

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CARROLLTON PRESBYTERIAN CHURCH NO:

VERSUS

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

**PETITION FOR DECLARATORY
JUDGMENT**

SEC. 26
SECTION:

565482

NOW INTO COURT, through undersigned counsel, comes petitioner, Carrollton Presbyterian Church, a Louisiana nonprofit corporation, domiciled in the Parish of Orleans. Petitioner is a local ("particular") church corporation which seeks a declaratory judgment that all property titled in its name and held by or for it is owned and held by or for it without a trust or other enforceable property interest in favor of the defendant. Petitioner respectfully represents:

THE PARTIES

1.

Carrollton Presbyterian Church (or "CPC") is a Louisiana nonprofit corporation incorporated in 1979 and domiciled in Orleans Parish. CPC was first organized in 1855 and first incorporated in 1894, as Carrollton Presbyterian Church of New Orleans (CPCNO) (i.e., CPC is legal successor to CPCNO). CPCNO variously amended its articles of incorporation or reincorporated in 1898, 1916, 1926, 1975, and 1979.

2.

Madefendant is the Presbytery of South Louisiana of the Presbyterian Church (USA) ("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, VENUE, AND OVERVIEW

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.

5.

Plaintiff was first organized in 1855. The interruption of the Civil War and Reconstruction caused membership to wax and wane until the congregation was reorganized in 1884 and first incorporated ten years later, as "Carrollton Presbyterian Church of New Orleans", in 1894. The local church's articles of incorporation were variously revised or restated in 1898, 1916, 1926, 1975, and 1979. All articles and by-laws are collectively submitted herewith as En globo Exhibit P-1. The first church building was dedicated in 1896, at the corner of Burdette and Hampson Streets in the City of New Orleans. In the early 1920's CPCNO merged with the former Palmer Park Church, and plaintiff's present church sanctuary was built in 1922 at 2032 S. Carrollton Avenue (the corner of S. Carrollton Avenue and Panola Street, in New Orleans). The plaintiff later acquired additional property in the late 1960's and early 1970's, all as more fully described below.

**THE ARTICLES OF INCORPORATION
FOR CARROLLTON PRESBYTERIAN CHURCH**

6.

"Carrollton Presbyterian Church of New Orleans" was first incorporated on September 5, 1894.

A) Article II of the 1894 articles provides:

The purposes and objects of this corporation are and is to establish and maintain a place of public worship of God, according to the forms, usages and doctrines of the Presbyterian Church in the United States, as particularly set forth in the Westminster Assembly's Confession of Faith and Catechism, and the form of government as adopted by the General Assembly of the said Presbyterian Church held at Augusta, Georgia in December 1861, and to exercise all the rights, powers and immunities granted by law to a corporate body and requisite to the administration of the affairs of such a religious body corporate.

B) Article III of the 1894 articles provide in relevant part:

The management of the business of the corporation shall be and is hereby vested in a Board of Trustees whose number ... and they and their successor shall exercise the exclusive management of its civil affairs and control of its property. The members elected, as above provided, shall have all the rights, powers and privileges and be subject to all the laws of a

corporation formed for religious purposes under the laws of the State of Louisiana.

C) Article IV of the 1894 articles provide in relevant part:

All matters pertaining to said corporation in its civil capacity, such as building and repairing houses of worship or residences for pastor or people; collecting and disbursing the revenues; buying and selling property, whether movable or immovable; and all other financial and secular measures in which it is interested shall be under the control of the Board of Trustees and shall be determined by a majority of those who maybe present at any regular or duly called meeting of said Board. Provided that in the sale or purchase of immovable or in making contracts exceeding in amount five hundred dollars, (\$500.00) each member shall be notified ... before the appointed ... This proviso shall not apply when three-fourths of the Board are present at any meeting.

D) Article VI of the 1894 articles provide in relevant part:

It [The Board] may hold, buy and sell any movable or immovable property for the purposes of its organization; and do all other acts that such a body corporate may do.

7.

On January 3, 1898 the 1894 articles were amended to further specify property-related actions the Board of Trustees were authorized to perform, subject only to majority approval of the congregation.

A) Article IV of the 1898 articles reads in relevant part:

All matters pertaining to said corporation in its civil capacity, such as building and repairing houses of worship, or residences for pastor or people, collecting and disbursing the revenues, buying, selling, mortgaging, pledging or hypothecating property, real, personal or mixed, borrowing money, drawing notes, and granting security for same, and all other financial and secular measures in which this corporation is interested, shall be under the control of the Board of Trustees, and shall be determined by a majority of those who may be present at any regular or duly called meeting of said church. Provided: that in the sale or purchase of immovables or in making contracts exceeding in amount five hundred dollars (\$500) each member shall be notified ... This proviso shall not apply when three-fourths of the Board are present at any meeting.

B) Article VI of the 1898 articles reads in relevant part:

It [the Board] may hold, buy, sell, pledge, mortgage or hypothecate property, real, personal or mixed, borrow and loan money, accepting and granting security therefore; and do all other acts that such a body corporate may do.

8.

On December 4, 1916, the 1894 articles were further amended by revising Article III.

Revised Article III provides in relevant part:

The management of the business of this corporation shall be and is hereby vested in a Board of Trustees, consisting of nine members, a majority of whom shall constitute a quorum; and they and their successors shall manage its civil affairs, and control its property. They shall have all the rights, powers and privileges and be subject to all the laws of a corporation formed for religious purposes under the laws of the State of Louisiana.

9.

On December 26, 1926, the 1894 articles were amended in their entirety by restating and/or adopting ten new articles.

A) Article II of the 1926 articles provides:

The purpose and objects of this corporation is and are to establish and maintain a place of public worship of God, according to the forms, usages and doctrines of the Presbyterian Church of the United States, as particularly set forth in the Westminster Assembly's Confession of Faith and Catechisms, and the form of government adopted by the General Assembly of the said Presbyterian Church, held at Augusta, Georgia, in December 1861, and as revised in 1925, Including all amendments, and to exercise all the rights, power and immunities granted by law to a corporate body, and requisite to the administration of the affairs of such a religious body corporate.

B) Article III of the 1926 articles provides in relevant part:

The management of the business of this corporation shall be and is hereby vested in a Board of Deacons ... and they and their successors shall manage the civil affairs of this corporation and control its property, subject to the laws of the General Assembly of the Presbyterian Church and the laws of the State of Louisiana and the United States Of America.

C) Article IV of the 1926 articles provides in relevant part:

... They shall have the care of the property of the congregation, both real and personal, and shall keep in proper repair the church edifice and other buildings belonging to the congregation. In matters of special importance affecting the property of the church, they can not take final action without the consent of the congregation.

D) Article V of the 1926 articles provides in relevant part:

The Board of Deacons by and with the consent of the congregation, shall have the right to buy, sell, mortgage, pledge, or hypothecate property, real, personal and mixed, borrow money, draw notes and grant security for the same; however, the consent of the congregation will not be necessary, should the amount involved be less than Eight Hundred (\$800.00) Dollars.

All other financial or secular matters in which this corporation is interested shall be determined by the Board of Deacons at any regular meeting of the Board. ...

10.

The meaning of the above 1926 articles was clarified in contemporaneously adopted 1894 by-laws.

A) Article I of the 1926 by-laws provides:

In Article II of the Church Charter outlining the Objects and Purposes of this corporation, there is a clause reading: "including all amendments", which is explanatory — meaning present as well as future amendments adopted by the General Assembly, which may not be in conflict with the Charter Provisions or the laws obtaining to this State.

Article II of the 1926 by-laws provide:

B) The constitution, by-laws, rules, and regulations promulgated, from time to time, by the General Assembly of the Presbyterian Church in the United States, in convention assembled, shall govern and control the affairs of this corporation, provided same be not inconsistent with the Constitution and laws of the United States of America, the State of Louisiana, or the charter and by-laws of this Corporation.

11.

On June 10, 1975 all ten articles contained in the last charter amendment of December 26, 1926 were revoked and superseded by new articles of incorporation.

A) Article I of the 1975 articles provides in relevant part:

The name and style of this corporation shall be the "CARROLLTON PRESBYTERIAN CHURCH OF NEW ORLEANS". ...

B) Article II of the 1975 articles provides:

The purpose and objects of this Corporation is and are to establish and maintain a place of worship of God, according to the forms, usages and doctrines as set forth in the WESTMINSTER ASSEMBLY'S CONFESSION OF FAITH AND CATECHISMS, and to conduct Bible School classes for all ages as well as a weekly school encompassing pre-kindergarten, kindergarten, elementary and secondary education, and to exercise all the rights, powers and immunities granted by law to a corporate body and requisite to the administration of the affairs of such a religious body corporate.

C) Article III of the 1975 articles provides in relevant part:

The control of all the corporation's properties, real, personal and mixed is hereby vested in a Board of Trustees, and their successors, consisting of nine members of Carrollton Presbyterian Church, a majority of whom shall constitute a quorum. ...

The Board of Trustees, by and with the consent of the congregation, present and voting shall have the right to buy, sell, mortgage, pledge or hypothecate property, real, personal and mixed, borrow money, draw notes and grant security for the same.

D) Article IV of the 1975 articles provides in relevant part:

The management of the religious business of the Corporation shall be and is hereby vested in a Board of Deacons of not more than twenty-seven members, of which ten shall constitute a quorum. ...

The Board of Deacons and their successors shall have the day to day management of the Church's operations and the care of all the properties of the corporation, movable and immovable, and shall keep in proper repair the Church edifice and buildings belonging to the corporation. ...

Subject to the provisions of Article III concerning the Trustees, all other financial or secular matters in which the corporation is interested shall be determined by the Board of Deacons at any regular meeting. In the event a meeting of the Board of Deacons is called at which it is contemplated a matter will be passed on involving more than Twenty-five Hundred (\$2500.00) Dollars, it shall be the duty of the Secretary to notify all of the members of the Board in writing at least twenty-four hours before the meeting, at the last known address of the member. Expenditures of over \$2,500.00 dollars must have the approval of the congregation. ...

E) Article VIII of the 1975 articles provides:

It is the intent of these amendments that the right and authority to purchase, mortgage or sell any movable or immovable properties of the Church, shall be vested exclusively in the Board of Trustees, whereas, the day to day management, care and maintenance of the properties shall be vested in the Board of Deacons.

12.

The Articles of Incorporation were further amended on November 13, 1979 by adoption of a complete restatement of the articles which revoked and rescinded all prior articles and amendments thereto. It is these 1979 articles of incorporation which are currently in effect.

A) Article I of the 1979 articles provides:

The name and title of this corporation shall be Carrollton Presbyterian Church and, under said name, unless sooner dissolved in accordance with law, it shall exist and continue, and shall have and enjoy corporate existence and succession, for a period of ninety-nine years from and after the date of this act, during which time, it, generally, shall possess all the powers, rights, privileges, capacities and immunities which non-profit corporations are authorized, and may hereafter be authorized, to possess under the Constitution and the laws of this State.

B) Article III of the 1979 articles provides:

This corporation is a non-profit corporation and the objects and purposes of this corporation are hereby declared to be: To establish and maintain a place or places of worship; to cultivate, propagate and practice the Christian Religion according to the teachings of the Holy Scriptures of the Old and New Testaments as expounded in the Westminster Assembly's Confession of Faith and amendments thereto, and the Larger and Shorter Catechisms of the Presbyterian Church in the United States, and according to the Book of Church Order of the Presbyterian Church in the United States

as ordained from time to time by the General Assembly thereof; to conduct Bible School classes for all ages as well as weekday school classes encompassing prekindergarten, kindergarten, elementary and secondary education; to conduct charitable and missionary work in the State of Louisiana and elsewhere, and to exercise all rights, powers and immunities granted by law to a corporate body and requisite to and helpful in the administration of the affairs of such a religious body.

C) Article V of the 1979 articles provides in relevant part:

The governing body of Carrollton Presbyterian Church shall consist of:

The Session

The Church Session consists of the Pastor and the ruling Elders of the Church. ...

The Session shall have the supervision and authority over all the Boards and Committees elected by the Congregation or appointed by the Session. ...

The management of all of the business, financial or other temporal affairs and powers of the corporation, except those reserved to the Board of Trustees, shall be vested in the Session, which shall include the day-to-day management of the Church's operations and the care of all of the properties of the corporation, movable and immovable, and shall keep in proper repair the Church edifice and all buildings belonging to the corporation.

Subject to the provisions of Article VI concerning the Trustees, all other financial or secular matters of the corporation shall be determined by the Session at any regular or special meeting. At any meeting of the Session at which it is contemplated that a matter involving more than \$2,500.00 will be passed upon, it shall be the duty of the Clerk to notify all of the members ... Any expenditure of over \$2,500.00 shall be approved by the Congregation at a meeting called for such purpose.

D) Article VI of the 1979 articles provides in relevant part:

Trustees

This body shall be composed of Trustees elected by the Congregation; the number and term of office of Trustee shall be determined by the Congregation. ...

The Trustees shall hold title to and control the properties of the corporation and shall have the right to buy, sell, mortgage, pledge or hypothecate property, real, person or mixed; borrow money, draw notes and grant security for the same and, in doing so, shall act solely under the authority of the corporation, granted in a duly called meeting of the Congregation.

13.

At all times in its history, the articles of incorporation of Carrollton Presbyterian Church and its predecessor provided that the corporate board of trustees, or the board of deacons when

managing the civil affairs of the corporation, shall exercise all powers of the corporation. Said articles further granted, without limitation, full and exclusive authority on all property matters variously to the local board of trustees/deacons and/or local congregation, *without* such authority being made subject to: a) any other ecclesiastical entity, or; b) the provisions of any denominational constitution that are at variance with the local church's articles of incorporation or the laws of the State of Louisiana.

14.

At no time in its history have the articles of incorporation for Carrollton Presbyterian Church or its predecessor contained any provision creating or establishing any trust, express or implied, upon the property held 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, the board of deacons, or the board of trustees of Carrollton Presbyterian Church or its predecessor 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.

THE PROPERTY OWNED BY
CARROLLTON PRESBYTERIAN CHURCH

15.

All immovable property owned and held by Carrollton Presbyterian Church were acquired in acts of conveyance variously dated: April 28, 1922 (2032 S. Carrollton Avenue); October 3, 1969 and March 19, 1971 (2022 S. Carrollton Avenue), and; December 30, 1971 (8121-23 Panola Street), said property being more fully described in En Globo Exhibits P-2 through P-5 submitted herewith.

16.

All acquisitions of immovable or real property and any moveable property, owned and held by Carrollton Presbyterian Church, 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 the local (i.e., particular) church only, or by donations made only to Carrollton Presbyterian Church, with the clear understanding that the property and improvements were and would continue to be controlled, owned and held only

by Carrollton Presbyterian Church. No financial contributions or donations were made by the PSL, the PCUSA or any predecessor national denomination or regional administrative unit.

17.

The property acquired by plaintiff on April 28, 1922 (whose municipal address is 2032 S. Carrollton Avenue and which is the site of plaintiff's current sanctuary building) was transferred on that date to plaintiff by the Presbyterian Board of Domestic Missions for the State of Louisiana ("Domestic Missions Board") without any reservation of rights. The Domestic Missions Board was a property holding company of the PCUS presbytery that was the predecessor to the Presbytery of South Louisiana of the Presbyterian Church (USA). The Domestic Missions Board had previously purchased the property in 1918 "for account of the Palmer Park Presbyterian Church" (Palmer Park Presbyterian Church subsequently consolidated with the Carrollton Presbyterian Church of New Orleans prior to the April 28, 1922 transfer). Upon payment by Carrollton Presbyterian Church to the Board of Domestic Missions of the Mission Board's previous purchase price, the Mission Board transferred all of its right, title and interest, without reservation of any rights, to Carrollton Presbyterian Church of New Orleans. Said property is more particularly described in En Globo Exhibit P-2 submitted herewith.

18.

By Act of Cash Sale dated October 3, 1969 from the succession of Julia Black to the Carrollton Presbyterian Church of New Orleans, plaintiff did acquire for the sum of \$45,000.00 two certain lots of ground with improvements thereon which bear the number 2022 S. Carrollton Avenue, as more particularly described in En Globo Exhibit P-3 submitted herewith.

19.

On March 19, 1971 by Act of Cash Sale from Mrs. Melvin O. (Ethyl Flannigan) Frank to the Carrollton Presbyterian Church of New Orleans, plaintiff did acquire for the sum of \$1,525.32 a certain piece or portion of ground with improvements thereon, which property likewise bears the number 2022 S. Carrollton Avenue and is more particularly described in En Globo Exhibit P-4 submitted herewith.

20.

Plaintiff's property described in En Globo Exhibits P-3 and P-4, bearing number 2022 S. Carrollton Avenue, is the site of plaintiff's Educational Building.

21.

On December 30, 1971 by Act of Donation from Alfred M. Barnes, Jr. to the Carrollton Presbyterian Church of New Orleans, the plaintiff did acquire a certain portion of ground with improvements thereon, then estimated by the donor to be valued at approximately \$26,500.00, which property bears the number 8121-23 Panola Street and being more particularly described in En Globo Exhibit P-5 submitted herewith.

22.

All real properties owned and held by Carrollton Presbyterian Church were originally titled in, and at all times have remained titled in, the name of the local church corporation only, and do not mention or refer to a national denomination such as the PCUS or PCUSA or any of their regional administrative units, 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 records of the Parish of Orleans, State of Louisiana.

23.

All moveable property held by or for Carrollton Presbyterian Church was and is owned exclusively and in full by it, without any third party interest, in trust or otherwise, attaching thereto.

**THE BASIS OF THE PSL'S CLAIMS TO THE
PROPERTY OF CARROLLTON PRESBYTERIAN CHURCH**

24.

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"). 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.

25.

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. (Exhibit P-6)

26.

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 plaintiff’s property and are not legally enforceable under the Constitution or the laws of the State of Louisiana.

27.

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 plaintiff’s property and are not legally enforceable under the Constitution or the laws of the State of Louisiana.

28.

G-8.0301 of the PCUSA Book of Order pertains to departure from the PCUSA 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 plaintiff's property and are not legally enforceable under the Constitution or the laws of the State of Louisiana.

29.

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." A copy of Chapter 6 of the 1982/1983 edition of the PCUS Book of Church Order (together for comparison with the 1980-1981 edition) is submitted herewith as En Globo Exhibit P-7.

30.

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 Carrollton Presbyterian Church.

31.

Part II of the PCUSA constitution, the Book of Order (the same part that contains the denomination's assertion of a trust over local church property at G-8.0201) sets forth "Historic Principles of Church Order". Those basic PCUSA governing principles 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) (submitted herewith as Exhibit P-8) 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.

32.

Part I of the constitution of the PCUSA, the Book of Confessions, further 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 or vested property rights. Specifically, 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." A copy of Part I of the PCUSA constitution, 6.148 is submitted herewith as Exhibit P-9.

33.

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.

34.

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."

35.

Carrollton Presbyterian Church timely exercised the exemption clause of G-8.0700 of the PCUSA Book of Order at a regularly called meeting on July 8, 1984, unanimously adopting a motion to exercise the exemption provision in Chapter VIII of the PCUSA Book of Order, it being the understanding and intent of the congregation that by so doing it would "retain" its "PCUS property heritage". En globo Exhibit P-10.

36.

Following the congregational adoption of the July 8, 1984 motion, the congregation notified the PSL of its action, which notice, pursuant to G-9.0407 – 9.0409 of the PCUSA Book of Order, was accepted without objection by the PSL (in affirmation that said proceedings were “regular and in accordance with the Constitution” and were “prudent and equitable”). Receipt by the PSL of this notice is evidenced by CPC's session minutes of Sept. 11, 1984, by PSL minutes of Oct. 9, 10, 1984, and by PSL correspondence of August 3, 1993. (En globo Exhibit P-10)

37.

For 127 years, from the time Carrollton Presbyterian Church was founded in 1855, and continuously throughout its existence until 1982, no denomination with which it was affiliated ever contained any 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, no denomination with which it was affiliated ever contained in its constitution any implied trust over local church property which ran in favor of the national denomination.

38.

In anticipation of 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 reportedly amended 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. (En Globo Exhibit P-7)

39.

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 added to the constitutions of the national denominations did not include or result from any vote, approval or action by the local congregation of Carrollton Presbyterian Church or its corresponding plaintiff civil corporation, 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 national General Assembly chosen by the regional presbyteries (which presbyteries in practice are the beneficiaries of the trust clauses that were added), and; b) participation by presbyters (voting delegates) to the presbyteries, sent to the meeting of the regional presbytery by the local congregations. The PCUSA Book of Order expressly states at G-4.0301d and G-1.0301 (submitted herewith as Exhibit 11) that presbyters are not required to act in a representative capacity on behalf of local congregations.

40.

Following initial approval by the commissioners to General Assembly, the new trust clauses 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, and irrespective of whether the local property owners of record participated in the ratification process.

41.

Regardless of how one interprets the trust clauses in Chapter 6 of the PCUS Book of Church Order, the action taken by Carrollton Presbyterian Church at its July 8, 1984 congregational meeting, notice of which was received by the PSL, manifests an intent by Carrollton Presbyterian Church to reject any ownership or control 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.

42.

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.

43.

At no time have the members of Carrollton Presbyterian Church or the members of its corporation, or their governing bodies (the session and the board of deacons/trustees,

respectively), 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 corporation's governing board have affirmed and reaffirmed their understanding and intent that all property held by the local church, whether incorporated or as an unincorporated religious association, whether corporeal or incorporeal, movable or immovable, (real or personal), is held by it in full and complete ownership in accordance with the deeds, articles of incorporation and other documents indicative of intent, 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.

**LOUISIANA LAW DOES NOT PERMIT THE
ESTABLISHMENT OF A VALID AND ENFORCEABLE TRUST
IN THE MANNER ASSERTED BY THE PSL**

44.

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 unless all or substantially all trust property was donated by the local beneficiary.

45.

The actions of Carrollton 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 Carrollton 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/PCUS ACKNOWLEDGE THAT LOCAL
CHURCH PROPERTY MATTERS ARE DETERMINED BY
STATE LAW AND ARE NOT CONTROLLED BY
ASSERTIONS IN RELIGIOUS CONSTITUTIONS**

46.

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. 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 or controlled by the trust or ownership provisions asserted in the PCUSA Constitution, or the constitution of its predecessor denomination, but instead are subject to the civil laws of the state in which the property is located and in which the local church has incorporated. A copy of G-7.0401 and G-7.0402 is submitted herewith as Exhibit P-12.

47.

The PCUSA Book of Order does not, and the former PCUS Book of Church Order did not, require that:

- a) a local church corporation include the name of the denomination (PCUS or PCUSA) in the local corporate name;
- b) local deeds contain the name of the denomination as part of the grantee's identification;

- c) inclusion of trust language in the deeds;
- d) local articles of incorporation state that the affairs of the corporation are subject to the denominational constitution irrespective of any contrary provisions in the civil articles of incorporation or state or federal law.

48.

The PCUSA's own official "Legal Resource Manual for Presbyterian Church (USA) Middle Governing Bodies and Churches" expressly acknowledges that the provisions of the PCUSA constitution do not control property matters (“Almost all property matters are governed by state law ...”). Exhibit P-13.

49.

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.” According to this provision in the PCUSA's own Book of Order, a presbytery or other ecclesiastical governing body of the PCUSA cannot exercise civil power to enforce a claim over local church property based on provisions in the denominational constitution. Nor can they obtain civil court enforcement of denominational provisions if those provisions are in derogation of or are contrary to the civil laws of the state. (Exhibit P-14)

50.

As a corollary to G-9.0102 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 also 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, the Constitution of the State of Louisiana, 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. (Exhibit P-8)

DECLARATORY RELIEF

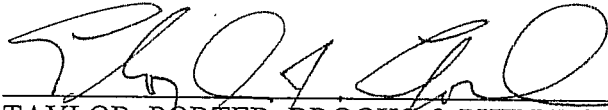
51.

Petitioner seeks a declaratory judgment: (a) that all property held by or for Carrollton 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 or disposition thereof.

WHEREFORE, Petitioner, Carrollton Presbyterian Church, prays that a declaratory judgment be issued herein as follows:

- 1) Declaratory Judgment - that all property held by or titled in the name of the petitioner, and all property held by or formerly titled in the name of the Carrollton Presbyterian Church of New Orleans, whether corporeal or incorporeal, movable or immovable (real or personal) is or was 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 deeds and 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, express or implied, in trust or otherwise, in said property nor right to determine the ownership or disposition thereof;
- 2) that defendant be served with a copy of the above and foregoing petition and order;
- 3) 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 declaratory judgment should not issue as prayed for in favor of petitioner;
- 4) for all general and equitable relief, and;
- 5) for all costs of these proceedings.

Respectfully submitted,



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

Lloyd J. Lunceford (#8439)

A. Michael Duffalo (#5125)

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 CARROLLTON PRESBYTERIAN
CHURCH

PLEASE SERVE:

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

Through its agent for service of process:

William H. Bottomly, III

4800 Zenith St., Apt. 234

Metairie, LA 70001