

IN THE SUPREME COURT  
STATE OF GEORGIA

TIMBERRIDGE PRESBYTERIAN  
CHURCH, INC./TIMBERRIDGE  
PRESBYTERIAN CHURCH,

Appellant,

v.

PRESBYTERY OF GREATER  
ATLANTA, INC.,

Appellee.

SUPREME COURT DOCKET  
NOS. S09A1494, S09A1495

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AMICUS CURIAE BRIEF OF  
THE PRESBYTERIAN LAY COMMITTEE

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## THE IDENTITY AND INTERESTS OF THE AMICUS CURIAE

Established in 1965, the Presbyterian Lay Committee (PLC) is a non-profit corporation whose mission is to inform and equip Presbyterians regarding issues facing the denomination and to assist local congregations and members in their dealings with the regional and national entities within the Presbyterian Church (United States of America) (PCUSA). In doing so, the PLC supports the traditional balance between clergy and laity in Presbyterianism. The PLC publishes the *Layman*, a magazine that historically had a circulation of more than 250,000, and operates *The Layman Online*, an Internet resource that records approximately 30,000 hits daily. The PLC also owns and operates PLC Publications and Reformation Press, a publishing house specializing in resource material on Reformed Theology. The PLC regularly reports on judicial decisions concerning church property issues and publishes a legal guide regarding disaffiliation and property issues: "A Guide to Church Property Law: Theological, Constitutional and Practical Considerations." As an entity that helps equip lay leaders to maintain the integrity of the Presbyterian denomination, the PLC has a strong interest in this matter.

The PLC has been asked by local churches to advocate on their behalf, representing their interests in church property litigation where misrepresentations or misunderstandings may adversely affect local church property rights. Here, the

property rights of numerous PCUSA churches in Georgia will be adversely impacted if the lower court's misapplication of law and misinterpretation of polity is affirmed.

The PLC is further concerned that an oversimplification of church polity, in general, will affect the rights of churches far beyond the denomination involved in this property dispute. Consequently, the PLC advocates here on behalf of neutral principles of law fairly and equitably applied to all, regardless of denominational affiliation, and free from improper entanglement in accord with the Constitutions of the United States and Georgia.

The PLC is vitally interested in the balance that has traditionally existed in Presbyterian denominations between local congregations and the structures by which Presbyterianism has historically been organized. Legal title to local Presbyterian church property is almost always held by the local church and in the name of the local church alone. Throughout most of its history in the United States, Presbyterianism has been marked by the multiplicity of regional and national organizations that have come and gone, and among which local congregations have chosen to affiliate entirely based upon the dictates of the conscience of the congregants.

The Presbyterian Lay Committee therefore respectfully submits this brief as *Amicus Curiae*.

## ARGUMENT<sup>1</sup>

The significance of this case goes beyond the ownership of the Timberridge Presbyterian Church property. Georgia has long been a "neutral principles of law" state in church property dispute resolution. Therefore, to decide who owns the property here, this Court should apply the rules that would govern any other case involving a challenge to a titleholder's ownership by another party claiming that the property is held in trust for the challenger's benefit.

The general law of trusts could not be clearer. A trust must arise from an action by the settlor expressing clear and unambiguous intent to create a trust for another. See O.C.G.A. § 53-12-20; Restatement (Third) of Trusts, § 2 (2003); Black's Law Dictionary, 1508 (6<sup>th</sup> ed. 1990)<sup>2</sup> The South Carolina Supreme Court said as recently as September 18, 2009, "It is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of

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<sup>1</sup> To eliminate redundancy between this brief and the brief submitted by the Appellant, this brief dispenses with a recitation of the facts, which are addressed in Appellant's brief.

<sup>2</sup> No principle of trust law states that a trust can be created by the declaration of a non-owner that the owner holds the property as trustee for the non-owner.

another". All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina, No. 26724 (S.C. Sup. Ct. September 18, 2009).<sup>3</sup>

Here, the title is clear. Ownership vested in Timberridge Presbyterian Church's name. There is no encumbrance and no trust language in the deed. Moreover, Timberridge expressly disavowed any claimed PCUSA trust by exercising its right to vote and opt out of any such trust shortly after the southern and northern denominations merged to form the PCUSA in 1983. The trial court's decision disregards that vote and would arguably invalidate such votes for all southern Presbyterian churches in Georgia.

Therefore, this Court would have to retreat from the neutral principles of law that it previously embraced to affirm the trial court. Indeed, the Presbytery of Greater Atlanta (PGA), the regional representative of the PCUSA, would have this Court interpret and apply the "mode of church government" language in O.C.G.A. § 14-5-46 in a manner that *defers* to the PGA's version of ecclesiastical polity, and in a manner that disregards deed language, local charters, the text of the denominational governing documents scrutinized in secular fashion and other indicators of mutual intent, which a neutral principles analysis and the Georgia statute (properly construed) require.

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<sup>3</sup> See also California-Nevada Annual Conference of United Methodist Church v. St. Luke's United Methodist Church 121 Cal. App. 4th 754, 769 (2004) [St. Luke's] [citing Probate Code § 15200(a) and Restatement (Second) Trusts § 17 (1959)].

**I. THE TRIAL COURT DID NOT FOLLOW CONSTITUTIONAL REQUIREMENTS OR NEUTRAL PRINCIPLES OF LAW IN ITS CONSTRUCTION AND APPLICATION OF O.C.G.A. § 14-5-46.**

Courts have used three general approaches to resolve church property disputes. The first two approaches have the court defer (either *de jure* or *de facto* deference) to an entity asserting hierarchical control over the other entity to resolve the dispute. In the third approach, a court follows the same legal principles that apply to all other property claimants to determine the mutual intentions of the parties. This approach—the neutral principles of law method—has been adopted by this Court. Presbyterian Church in the U.S. v. Eastern Heights Presbyterian Church in the U.S., 225 Ga. 259, 167 S.E.2d 658 (1969). The trial court, however, effectively disregarded that method and *de facto* deferred to the PGA by interpreting O.C.G.A. § 14-5-46 to give determining weight to the "mode of church government" of the PCUSA, and then deferring to the PCUSA's unilateral declaration of a trust that it added to the denomination's governing documents without the consent of the recorded title holder. Such deference to an assertion of hierarchy by one religious entity - an interested party to the litigation - claiming to be superior to another, is unconstitutional for the reasons explained herein.<sup>4</sup>

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<sup>4</sup> Contrary to the PGA's suggestion, the weight of authority clearly favors the application of neutral principles, and outcomes under that method are not determined by the mere existence of an asserted trust in denominational constitutions. Instead, outcomes are fact-specific and most often based on specific language in deeds or articles of incorporation that reflect local consent. For a more

**A. The Law And Practical Experience Require Civil Courts To Use Neutral Principles To Decide Property Disputes Between Religious Organizations.**

Forty years ago, the United States Supreme Court held that the Establishment Clause permitted state courts to apply "neutral principles" to resolve property disputes between religious organizations. See Presbyterian Church in the United States v. Hull Mem'l Presbyterian Church, 393 U.S. 440, 449 (1969); see also Jones v. Wolf, 443 U.S. 595, 602-604 (1979). The Supreme Court has held that when religious organizations invoke the power of a civil court to decide the secular question of property title, the court may subject religious organizations to the same legal rules that apply to everyone else even if doctrinal authorities might decide the matter differently. See Jones, 443 U.S. at 604 ("State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute.").

Moreover, the U.S. Supreme Court has disapproved of both judicial entanglement in religious affairs and judicial (or legislative) principles that provide an advantage to some, but not other forms of religion or religious organization. Jones, 443 U.S. at 603 (finding that the neutral-principles approach is "flexible

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accurate state-by-state analysis of church property cases, see the table included as an Appendix to Jeffrey B. Hassler *A Multitude of Sins? Constitutional Standards for Legal Resolution of Church Property Disputes in a Time of Escalating Intrad denominational Strife*, 35 Pepp. L. Rev. 399 (2008)).

enough to accommodate all forms of religious organizations..." and it "promises to free civil courts completely from entanglement in questions of religious doctrine.")

For example, the U.S. Supreme Court has held that the government may not delegate decision-making authority on temporal, civil matters to religious institutions. In Larkin v. Grendel's Den, 459 U.S. 116 (1982), the Court rejected a state law that gave churches a veto over neighboring applications for liquor licenses because the law "vest[ed] discretionary governmental powers in religious bodies." Id. at 123. However, that is exactly what the PGA seeks when it urges this Court to affirm the trial court's construction of the "mode of government" language in O.C.G.A. § 14-5-46, which delegated to a purportedly hierarchical church—and no other religious organizations—the inherently governmental power to decide property ownership. Federal and state religious guarantees do not permit courts to supplant civil rules of decision in property cases by delegating authority to an ecclesiastical decision-maker, whether by direct delegation or, as in this case, by indirect delegation that results from misconstruing O.C.G.A. § 14-5-46.

**B. The Trial Court's Threshold Judicial Classification of a "Mode of Church Government" As Hierarchical or Congregational Impermissibly Entangled that Court in Religion.**

Allowing courts to determine whether a denomination's "mode of church government" is sufficiently hierarchical to warrant judicial deference would entangle those courts in questions of religious doctrine. Perhaps a rule of

deference might be more nearly permissible under state and federal religious guarantees if religious organizations consisted only of obvious and complete hierarchies on the one hand and local congregations unaffiliated with any larger religious organization on the other. However, realistically there are far more than the two types of structures for religious organizations, "hierarchical" or "congregational," than originally noted in the U.S. Supreme Court's decision in Watson v. Jones, 80 U.S. (13 Wall.) 679 (1871).

Watson reflects the varieties and ambiguities in differing church polities, but unfortunately too many courts have interpreted the opinion to require a rigid "either/or" determination that a church is either "congregational" or "hierarchical". Although there is little to dispute Watson's holding that the Presbyterian General Assembly should properly determine which of two factions in a congregation was in fact the "true" denominational faction, which was at issue in Watson, there is far less support for the notion that the Presbyterian Church is (or ever was) a hierarchy whose adjudicatory bodies had plenary power over the property of every local congregation.<sup>5</sup> Moreover, Watson itself acknowledged that regardless of the form

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<sup>5</sup> For example, the Presbyterian polity has several spheres of organization beyond the local congregation. "Presbyteries" are gatherings of commissioners from individual churches that conduct business matters as defined by the denomination's constitution, or "Book of Order." Presbyteries in turn send commissioners both to a wider synod-level body and to the General Assembly. Commissioners are not required to vote in accordance with the wishes or intentions of their sending bodies. They are entitled to vote their individual consciences, and they are not

of church government, it would be the "obvious duty" of a civil tribunal to enforce the "express terms" of a deed, will or other instrument of church property ownership". See Jones, 443 U.S. at 603 n. 3 (quoting Watson, 80 U.S. (13 Wall.) at 722, 23).

Civil court determination of the actual form of ecclesiastical polity is fraught with problems. When there is any dispute over whether a church is hierarchical or the extent of hierarchical power, "the resolution of these questions may require a court to intrude impermissibly into religious doctrinal issues." Maktab Tarighe Oveyssi Shat Maghsoudi, Inc. v. Kianfar 179 F.3d 1244, 1248 (9th Cir. 1999) (addressing Sufi denominations.) When civil courts attempt to resolve the validity of an assertion of hierarchical polity or to interpret the general church's "mode of church government" by deferring to its claim of a trust in its own favor, government embroilment in controversies over religious doctrine is pronounced. See Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 20 (1989) Brennan, J. plurality op., citing Jones, 443 U.S. 595 (1979).

The U.S. Supreme Court recognized this problem of entanglement in Jones. The Court observed that "a rule of compulsory deference to religious authority" would "always" require "civil courts \* \* \* to determine which unit of government

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required to disclose their vote to the body that sent them, so that the system is more connectional than representational. (Book of Order § G-4.0301).

has ultimate control over church property." Jones, 443 U.S. at 605. This necessarily entangles civil courts in religion.

The problem of judicial entanglement in religion is evident in this case where, contrary to the PGA's assertion that the PCUSA is hierarchical, the Presbyterian Church has a long record of disclaiming hierarchical control. The legal manual of the PCUSA specifically states that its "polity is presbyterial—as distinguished from hierarchical." (PCUSA, LEGAL RESOURCE MANUAL 2004-2007 (2d ed. 2005) *Basic Organization of the Presbyterian Church* [available at <http://www.pcusa.org/legal/basic.htm>].) The recent moderator of the PGA, Joan Gray (who also is the immediate past national moderator of the PCUSA), has likewise written that "there is no hierarchy of Presbyters in the Presbyterian Church. . . . Rather, all Presbyters stand in the same footing." Joan S. Gray & Joyce C. Tucker, Presbyterian Polity for Church Officers (3d ed. 1999).

The Permanent Judicial Commission of the General Assembly—the highest ecclesiastical adjudicative body in the PCUSA—cautioned that "a higher governing body's 'right of review and control over a lower one' must not be understood in hierarchical terms, but in light of the shared responsibility and power at the heart of the Presbyterian Order." Johnston v. Heartland Presbytery (2004) Permanent Judicial Comm'n Remedial Case 2 17—2, p.7 (quoting Book of Order section G—4.0302).

In other words, the courts in Watson and other cases that have viewed the existence of the General Assembly, synods and presbyteries as indications of hierarchical control have misstepped in their interpretations of Presbyterian ecclesiastical law. That the civil law of property could be distorted by civil courts' confusion over church polity, demonstrates the folly of trial courts though voicing assent to neutral principles of law, deciding church property cases on the much-disputed theological point of whether a church government is hierarchical or congregational. Indeed, that is the very question of ecclesiastical polity, which the U.S. Supreme Court, in Jones, said, is "obviated" by the neutral principles of law method. Jones, 443 U.S. at 603-605.<sup>o</sup>

**C. Judicial Deference to the PCUSA'S Purported "Mode of Church Government" Unconstitutionally Favors Certain Forms of Religious Belief and Structure.**

There is another reason that neutral property law principles should be strictly applied to church property disputes instead of according determinative weight to a

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<sup>o</sup> The error is understandable. Seeking litigation advantage, the national organization of the PCUSA has contended that the Presbyterian Church is somehow thoroughly hierarchical. Governing bodies larger than the individual congregation do of course exist in Presbyterian denominations. The issue is how broadly the powers of the presbyteries, the synods, and the General Assembly reach into local, temporal affairs. Those bodies may determine matters of general religious doctrine, at least insofar as those matters may be represented as the doctrine of the PCUSA. But there is substantial dispute whether any higher body has the power to compel a congregation (or presbytery) to disregard the collective conscience of its members or face the confiscation of its place of assembly and other property.

church's perceived "mode of church government." Any form of judicial deference to a religious organization's assertion of hierarchical power in a property dispute would unconstitutionally favor religious organizations with multiple tiers. Within those groups, a rule of deference would favor the most central or national bodies asserting hierarchical control. Judicial deference to an assertion of hierarchy by one religious body over another has one certain result: "in every case, regardless of the facts, compulsory deference would result in the triumph of the hierarchical organization." Bjorkman v. Protestant Episcopal Church in U.S. of Diocese of Lexington 759 S.W.2d 583, 586 (Ky. 1988). That in large part is why the Kentucky Supreme Court in Bjorkman embraced a neutral- principles analysis rather than a rule of deference.<sup>7</sup>

Moreover, the Constitution forbids both a rule that favors one side of a dispute and a rule that favors one form of religious organization. Thus, the U.S. Supreme Court has held that preferences for particular forms of religious observance are impermissible when they impose too great a burden on third parties. See Estate of Thornton v. Caldor, 472 U.S. 703 (1985). In Caldor, the

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<sup>7</sup> The alternative to a deeply entangling resolution of intertwined questions of doctrine and polity would be to accept assertions of hierarchical religious control of church property at face value. That would be equally unconstitutional because "the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." Jones, 443 U.S. at 602.

statute at issue produced an "unyielding weighting in favor of Sabbath observers"—who were given an absolute right not to work on their particular Sabbath—"over all other interests," including those of employers and non-sabbatarian employees. *Id.* at 710; see also Cutter v. Wilkinson, 544 U.S. 709, 722 (2005).

Here, an "unyielding weighting" in favor of the interests of an asserted religious hierarchy would trump local congregations' property rights regardless of the facts of any particular case or however inequitable the result might be. That "weighting" also would unduly favor those denominational factions that assert a hierarchical form and claim hierarchical power over local congregations. As the New York Court of Appeals has observed, "[b]y supporting the hierarchical polity over other forms and permitting local churches to lose control over their property, the deference rule may indeed constitute a judicial establishment of religion." First Presbyterian Church of Schenectady v. United Presbyterian Church in the U.S., 464 N.E.2d 454, 460 (N.Y. 1984).

**D. The Establishment Clause Requires The Use Of Strictly Neutral Principles That Provide No Procedural Or Evidentiary Preferences To Religious Organizations Or Asserted Hierarchies Within Them.**

Justice Brennan's concurring opinion in Maryland & Virginia Eldership of the Churches of God v. Sharpsburg Church of God, Inc., 396 U.S. 367 (1970) (adopted by the majority in Jones) explained how courts can resolve church

property disputes without any involvement in matters of doctrine: "Under the 'formal title' doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws." Id. at 370 (Brennan, J., concurring). That strictly neutral reliance on formal title, corporate structure, and explicit agreement by the title-holder of the type chargeable to any other property holder is in fact the only method of determining property disputes that is consistent with contemporary Establishment Clause jurisprudence.

Denominational governing documents are also to be examined, but are to be "scrutinized in purely secular terms". Jones, 443 U.S. at 604. As stated in that opinion, "the neutral principles of law method, properly understood and applied, looks to the mutual intention of the parties as ascertained by "well-established concepts of trust and property law", and "thereby promises to free civil courts completely from entanglement in questions of "religious ... polity". Id. at 603. The neutral principles approach ... "obviates entirely the need for an analysis or examination of ecclesiastical polity ..." Id. at 605.

Misreading other passages in Jones, however, the PGA contends that a denomination may unilaterally assert a trust for its own benefit over property titled in the name of a local church organization, simply by declaring the trust in the general church canons or constitution. That contention snatches a twig from the Jones opinion without regard for the surrounding forest. The whole point of the

neutral-principles analysis is that "the outcome of a church property dispute is not foreordained." *Id.* at 606. Rather than depending on the preference of a purported religious hierarchy, i.e. the "mode of church government", a property dispute would turn on the express intentions of the property owner as well as the body claiming spiritual supremacy. Indeed, in the relevant passages, Jones extolled a secular, neutral-principles approach for its "flexibility in ordering private rights and obligations to reflect the *intentions of the parties*"—not just the preferences of an assertive hierarchy. *Id.* at 603 (emphasis added).

In answering the dissenting opinion's concern that application of neutral legal rules could violate the Free Exercise Clause (a contention since squarely rejected in Employment Division v. Smith, 494 U.S. 872, 878-882 (1990)) the Court in Jones explored ways in which "the *parties* can ensure, if *they* so desire, that the faction loyal to the hierarchical church will retain the church property." Jones, 443 U.S. at 606 (emphasis added). The Court explained that the parties "can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church." *Id.* The Court suggested, as a possible alternative, that "the constitution of the general church can be made to recite an express trust in favor of the denominational church." *Id.* Most importantly, in keeping with its emphasis on a rule of decision that relies on "objective, well-established concepts of trust and property law familiar to lawyers and judges," the Court made clear that

any "recitation of trust" would have to be "*embodied in some legally cognizable form.*" *Id.* at 606 (emphasis added). The Court did not suggest that such a recitation, made unilaterally by the purported beneficiary, could have legal effect irrespective of the operation of neutral principles of state law in contravention of the intent of the property owner. A statement by a purported beneficiary unilaterally asserting a trust in its own favor over the property of another legal owner is not "legally cognizable" under the principles applicable to other parties—certainly not in Georgia.<sup>8</sup>

**E. O.C.G.A. § 14-5-46 Should Be Construed In Accord with Generally Applicable Principles of Trust Law.**

O.C.G.A. § 14-5-46 should not be misconstrued to abrogate basic principles of property or trust law. There is no support for the notion that O.C.G.A. § 14-5-46 authorizes a church "hierarchy" to create a trust interest for itself in property owned by a local church, simply by saying so. Even if labeled a church canon or constitution, a document created by an allegedly hierarchical body remains a creation of the beneficiary rather than a written expression of unambiguous intent by the trustor. That type of document would not suffice to create a trust under the

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<sup>8</sup> By now, any religious organization that actually intends to hold its property in trust for some governing body has had nearly three decades to impress that property with an express trust. A denomination that actually had the power to control its affiliated congregations' property would have no difficulty instructing them to take that step. That a particular local congregation has not done so indicates that an asserted hierarchy does not have the power that it claims in litigation. See also supra note 3.

law applied to other property holders and claimants.

Construing O.C.G.A. § 14-5-46 as in accord with normal property law and trust principles avoids serious federal constitutional questions. The Establishment Clause explicitly limits legislative authority: "Congress shall make no law respecting an establishment of religion \* \* \* ." (U.S. Const. amend I.) Accordingly, a state legislature has no more power than a court to dictate an unconstitutional process for deciding property disputes between religious organizations.<sup>9</sup> To recognize a religion-specific exception to general law, and allow a purportedly hierarchical denomination to determine property ownership by fiat, would have impermissible effects.

First, *if* the "mode of church government" language of O.C.G.A. § 14-5-46 was construed to allow national denominations to expropriate local congregational property without any affirmative conveyance by the congregation (by deferring to a claimed hierarchical status), the statute would give special property rights to so-called hierarchical churches because of both their religious nature and their choice of a hierarchical structure. Under that construction, O.C.G.A. § 14-5-46 also would unduly and improperly favor hierarchical organizations against other religious groups, and those within a denomination that assert hierarchical control over those that resist it. A preference of either type would violate both federal religious

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<sup>9</sup> Cantwell v. Connecticut, 310 U.S. 396 (1940); Everson v. Bd. of Educ., 330 U.S. 1 (1947).

guarantees and those set forth at Ga. Const. art. I, paras. III and IV.<sup>10</sup> As the U.S. Supreme Court said in a landmark decision:

**The "establishment of religion" clause ... means at least this: Neither a state nor the Federal Government ... can pass laws, which aid one religion, aid all religions, or prefer one religion over another.**

Everson v. Bd. of Educ., 330 U.S. 1, 15 (1947) (emphasis added).

Second, any statute like O.C.G.A. § 14-5-46 would have to "be administered neutrally among different faiths." Cutter, 544 U.S. at 720, citing Board of Ed. of Kiryas Joel Village Sch. Dist. v. Grumet, 512 U.S. 687 (1994). That would be impossible under the interpretation of the statute urged by the PGA and adopted by the trial court. The statute would discriminate within the category of religious institutions, treating those that are members of general churches or religious bodies worse than those who are not members of such churches. That would unlawfully "differentiate among bona fide faiths," Cutter, 544 U.S. at 723, much as the statute invalidated in Larson v. Valente, 456 U.S. 228 (1982).

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<sup>10</sup> By enlisting the power of the state in favor of any assertion of hierarchical property rights, O.C.G.A. § 14-5-46, if interpreted the PGA's way, would "impermissibly advance a particular religious practice" and therefore would be invalid. Estate of Thornton, 472 U.S. at 710. Just as a "statutory preference for the dissemination of religious ideas offends our most basic understanding of what the Establishment Clause is all about" Texas Monthly v. Bullock, 489 U.S. 1, 28 (1989) (Blackmun, J., concurring), a "statutory preference" for centralized religious organizations, or organizations that aspire to central control, is "constitutionally intolerable." Id.

A local congregation has no realistic ability to express the religious conscience of its members if, by doing so, it stands to lose the sanctuary and other property it has acquired. Allowing some religious bodies to use civil law to give themselves this kind of power over other groups would violate the free exercise and establishment protections of the United States and Georgia Constitutions. (See U.S. Const., amend. I; Ga. Const., art. I, paras. III, IV). The trial court's interpretation and application of O.C.G.A. § 14-5-46 not only departs from the prior decisions of this Court but also places at risk fundamental freedoms:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

Board of Education v. Barnett, 319 U.S. 624, 642 (1943).

O.C.G.A. § 14-5-46 can alternatively and rightly be interpreted to avoid all these constitutional problems by construing its "mode of church government" language to simply require scrutiny of the denomination's governing documents as one factor among several in a neutral principles analysis, but "scrutinized in purely secular terms" and "obviating entirely the need for an analysis or examination of ecclesiastical polity". Jones, 443 U.S. at 603-605 (emphasis added). Mere affiliation with a denomination, without more, should not risk automatic forfeiture of property rights as a consequence of unilateral assertions of a trust by ecclesiastical hierarchies (or claimed hierarchies) and subsequent judicial

deference to an asserted "mode of church government". Georgia statutes should not be ignored (O.C.G.A. § 53-12-20) or misconstrued (O.C.G.A. § 14-5-46) to accomplish that result.

The cases cited by the PGA do not lead to a different result. PGA's brief relies principally on two cases, the recent decision from the Georgia Court of Appeals in Sirmans v. Board of Trustees of the South Georgia Annual Conference of the United Methodist Church, Inc., 295 Ga. App. 378, 672 S.E.2d 423 (2008) cert denied, April 20, 2009, and Crumbley v. Soloman, 243 Ga. 343, 254 S.E.2d 330 (1979). Sirmans and Crumbley are distinguishable from this case and should be viewed in light of this Court's seminal decision in Presbyterian Church in the U.S. v. Eastern Heights Presbyterian Church in the U.S., 225 Ga. 259, 167 S.E.2d 658 (1969).

On initial hearing in Eastern Heights this Court ruled that under then-existing Georgia law, churches with a "connective" form of government carried with them an implied trust on local church property for the benefit of the general church (i.e., denomination), but *conditioned* on the general church adhering to its tenets of faith and practice as they existed at the time the local church initially affiliated. On review the United States Supreme Court reversed, stating that "the departure-from-doctrine element of Georgia's implied trust theory can play no role in any future judicial proceedings." Hull Mem'l Presbyterian Church, 393 U.S. at

450. The U.S. Supreme Court then remanded the case back to this Court for further proceedings.

On remand, this Court held that the entire theory of an implied trust must fall. "Since Georgia chose to adopt the implied trust theory with this element (adherence to original doctrine) as a condition, this court must assume that it would not have adopted the theory without this mode of protecting the local churches." Eastern Heights, 225 Ga. at 260, 167 S.E.2d at 659 (parenthesis and emphasis added). This Court continued:

**There was no other basis for a trust in favor of the general church, none being created by the deeds on the property, implied under the statutes of this State ... or required by the constitution of the general church. It will be remembered that the general church put no funds into this property.<sup>11</sup>**

Id. at 260, 167 S.E.2d at 659 (emphasis added).

Therefore to resolve the case this Court was "brought to a determination of where the legal title lies ..." Id. In examining the deeds the court noted that the grantees in the various deeds listed the local church or the local church corporation only, and made no mention of the specific denomination, the PCUS. In a *unanimous* opinion, this Court concluded that legal title to the property lay with the respective local churches free of any trust. Id. at 261.

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<sup>11</sup> The Record in this case indicates that, as in Eastern Heights, the general church put no funds into the Timberridge property.

O.C.G.A. § 14-5-46 (or its predecessor) was no impediment to this Court in Eastern Heights declaring that the local church held its property unfettered by any third party denominational trust claims — even though the "mode of church government" of the PCUS at the time was no more or no less hierarchical than its legal successor, the PCUSA.

The appellate decision in Sirmans on which the PGA now heavily relies is inapposite. That decision must be viewed in the context of the litigants in that dispute. In Sirmans, the United Methodist Church ("UMC") was seeking a declaratory judgment to determine the rights of the UMC and several of the local church's congregants (the Sirmans), neither of whom were the owners of the property. Sirmans, 295 Ga. App. at 379-80, 672 S.E.2d at 425. As between the UMC and the Sirmans, the Court found that the Sirmans could not take the benefits of being members of the denomination yet assert a superior right to use of the property over the denomination. Id. The Court specifically noted that disposition of the case would not impact the property owners' ability to assert rights to the property. Id.<sup>12</sup>

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<sup>12</sup> In Watson, 80 U.S. (13 Wall. at 703), the Court said that prior to 1813 there was no common or definite rule about how to resolve church property disputes. The matter was resolved in 1813, in Craigdallie v. Aikman, 2 Bligh, 529; 1 Dow. 1. As Watson noted, the Craigdallie court *rejected* the assertion that an implied trust existed necessarily in favor of a predetermined, specified beneficiary, whether the local congregational majority or the denomination (the general body). Rather, Craigdallie held that the only implied trust that existed was one which ran

Crumbley is also readily distinguishable from this case. In Crumbley, the deeds to the property expressly identified the grantee as "Franklin Tabernacle of the Holiness Baptist Church." Crumbley, 243 Ga. at 347, 254 S.E.2d at 331. That language created an ambiguity because the local church was Franklin Tabernacle and the denomination was the Holiness Baptist Association. Id. The Court ruled that it could not enforce the grantor's intent because it was uncertain given the reference to both the local church and the denomination. Id. By contrast, the deeds to the local Timberridge property end with the designation "Timberridge Presbyterian Church" or "Timberridge Presbyterian Church, Inc." They do not identify the grantee as a member of a specific Presbyterian denomination. Thus, the intent of the grantor here is obvious, unlike the case in Crumbley.

## **II. THE NEUTRAL PRINCIPLES OF LAW CORRECTLY APPLIED.**

Although this Court has previously adopted the neutral principles of law test for use by lower courts in Georgia, the trial court did *not* apply that test when it essentially ignored the deeds (which contain no trust language), state trust law, articles of incorporation and the vote by Timberridge to use the exception of G-8.0701 of the PCUSA Book of Order to fall back on the 1982/83 edition of the

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in favor of "that part of the society adhering to and maintaining the original principles upon which it was founded." Watson, 80 U.S. at 705. Watson went on to note that Craigdallie's rejection of an implied trust that ran necessarily in favor of the national denomination or the local congregational majority had subsequently "been accepted in all cases of this nature in England, Scotland and America." Id.

PCUS Book of Church Order. Instead, the trial court misinterpreted O.C.G.A. § 14-5-46 to give determining weight to the PCUSA's alleged "mode of church government," the claimed hierarchical form of ecclesiastical polity. In doing so, the trial court erroneously entangled itself in this disputed question of the PCUSA's form of religious polity and ignored the deed language and other indicators of mutual intent, including the text of the denominational constitutions "scrutinized in purely secular terms". Jones, 443 U.S. at 604.

The PCUSA Book of Order contains a unilateral assertion of a trust over property not owned by the PCUSA (the purported settler). This was made after Jones held that a church being "connectional" is not sufficient grounds to establish a trust. However, the issue with the unilateral assertion by the PCUSA is moot because Timberridge opted out of the PCUSA's purported trust provision by invoking the exemption provision of G-8.0701. The operative language of G-8.0701 states:

"... any church which was not subject to a similar provision of the Constitution of the church of which it was a part, prior to the reunion ... shall be excused from that provision of this chapter if the congregation ... vote[s] to be exempt from such provision in a regularly called meeting and shall thereafter notify the presbytery of which it is a constituent church of such vote. **The particular church voting to be so exempt 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 (U.S.A.).**"

There is no dispute that Timberridge exercised its right to opt out of the property provisions of the new Book of Order, electing to rely upon the old form. Therefore the pertinent question is whether the former PCUS Book of Order created a legal trust interest over Timberridge's property. The trial court erred when it presumed for purposes of its decision that such a trust had been created.

The former PCUS constitution also cannot circumvent Georgia state law. Thus, to the extent that a provision in a book of order seeks to alter property rights, it must do so in compliance with Georgia laws on property rights.

O.C.G.A. § 14-5-46 is a deed validation statute. It applies to the interpretation of deeds, and does not *ipso facto* validate claims of trust or place denominational claims of trust beyond the scrutiny of the courts or exempt such claims from the legal elements required for a trust. See O.C.G.A. § 14-5-46. Thus, to determine if a trust exists, it is logical to look to trust law. Therefore, the validity of any assertion of trust found in the old PCUS book of order must still be examined for legal sufficiency under trust law.

The purported trust language in the PCUS Book of Church Order is also a post-Jones v Wolf unilateral assertion of trust over property not owned by the settlor (i.e. the PCUS). In accordance with the U.S. Supreme Court in Jones, the language utilized to show the intent of the parties to create a trust still must be in some legally cognizable form. §6-3 of the PCUS Book of Order fails to satisfy

O.C.G.A. § 53-12-20, and therefore suffers from the same legal infirmities as G-8.0701. Timberridge explains this in detail at pages 26-33 of its brief; PLC will not repeat those arguments herein.

Imposition of a trust where there is no written signed trust document and the property owner expressly voted to opt out of a trust is certainly contrary to the intended constitutional effect of Jones v. Wolf, and hardly sufficient to justify a trust under Georgia law. Thus, by giving undue weight to the words "form of government" in O.C.G.A § 14-5-46, the trial court unwittingly reintroduced a form of denominational deference to Georgia jurisprudence that has otherwise long been abandoned, and directly contradicts the civil law requirements for trust creation applicable to all citizens, corporations, and organizations in Georgia, and directly contradicts the intent expressed by Georgia PCUS churches when they opted out of a trust provision as part of the merger process.

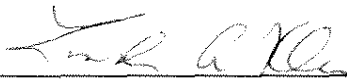
Accepting the trial court's approach would effectively set aside the express voted-upon intent of scores of former PCUS churches in Georgia which elected to rely upon the traditional Presbyterian polity with which they were familiar and comfortable, and which did not subject their property to a trust favoring an outside

entity.<sup>13</sup> The trial court's order should be reversed to prevent that result from occurring and frustrating the intention of such property owners.

### CONCLUSION

The trial court deviated from the neutral principles of law test and erroneously gave deference to the PCUSA's governing documents. PLC urges this Court to reverse the trial court and reaffirm that the neutral principles of law test remains the law in Georgia.

Respectfully submitted this 15<sup>th</sup> day of October, 2009.



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<sup>13</sup> It should also be noted that traditionally, the southern branch PCUS church did not have a trust clause. The subject section, § 6-3, was added in the final assembly of the PCUS, on the cusp of the merger.

**CERTIFICATE OF SERVICE**

A copy of the foregoing was sent by ordinary U.S. Mail, postage prepaid,  
this 15<sup>th</sup> day of October, 2009 to:

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