

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. 565482

SECTION: 26

CARROLLTON PRESBYTERIAN CHURCH

VERSUS

**THE PRESBYTERY OF SOUTH LOUISIANA OF THE
PRESBYTERIAN CHURCH (U.S.A.)**

FILED: _____

DEPUTY CLERK

ANSWER AND EXCEPTIONS TO PETITION AS AMENDED

NOW INTO COURT, through undersigned counsel, comes defendant, the Presbytery of South Louisiana (hereinafter the "Presbytery"), who hereby states its answer to the Petition for Declaratory Judgment (hereinafter the "Petition") and Amended Petition for Temporary Restraining Order, Preliminary and Permanent Injunctions and Declaratory Judgment (hereinafter the "Amended Petition") filed by Carrollton Presbyterian Church (hereinafter "Carrollton").

FIRST DEFENSE

The Presbytery excepts to the Petition and the Amended Petition on the basis that the court lacks authority to grant the relief requested to the extent that such relief requires this court to second guess the decisions of internal church judicatories or to decide those issues in the first instance. Carrollton communicated to the Presbytery that it wished to cease operations and effect its dissolution, an internal church matter with only incidental effects on the use or disposition of church property. Such an internal church matter is beyond the scope of this court's power to address. *See* La. C.C.P. art. 925A(6).

SECOND DEFENSE

The Presbytery excepts to the Petition and Amended Petition as premature for failure to exhaust administrative remedies because, at the time this suit was filed and when the Amended

Petition was filed, Carrollton was involved in an internal church governance procedure that has not yet been completed. Until that administrative process is complete, there is no final ecclesiastical decision about the fate of Carrollton as a particular church of the PCUSA or with respect to the use or disposition of the subject church property. As such, the present action is premature. See La.C.C.P. art. 926A(1).

THIRD DEFENSE

The Presbytery objects to the Amended Petition because it sought and obtained a temporary restraining order under false pretenses and wrongfully deprived the Presbytery of a meaningful opportunity to be heard in advance of the issuance of the temporary restraining order.

FOURTH DEFENSE

AND NOW responding paragraph by paragraph to the specific allegations contained in the Petition, the Presbytery answers as follows:

1.

The allegations in paragraph 1 of the Petition are admitted solely to the extent that they identify Carrollton as a Louisiana non-profit corporation domiciled in Orleans Parish. At all times pertinent to Carrollton's incorporation, Carrollton was a particular church of the Presbyterian Church in the United States, which is now the Presbyterian Church (U.S.A.) (hereinafter "PCUSA").

2.

The allegations of paragraph 2 of the Petition are admitted solely to the extent that they identify the Presbytery of South Louisiana of the PCUSA as a Louisiana non-profit corporation domiciled in East Baton Rouge Parish. As to the balance of the allegations in paragraph 2, the Presbytery states that it is one of the four governing bodies within the PCUSA, which is a hierarchical denomination established in 1983 upon the merger or reunification of the Presbyterian Church in the United States (hereinafter "PCUS") and the United Presbyterian Church in the United States of America, which were established in 1861 as the southern and northern Presbyterian Churches in the United States, respectively, at the outbreak of the Civil War. The PCUSA and its particular churches are bound together by the church polity and ecclesiastical law embodied in the *Book of Order*.

3.

The allegations in paragraph 3 of the Petition are denied as this is not a church property matter but is instead a church governance matter with incidental effects on church property.

4.

The allegations in paragraph 4 of the Petition are admitted.

5.

The allegations in paragraph 5 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery avers that at all times pertinent to the acquisition of the immovable property mentioned in paragraph 5 of the Petition, Carrollton was a particular church of the Presbyterian Church in the United States, which is now the PCUSA, and the property was acquired for the purpose of establishing and maintaining buildings of worship for the PCUS and according to its form of government. The PCUS and its form of government are now the PCUSA and the *Book of Order*, respectively. Indeed, the merger of Carrollton Presbyterian Church and the Palmer Park Presbyterian Church and the relocation of both of these churches to the present location on Carrollton Avenue was at the direction of the New Orleans Presbytery, the predecessor in interest to the Presbytery of South Louisiana. In addition, the property at 2032 S. Carrollton Avenue was provided to the newly merged congregations by the Presbyterian Board of Domestic Missions for the State of Louisiana and Elsewhere an entity owned and controlled by the predecessor of the Presbytery, at the direction of the Presbytery, and as part of Presbyterian church development.

6.

The allegations in paragraph 6 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery avers that the documents referenced by Carrollton are the best evidence of their contents. At all times pertinent to these purported articles of incorporation, Carrollton was a particular church of the PCUS, which is now the PCUSA. Carrollton voluntarily joined the PCUSA and subjected itself to church polity and ecclesiastical law embodied in *The Book of Order* and acquiesced in the civil effects of the same, including, but not limited to, the trust provision.

7.

The allegations in paragraph 7 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery avers that the documents referenced by Carrollton are the best evidence of their contents. At all times pertinent to these purported articles of incorporation, Carrollton was a particular church of the PCUS which is now the PCUSA. Carrollton voluntarily joined the PCUSA and subjected itself to church polity and ecclesiastical law embodied in the *Book of Order* and acquiesced in the civil effects of the same, including, but not limited to, the trust provision.

8.

The allegations in paragraph 8 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery avers that the documents referenced by Carrollton are the best evidence of their contents. At all times pertinent to these purported articles of incorporation, Carrollton was a particular church of the PCUS which is now the PCUSA. Carrollton voluntarily joined the PCUSA and subjected itself to church polity and ecclesiastical law embodied in the *Book of Order* and acquiesced in the civil effects of the same, including, but not limited to, the trust provision.

9.

The allegations in paragraph 9 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery avers that the documents referenced by Carrollton are the best evidence of their contents. At all times pertinent to these purported articles of incorporation, Carrollton was a particular church of the PCUS, which is now the PCUSA. Carrollton voluntarily joined the PCUSA and subjected itself to church polity and ecclesiastical law embodied in the *Book of Order* and acquiesced in the civil effects of the same, including, but not limited to, the trust provision.

10.

The allegations in paragraph 10 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery avers that the documents referenced by Carrollton are the best evidence of their contents. At all times pertinent to these purported articles of incorporation, Carrollton was a particular church of the PCUS, which is now the

PCUSA. Carrollton voluntarily joined the PCUSA and subjected itself to church polity and ecclesiastical law embodied in the *Book of Order* and acquiesced in the civil effects of the same, including, but not limited to, the trust provision.

11.

The allegations in paragraph 11 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery avers that the documents referenced by Carrollton are the best evidence of their contents. At all times pertinent to these purported articles of incorporation, Carrollton was a particular church of the PCUS, which is now the PCUSA. Carrollton voluntarily joined the PCUSA and subjected itself to church polity and ecclesiastical law embodied in the *Book of Order* and acquiesced in the civil effects of the same, including, but not limited to, the trust provision.

12.

The allegations in paragraph 12 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery avers that the documents referenced by Carrollton are the best evidence of their contents. At all times pertinent to these purported articles of incorporation, Carrollton was a particular church of the PCUS, which is now the PCUSA. Carrollton voluntarily joined the PCUSA and subjected itself to church polity and ecclesiastical law embodied in the *Book of Order* and acquiesced in the civil effects of the same, including, but not limited to, the trust provision.

13.

The allegations in paragraph 13 of the Petition are denied.

14.

The allegations in paragraph 14 of the Petition are denied.

15.

The allegations in paragraph 15 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery further avers that the documents referenced by Carrollton are the best evidence of their contents and speak for themselves.

16.

The allegations in paragraph 16 of the Petition are denied.

17.

The allegations in paragraph 17 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery further avers that the documents referenced by Carrollton are the best evidence of their contents and speak for themselves.

18.

The allegations in paragraph 18 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery further avers that the documents referenced by Carrollton are the best evidence of their contents and speak for themselves.

19.

The allegations in paragraph 19 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery further avers that the documents referenced by Carrollton are the best evidence of their contents and speak for themselves.

20.

The allegations in paragraph 20 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery further avers that the documents referenced by Carrollton are the best evidence of their contents and speak for themselves.

21.

The allegations in paragraph 21 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery further avers that the documents referenced by Carrollton are the best evidence of their contents and speak for themselves.

22.

The allegations in paragraph 22 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery further avers that the documents referenced by Carrollton are the best evidence of their contents and speak for themselves.

23.

The allegations in paragraph 23 of the Petition are denied.

24.

The allegations of paragraph 24 of the Petition are admitted.

25.

The allegations of paragraph 25 of the Petition are admitted.

26.

The allegations of paragraph 26 of the Petition that the PCUSA's *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 (U.S.A.)" is admitted. The remaining allegations in paragraph 26 of the Petition are denied. At all pertinent times, Carrollton was a particular church of the PCUS, which is now the PCUSA. Carrollton voluntarily joined the PCUSA and subjected itself to church polity and ecclesiastical law embodied in the *Book of Order* and acquiesced in the civil effects of the same, including, but not limited to, the trust provision.

27.

The first three sentences of paragraph 27 of the Petition are admitted. The balance of the allegations of paragraph 27 of the Petition are denied.

28.

The allegations of the first two sentences of paragraph 28 of the Petition are admitted. The balance of the allegations of paragraph 28 of the Petition are denied.

29.

The allegations of paragraph 29 of the Petition are denied for lack of sufficient information to justify a belief therein. The Presbytery further avers that the documents referenced by Carrollton are the best evidence of their contents and speak for themselves.

30.

The allegations in paragraph 30 of the Petition are denied.

31.

The quotations from the *Book of Order* in paragraph 31 of the Petition are accurate. However, the implication of the allegations in paragraph 31 is denied. At all pertinent times, Carrollton was a particular church of the PCUS, which is now the PCUSA. Carrollton voluntarily joined the PCUSA and subjected itself to church polity and ecclesiastical law

embodied in the *Book of Order* and acquiesced in the civil effects of the same, including, but not limited to, the trust provision.

32.

The quotations from the *Book of Order* in paragraph 32 of the Petition are accurate. However, the implication of the allegations in paragraph 32 is denied. At all pertinent times, Carrollton was a particular church of the PCUS, which is now the PCUSA. Carrollton voluntarily joined the PCUSA and subjected itself to church polity and ecclesiastical law embodied in the *Book of Order* and acquiesced in the civil effects of the same, including, but not limited to, the trust provision.

33.

The allegations of paragraph 33 of the Petition are admitted.

34.

The allegations of paragraph 34 of the Petition are admitted.

35.

The allegations of paragraph 35 of the Petition are admitted.

36.

The allegations of paragraph 36 of the Petition are admitted.

37.

The allegations of paragraph 37 of the Petition are denied.

38.

The allegations of paragraph 38 of the Petition are denied. Every former PCUS congregation had the right to leave the newly reunified PCUSA with church property if it acted to do so within eight years of reunion by simple majority vote as set forth in Article 13 of the Articles of Agreement. If they did not leave the PCUSA during that time period they were subject to the *Book of Order*, including the trust clause. Even if they elected to exercise the exemption under G-8.0700 to the provisions of G-8.0500, such a former PCUS church was nevertheless subject to the Book of Church Order of the former PCUS as such Book of Church Order existed in 1983 which property provisions included a trust in favor of the national denomination. The PCUS Book of Church Order provided at Chapter 6, section 6-3 as follows:

§ 6-3. All property held by or for a particular church, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States

As such, the election to exercise the exemption under G-8.0700 rendered the former PCUS church like Carrollton subject to the express trust clause of the Book of Church Order.

39.

The allegations of paragraph 39 of the Petition are denied. At all pertinent times, Carrollton was a particular church of the PCUS, which is now the PCUSA. Carrollton voluntarily joined the PCUSA and subjected itself to church polity and ecclesiastical law embodied in the *Book of Order* and acquiesced in the civil effects of the same, including, but not limited to, the trust provision.

40.

The allegations of paragraph 40 of the Petition are denied because every congregation in PCUS was empowered to participate in presbytery meetings and vote on the proposed changes to the constitution to include the trust clauses. Any failure to participate does not relieve the particular church of the responsibilities to abide by the Book of Church Order as then amended by constitutional action of the presbyteries or by the *Book of Order* of the reunited PCUSA. Indeed, any church that believed its property rights had been negatively affected in any way by these revisions to the Book of Church Order of the PCUS or by the *Book of Order* of the reunited PCUSA was certainly free to leave the denomination with church property as set forth in the Articles of Agreement a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference.

41.

The allegations of paragraph 41 of the Petition are denied. Instead, any such action was taken with full knowledge that doing so subjected the remaining congregation to the trust provisions in the *Book of Order* of the PCUSA.

42.

The allegations of paragraph 42 of the Petition are denied as stating a legal conclusion for which no response is required. In addition, the allegation is irrelevant because the United States

Supreme Court, in *Jones v. Wolf*, 443 U.S. 595 (1979), expressly held that the a national denomination could accomplish an enforceable express trust by including one in its constitution without the necessity of resorting to express trust clauses in deeds when the court stated:

At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal.

443 U.S. at 606. Moreover, Carrollton's proposed property sale would result in that property ceasing to be used as a particular church of the PCUSA and as a means of Carrollton accomplishing its own dissolution, thereby subjecting the property to the control of the Presbytery under the *Book of Order*, irrespective of the trust clause.

43.

The allegations of paragraph 43 of the Petition are denied. Carrollton voluntarily joined the PCUSA and subjected itself to church polity and ecclesiastical law embodied in the *Book of Order* and acquiesced in the civil effects of the same, including, but not limited to, the trust provision.

44.

The allegations of paragraph 44 of the Petition are denied.

45.

The allegations of paragraph 45 of the Petition are denied.

46.

The Presbytery admits that the quotation in paragraph 46 of the Petition of G-7.0401 from the *Book of Order* is accurate. The Presbytery further avers, however, that this requirement does not preclude the establishment of a valid and enforceable trust relationship between the PCUSA and the particular church as a constituent member of the PCUSA under ecclesiastical law as embodied in the *Book of Order* and the Articles of Agreement and Louisiana law. The remaining allegations of paragraph 46 of the Petition are denied.

47.

The allegations of paragraph 47 of the Petition are denied as stating a legal conclusion for which no response is required. In addition, the allegation is irrelevant because the United States Supreme Court, in *Jones v. Wolf*, 443 U.S. 595 (1979), expressly held that the a national denomination could accomplish an enforceable express trust by including one in its constitution without the necessity of resorting to express trust clauses in deeds. Moreover, Carrollton's proposed property sale would result in that property ceasing to be used as a particular church of the PCUSA and as a means of Carrollton accomplishing its own dissolution subjecting the property to the control of the Presbytery under the *Book of Order*, irrespective of the trust clause.

48.

The allegations of paragraph 48 of the Petition are denied as stating a legal conclusion for which no response is required. In addition, the allegation is irrelevant because the United States Supreme Court, in *Jones v. Wolf*, 443 U.S. 595 (1979), expressly held that the a national denomination could accomplish an enforceable express trust by including one in its constitution without the necessity of resorting to express trust clauses in deeds. Moreover, Carrollton's proposed property sale would result in that property ceasing to be used as a particular church of the PCUSA and as a means of Carrollton accomplishing its own dissolution subjecting the property to the control of the Presbytery under the *Book of Order*, irrespective of the trust clause.

49.

The allegations of paragraph 49 of the Petition are denied as stating a legal conclusion for which no response is required. In addition, the allegation is irrelevant because the United States Supreme Court, in *Jones v. Wolf*, 443 U.S. 595 (1979), expressly held that the a national denomination could accomplish an enforceable express trust by including one in its constitution without the necessity of resorting to express trust clauses in deeds. Moreover, Carrollton's proposed property sale would result in that property ceasing to be used as a particular church of the PCUSA and as a means of Carrollton accomplishing its own dissolution subjecting the property to the control of the Presbytery under the *Book of Order*, irrespective of the trust clause.

50.

The allegations of paragraph 50 of the Petition are denied.

51.

The allegations of paragraph 51 of the Petition are denied.

FIFTH DEFENSE

The Amended Petition filed by Carrollton adopts the allegations of paragraphs 1 through 51 of the original Petition and alleges additional paragraphs 52 through 69 in support of a new claim for the additional relief of a temporary restraining order, a preliminary injunction and a permanent injunction. The Amended Petition alleges that this injunctive relief is necessary to prohibit the Presbytery from taking actions described in paragraphs 52 through 59 which would allegedly violate Carrollton's "free speech rights guaranteed by the First and Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the Louisiana Constitution," "the religion clauses of the First Amendment to the United States Constitution and Article I, Section 8 of the Louisiana Constitution" and "the due process guarantees of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Louisiana Constitution." Amended Petition at ¶ 63. The Amended Petition further alleges that "the effect of such actions, if taken in whole or in part or threatened by the [Presbytery] would chill if not violate the foregoing, protected rights, interfere with appropriate local church governance of congregational matters, [and] impede the ability of the congregation of Carrollton Presbyterian Church to hold a congregational or corporate meeting free of improper interference." *Id.* As a result, Carrollton further alleges that it need not show irreparable harm to obtain the requested injunctive relief "when the deprivation of a constitutional right is involved" (*id.* at ¶ 64); that "absent a temporary restraining order and preliminary injunction, the rights of petitioners and the ministry of Carrollton Presbyterian Church will be irreparably injured" (*id.* at ¶ 66); that no amount of monetary award would be an adequate remedy as a result of "disciplinary action initiated by the [Presbytery] in retaliation for the exercise of petitioner's rights" (*id.*); and that it is entitled to injunctive relief prohibiting the Presbytery from "initiating any disciplinary action against the ministers or members of CPC, appointing an administrative commission with authority to assume 'original jurisdiction' over Carrollton's local governance . . . , or otherwise interfering, by dissolution or otherwise, in any way with the rights and responsibilities of the ministers, or employees of CPC, the governing body of CPC (the session),

its congregation, or the governing body of its local church corporation.” *Id.* at Prayer for Relief, subparagraphs 1, 2 and 3. Said claims are wholly and completely meritless for the failure of Carrollton to allege that any state actor was involved or ever would be involved in any such actions if taken by the Presbytery. Moreover, Carrollton stipulated that it made no allegation of a state actor and therefore had no viable constitutional claims in this case. In addition, the Presbytery denies that Carrollton is entitled to the sweeping and invasive relief demanded in its Amended Petition because the actions Carrollton seeks to enjoin involve the administration of internal church governance through procedures that are the responsibility of the Presbytery under the *Book of Order*. Carrollton, as a particular church of the PCUSA, is bound by the provisions of the *Book of Order* and is subject to these procedures and the exercise of the Presbytery’s responsibilities.

SIXTH DEFENSE

AND NOW responding paragraph by paragraph to the specific allegations contained in the Amended Petition, the Presbytery responds as follows:

52.

The allegations of the first sentence of paragraph 52 of the Amended Petition are admitted. The balance of the allegations of paragraph 52 are denied. The Presbytery further avers that the appointment of administrative commissions is an ecclesiastical concern over which this court does not possess jurisdiction. Furthermore, administrative commissions are not limited to the circumstances alleged in the first sentence of paragraph 52. Indeed, the Presbytery has often had occasion to establish administrative commissions to deal with church property in the context of church dissolution. Carrollton has sought to sell church property and effect its own dissolution and has acted to prevent the Presbytery from fulfilling its responsibilities in that process as required by the *Book of Order* necessitating the intervention of an administrative commission.

53.

The allegations of paragraph 53 of the Amended Petition are denied because the presbyteries, including the Presbytery of South Louisiana, have always had the right to use administrative commissions to address dissolution of particular churches and the incidental

property issues that arise in that context. Furthermore, the Presbytery possesses “whatever administrative authority is necessary to give effect to duties and powers assigned by the Constitution of the church.” *Book of Order* G-4.0301i. Moreover, “[t]he jurisdiction of each governing body is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries, and with the acts of each subject to review by the next higher governing body.” *Id.* at G-9.0103. As a result, the Presbytery has been given the authority to take whatever administrative action is necessary to fulfill its responsibilities assigned by the *Book of Order*. The Presbytery further avers that the appointment of administrative commissions is an ecclesiastical concern over which this court does not possess jurisdiction.

54.

The allegations of paragraph 54 of the Amended Petition are denied because the presbyteries, including the Presbytery of South Louisiana, have always had the right to use administrative commissions to address dissolution of particular churches and the incidental property issues that arise in that context. Furthermore, the Presbytery possesses “whatever administrative authority is necessary to give effect to duties and powers assigned by the Constitution of the church.” *Book of Order* G-4.0301i. Moreover, “[t]he jurisdiction of each governing body is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries, and with the acts of each subject to review by the next higher governing body.” *Id.* at G-9.0103. As a result, the Presbytery has been given the authority to take whatever administrative action is necessary to fulfill its responsibilities assigned by the *Book of Order*. The Presbytery further avers that the appointment of administrative commissions is an ecclesiastical concern over which this court does not possess jurisdiction.

55.

The allegations of paragraph 55 of the Amended Petition are denied because the presbyteries, including the Presbytery of South Louisiana, have always had the right to use administrative commissions to address dissolution of particular churches and the incidental property issues that arise in that context. Furthermore, the Presbytery possesses “whatever administrative authority is necessary to give effect to duties and powers assigned by the Constitution of the church.” *Book of Order* G-4.0301i. Moreover, “[t]he jurisdiction of each

governing body is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries, and with the acts of each subject to review by the next higher governing body.” *Id.* at G-9.0103. As a result, the Presbytery has been given the authority to take whatever administrative action is necessary to fulfill its responsibilities assigned by the *Book of Order*. The Presbytery further avers that the appointment of administrative commissions is an ecclesiastical concern over which this court does not possess jurisdiction.

56.

The allegations of paragraph 56 of the Amended Petition are denied because the presbyteries, including the Presbytery of South Louisiana, have always had the right to use administrative commissions to address dissolution of particular churches and the incidental property issues that arise in that context. Furthermore, the Presbytery possesses “whatever administrative authority is necessary to give effect to duties and powers assigned by the Constitution of the church.” *Book of Order* G-4.0301i. Moreover, “[t]he jurisdiction of each governing body is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries, and with the acts of each subject to review by the next higher governing body.” *Id.* at G-9.0103. As a result, the Presbytery has been given the authority to take whatever administrative action is necessary to fulfill its responsibilities assigned by the *Book of Order*. The Presbytery further avers that the appointment of administrative commissions is an ecclesiastical concern over which this court does not possess jurisdiction.

57.

The allegations of paragraph 57 of the Amended Petition are denied because the presbyteries, including the Presbytery of South Louisiana, have always had the right to use administrative commissions to address dissolution of particular churches and the incidental property issues that arise in that context. Furthermore, the Presbytery possesses “whatever administrative authority is necessary to give effect to duties and powers assigned by the Constitution of the church.” *Book of Order* G-4.0301i. Moreover, “[t]he jurisdiction of each governing body is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries, and with the acts of each subject to review by the next higher governing body.” *Id.* at G-9.0103. As a result, the Presbytery has been given the

authority to take whatever administrative action is necessary to fulfill its responsibilities assigned by the *Book of Order*. The Presbytery further avers that the appointment of administrative commissions is an ecclesiastical concern over which this court does not possess jurisdiction.

58.

The allegations of paragraph 58 of the Amended Petition are denied because the presbyteries, including the Presbytery of South Louisiana, have always had the right to use administrative commissions to address dissolution of particular churches and the incidental property issues that arise in that context. Furthermore, the Presbytery possesses “whatever administrative authority is necessary to give effect to duties and powers assigned by the Constitution of the church.” *Book of Order* G-4.0301i. Moreover, “[t]he jurisdiction of each governing body is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries, and with the acts of each subject to review by the next higher governing body.” *Id.* at G-9.0103. As a result, the Presbytery has been given the authority to take whatever administrative action is necessary to fulfill its responsibilities assigned by the *Book of Order*. The Presbytery denies that it ever misused an administrative commission or ever intended to do so and that such allegations are made solely for the purpose of misleading this court as to the Presbytery’s intentions in this matter. The Presbytery further avers that the appointment of administrative commissions is an ecclesiastical concern over which this court does not possess jurisdiction.

59.

The allegations of paragraph 59 of the Amended Petition are admitted except to deny that any such actions constituted any kind of “escalation” purposely directed at Carrollton or any other particular church within the Presbytery of South Louisiana. Instead, such activities were the natural activities of a Presbytery exercising its constitutional responsibilities under the *Book of Order*.

60.

The allegations of paragraph 60 of the Amended Petition that a monetary award is an insufficient remedy because it cannot protect Carrollton’s Constitutional rights are denied.

Furthermore, the Presbytery denies that it has taken or threatened any action that would violate Carrollton's Constitutional rights.

61.

The allegations of paragraph 61 of the Amended Petition that the Presbytery should be prohibited from performing its responsibilities under the *Book of Order* to establish an administrative commission as the same "would, without just cause, usurp and replace the authority of the pastor, the session, or the board of trustees" in violation of Carrollton's rights are denied. Furthermore, the Presbytery denies that the appointment of an administrative commission or any action it might take would violate Carrollton's Constitutional rights. Indeed, the appointment of administrative commissions is an ecclesiastical concern over which this court does not possess jurisdiction. The Presbytery also denies that the requested injunctive relief would "preserve the status quo."

62.

The allegations of paragraph 62 of the Amended Petition that Carrollton requires a permanent injunction in the form of the preliminary injunction in addition to a declaration of its property rights are denied. Furthermore, the Presbytery denies that Carrollton is entitled to injunctive relief and further denies that it is entitled to the declaratory relief it seeks.

63.

The allegations of paragraph 63 of the Amended Petition that any of the actions described in paragraphs 52 through 59 would violate Carrollton's "free speech rights guaranteed by the First and Fourteenth Amendments to the United States Constitution," "the religion clauses of the First Amendment to the United States Constitution" and "the due process guarantees of the Fourteenth Amendment to the United States Constitution" and that "the effect of such actions, if taken in whole or in part or threatened by the [Presbytery] would chill if not violate the foregoing, protected rights, interfere with appropriate local church governance of congregational matters, [and] impede the ability of the congregation of Carrollton Presbyterian Church to hold a congregational or corporate meeting free of improper interference" are denied. Furthermore, the Presbytery denies that any such actions would violate Carrollton's Constitutional rights or interfere with appropriate local church governance because that issue is one for the Presbytery to

decide in the first instance under the polity of the PCUSA as expressed in the *Book of Order*, an ecclesiastical process that was ongoing at the time of the filing of Carrollton's Amended Petition and over which this Court lacks jurisdiction.

64.

The allegations of paragraph 64 of the Amended Petition set forth legal conclusions to which no response is required. In an abundance of caution, the Presbytery avers that Carrollton must prove a deprivation of its Constitutional rights to come within this exception to the requirement that one prove irreparable harm to obtain injunctive relief, and the Presbytery denies the violations of Constitutional rights alleged by Carrollton.

65.

The allegations of paragraph 65 of the Amended Petition set forth legal conclusions to which no response is required. In an abundance of caution, the Presbytery avers that no such exceptions to the irreparable harm requirement apply in this case.

66.

The allegations of paragraph 66 of the Amended Petition that an injunction is necessary to protect Carrollton from actions of the Presbytery that would be in retaliation for the exercise of petitioner's rights are denied. Furthermore, the Presbytery avers that Carrollton must prove a potential deprivation of its Constitutional rights to show that it might be irreparably harmed in order to obtain the injunctive relief requested under paragraph 66 of the Amended Petition and the Presbytery denies the violation of Constitutional rights alleged by Carrollton.

67.

The allegations of paragraph 67 of the Amended Petition that a preliminary injunction is necessary to "stay the hand" of the Presbytery "from appointing an administrative commission that would, without just cause, usurp and replace the authority of the pastor, the session, or the board of trustees" as such action would violate "the rights of petitioner" are denied. Furthermore, the Presbytery denies that the appointment of an administrative commission or any action it might take would violate Carrollton's Constitutional rights. The Presbytery also denies that the requested injunctive relief would "preserve the status quo." In fact, the injunctive relieve actually prevents the Presbytery from carrying out its internal church governance responsibilities

under the *Book of Order*, procedures protected by the First Amendment and over which this Court lacks jurisdiction.

68.

The allegations of paragraph 68 of the Amended Petition that the requested injunctive relief is “in the public interest” are denied. Furthermore, the Presbytery denies that judicial interference in an ongoing ecclesiastical process is ever in the public interest.

69.

The allegations of paragraph 69 of the Amended Petition are denied.

In response to the allegations of Carrollton’s Prayer for Relief, as set forth in the paragraph beginning “WHEREFORE” on pages 7 and 8 of the Amended Petition, the Presbytery denies that a temporary restraining order should be (or should have been) issued and further denies that any preliminary or permanent injunction, or declaratory judgment should be issued in Carrollton’s favor. The Presbytery further responds to the specific allegations of Carrollton’s Prayer for Relief as follows:

1) The Presbytery denies that it or those acting on its behalf or in its stead should be restrained from (a) filing documents in mortgage and conveyance records with respect to the property. Moreover, the Presbytery avers that this stated concern of Carrollton’s is moot because Carrollton knew that a *Notice of Lis Pendens* about this case was already on file in the public records of Orleans Parish when Carrollton filed its Amended Petition seeking injunctive relief. The Presbytery denies that it or those acting on its behalf or in its stead should be restrained from (b) taking actions with respect to church property to determine ownership, use or control thereof. Moreover, the Presbytery avers that it has ecclesiastical duties under the *Book of Order* requiring that it take such actions because Carrollton has asserted that it plans to sell all of the subject church property and dissolve as a congregation. The Presbytery denies that it or those acting on its behalf or in its stead should be restrained from (c) asserting rights to the property claimed by Carrollton, initiating disciplinary action against ministers or members of Carrollton, appointing an administrative commission to take actions deemed appropriate under the *Book of Order*, including dissolving Carrollton as a particular church of the PCUSA, or taking any other action with respect to church governance deemed appropriate by the Presbytery in the exercise of its

responsibilities under the *Book of Order* because Carrollton has asserted that it plans to sell all of the subject church property and dissolve as a congregation and, at the same time, has refused to allow the Presbytery to carry out its responsibilities under the *Book of Order* as necessitated by those actions.

2) The allegations of paragraph 2 of Carrollton's Prayer reiterate the prayer for relief in paragraph 1 of the Prayer. The Presbytery denies the allegations of paragraph 2 of the Prayer and adopts by this reference its specific responses to those allegations as it made in response to the allegations made in paragraph 1 of the Prayer.

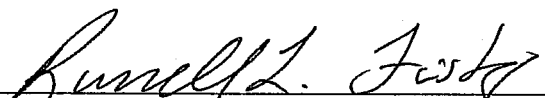
3) The allegations of paragraph 3 of Carrollton's Prayer reiterate the prayer for relief in paragraph 1 of the prayer. The Presbytery denies the allegations of paragraph 3 of the Prayer and adopts by this reference its specific responses to those allegations as it made in response to the allegations made in paragraph 1 of the Prayer.

4) Carrollton's assertions as to its alleged right to a declaratory judgment are denied because Carrollton holds church property at issue in trust for the use and benefit of the PCUSA and subject to the authority of the Presbytery pursuant to the *Book of Order*, state law, and the First Amendment's freedom of religion clauses. In addition, Carrollton's proposed property sale would result in that property ceasing to be used as a particular church of the PCUSA and as a means of Carrollton accomplishing its own dissolution subjecting the property to the control of the Presbytery under the *Book of Order*, irrespective of the trust clause.

Any remaining allegations in Carrollton's Prayer for Relief are also denied.

WHEREFORE, the Presbytery of South Louisiana prays that after due proceedings are had, that this Answer be deemed good and sufficient and that this suit be dismissed, with prejudice, and that this Court dissolve the temporary restraining order as wrongfully issued and award the Presbytery of South Louisiana its attorney's fees for defending against the wrongfully issued temporary restraining order.

Respectfully Submitted,


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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer and Exceptions to Petition as Amended has been served upon all counsel of record by placing same in the U.S. mail, postage prepaid and addressed to each on this 22nd day of July, 2009.

