectfully requests this Court to reconsider its decision not to designate for publication its September 14, 2011, decision, for the following reasons:

1.

On September 14, 2011, this Court (JJ. Carter, Parro, and Higginbotham) rendered a fifteen (15) page formal opinion in this matter. In deciding to dispose of this case by formal opinion pursuant to Uniform Rule 2-16.1A this Court determined that its decision either established a new rule of law, altered or modified an existing rule, involved a legal issue of continuing public interest, explained existing law, applied an established rule of law to a factual situation significantly different from that in published opinions of the courts of this state, or constituted a significant and non-duplicative contribution to legal literature.

2.

Nevertheless, in issuing its September 14, 2011, decision, this Court captioned it "NOT DESIGNATED FOR PUBLICATION".

3.

La. Code Civ. P. art. 2168 (posting of unpublished opinions; citation), provides:

A. The unpublished opinions of the Supreme Court and the Courts of Appeal shall be posted by such courts on the Internet websites of such courts.

B. Opinions posted as required in this Article may be cited as authority and, if cited, shall be cited by use of the case name and number assigned by the posting court.

This Court has posted its September 14, 2011, decision on its Internet website. Therefore, the decision may be cited as having the same authority as if it had been designated for publication.

4.

This Motion for Reconsideration of this Court's decision not to publish its September 14, 2011, decision is timely filed within the fourteen (14) day period for the delay for rehearing, in accordance with Uniform Rule 2-16.3C and Uniform Rule 2-18.2(B).

5.

Undersigned counsel is the general editor of A GUIDE TO CHURCH PROPERTY LAW (Reformation Press, 2nd ed., 2010, 478 pp.) He has a broad knowledge of the reported case law in the United States on the subject of denominational trust claims over local church property. (Undersigned counsel has no financial motive in seeking publication, having waived all royalties).

6.

This Court's September 14, 2011, decision is not duplicative of prior, published opinions by the supreme court or the courts of appeal of this state. This Court's September 14, 2011, decision reached conclusions that were obvious and unavoidable when prior, relevant case law was applied (e.g., Jones v. Wolf, 443 U.S. 595 (1979) and Fluker Community Church v. Hitchens, 419 So.2d 445 (La. 1982)), but the decision's conclusions, that any purported trust over church property be subject to the form requirements set forth in the Louisiana Trust Code and that the application of PCUS 6-8 negated any express trust asserted at PCUSA G-8.0201, had not previously been expressly addressed in the published opinions of the courts of this state.

7.

The facts in this case are not novel or uncommon among certain denominations, notably the Presbyterian Church (USA) and The Episcopal Church (USA); There is no risk that bad facts will make bad law. The issues presented do not arise in churches that have a congregational form of government such as

Baptist churches (where ecclesiastical authority is not shared between the local church and district, regional, or national agencies), nor do they arise in denominations that have a strictly hierarchical form of government such as the Roman Catholic Church (where property is invariably titled in the name of the Catholic diocese instead of the local parish). There are, however, hundreds, if not thousands, of churches throughout the southern United States, that have an intermediate form of government (many here in Louisiana), in which the exception provision of PCUSA G-8.0701 was timely invoked and Section 6-8 of the PCUSA Book of Church Order was made effective to negate the assertion of a trust at PCUSA G-8.0201.

8.

Additionally, there are hundreds, if not thousands, of churches throughout both the northern and southern United States just like Carrollton Presbyterian Church (and scores, if not hundreds, of such churches here in Louisiana) in which church property deeds and local church articles of incorporation omit any trust language, use restrictions, or reversionary clauses, and where state trust law has not been followed, yet non-owner, religious denominations (mostly Presbyterian and Episcopalian) seek to impose an enforceable trust exclusively on the basis of the denomination amending its constitution to assert a trust.

9.

Lawyers for PCUSA presbyteries, for example, are currently asserting an enforceable trust based exclusively on a trust clause added to the denominational constitution in cases now pending in Georgia, Pennsylvania, Indiana, Missouri, Kansas—and here in Louisiana, in New Covenant Presbyterian Church, Inc. v. The Presbytery of South Louisiana of the Presbyterian Church (USA); 19th Judicial District Court, Suit Number 602832.

10.

Denominational lawyers throughout the United States often argue that any exercise of subject matter jurisdiction by civil courts to resolve church property disputes necessarily violates the free exercise of religion. This broad assertion has been uniformly rejected by the courts. However, the specific text of the injunction upheld by this Court's September 14, 2011, decision, though not unusual, has not been previously addressed. This Court's finding of "no unconstitutional breach" is thus a significant, non-duplicative contribution to this state's body of law and to the nation's body of law.

11.

This Court's September 14, 2011, decision is a timely, clear, and important exposition of the law. It involves legal issues of widespread and continuing legal and public interest. It is a significant, non-duplicate contribution to this state's body of law and to the nation's body of law. Denominational middle governing bodies (i.e., presbyteries, dioceses, and conferences), local churches, and their counsel in other, similar cases in Louisiana and elsewhere throughout the United States will benefit from this Court's guidance and analysis if counsel can readily access this Court's September 14, 2011, decision by customary research methods through publication in the official Reporter.

WHEREFORE, Carrollton requests and moves that this Court reconsider its decision not to designate for publication its September 14, 2011, decision, and to now decide to publish its decision.

Respectfully submitted,

TAYLOR, PORTER, BROOKS & PHILLIPS, L.L.P.

By: 

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Facsimile: (225) 346-8049

*Attorneys for Plaintiff/Appellee,
Carrollton Presbyterian Church*

ATTORNEY VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary, personally came and appeared

LLOYD J. LUNCEFORD,

who being duly sworn, did depose and say:

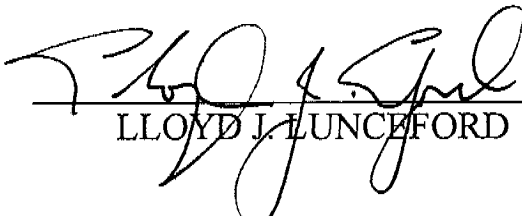
That he is counsel of record for Appellee/Plaintiff, Carrollton Presbyterian Church; that all of the allegations contained in the foregoing Motion for Reconsideration of Decision Not to Publish are true and correct to the best of his knowledge, information and belief.

That he has mailed a copy of the Motion for Reconsideration, both electronically and via U.S. Mail, postage prepaid, to the following on this date:

Mr. John Anthony Dunlap
Mr. Russell L. Foster
Carver, Darden, Koretzky, Tessier,
Finn, Blossman & Areaux, LLC
Energy Centre, Suite 3100
1100 Poydras Street
New Orleans, LA 70163

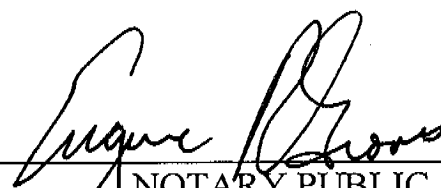
Mr. E. Wade Shows
Shows, Cali, Berthelot & Walsh,
LLP
P.O. Drawer 4425
Baton Rouge, LA 70821

Honorable Kay Bates, Judge
Nineteenth Judicial District Court
P. O. Box 1991
Baton Rouge, LA 70821-1991



LLOYD J. LUNCEFORD

SWORN TO AND SUBSCRIBED BEFORE ME, this 22nd day of
September, 2011.



NOTARY PUBLIC
Eugene R. Graves, Bar Roll Number: 6358
My commission is for life.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

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CARROLLTON PRESBYTERIAN CHURCH

VERSUS

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ORDER

Considering Carrollton Presbyterian Church's Motion for Reconsideration of Decision Not to Publish the September 14, 2011, formal Opinion,

IT IS HEREBY ORDERED that this Court now designates its September 14, 2011, Opinion in this matter for publication.

Baton Rouge, Louisiana, this _____ day of _____, 2011.

JUDGE, FIRST CIRCUIT COURT OF APPEAL

**STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT**

2011 CA 0205

CARROLLTON PRESBYTERIAN CHURCH

VS.

**THE PRESBYTERY OF SOUTH LOUISIANA
OF THE PRESBYTERIAN CHURCH (USA)**

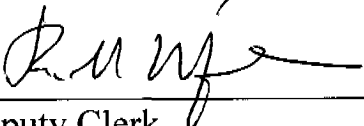
**19TH JUDICIAL DISTRICT COURT
EAST BATON ROUGE PARISH CASE NO. 565482**

ORDER

The September 22, 2011 for Reconsideration of Decision Not to Publish filed by Carrollton Presbyterian Church is **HEREBY GRANTED**. The September 14, 2011 decision rendered in this matter shall be designated for publication.

**BJC
RHP
TMH**

Issued this 27th day of September 2011.



Chief Deputy Clerk